

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

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

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

ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission rules as follows:

Background

1. On March 13, 2020, William J. Flohrs (Complainant) filed a Formal Complaint (Complaint)¹ with the Commission against Kansas City Power & Light Company (Evergy).² Complainant brought his claims after Evergy trimmed his trees and he generally challenges Evergy's vegetation management practices.

2. On May 7, 2020, the Commission found the Complaint complied with the procedural requirements in K.A.R. 82-1-220(b) and established a prima facie case.³

3. On May 21, 2020, Evergy filed a motion to dismiss, arguing the Complaint did not meet the requirements of K.A.R. 82-1-220(b) because Complainant failed to demonstrate Evergy

¹ Formal Complaint of William J. Flohrs (Mar. 13, 2020).

² Evergy Metro, Inc. is formerly known as Kansas City Power & Light Company. *See* Docket No. 20-KCPE-122-CCN.

³ Order Adopting Legal Memorandum (May 7, 2020).

violated any provision of law, regulation, or order.⁴ Evergy asserts the Complaint should be dismissed for failure to state a claim.⁵

4. On May 28, 2020, Complainant requested the Commission deny Evergy's motion. Complainant disagrees with Evergy's claims and Complainant repeats the claims asserted in the Complaint.⁶

5. On August 24, 2020, Commission Staff (Staff) filed its Report and Recommendation (R&R).⁷ According to Staff, an easement conveyance, signed on September 4, 1959, is controlling.⁸ Staff states Evergy acted in accordance with the easement, "which allows the [utility] to trim and/or cut and clear away any trees or debris on or adjacent to the easement whenever the utility judges such will interfere with the operation or maintenance of the transmission line."⁹ Staff also addresses six additional items from the Complaint. Staff recommends the Commission deny the Complaint because Evergy acted in accordance with the easement.¹⁰

6. On August 24, 2020, Complainant replied to Staff's R&R.¹¹ Complainant argued Staff did not address "all aspects of the easement"¹² and challenged Staff's findings.

7. On September 8, 2020, Complainant filed a request seeking the data requests Staff sent to Evergy and Evergy's responses. Complainant also requested Staff provide transcripts of telephone conversations.¹³

⁴ Motion to Dismiss of Evergy Metro, Inc., ¶ 5 (May 21, 2020).

⁵ *Id.*, ¶ 11.

⁶ Complainant Response to Evergy's "Motion to Dismiss of Evergy Metro, Inc." (May 28, 2020).

⁷ See Notice of Filing of Staff's Report and Recommendation (Aug. 24, 2020).

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.* at 3-5.

¹¹ See Complainant Response to Notice of Filing of Staff's Report and Recommendation (Aug. 24, 2020).

¹² *Id.*, ¶ 1.

¹³ Complainant Response to Notice of Filing of Staff's Report and Recommendation Dated August 24, 2020 (Sept. 8, 2020).

8. On September 14, 2020, Staff filed 11 data requests and Evergy's responses to 10 of the requests.¹⁴ Staff did not file the response to Data Request No. 10 (DR 10) because Evergy designated the response a "Confidential" trade secret.¹⁵ Staff left a voicemail for someone at Evergy on August 5, 2020, but Staff does not have a copy of the transcript. Staff does not recall any other telephone conversations with anyone at Evergy regarding the Complaint.¹⁶

9. On September 16, 2020, Complainant filed a response stating: Staff should recuse itself from the docket; Staff should provide an MP3 file of the August 5, 2020 voicemail; the docket should be stayed until Complainant secures a survey of the property; Evergy should provide a copy of Evergy's Transmission Vegetation Management Program (TVMP); Evergy should stop performing further tree trimming; Evergy should produce documentation of construction of the subject transmission line; and requested to receive notification of all correspondence between Evergy and Staff in this matter.¹⁷

10. On September 17, 2020, Staff replied explaining Staff provides independent opinions on assigned dockets. Staff would not release the TVMP Evergy designated "Confidential" without a Commission order. Staff also explained Staff does not have any recording of the voicemail.¹⁸

11. On September 24, 2020, Complainant filed a motion challenging the confidentiality of Evergy's document. Complainant claims Evergy did not follow the requirements under K.A.R. 82-1-221a. Complainant requests the Commission make public the document Evergy designated as confidential.¹⁹

¹⁴ Staff's Redacted Response to Complainant's Request for Documents (Sept. 14, 2020).

¹⁵ *Id.*, ¶ 4.

¹⁶ *Id.*, ¶ 2.

¹⁷ Complainant Response to Staff's Response to Complainant's Request for Documents (Sept. 16, 2020).

