

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Complaint Against	)	Docket No. 20-EKME-397-COM
Kansas City Power & Light (Evergy) by	)	
William J. Flohrs	)	

**STAFF'S REPLY TO COMPLAINANT'S RESPONSE**

The Staff of the Kansas Corporation Commission ("Staff" and "Commission," respectively) hereby states the following in response to *Complainant's Response to Staff's Response to Complainant's Request for Documents* (Complainant's Response) filed September 16, 2020:

1. Staff operates independently and provides its opinions on assigned dockets. In this particular docket, Staff's opinion is that the Complainant failed to meet his burden of proof that Evergy violated a Commission jurisdictional law, rule, regulation, or order.<sup>1</sup>
2. Easements between the utility and the customer are private contracts and disputes must be litigated before a district court.<sup>2</sup> The Commission is an administrative agency with limited jurisdiction, and is without jurisdiction to determine whether a breach of contract has occurred and it cannot award compensation for the alleged damages to Complainant's back yard.<sup>3</sup>

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<sup>1</sup>See Notice of Filing of Staff's Report and Recommendation (Aug. 24, 2020).

<sup>2</sup>See *Grindsted Prod., Inc. v. Kansas City Power & Light Co.*, 21 Kan. App. 2d 435, 447, 901 P.2d 20, 28 (1995) (stating: "[t]his court reversed, stating that there was no administrative remedy available to Hamilton because the dispute was 'essentially private...'" In other words, the KCC did not have the power to determine negligence or breach of contract issues and could not award damages for lost profits or damage to reputation."); *Hamilton v. United Tel. Co. of Kansas*, 6 Kan. App. 2d 885, 886-87 (1981) (stating: "[t]he import of K.S.A. 66-101 et seq. indicates no administrative remedy exists for a party where the dispute is essentially private. Where there is no administrative remedy, the litigant may proceed directly to district court. Cf. *Beaver v. Chaffee*, 2 Kan.App.2d 364, 369, 579 P.2d 1217 (1978). Further, private litigants have, in the past, proceeded directly to district court in breach of contract and negligence actions against public utilities. E.g., *Wille v. Southwestern Bell Tel. Co.*, 219 Kan. 755, 549 P.2d 903 (1976). Finally, there is no need for administrative guidance. The questions put to the district court are inherently judicial, i.e., was there breach of contract? Was there negligence?"); K.S.A. 66-176.

<sup>3</sup>See *Id.*

3. Although Staff is not required to do so, Staff has voluntarily submitted all of the discovery information it gathered in preparing its Report and Recommendation in this matter.<sup>4</sup> Staff will be submitting, in conjunction with this Reply, the Complainant's requested Confidential information under seal for Commission consideration. Staff will not release the same without a Commission order because Evergy is entitled to confidentiality protections under K.A.R. 82-1-221a and K.S.A. 66-1220a.

4. Staff does not have any record of the voicemail left by Tim Stringer on August 5, 2020. Evergy may have a copy if it records its phone calls but Staff is unaware if that is the case. Based on the context of the e-mail response provided by James Ferneau, it appears that Mr. Stringer had a question about "notification to customers when there is trimming around Company Transmission Lines in someone's backyard." The e-mail response from Mr. Ferneau indicated that there is no single procedure that applies to all situations.

WHEREFORE, Staff respectfully requests the Commission dismiss the Complaint consistent with its Report and Recommendation filed August 24, 2020.

Respectfully submitted,

**/S/ Michael Neeley**

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<sup>4</sup>See Staff's Redacted Response to Complainant's Request For Documents (Sept. 14, 2020).

## CERTIFICATE OF SERVICE

20-EKME-397-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Reply to Complainant's Response was served via electronic service this 17th day of September, 2020, to the following:

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