

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

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri)
West for Permission and Approval of) Case No. EA-2024-0292
Certificates of Convenience and Necessity)
Authorizing It to Construct, Install, Own,)
Operate, Manage, Maintain and Control)
Two Solar Generation Facilities)

**EVERGY MISSOURI WEST’S REPLY IN SUPPORT OF
ITS MOTION FOR PROTECTIVE ORDER**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West” or the “Company”), pursuant to 20 CSR 4240-2.080(13), respectfully submits this reply in support of its Motion for Protective Order and for Expedited Treatment (the “Motion”), stating as follows:

I. INTRODUCTION

1. The responses narrow this dispute considerably. Staff of the Commission (“Staff”) recognizes that the Company’s “concern regarding the use of public or inadequately secured AI platforms is legitimate.”¹ Staff further states that it “is supportive of narrowly tailored guidance confirming that confidential or highly confidential information may not be submitted to any AI service that permits unauthorized access, model training, secondary use, or disclosure.”² Office of the Public Counsel (“OPC” or “Public Counsel”) concedes that four of the five conditions in the Company’s proposed secure-environment exception “fall within the limitations of rule 20 CSR 4240-2.135(6)-(8).”³

2. The Company accepts Staff’s formulation. It also withdraws the one provision Staff and Public Counsel jointly contest—the requirement that a receiving party deliver a written certification describing its AI tools to the designating party—and accepts in its place the documentation procedure Staff

¹ Staff’s Response to Evergy Missouri West’s Motion for Protective Order and for Expedited Treatment ¶ 23 (July 31, 2026) (“Staff Response”).

² Id. ¶ 24. Staff’s WHEREFORE clause describes the same guidance as reaching “confidential information” and asks that it apply “to all parties practicing before the Commission.” The Company reads Staff’s recommendation as ¶ 24 states it, covering information designated either Confidential or Highly Confidential.

³ Public Counsel’s Response in Opposition to Evergy West’s Motion for Protective Order ¶ 5 (July 31, 2026) (“Public Counsel Response”).

proposes.⁴ The operative terms of the order the Company now requests therefore come from Staff's own response and from conditions Public Counsel agrees reflect existing law. A proposed form of order is attached as Attachment A.

II. THE RESPONSES CONFIRM THAT CLARIFICATION IS WARRANTED

3. Staff's principal argument is that 20 CSR 4240-2.135(13) already requires every recipient to keep designated information secure and to neither use nor disclose it outside the proceeding. The Company agrees that section (13) states the duty. The Motion addresses a different question: whether submitting designated information to a generative AI service whose provider retains inputs, uses them for model training, or discloses them onward is consistent with that duty. Courts have begun answering that question because the answer is not obvious to every user and because a wrong answer cannot be undone once the information is submitted.⁵

4. Morgan v. V2X, Inc., the decision Staff analyzes at length, illustrates the value of express clarification. The protective order there "arguably cover[ed] the use of AI already," and the court observed that transmission of confidential information to an AI provider that stores it in its own databases or uses it for its own purposes "may violate the current Protective Order." The court nevertheless entered AI-specific language.⁶ A general confidentiality duty can be sound and still benefit from an express statement of how it applies to tools that invite inadvertent violation.

5. Public Counsel's response points in the same direction. Public Counsel reports that its own use of artificial intelligence is now governed by State Administrative Policy SP19, Acceptable Use for Artificial Intelligence, issued July 15, 2026.⁷ The State found an AI-specific policy necessary for its own workforce, notwithstanding its general confidentiality and security policies, supports the premise of the

⁴ Staff Response ¶ 22.

⁵ See United States v. Heppner, 820 F. Supp. 3d 292, 296-97 (S.D.N.Y. 2026) (finding no reasonable expectation of confidentiality in a party's voluntary submissions to a publicly accessible AI platform).

