

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

	)	<u>Case Nos.</u>
Mark A. Hil and Bethann C. Hill	)	<u>EC-2026-0350</u>
Denise Allegri	)	<u>EC-2027-0056</u>
Timothy Allegri	)	<u>EC-2027-0058</u>
Candace Robertson	)	<u>EC-2027-0065</u>
Stephen Robertson	)	<u>EC-2027-0067</u>
Bety Beyers	)	<u>EC-2027-0068</u>
Glen Wolfe	)	<u>EC-2027-0069</u>
Amy Wolfe	)	<u>EC-2027-0070</u>
Complainants,	)	
v.	)	
	)	
Evergy Missouri West, Inc. d/b/a	)	
Evergy Missouri West	)	
	)	
Respondent.	)	

**STAFF RESPONSE IN SUPPORT OF RESPONDENT’S MOTIONS TO DISMISS IN CASE
NOS. EC-2027-0056, EC-2027-0065, EC-2027-0067, EC-2027-0068, EC-2027-0069, AND
EC-2027-0070**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Response in Support of Respondent’s Motions to Dismiss in Case Nos. EC-2027-0056, EC-2027-0065, EC-2027-0067, EC-2027-0068, EC-2027-0069, and EC-2027-0070* states as follows:

1. On August 24, 2026,¹ Denise Wray Allegri filed a complaint with the Missouri Public Service Commission (“Commission”), under Case No. EC-2027-0056, against Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW”) pursuant to Commission Rule 20 CSR 4240-2.070. The complaint is regarding the replacement of a 69kV transmission line along Missouri Highway 13 (“MO Route 13”) resulting from an expansion of the highway

¹ All dates references will be to 2026 unless otherwise indicated.

by the Missouri Department of Transportation (“MoDOT”). Allegri alleges that EMW’s proposed transmission line project violates National Electric Safety Code (“NESC”) standards; Commission Rule 20 CSR 4240-18.010, which requires electrical corporation adherence to the NESC; and EMW’s Certificate of Convenience and Necessity (“CCN”) in Case No. 9470 in regard to EMW’s adherence to NESC standards as outlined in the *Report and Order*, Ordered Paragraph Two.² Allegri’s requested relief is that the Commission order EMW to adhere to the terms of its CCN in Case No. 9470 and the NESC and direct EMW to place transmission poles within the MoDOT right-of-way.

2. On August 31, Candace K. Robertson,³ Stephen L. Robertson,⁴ Betty L. Beyers,⁵ Glen Wolfe⁶, and Amy Wolfe,⁷ filed substantively similar complaints against EMW, echoing the same accusations as Allegri, and requesting similar relief (collectively, the “Complainants”).

3. On September 4, the Commission determined that the cases would proceed as Formal Complaints under Rule 20 CSR 4240-2.070, set a deadline for EMW’s responses, and ordered Staff to investigate the complaints and file a report no later than October 19.

4. On October 2, EMW filed its *Answer, Affirmative Defenses, and Motion to Dismiss* in Complainants’ respective cases.

5. On October 9, Allegri filed a *Response to Evergy Missouri West’s Answer, Affirmative Defenses and Motion to Dismiss*.

² *Formal Complaint, Denise-Formal-Complaint.pdf*, EC-2027-0056, Docket Item No. 1.

³ File No. EC-2027-0065.

⁴ File No. EC-2027-0067.

⁵ File No. EC-2027-0068.

⁶ File No. EC-2027-0069.

⁷ File No. EC-2027-0070.

6. The Commission consolidated Complainants' cases with Case Nos. EC-2026-0350 and EC-2027-0058 on October 16.

Response in Support of Motions to Dismiss

7. Complainants do not allege any *specific* violation of NESC standards, merely the general charge that the placement of EMW's poles outside the MoDOT right-of-way is in violation of the NESC pole line swing clearance, in that it goes *beyond* the requirements of the NESC.

8. Missouri courts have consistently recognized that safety codes and standards set *minimum* thresholds of required conduct, not ceilings. The Missouri Supreme Court has ruled that, "An industry code is an admission of what the industry considers it should do, but the defendant's duty is and continues to be to exercise the highest degree of care in its operations." *Freeman v. Kansas City Power & Light Co.*, 502 S.W.2d 277, 283 (Mo. 1973).

9. Ordered Paragraph Two of the Commission's *Report and Order* in Case 9470 states in pertinent part,

ORDERED: 2. That said electric transmission and power lines and all equipment connected therewith shall be constructed so as to conform to the specific rules and regulations contained in the National Electrical Safety Code, issued by the United States Bureau of Standards . . . Furthermore, that said applicant herein shall maintain and operate said transmission lines and all equipment connected therewith in a reasonably safe and adequate manner so as not to endanger the safety of the public or to interfere unreasonably with the service of other aerial lines ⁸

10. Ordered Paragraph Two merely requires that transmission lines be constructed to conform to NESC standards and to maintain and operate said transmission lines in a safe and adequate manner so as to not endanger the safety of the public. Ordered

⁸ *Report and Order*, Case No. 9470, Pgs. 11 and 12

Paragraph Two does *not* bar an electric utility from going *beyond* the standards of the NESC. To construe Ordered Paragraph Two in such a way would be contradictory to the Court's holding in *Freeman* and to the requirement that transmission lines be operated, and therefore designed and constructed, to ensure public safety.

