

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

Show Me Ethanol,	)	
	)	
Complainant,	)	
	)	
vs.	)	File No. EC-2026-0064
Evergy Missouri Metro Inc., d/b/a	)	
Evergy Missouri Metro	)	
	)	
Respondent.	)	

Reply to Evergy’s Answer and Motion to Dismiss

COMES NOW, Show Me Ethanol, (“SME”) and for this Reply to Evergy’s Motion to Dismiss, states:

Introduction

1. SME filed this complaint alleging the failure of Evergy Missouri Metro Inc., d/b/a Evergy Missouri Metro (“Evergy Missouri Metro” or “Evergy”) to provide adequate and reliable service to SME at its facilities in Carrollton, Missouri as required under Section 393.130.1, RSMo. That provision requires “every electrical corporation ... shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”
2. SME noted that among the Commission’s powers to fulfill its duties, it is empowered under Section 393.140(2) to:

... examine or investigate the methods employed by such persons and corporations in manufacturing, distributing and supplying ... electricity for light, heat or power and in transmitting the same, ... and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such ... electricity ... system, and those employed in the manufacture and distribution thereof, and have power to order reasonable

improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of ... electrical corporations[.]

3. SME detailed the increasing reliability issues and continued uncertainty of the cause, remedy, or plan by Evergy to improve reliability in its service. In light of those issues, SME asked for the Commission's assistance in resolving the issue by:

- Investigating and requiring Evergy to take steps to assure SME that it will have adequate and reliable service in the future, and establish a deadline for such action;
- Engaging in discussions to permit SME to develop its own on-site power supplies in the event Evergy cannot assure adequate and reliable power; and
- Any and all appropriate relief as the Commission deems just and reasonable in the circumstances.

4. The Commission directed Evergy to file its response by October 13, 2025.

5. The Commission has directed its staff to file a report by October 27, 2025.

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6. In its Answer, Evergy disputes many, if not all, of the material allegations within the Complaint. This includes Evergy disputing the occurrence, frequency, duration, and causes of the power outages SME discusses within its complaint. SME continues to evaluate the information provided in the Answer by Evergy but material factual disputes remain at this time.

7. As part of its Answer, Evergy asks the Commission to dismiss the complaint for failure to state a claim upon which relief can be granted.¹ The Commission must deny Evergy's request.

¹ Evergy Answer, p. 11.

8. Missouri Courts have explained the standard for reviewing a motion to dismiss for failure to state a claim upon which relief can be granted:

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.²

9. As noted, in its pleading, Evergy disputes the averments within SME's complaint related to its failure to provide reliable and adequate service as required by law. Specifically, Evergy disputes the occurrence, duration, frequency, and causes of power outages experienced by SME. The Company appears to believe these events are "momentary interruptions" against which it claims no duty to address or prevent.

10. SME argues that it has experienced over 30 hours without power since 2023 and that it has seen increasing frequency and duration of outages since that time. Despite Evergy's assertion to the contrary, SME believes this level of power interruption is a violation of Section 393.130.1 RSMo. by failing to provide SME with safe and adequate electric service.

11. If the Commission finds the allegations of SME to be true, its powers to ensure that regulated utilities provide safe and adequate power include both investigating the provision of power and ordering improvements, as requested.³

12. Furthermore, to the extent the 30 hours of power outages could be viewed as "momentary interruptions" SME does not concede that duration means that Evergy is providing reliable and adequate service.

² *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 463-464 (Mo. Banc 2001).

³ See Section 393.140(2).

13. SME has supported its claim and, if the Commission finds these allegations to be true, it is empowered to take action to investigate the causes and order Evergy to take steps to resolve the power supply issues.

Conclusion

14. Evergy's motion admits it has a duty to provide safe, adequate, and reliable power to its customers. SME argues Evergy has failed to fulfill this duty causing SME to incur significant operational delays and financial damages. Further, SME has pointed out that the Commission is empowered to investigate this dispute and order the relief requested.

WHEREFORE, SME respectfully submits this *Reply to Evergy's Answer and Motion to Dismiss* and asks the Commission to deny Evergy's motion to dismiss.

Respectfully,

/s/ Tim Opitz

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Certificate of Service

I hereby certify that copies of the foregoing have been emailed to the following counsel on this 23rd day of October 2025:

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