¹⁸ Staff's Reply to Complainant's Response, ¶ 4 (Sept. 17, 2020).

¹⁹ Complainant Response to Staff's Filing on September 17, 2020 and Motion to Classify Confidential Documents as Public Records (Sept. 24, 2020).

12. Neither Evergy nor Staff responded.
13. Complainant also filed a motion on September 24, 2020, requesting until November 15, 2020, for parties to file additional documents.²⁰
14. Neither Evergy nor Staff responded.
15. On January 4, 2021, Complainant served additional discovery.²¹
16. On February 24, 2021, Complainant served additional discovery.²²
17. On February 26, 2021, Staff filed a notice of service stating Staff submitted responses to Complainant's January 4, 2021 discovery requests on February 16, 2021.²³
18. On March 19, 2021, Complainant filed a motion requesting the Commission issue protective and discovery orders "to allow Complainant and its consultant access to the full information contained in this filing."²⁴ Complainant specifically referenced Evergy's TVMP, which was submitted in response to Staff's DR 10.²⁵
19. On March 22, 2021, Complainant served additional discovery.²⁶
20. On March 23, 2021, Staff filed objections to Complainant's discovery and requested a discovery deadline.²⁷ Staff states it filed all discovery requests and responses Staff conducted in the docket. Staff further explains Complainant previously solicited discovery responses regarding Staff's R&R, and Staff responded to the discovery requests. Staff contends Complainant seeks legal advice in his most recent discovery requests, which "Staff is not ethically

²⁰ Motion of Complainant for Extension of Time to Answer Complaint and to Give all Parties an Opportunity to Respond to Motions and Briefs (Sept. 24, 2020) (Motion for Extension of Time).

²¹ Certificate of Service (Jan. 4, 2021).

²² Certificate of Service (Feb. 24, 2021).

²³ Certificate of Service (Complainant's January, 2021 Discovery) (Feb. 26, 2021).

²⁴ Motion for Protective Order and Discovery Order, ¶ 1 (Mar. 19, 2021).

²⁵ *Id.*, ¶ 2.

²⁶ Certificate of Service (Mar. 22, 2021).

²⁷ *See* Staff's Objections to Discovery and Motion for Discovery Cut-Off (Mar. 23, 2021).

able to provide.”²⁸ Staff states the schedule does not appear to contemplate further pleadings, other than the Commission’s order. Staff argues Complainant has the burden to prove his claims, Complainant has had over one year to submit discovery, and Staff requests a discovery deadline.²⁹

21. On March 23, 2021, Complainant filed a second motion seeking protective and discovery orders. Complainant does not identify any type of document he believes is subject to a protective order. Rather, Complainant requests “access to the full information contained in this filing.”³⁰

22. On March 29, 2021, Complainant filed a response to Staff’s objections and request for a discovery deadline. Complainant asserts his general dissatisfaction with the data request responses. Complainant requests discovery remain open until this matter is resolved.³¹

Analysis

I. Legal Standards

23. “The commission is given full power, authority and jurisdiction to supervise and control the electric public utilities...doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.”³² As applied to the regulation of electric public utilities, the Commission’s authority and jurisdiction, “shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are expressly granted to and conferred upon the commission.”³³

²⁸ *Id.*, ¶ 8.

²⁹ *Id.*, ¶ 9.

³⁰ Motion for Protective Order & Discovery Order (Mar. 23, 2021).

³¹ Complainant’s Answer to “Staff’s Objections to Discovery and Motion for Discovery Cut-Off,” Dated March 23, 2021 (Mar. 29, 2021).

³² K.S.A. 66-101.

³³ K.S.A. 66-101g.

24. K.S.A. 66-101e provides:

Upon a complaint in writing made against any electric public utility governed by this act that any of the rates or rules and regulations of such electric public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such electric public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such electric public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary.

II. Evergy's Motion to Dismiss for Failure to State a Claim

25. Evergy argues the Complaint should be dismissed for failure to state a claim.³⁴

Evergy contends none of Complainant's allegations constitute a violation of any law, regulation, or order.³⁵ Evergy argues, "The only law, regulation, or order [Complainant] contends [Evergy] violated is the order in Docket No. 02-GIME-365-GIE."³⁶ Evergy claims the Commission order supports the need for Evergy to trim trees away from transmission lines. Evergy further states there is no Commission rule or regulation requiring a utility to file vegetation management policies for Commission approval.³⁷

26. Evergy also cites Section 6.15 of the General Rules and Regulations of its Tariffs, arguing Complainant is required to provide access across his property for Evergy to trim and remove trees.³⁸ Evergy further cites Section 6.12 of its General Rules and Regulations, claiming

³⁴ Motion to Dismiss, ¶ 11 (May 21, 2020).

