

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Andrew J. French, Chairman
 Dwight D. Keen
 Susan K. Duffy

In the Matter of the Complaint Against)
Evergy Metro, Inc. by Scott Worthey.) Docket No. 21-EKME-081-COM

ORDER DENYING COMPLAINT

This matter comes before the State Corporation Commission of the State of Kansas (Commission or KCC) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

1. On June 23, 2020, a crossarm broke on a 34.5 kV line owned by Evergy Kansas Metro, Inc. (Evergy Metro) causing it to fall into a 12.47 kV line causing a power surge that damaged several electronic devices in Scott Worthey's home.

2. On August 7, 2020, Scott Worthey submitted a Formal Complaint against Evergy Metro to the Commission. Worthey alleged Evergy Metro was grossly negligent in the maintenance of its power pole crossarms.¹

3. On October 5, 2020, Evergy Metro filed a motion to dismiss alleging that none of Mr. Worthey's accusations amounted to a violation of any law or tariff. Under Evergy Metro's approved tariffs, Evergy Metro is only liable for damage from "willful conduct or gross negligence."² Evergy Metro alleged that there is no Commission mandate as to how often poles should be inspected, and that Evergy Metro is "constantly patrolling" its poles.³ Evergy Metro

¹ Formal Complaint Against Evergy Metro, Inc. by Scott Worthey, p.3 (Aug. 11, 2020).

² Motion to Dismiss of Evergy Kansas Metro, Inc., p.1 (Oct. 05, 2020).

³ *Id.* at 3.

follows the standard determined by the Missouri Public Service Commission which requires “eight-year detailed inspections and twelve-year intrusive inspections.”⁴ Evergy Metro alleged the damage to the pole was caused by lighting damage and high winds.⁵

4. On October 15, 2020, Worthey filed a response to Evergy’s Motion to Dismiss. Worthey alleged that Evergy Metro’s lack of maintenance constituted gross negligence and willful misconduct, noting that Evergy Metro recently made repairs only after Worthey and KCC pointed out specific issues.⁶ Worthey alleged that if Evergy Metro had been “constantly patrolling” it would have known about the issues before they were pointed out. Worthey also denied Evergy’s assertion that the damage to the pole that lead to his complaint was caused by lightning and high wind. Worthey attached weather reports for the two weeks preceding the event to his motion, pointing out that there were no incidents of high wind or inclement weather in the area.⁷ Evergy has not reconciled its claims of inclement weather with Worthey’s empirical contrary data.

5. On July 30, 2021, Commission Staff (Staff) filed its Report and Recommendation concluding that Evergy Metro was not grossly negligent in maintaining its equipment and the complaint should be dismissed.⁸ While investigating the complaint, Staff drove along a 12 mile section of Evergy Metro’s 34.5kV line and documented eleven possible issues, ten of which needed repair.⁹ According to Evergy Metro’s records, those poles had been inspected in 2008 and 2016, with maintenance performed on the line in 2020, none of Evergy’s records note deficiencies in the crossarms.¹⁰ Staff believes that degradation they observed occurred over a long period of time and should have been visible during the 2008 and 2016 inspections and the 2020 maintenance.

⁴ *Id.*

⁵ *Id.*

⁶ Response to Motion to Dismiss of Evergy Kansas Metro, Inc., p.1 (Oct. 15, 2020).

⁷ *Id.* at 10-15.

⁸ Notice of filing of Staff’s Report and Recommendation, p.7 (July 30, 2021).

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 5.

Staff is concerned about the lack of maintenance and inspection of Evergy Metro's cross arm supports and believes the problem may not be isolated to the small section that was inspected. Therefore Staff recommended the Commission order Evergy Metro and Evergy Central to inspect all their 34.5 kV double circuit lines for potential failure of the 34.5 kV conductor supports and that Evergy Metro and Evergy Kansas Central (Evergy Central) complete this inspection and submit a report within six months of the Final Order in this Docket.¹¹

