

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

MOTION TO DISMISS OF EVERGY METRO, INC.

Evergy Metro, Inc. (“Evergy Kansas Metro” or “Evergy”) (formerly known as Kansas City Power & Light Company) submits the following Motion to Dismiss (Motion) the Complaint filed by William J. Flohrs (“Mr. Flohrs”). In support of its Motion, Evergy Kansas Metro states as follows:

I. Introduction

1. On or about March 13, 2020, Mr. Flohrs filed his Complaint in this matter. Evergy was served with the Complaint on May 13, 2020.

2. Mr. Flohrs contends that Evergy’s contractor damaged a tree in his yard when trimming the tree to obtain clearance from a transmission line that runs through Mr. Flohrs’ yard.

3. Evergy Kansas Metro identified the need to trim the trees in Mr. Flohrs’ backyard during its annual patrol of the 161 kV line that runs through the yard. The trees at issue have been trimmed numerous times before. Evergy has confirmed that its contractor trimmed the trees on Mr. Flohrs’ property in this instance in a manner consistent with Evergy’s vegetation management policy and guidelines. The tree that is the subject of Mr. Flohrs’ complaint was not left unsafe. That tree is still healthy and no other property damage occurred.

4. None of the allegations made by Mr. Flohrs constitute a violation of any law, regulation, or Evergy Kansas Metro’s Electric Tariffs (Tariffs). In fact, Evergy Kansas Metro’s Tariffs make it clear that Mr. Flohrs is required to provide Evergy Kansas Metro with a right-of-

way across his property, including the right to trim trees as deemed necessary by the Company. Additionally, Evergy Kansas Metro's Tariff also makes it clear that Evergy is not liable for any damages resulting from the provision of electric service to a Customer. Therefore, the Complaint should be dismissed.

II. Motion to Dismiss

5. K.A.R. 82-1-220(b)(1) of the Commission's regulations states that a formal complaint must:

Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions.

Mr. Flohrs has not met the requirements of the above-cited regulation. He has not demonstrated that Evergy has violated any provision of any law, regulation, or order.

6. The only law, regulation, or order Mr. Flohrs contends Evergy Kansas Metro violated is the order in Docket No. 02-GIME-365-GIE. However, the language in that order actually supports the need for Evergy Kansas Central to trim trees away from transmission lines, as was done in Mr. Flohrs' backyard. The Order states that "[e]ach utility should maintain clearances of vegetation from the utility's overhead transmission and primary distribution facilities sufficient to avoid limb contact under design-basis events."¹ Furthermore, there is no Commission rule or regulation regarding filing of vegetation management policies for approval with the Commission.

7. Section 6.15 of Evergy Kansas Metro's General Rules and Regulations provides:

The Customer will provide or procure for the Company such rights-of-way (including permission to trim or remove any trees

¹ Order, Docket No. 02-GIME-365-GIE, Electric Reliability Requirements, p. 5 (Oct. 4, 2004).

that may interfere with the operation of the Company's facilities) as are satisfactory to the Company, across property owned or otherwise controlled by the Customer, for the construction, operation and maintenance by the Company of its facilities necessary or incidental to the supplying of such electric service.

The provisions of Evergy Kansas Metro's Tariff are the "terms and conditions which govern the relationship between a utility and its customers" and they "bind both the utility and the customer."² Thus, Mr. Flohrs is bound by the requirement to provide a right-of-way across his property, including providing permission to trim and remove trees.

8. Mr. Flohrs alleges that Evergy's contractor damaged his tree when conducting routine tree-trimming along the 161 kV transmission line that runs through his yard. However, Evergy's Tariffs clearly provide the Company the right to trim trees as deemed necessary by the Company for clearance from power lines. Additionally, Evergy Kansas Metro holds an easement that provides the right for the Company to trim trees on Mr. Flohrs' property.

9. Finally, Section 6.12 of the General Rules and Regulations provides:

The Customer shall indemnify, save harmless and defend the Company against all claims, demands, cost or expense, for loss, damage and injury to persons or property, in any manner directly or indirectly connected with, or growing out of the distribution or use of electric service by the Customer at or on the Customer's side of the point of delivery.

10. As a result, Evergy Kansas Metro would not be liable to Mr. Flohrs even if damage to the tree had occurred during tree trimming, which was being conducted in connection with the provision of electric service. Kansas courts have upheld the validity of these types of limitations of liability clauses.³

² *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co.*, 267 Kan. 760, 765 (1999).

³ See *Danisco*, 267 Kan. 760; *Midwest Energy, Inc. v. Stoidi 2, Inc.*, 85 P.3d 228, 2004 WL 421990 (Kan. Ct. App. 2004).

11. Mr. Flohrs has provided no basis for the Commission to disregard the right-of-way and liability provisions of Evergy's Tariff or the well-established case law upholding those provisions. He has also provided no allegation or support demonstrating that Evergy Kansas Metro has violated any provision of law, Commission order, or tariff. Therefore, the Complaint should be dismissed for failure to state a claim.

WHEREFORE, Evergy having fully responded to the Complaint respectfully requests that the Commission dismiss the Complaint for failure to state a claim and for such further relief as may be appropriate.

Respectfully submitted,

EVERGY METRO, INC.



Cathryn J. Dinges, #20848

Corporate Counsel

818 South Kansas Avenue

Topeka, Kansas 66612

(785) 575-8344; Telephone

(785) 575-8136; Fax

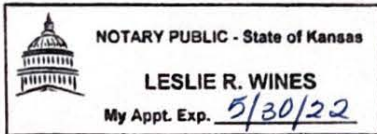
VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

Cathryn J. Dinges, being duly sworn upon her oath deposes and says that she is one of the attorneys for Evergy Metro, Inc.; that she is familiar with the foregoing **Motion to Dismiss**; and that the statements therein are true and correct to the best of her knowledge and belief.

Cathryn Dinges
Cathryn J. Dinges

SUBSCRIBED AND SWORN to before me this 21st day of May, 2020.



Leslie R. Wines
Notary Public

My Appointment Expires: May 30, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2020, the foregoing **Motion to Dismiss** was electronically filed with the Kansas Corporation Commission and electronically served on the following parties on the service list:

ROBERT VINCENT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
r.vincent@kcc.ks.gov

WILLIAM J FLOHRS
WILLIAM J. FLOHRS
10633 W 123RD STREET
OVERLAND PARK, KS 66213
bflohrs@yahoo.com

Cathryn Dinges
Cathryn J. Dinges