BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Stephen Robertson,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No.EC-2027-0067
	)	
Evergy Missouri West, Inc. d/b/a	)	
Evergy Missouri West,	)	
	)	
Respondent.	)	

PUBLIC COUNSEL'S RESPONSE IN
OPPOSITION TO MOTION TO DISMISS

COMES NOW the Office of the Public Counsel ("OPC") and for its response in opposition to Evergy's motion to dismiss, states:

Evergy's Answer to the Complaint includes a *Motion to Dismiss*, wherein Evergy moves the Commission to dismiss the Complaint.

"On a motion to dismiss for failure to state a cause of action, the sole question is whether plaintiff's petition states a cause of action under the applicable law." *Asaro v. Cardinal Glennon Mem'l Hosp.*, 799 S.W.2d 595, 600 (Mo. 1990). Evergy's *Motion* should be denied because the Complaint alleges Evergy's actions violated a Commission order and a Commission rule, which are recognized causes of action under § 386.390 RSMo.

"A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences

therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 464 (Mo. 2001).

The Commission has the primary and exclusive jurisdiction to determine whether a regulated utility acted in violation of a Commission order or rule.[1] The Commission has already acknowledged it possesses the authority to determine whether Evergy has violated Order 9470.[2] Additionally, the Commission stated that the time to consider the complaint is when Evergy had relocated its line outside of the right-of-way or presented a plan to do so to the affected landowners.[3] In this case, the Complaint asserts Evergy is placing poles outside the right-of-way and has presented a plan to do so. The relief that may be granted is an order finding whether Evergy's actions violated an order or rule.

Determining whether Evergy violated the CCN order or the Commission's safety rules requires fact findings and legal conclusions, which necessitate a hearing and argument, or at a minimum, agreed upon facts

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[1] *Bryan Buck, on behalf of himself and all others similarly situated, Appellants, v. Union Electric Company, d/b/a Ameren Missouri, and Ameren Corporation, Respondents* , Missouri Court of Appeals, Eastern District - ED113772 (June 23, 2026). In finding the Commission has "exclusive jurisdiction" [emphasis in opinion] in complaints as to whether a tariff, statute, rule, order or decision has been violated under § 386.390, the Court stated, "As a result, "no other body, judicial, executive or municipal may step in" without the [Commission] first acting on the matter." See *In re Estate of Dothage*, 727 S.W.2d 925, 929 (Mo. App. W.D. 1987).

[2] Case No. EC-2024-0015, Order Dismissing Complaints, December 19, 2024, p. 5.

[3] *Id.*

necessary to decide the case, and legal argument from the parties. Evergy's *Motion* should be denied, and the Complainant provided with an opportunity to make their case.

WHEREFORE, the Office of the Public Counsel respectfully offers this response in opposition to Evergy's motion to dismiss the case.

Respectfully submitted,

/s/ Marc Poston
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 13th day of October 2026.

/s/ Marc Poston