

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of December, 2024.

Timothy Allegri, et al.,)
)
Complainants,)
)
v.)
)
Evergy Missouri West, Inc. d/b/a Evergy Missouri)
West,)
)
Respondent.)

File No. EC-2024-0015

ORDER DISMISSING COMPLAINTS

Issue Date: December 19, 2024

Effective Date: January 18, 2025

Background

This case involves landowners along an 8.7-mile stretch of Missouri State Highway 13 in Johnson and Lafayette counties affected by project plans to obtain easements to replace and relocate a 69 kV electric line in coordination with a widening of the highway by the Missouri Department of Transportation (MoDOT).¹

On August 1, 2023, Timothy Allegri filed a complaint with the Commission against Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West.

¹ The project is referred to in filings as the Fayetteville Transmission Line Upgrades or, simply, "Fayetteville Project."

Mr. Allegri filed a request on August 15, 2023, to add 26 self-represented co-complainants to his complaint.² Evergy Missouri Metro and Evergy Missouri West objected to adding the additional co-complainants because their addition, as contemplated, did not comply with the Commission's rules. On September 6, 2023, the Commission denied Mr. Allegri's request. As a result of that denial, on or between September 11 and September 28, 2023, complaints were filed by 37 similarly-situated individuals.³ Those complaints contained identical attached sheets setting forth the substance of those complaints.

On October 3, 2023, the Commission issued its *Order Consolidating Files and Dismissing Party*, consolidating 38 separate complaint files into a single file under File No. EC-2024-0015 and dismissing Evergy Missouri Metro as a party to the complaints.⁴ On October 13, 2023, Evergy Missouri West⁵ filed its *Answer to Consolidated Complaints*, incorporating its *Answer, Affirmative Defenses, and Motion to Dismiss* it had filed in Mr. Allegri's case on August 30, 2023.

² Most of the co-complainants Mr. Allegri sought to add were included in his original July 25, 2023, complaint. The Commission notified Mr. Allegri that the original complaint was deficient due to the co-complainants being represented by a non-attorney. Mr. Allegri responded by filing a complaint solely on his own behalf on August 1, 2023.

³ File numbers assigned to the complaints filed and the respective complainants were as follows: EC-2024-0062 Betty Beyers; EC-2024-0063 David A. Handly; EC-2024-0064 Denise Allegri; EC-2024-0065 Charles E. Bracken; EC-2024-0066 Jesse L. Green, Jr.; EC-2024-0067 Kendra B. Butner; EC-2024-0068 Letha Sue Boland; EC-2024-0069 Susan G. Bracken; EC-2024-0070 Victor Butner; EC-2024-0071 Marjorie J. Dyer; EC-2024-0072 Barbara A. Rasa; EC-2024-0073 Bethann C. Hill; EC-2024-0074 Candace K. Robertson; EC-2024-0075 Donald W. Rasa; EC-2024-0076 Dwayne Marsh; EC-2024-0077 Norman Howard; EC-2024-0078 Rebekah L. Marsh; EC-2024-0079 Scott Rasa; EC-2024-0080 Stephen L. Robertson; EC-2024-0081 Teresa Howard; EC-2024-0082 Bart D. Wyatt; EC-2024-0083 Carl J. Wouden; EC-2024-0084 Cheryl K. Wouden; EC-2024-0085 Dorothy J. Bell; EC-2024-0086 Steven J. Bell; EC-2024-0087 Amy Wolfe; EC-2024-0088 Glen Wolfe; EC-2024-0089 Mark A. Hill; EC-2024-0090 Steven A. Dyer; EC-2024-0091 Walter L. Dyer; EC-2024-0093 Aaron Collett; EC-2024-0094 Collette Collett; EC-2024-0095 Chad Krummel; EC-2024-0096 Jessica Krummel; EC-2024-0097 Cheryl Hedden; EC-2024-0114 Rhonda G. Berg; and EC-2024-0115 David J. Berg.

