

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

Bethann C. Hill and Mark A. Hill,	)	
	)	
Complainants,	)	
	)	
v.	)	Case No.EC-2026-0350
	)	
Evergy Missouri West, Inc. d/b/a	)	
Evergy Missouri West,	)	
	)	
Respondent.	)	

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

COMES NOW the Office of the Public Counsel (“Public Counsel” or “OPC”) and for its Response in Opposition to Evergy Missouri West, Inc. d/b/a Evergy Missouri West’s (“Evergy” or “Company”) Motion to Dismiss, states:

Background

1. Bethann C. Hill and Mark A. Hill (“Complainants” or “the Hills”) own property along Highway 13 in Johnson County. The Missouri Department of Transportation (“MoDOT”) plans to widen portions of Highway 13 including where the highway abuts the Hills’ property.

2. Evergy’s power line along Highway 13 will need to be moved to accommodate the highway expansion. Evergy’s relocation project (“Fayetteville Project”) was the subject of thirty-eight (38) prior complaints with the Public Service Commission (“Commission”), alleging Evergy had violated its certificate of convenience and necessity (“CCN”) by seeking to

condemn private property outside the MoDOT right-of-way. The Commission dismissed the complaints after Evergy withdrew its condemnation petitions and asserted the Fayetteville Project was on hold.¹

3. In dismissing the prior complaints, including the Hills' prior complaints, the Commission acknowledged its authority to determine whether Evergy had violated the CCN, and that the complaints could be renewed if Evergy moves forward with the project. The Commission stated:

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 affected landowners, the Allegris are requesting an advisory opinion from the Commission, which, again, it lacks the authority to issue.² ...

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.³

The Present Complaints

4. On June 3, 2026, the Hills renewed their complaints with the Commission. The Complaints include a May 13, 2026, letter from Evergy indicating Evergy's intention to acquire property rights from the Hills. The Hills assert, "Evergy Missouri West's ongoing Fayetteville project, initiated in 2023, is violating CCN 9470 as they are placing poles in violation of CCN

¹ Case No. EC-2024-0015, Order Dismissing Complaints, December 19, 2024, p. 4.

² *Id.*, pp. 5-6.

³ *Id.*

9470.”⁴ The Hills seek an order from the Commission finding Evergy’s actions are in violation of the Commission’s ordered CCN in Case No. 9470 and the National Electrical Safety Code (NESC) incorporated into Commission rule 20 CSR 4240-18.010.

5. Missouri statute § 386.390.1 RSMo provides the Hills with the relief they seek in this case – a Commission determination of whether Evergy violated a Commission order or rule. It states in relevant part:

Complaint may be made by...any corporation or person, ...by petition or complaint in writing, setting forth any act or thing done ...by any corporation, person or public utility in violation, or claimed to be in violation, ...of any rule promulgated by the commission...or of any order or decision of the commission.

6. On July 6, 2026, Evergy filed an *Answer, Affirmative Defenses, and Motion to Dismiss*. Evergy confirmed its attempts to relocate the line outside the MoDOT right-of-way when it asserted that the portion of the right-of-way in which MoDOT indicated Evergy may relocate its line “is not sufficient to meet applicable safety and clearance requirements.”⁵

Response to Motion to Dismiss

7. Evergy’s Answer includes a *Motion to Dismiss*, wherein Evergy moves the Commission to dismiss the Complaints. Evergy’s *Motion* recognizes that in deciding upon the *Motion*, the Commission should assume the factual assertions are true.⁶ That is, the Commission should assume

⁴ Complaints, p. 2.

⁵ Evergy Answer, p. 2.

⁶ “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

Evergy has acquired easements outside the right-of-way and seeks to further acquire an easement outside the right-of-way onto the Hills' property.

8. Evergy's *Motion* argues the Commission should dismiss the Complaints for failure to state a claim upon which relief may be granted. "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 Hills allege Evergy's actions violated a Commission order and a Commission rule, which are recognized causes of action under § 386.390 RSMo.

9. Evergy also argues the Commission lacks the authority to resolve eminent domain disputes. However, the Commission is only being asked to interpret its own orders and rules, not participate in eminent domain. Evergy cites an unrelated complaint involving Grain Belt (Case No. EC-2021-0059) wherein the Commission considered whether a CCN order was violated. That case supports denying Evergy's *Motion* because the Hills simply request the same. The fact that the complainants in that case were unsuccessful has no relevance to deciding Evergy's *Motion*. It also has no relevance to ultimately deciding this case as the facts of this case involve a different CCN order and different parties.

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

10. The Commission has the *primary and exclusive jurisdiction* to determine whether a regulated utility acted in violation of a Commission order or rule.⁷ The Commission has already acknowledged it possesses the authority to determine whether Evergy has violated the CCN order.⁸ 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.⁹ In this case, the Hills assert Evergy is placing poles outside the right-of-way and has presented a plan to do so on the Hills' property. The relief that may be granted is an order finding whether Evergy's actions violated an order or rule.

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

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).

⁷ [*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).

⁸ Case No. EC-2024-0015, Order Dismissing Complaints, December 19, 2024, p. 5.

⁹ *Id.*

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission deny Everygy's *Motion to Dismiss*.

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 16th day of July 2026.

/s/ Marc Poston