⁶ Morgan v. V2X, Inc., No. 25-cv-01991-SKC-MDB, 2026 WL 864223, at *6 & n.2 (D. Colo. Mar. 30, 2026).

⁷ Public Counsel Response ¶ 6.

Motion: express application of confidentiality obligations to AI tools protects against inadvertent and irreversible disclosure.

6. Staff's response also confirms that the subject is current rather than hypothetical. Staff cautions against "chilling use of efficient, compliant tools that already meet no-retention and no-training standards," and objects that the proposed order could restrict "functionally comparable tools" used by the participants examining the Company's evidence.⁸ The Company takes Staff at its word. If the tools in use already meet those standards, the proposed order changes nothing about their use. It makes those standards enforceable obligations of this proceeding rather than the voluntary terms of a vendor contract, and its only practical effect falls on non-compliant use. Staff's observation also answers its own suggestion that the Motion identifies no present need:⁹ the tools and designations are in use already, and a wrong answer about what qualifies cannot be undone later.

III. THE COMPANY'S CONFORMING MODIFICATIONS

7. *Certification.* The Motion proposed that a receiving party using a qualifying AI tool provide written certification to the designating party describing the tool and its safeguards. Staff and Public Counsel object, and Staff correctly notes that Morgan required something narrower: a party relying on qualifying contractual protections "must retain written documentation of these contractual protections."¹⁰ The Company withdraws the certification requirement. In its place, the Company accepts Staff's alternative: documentation retained by the user and provided to the Commission "for confidential or in camera review only upon a specific showing of good cause."¹¹ Under the attached proposed order, no party discloses its tools, workflow, or security architecture to any other party.

8. *Exclusive control.* The Motion's safe harbor conditioned AI use on tools that keep designated information on servers within the receiving party's exclusive control. Staff objects that "[s]erver

⁸ Staff Response ¶¶ 11, 14.

⁹ See Staff Response ¶¶ 6, 19.

¹⁰ Morgan, 2026 WL 864223, at *7. See Staff Response ¶ 16 & n.3.

¹¹ Staff Response ¶ 22.

ownership is not a substitute for a functional security analysis.”¹² The attached proposed order adopts the functional standard instead. Its qualifying-tools test is the one the Morgan court entered and the one Staff itself articulates: enforceable access, non-training, non-retention, and deletion restrictions, whatever the hosting arrangement.¹³

9. *Enforcement.* The Company does not object to conforming the enforcement provision to the Commission’s rules and to Mo. Rev. Stat. Section 536.095,¹⁴ which addresses contemptuous conduct in a contested case through application to the circuit court. Nor does the Company object to a reference confirming that officers and employees of the Commission and the Office of the Public Counsel remain subject to Section 386.480.¹⁵

10. *Deletion and return.* The requirement that an AI provider afford the ability to delete uploaded designated information describes a contractual capability of the tool. It operates alongside the return-or-destruction procedure of 20 CSR 4240-2.135(15) and displaces nothing in sections (15) or (16). Section (15) presupposes the capability: a party whose designated information sits with a provider that cannot delete it must perform its own obligation to return or destroy all copies and notes at the close of the proceeding.¹⁶ Morgan imposed the same capability.¹⁷ The Company likewise does not object to language preserving litigation holds, public-record obligations, and routine system backups that cannot reasonably be altered without compromising system integrity.¹⁸

¹² Staff Response ¶ 12.

¹³ Morgan, 2026 WL 864223, at *7; Staff Response ¶ 5 (a secure tool “does not become unlawful merely because it is generative or hosted by a service provider operating under enforceable access, non-training, non-retention, and deletion restrictions”).

¹⁴ All citations are to the Revised Statutes of Missouri (2016), as amended.

¹⁵ See 20 CSR 4240-2.135(16).

¹⁶ 20 CSR 4240-2.135(15).

¹⁷ Morgan, 2026 WL 864223, at *7 (the AI provider “must contractually afford the party or authorized recipient the ability to remove or delete all CONFIDENTIAL information upon request”).