⁴ Neither the service line in question nor the subject easements are within Evergy Missouri Metro's service area.

⁵ Throughout the remainder of this order, Evergy Missouri West will simply be referred to as "Evergy."

On December 21, 2023, the Commission issued an *Order Establishing Procedural Schedule* in which an evidentiary hearing was set for January 23-25, 2024.⁶ At the request of Timothy and Denise Allegri, who cited settlement negotiations and a scheduled mediation session, the Commission canceled the evidentiary hearing on January 16. When those proceedings did not result in a settlement of the complaints, on March 19, the Commission issued an *Order Resetting Evidentiary Hearing*, scheduling the evidentiary hearing for May 14-16.

On April 10, Evergy filed a *Notice to Commission and Motion to Dismiss Due to Lack of Controversy* stating that it had dismissed condemnation cases in the circuit courts of Johnson and Lafayette counties⁷ related to issues involving complainants in this pending Commission case. In a response filed April 11, Complainants Timothy and Denise Allegri stated that the circuit court cases were ongoing.

On May 2, the Allegris filed a *Motion for Case Review and Motion for Expedited Treatment*. Among other things, the motion requested the Commission “consider rescheduling the evidentiary hearings (sic) until such time Evergy presents its revised [project] plan and files it . . . and prior to beginning work on the . . . revised project.” On May 7, Evergy, the Staff of the Commission (Staff), and the Office of the Public Counsel (OPC) each filed a response to the Allegris’ motion. No other parties filed a response. Although the responding parties differed on whether an evidentiary hearing was still appropriate, none of the responding parties were opposed to canceling the evidentiary hearing. As a result, on May 9, the Commission canceled the evidentiary hearing, suspended the

⁶ Unless otherwise noted, all subsequent dates in this order refer to the year 2024.

⁷ Lafayette County Circuit Court Case Nos. 23LF-CV00700 and 23LF-CV00939 and Johnson County Circuit Court No. 23JO-CC00142.

procedural schedule, and directed Evergy to file monthly reports on the status of the Fayetteville Project and the status of condemnation cases in the circuit courts of Johnson and Lafayette counties involving the complainants.

Evergy has since complied with the Commission's order and filed monthly status reports. In the initial report, filed on June 14, Evergy stated that the Fayetteville Project was on hold "until and unless MoDOT initiates their acquisition efforts," that the two condemnation cases in Lafayette County had been "fully resolved," and that the Johnson County case had been closed, but a motion to reconsider was pending. On June 15, Complainants Timothy and Denise Allegri filed a response that, among other assertions, took issue with Evergy's "fully resolved" characterization of the condemnation cases, stating that there were motions for attorney fees that had yet to be resolved.⁸ In Evergy's status report filed on September 16, Evergy indicated that all three circuit court cases were now closed. No responses contradicting Evergy's assertion have subsequently been filed by any of the complainants in this matter.

In July and August, eight of the 38 complainants in this consolidated case dismissed their complaints, citing settlements with Evergy.

Following the resolution of the circuit court cases and recognizing that the formal complaints of 30 complaints against Evergy are still active, the Commission takes up Evergy's motion to dismiss filed on April 10.

Motion to Dismiss

As noted previously, Evergy dismissed its circuit court condemnation suits involving the complainants and those cases are now closed. Moreover, the Fayetteville

⁸ Complainants Charles and Susan Bracken and Dwayne and Rebekah Marsh filed separate pleadings on August 9, also alleging pending unresolved attorney fee motions.