6. On August 30, 2021, Evergy Metro filed its response to Staff's Report and Recommendation. Evergy Metro agreed to inspect all of its 34.5 kV line but argued that it was inappropriate for the Commission to order Evergy Central to also inspect their lines.¹² Evergy Metro states that Evergy Metro and Evergy Central are separate corporate entities and Evergy Central was not the subject of this complaint, nor had it taken part in the Docket.¹³

7. Evergy Metro's tariff and relevant case law limits Evergy's liability to instances of willful conduct or gross negligence.¹⁴ Although Kansas Courts no longer recognize degrees of negligence, the term "wanton conduct" is its functional equivalent.¹⁵ Therefore the actual standard is better stated as "willful or wanton conduct." The Commission has determined that Evergy Metro's actions were not willful or wanton. For conduct to be "willful" there must be an intent to cause harm.¹⁶ Neither Worthey nor Staff have presented evidence that would indicate Evergy Metro's failure to inspect crossarm supports was done with the intent to cause harm. Therefore the Commission is unable to find that Evergy Metro's conduct was willful.

¹¹ Notice of Filing of Staff's Report and Recommendation, p.7 (July 30, 2021).

¹² Response of Evergy Kansas Central, Inc. to Staff Report and Recommendation, p. 2 (Aug. 30, 2020).

¹³ *Id.* at 3.

¹⁴ Notice of Filing of Staff's Report and Recommendation, p.5 (July 30, 2021); *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co.*, 267 Kan. 760, 773 (1999).

¹⁵ *Burdick v. Sw. Bell Tel. Co.*, 9 Kan. App. 2d 182, 185 (1984); *State v. Krovvidi*, 274 Kan. 1059, 1068–69 (2002).

¹⁶ *Unruh v. Purina Mills, LLC*, 289 Kan. 1185, 1195 (2009).

8. The Kansas Supreme Court defines a wanton act as “more than ordinary negligence but less than a willful act. For an act to be wanton, the actor must realize the imminence of danger and recklessly disregard and be indifferent to the consequences.”¹⁷ Staff has determined that there was not enough evidence to make a finding of wantonness, and the Commission agrees.¹⁸ Evergy Metro, however, should not interpret this as a Commission endorsement of its inspection practices. Rather, the Commission believes Evergy’s inspection practices can and should be improved. In Staff’s Report and Recommendation, Staff noted “serious concerns about EKM’s maintenance” and points out that a defect that causes a 34.5 kV line to fall into a 12.47 kV line could be reasonably expected to endanger life or property.¹⁹

9. The Commission shares Staff’s concern for the safety of the individuals and property in physical proximity to Evergy Metro’s 34.5 kV double circuit lines and finds that inspection of those systems is an appropriate measure to ensure public safety and welfare.

10. The Commission agrees with Evergy Metro that it would be inappropriate to order Evergy Central to inspect its 34.5 kV double circuit lines in this docket. However, given the commonalities between Evergy Metro and Evergy Central, potentially including operational and maintenance practices, the Commission believes it would be appropriate to open a separate docket for Evergy Central to demonstrate the adequacy of its pole inspection procedures. Therefore, concurrent with the issuance of this Order, the Commission will issue an Order for Evergy Central to Show Cause why it should not be subject to the same inspection requirements imposed on Evergy Metro in this docket.

¹⁷ *Reeves v. Carlson*, 266 Kan. 310, 314 (1998).

¹⁸ Notice of filing of Staff’s Report and Recommendation, p.7 (July 30, 2021).

¹⁹ *Id.* at 5.


THEREFORE, THE COMMISSION ORDERS:

- A. Scott Worthey's complaint against Evergy Metro is denied.
- B. Evergy Metro shall complete an inspection of all of its 34.5 kV double circuit lines for potential failure of the 34.5 kV conductor supports, poles, crossarms and conductor attachments and file a report of their findings with Staff within six months of this Order.
- C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²⁰

BY THE COMMISSION IT IS SO ORDERED.

French, Chair; Keen, Commissioner; Duffy, Commissioner

Dated: 11/09/2021 _____



Lynn M. Retz
Executive Director

DGC

²⁰ K.S.A. 66-118b; K.S.A. 77-503(c), K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

21-EKME-081-COM

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
first class mail and electronic service on 11/09/2021.

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