¹⁸ See Staff Response ¶ 17.

IV. THE MOTION IS NARROWER THAN THE RESPONSES SUGGEST

11. The proposed order governs one subject: the handling of information a producing party has designated Confidential or Highly Confidential, which is the same subject every section of 20 CSR 4240-2.135 governs. A party remains free to use any tool, for any purpose, that does not involve submitting another party's designated information to a service lacking the safeguards Staff itself endorses. The order leaves the Commission's internal analytical methods untouched.

12. The order also binds the Company identically. When Staff, Public Counsel, or any other participant designates information under the rule, the Company is a receiving party subject to every restriction. A producing party's freedom to handle its own information exists under the current rule and under every confidentiality regime the Commission administers. The Motion changes nothing about it.

13. Staff objects that the order would attach consequences to a designation before the Commission decides whether the information qualifies. The existing rule already operates that way. Designations take effect on submission, they remain subject to challenge under 20 CSR 4240-2.135 (11), and a party seeking greater protection receives the protection sought while its motion is pending.¹⁹ The proposed order adds a handling safeguard to that structure and creates no new adjudicative shortcut. The Company also accepts the caution against over-designation that the Morgan court directed to the parties before it.²⁰

14. As to particularity, 20 CSR 4240-2.135(4) asks what must be protected, what harm may result, and how disclosure may occur while protecting the interests at stake. The Motion answers each at the level at which the risk exists. The information is that which qualifies for Confidential or Highly Confidential designations. The harm is the irreversible retention, training use, or onward disclosure that follows once designated information reaches an unsecured platform, a harm that does not vary document by document. Staff itself describes the concern as one "applicable to virtually every Commission

¹⁹ See 20 CSR 4240-2.135(4)(A), (11).

²⁰ See Morgan, 2026 WL 864223, at *7 n.4.

proceeding and every utility.”²¹ A categorical harm does not require document-by-document proof. The method of protected disclosure is the secure-environment safe harbor whose substantive conditions Public Counsel agrees reflect existing law. Federal courts have addressed the identical risk through case-wide protective-order provisions rather than item-by-item rulings.²²

15. Finally, the Company does not oppose Commission-wide treatment of this subject through the alternatives Staff identifies, including standardized language for future orders.²³ Rulemaking takes time, and discovery involving designated information proceeds now. An order in this docket built on Staff’s own formulation supplies interim protection and can serve as the standardized language Staff recommends.

V. EXPEDITED TREATMENT

16. Because the operative terms of the attached proposed order come from Staff’s response and from conditions Public Counsel agrees reflect existing law, entry requires no further record and imposes no burden on any party, customers, or the public. Tools that already meet the order’s standards remain fully available, so prompt entry costs the parties nothing. As to timeliness, the decisions that frame the question issued this year, Heppner in February and Morgan in March, and the State’s own AI policy issued on July 15, 2026, one week before the Motion was filed.²⁴ The Company renews its request that the Commission act at its earliest opportunity.

WHEREFORE, the Company respectfully requests that the Commission enter a protective order in the form attached as Attachment A; or, in the alternative, issue the narrowly tailored guidance Staff supports, confirming that information designated Confidential or Highly Confidential may not be submitted to any AI service that permits unauthorized access, model training, secondary use, or disclosure; and grant such other and further relief as the Commission deems just and reasonable.

²¹ Staff Response ¶ 21.

²² See Morgan, 2026 WL 864223, at *7.

²³ Staff Response ¶ 21. To the extent Staff’s WHEREFORE clause asks that the alternative guidance apply to all parties practicing before the Commission, guidance of that breadth would issue through the generally applicable mechanisms Staff identifies in ¶ 21. The order proposed here binds the parties to this proceeding and can supply the standardized language for both.

