

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Larry Deshotels,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No.EC-2024-0168
	)	
Evergy Missouri West, Inc. d/b/a	)	
Evergy Missouri West,	)	
	)	
Respondent.	)	

**PUBLIC COUNSEL’S RESPONSE  
TO EVERGY’S MOTION TO DISMISS**

**COMES NOW** the Office of the Public Counsel (“OPC”) and for its response to Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro’s<sup>1</sup> (“Evergy” or “Company”) December 15, 2023, Motion to Dismiss, states:

1. Evergy’s Motion to Dismiss cites the Company’s liability rule, P.S.C. MO. No. 2, Revised Sheet No. 1.14, §3.17, as a basis for the Commission to dismiss this Complaint. The tariff states:

3.17 LIABILITY OF COMPANY: Except where due to the Company's willful misconduct or gross negligence, the Company shall not be liable in negligence or otherwise for any claims for loss, expense or damage (including indirect, economic, special or consequential damage) on account of fluctuations, interruption in, or curtailment of electric service; or for any delivery delay, breakdown; or failure of or damage to facilities; or any electric disturbance originating on or transmitted through electric systems with which the Company's system is interconnected, act of God or public enemy, strike, or other labor disturbance involving the Company or the Customer, civil, military or governmental authority.

2. The OPC urges the Commission to not dismiss this Complaint on the basis of this liability provision.

3. In 2013, the Missouri Court of Appeals determined the Commission lacks the authority to authorize a utility to be immune from negligence when such negligence causes death, injury, or damage to property. *PSC v. Mo. Gas Energy*, 388 S.W.3d 221, 230-231 (Mo. App. 2013). The Court held in part:

Common law in Missouri favors a system where its citizens may file an action for negligence when a company's negligence causes injury or harm. "[U]nless a statute clearly abrogates the common law either expressly or by necessary implication, the common law rule remains valid." *In re Estate of Parker*, 25 S.W.3d 611, 614 (Mo. App. 2000). We find no statute, and the Commission and MGE do not direct us to any such statute, that grants the Commission the authority to limit a public utility's negligence liability involving personal injury or property damage. Nowhere do the statutes establish a policy suggesting that a public utility company should be immune from negligence liability when its negligence is responsible for a customer's death, injury, or damage to property.

4. Evergy has cited to no statute that grants the Commission the authority to limit the Company's negligence liability.

WHEREFORE, the Office of the Public Counsel respectfully offers this Response to Evergy's Motion to Dismiss.

Respectfully submitted,

/s/ Marc Poston  
Marc Poston (Mo Bar #45722)  
Missouri Office of Public Counsel

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<sup>1</sup> Evergy's December 15, 2023 Answer asserts that while Evergy Missouri West is named as the Respondent, the Complainant is actually served by Evergy Missouri Metro, Inc.

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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 22nd day of December 2023.

**/s/ Marc Poston**