11. Allegri alleges that EMW is seeking excessive land for its project, in violation of Commission orders, but fails to cite to a Commission order that supports this allegation. Instead, Allegri make reference to Staff's *Report and Recommendation* from EC-2023-0015 to support this allegation.⁹ In this *Report and Recommendation*, Staff stated that EMW's encroachment onto private land outside of the existing highway right-of-way required Commission approval as it exceeded the bounds of its CCN based on the authority granted in Ordered Paragraph One.¹⁰ This interpretation mistakenly interprets the rights-of-way referenced in Ordered Paragraph One as MoDOT rights-of-way, rather than private rights-of-way or easements secured by EMW. Ordered Paragraph One states, "That the Missouri Public Service Corporation be and is hereby authorized to construct, maintain and operate electric transmission lines and distribution systems over, along and across the highways of the Counties . . . and along such other routes as may be properly provided in said counties, and along *private rights-of-way as may be secured by the applicant . . .*"¹¹ The rights-of-way contemplated in Ordered Paragraph One are those of the Missouri Public Service Corporation – EMW's predecessor – as it is the applicant which would go about

⁹ *Response to Evergy Missouri West's Answer, Affirmative Defenses and Motion to Dismiss*, EC-2027-0056, Docket Item No. 8, Pg. 4

¹⁰ *Staff Report and Recommendation*, EC-2023-0015, Docket Item No. 14

¹¹ *Report and Order*, Case No. 9470, Pgs. 10 and 11

securing such private rights-of-way or easements. As such, the Commission's *Order* in Case No. 9470 does not restrict EMW to construct exclusively in MoDOT's right-of-way, rather it explicitly permits EMW to secure and construct in additional easements along roadways in the relevant counties.

12. Beyers' statement that it is not possible to form a value of her land without a Commission ruling on CCN and NESC restrictions is clearly in reference to easement negotiations or future eminent domain proceedings. This is a question of arbitrariness regarding EMW's land acquisition decisions, not a question of adherence to safety standards. Missouri statute grants public utilities the authority to condemn property for the construction or expansion of its transmission lines.¹² This authority is subject to a utility receiving a CCN to provide service to the area from the Commission, per Section 393.170, RSMo. The Commission has the authority to issue a CCN but plays no role in easement negotiation or eminent domain proceedings, as, pursuant to Section 523.256 RSMo, the authority to adjudicate eminent domain proceedings rests with the judicial system, not the Commission.

12. Allegri alleges that Evergy has failed to provide proof of public need, and that "[T]he proof-of-public-need must be presented by the utility to the PSC prior to an eminent domain action because the circuit court is not in the business of governing utilities, the PSC is."¹³ Allegri's concerns regarding public need are better suited for eminent domain proceedings. It is in CCN proceedings that public convenience and necessity of an asset is

¹² § 523.010 RSMo

¹³ *Response to Evergy Missouri West's Answer, Affirmative Defenses and Motion to Dismiss*, EC-2027-0056, Docket Item No. 8, Pg. 8

considered. Once a public utility has been certificated to serve a defined area, it need not obtain a new certificate each time an extension or improvement within that certificated area becomes necessary. *Empire District Electric Co. v. Cox*, 588 S.W.2d 263 (Mo. App. 1979). For the purposes of Commission review, public convenience and necessity has already been established for this transmission line once EMW was granted the CCN for its construction and operation. By the precedent set by Missouri's courts, EMW need not obtain a new certificate to upgrade this existing line, and thus public need has been established *for the purposes of Commission review*. Further arguments about the public need for land acquisition is an argument for the circuit court.

13. Complainants' broader concerns about ulterior motives or arbitrariness of EMW's land acquisition for its transmission line project is outside the scope of the Commission's authority to determine. As addressed earlier in this responses, Missouri statute grants public utilities the authority to condemn property for the construction or expansion of its transmission lines. "[T]he determination of need for the land to be condemned is vested in the sound discretion of the utility, and is not subject to judicial review, unless the protesting landowner alleges and proves that the utility's claim of necessity constitutes fraud, bad faith or an arbitrary or unwarranted abuse of discretion." *Mo. Pub. Serv. Co. v. H & W Inv. Co.*, 602 S.W.2d 41 (Mo. Ct. App. 1980). If Complainants wish to assert bad faith or arbitrary nature in EMW's decision, this argument should be made before the circuit court in eminent domain proceedings, not before the Commission.

Recommendation

14. Staff recommends that EMW's motions to dismiss in Case Nos. EC-2027-0056, EC-2027-0065, EC-2027-0067, EC-2027-0068, EC-2027-0069, and EC-2027-0070 be granted. NESC safety standards are a *minimum standard* by which electric utilities are to design and construct its transmission lines. Complainants' allegations that EMW is violating the NESC and its CCN in Case No. 9470 by going *beyond* those standards are erroneous and should be dismissed. Complainants' allegation that EMW's CCN in Case No. 9470 restricts EMW to construction of transmission lines only in the highway right-of-way is erroneous. As the Commission lacks jurisdiction over matters pertaining to eminent domain, including questions of arbitrariness of land acquisition or valuation of land, Complainants requested relief cannot be granted by this Commission. As such, Staff recommends that this case be dismissed.

WHEREFORE, Staff respectfully files this *Response in Support of Respondent's Motions to Dismiss in Case Nos. EC-2027-0056, EC-2027-0065, EC-2027-0067, EC-2027-0068, EC-2027-0069, and EC-2027-0070* in lieu of a Report and Recommendation; on account of all the foregoing, Staff prays that the Commission dismiss the complaints; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully Submitted,

/s/ Travis J. Pringle

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 19th day of October, 2026.

/s/ Travis J. Pringle