²⁴ Staff Response ¶ 19. See Heppner, 820 F. Supp. 3d 292 (S.D.N.Y. Feb. 17, 2026); Morgan, 2026 WL 864223 (D. Colo. Mar. 30, 2026); Public Counsel Response ¶ 6 (SP19 issued July 15, 2026). The Motion was filed July 22, 2026.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586

Cole Bailey, MBN 77268

Evergy, Inc.

1200 Main – 17th Floor

Kansas City, Missouri 64105

Phone: (816) 556-2314

Fax: (816) 556-2110

roger.steiner@evergy.com

cole.bailey@evergy.com

Karl Zobrist, MBN 28325

Jacqueline M. Whipple, MBN 65270

D. Michael Robinson, MBN 73482

Chandler Hiatt, MBN 75604

Dentons US LLP

4520 Main Street, Suite 1100

Kansas City, MO 64111

Phone: (816) 460-2400

Fax: (816) 531-7545

jacqueline.whipple@dentons.com

michael.robinson@dentons.com

chandler.hiatt@dentons.com

Attorneys for Evergy Missouri West

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon counsel for all parties on this 13th day of August 2026, by EFIS filing and notification, and/or e-mail.

/s/ Roger W. Steiner

Roger W. Steiner

ATTACHMENT A

Proposed Protective Order Provisions

1. **Application.** This Order governs the handling of information designated Confidential or Highly Confidential under 20 CSR 4240-2.135 in this proceeding (“Designated Information”) by every party, counsel, consultant, or agent to whom Designated Information is disclosed (each, a “Receiving Party”). This Order applies equally to all parties, including the Company when it receives Designated Information produced by another party. Nothing in this Order restricts a party’s use of its own information.

2. **Prohibition.** No Receiving Party shall input, upload, submit, or otherwise disclose Designated Information to any artificial intelligence tool, platform, or service that permits unauthorized access, model training, secondary use, or disclosure of such information.

3. **Qualifying Tools.** A Receiving Party may use an artificial intelligence tool to process Designated Information only if: (a) the provider is contractually prohibited from storing or using inputs to train, fine-tune, or otherwise improve any model or algorithm; (b) the provider is contractually prohibited from disclosing inputs to any third party except where disclosure is essential to delivery of the service, and any such third party is bound by obligations no less protective than this Order; (c) the provider contractually affords the Receiving Party the ability to remove or delete all Designated Information upon request; and (d) the Receiving Party has implemented reasonable technical and organizational safeguards against unauthorized access, disclosure, or use of Designated Information processed by the tool.

4. **Documentation.** A Receiving Party using a tool it contends satisfies Paragraph 3 shall retain written documentation of the required contractual protections or applicable product terms and conditions. Such documentation shall be provided only to the Commission, for confidential or in camera review, upon motion and a specific showing of good cause. No party shall be required to disclose its tools, workflow, or security architecture to another party.

5. **Notice and Mitigation.** If Designated Information is disclosed without authorization through any artificial intelligence tool, the Receiving Party shall immediately notify the designating party and the Commission and shall take all reasonable steps to mitigate the effects of the disclosure.

6. **Return, Destruction, and Deletion.** This Order does not alter the return-or-destruction procedure of 20 CSR 4240-2.135(15), the treatment of Commission and Office of the Public Counsel personnel under 20 CSR 4240-2.135(16) and Mo. Rev. Stat. Section 386.480, or litigation holds, public-record obligations, and routine system backups that cannot reasonably be altered without compromising system integrity.

7. **Designations.** This Order does not alter a designating party's obligations under 20 CSR 4240-2.135(2) and (18), any party's right to challenge a designation under 20 CSR 4240-2.135(11), or the Commission's authority under 20 CSR 4240-2.135(19).

8. **Duration and Enforcement.** The restrictions of this Order survive the conclusion of this proceeding for so long as Designated Information retains its designation. Violations may be addressed under the Commission's rules and Missouri law, including application to the circuit court under Mo. Rev. Stat. Section 536.095.