Project is on hold. The complaints in this matter stem from Evergy's efforts to secure easements on complainants' property related to that project. With the project on hold and Evergy no longer pursuing easements, the Commission agrees with Evergy's position that a controversy no longer exists for which the Commission should receive evidence and render a decision on whether Evergy has violated a statute, tariff, or Commission rule, decision, or order. To do so, regarding what Evergy may or may not do in the future, would be to issue an advisory opinion, for which Commission has no authority.⁹

In their case review motion filed May 2, the Allegris state that their complaints are not only about Evergy seeking easements, but also regard "violations of CCN [certificate of convenience and necessity] orders" and "the methods and practices used by Evergy in the transaction of their business . . .". The Allegris are referring to the CCN granted by the Commission in 1938 to Missouri Public Service Corporation (MPSC) in Case No. 9470 to provide electric service in areas that include property owned by the complainants. That CCN granted MPSC authority to "construct, maintain and operate electric transmission lines and distributions systems over, along and across the highways" of the counties in its service area.¹⁰ The Allegris argue that Evergy has violated the CCN by seeking easements to construct electric transmission lines outside of MoDOT's right-of-way.

While the Commission acknowledges its authority to receive evidence and render a decision on whether Evergy has violated the CCN, since the allegation is that Evergy would be exceeding the authority granted by the CCN in relocating the electric line outside of MoDOT's right-of-way and it has not yet done so or presented a plan to do so to the

⁹ See *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State of Missouri*, 392 S.W.3d 24, 38 (Mo. App. 2012).

¹⁰ *Staff Recommendation*, Schedule AJB-1, filed November 6, 2023.

affected landowners, the Allegris are requesting an advisory opinion from the Commission, which, again, it lacks the authority to issue.

As to a complaint regarding the methods and practices used by Evergy in the transaction of their business, the Commission does have authority to “[e]xamine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business.”¹¹ However, the Commission agrees with Staff’s position in its May 7th filing¹² that, while it is proper for the Commission to investigate and review Evergy’s methods and practices during a general rate case, it must refrain from managing any public utility.

For all the reasons stated above, the Commission will dismiss the remaining 30 complaints against Evergy contained within this consolidated case. If and when Evergy moves forward with the Fayetteville Project, should any of the complainants allege, at that time, that Evergy has violated a statute, tariff, or Commission rule, decision, or order, they may file a new complaint with the Commission.

Under Commission Rule 20 CSR 4240-2.070(14), the regulatory law judge shall cause the parties to be notified that the Commission’s decision will be final unless an application for rehearing is filed. The application for rehearing must be filed with the Commission before the effective date of this order, which is January 10, 2025.¹³ If the Commission denies the application for rehearing, the parties then have 30 days after the

¹¹ Section 393.140(5), RSMo 2016.

¹² *Staff’s Response to Motion for Case Review and In Support of Company’s Motion to Dismiss*, filed May 7, 2024.

¹³ Sections 386.500 and 386.515, RSMo (Supp. 2023).

denial is issued to file an appeal with the court of appeals.¹⁴ If the Commission grants the application for rehearing, then the Commission will order appropriate actions at that time.

THE COMMISSION ORDERS THAT:

1. For all the reasons stated above, the 30 remaining complaints against Every Missouri West are dismissed without prejudice.
2. If any party wishes to request a rehearing by the Commission, such request must be filed no later than January 17, 2025.
3. This order shall become effective on January 18, 2025.
4. This file shall be closed on January 19, 2025.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Hahn, Ch., Coleman, Holsman
Kolkmeier, and Mitchell CC., concur.

Seyer, Regulatory Law Judge

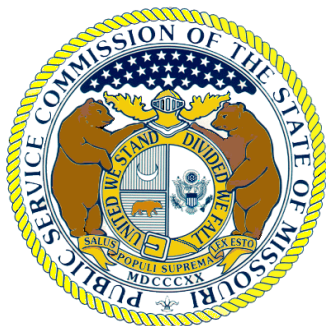
¹⁴ Section 386.510, RSMo (Supp. 2023).

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 19th day of December 2024.



Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 19, 2024

File/Case No. EC-2024-0015

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Nancy Dippell". The signature is written in a cursive, flowing style.

**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.