³⁵ *Id.*, ¶ 4.

³⁶ *Id.*, ¶ 6.

³⁷ *Id.*

³⁸ *Id.*, ¶ 7.

Evergy would not be liable even if damage to the tree occurred during the tree trimming.³⁹ Evergy provides a response to the factual allegations and legal analysis supporting its position that the tariffs are enforceable and applicable to Complainant.⁴⁰

27. “When a motion to dismiss under K.S.A. 60-212(b)(6) raises an issue concerning the legal sufficiency of a claim, the question must be decided from the well-pleaded facts of plaintiff’s complaint. Dismissal is justified only when the allegations of the petition clearly demonstrate plaintiff does not have a claim.”⁴¹

28. On May 7, 2020, the Commission concluded the Complaint met the requirements of K.A.R. 82-1-220(b) and established a prima facie case.⁴²

29. On the face of the Complaint alone, Complainant established a prima facie case and Evergy’s motion to dismiss for failure to state a claim is denied. The remainder of Evergy’s motion is treated as an Answer to the Complaint.

III. Complainant’s Motion for Extension of Time and Request to Stay the Proceedings

30. Complainant requested the Commission delay final disposition of this docket until Complainant secures a survey of the property.⁴³ The Commission finds that sufficient time has passed for Complainant to request the survey or request additional time and Complainant’s request for an indefinite stay is denied.

31. Complainant also requested the Commission stay the docket until November 15, 2020.⁴⁴ Because the Commission did not act prior to November 15, 2020, and the requested deadline has passed, Complainant’s September 24, 2020, motion is moot.

³⁹ *Id.*, ¶¶ 9-10.

⁴⁰ *Id.*, ¶¶ 10-11.

⁴¹ *Grindsted Products, Inc. v. Kansas Corporation Comm’n*, 262 Kan. 294, Syl. ¶ 1 (1997).

⁴² Order Adopting Legal Memorandum, ¶ 5.

⁴³ Complainant Response to Staff’s Response to Complainant’s Request for Documents, Claimant Requests ¶ 3 (Sept. 16, 2020)

⁴⁴ Motion for Extension of Time, ¶ 5. (Sept. 24, 2020).

IV. Complainant's Discovery Challenges

32. Complainant asserts two claims regarding discovery: (1) that he never received a copy of the Transmission Vegetation Management Program (TVMP), which he believes he is entitled to; and (2) he challenges the confidential designation of Evergy's response to DR 10, which is the TVMP.

33. Complainant makes the following arguments in support of his challenge to Evergy's confidential designation of the TVMP:

- a. Complainant discusses the order in Docket No. 20-KCPE-107-COM (20-107 docket). Complainant argues that Staff referenced a document, but did not publish the document. Complainant argues the document "should be made public if Staff is going to reference it or use it in any way."
- b. That Evergy did not accompany its document with a cover letter requesting confidential status, citing K.A.R. 82-1-221a(a)(2).
- c. That "Evergy has not filed any motions or briefs citing [K.S.A.] 66-1220a as a reason that the documents should remain confidential."
- d. That Evergy "did not file a motion that these documents remain confidential therefore the documents should be made public," citing K.A.R. 82-1-221a(a)(5) and (b).⁴⁵

34. Neither Staff nor Evergy responded to Complainant's challenge to the confidential designation.

35. Complainant's arguments regarding the 20-107 Docket are misguided. Complainant believes Staff must cite all statements to a public document, but his belief has no bearing on the confidential designation of the TVMP. Party statements, or references to a document, do not determine whether a document contains trade secrets or confidential commercial information.

⁴⁵ Motion to Classify Confidential Documents as Public Records.

36. Complainant's remaining three claims are that Evergy failed to comply with statutes and rules governing confidentiality. There is no form requirement, however, for a notice of confidential designation. Additionally, no party is required to file a motion or cite to K.S.A. 66-1220a in order to designate a document as confidential.

37. Despite the shortcomings of Complainant's arguments, Staff also requested the Commission review the confidential designation.⁴⁶ Thus, a Commission determination on the confidential designation of the document is warranted.

38. The Commission is prohibited from disclosing to or allowing inspection by anyone, including parties to a regulatory proceeding, information which is a trade secret or any confidential commercial information of a corporation unless the Commission finds that disclosure is warranted after consideration of several factors provided in K.S.A. 66-1220a.

39. When evaluating challenges to confidential designations, the Commission must first determine whether information designated by a party is appropriately considered confidential. If the information is not confidential, then it will be disclosed. If the Commission concludes the information is appropriately designated as confidential, then the Commission considers the factors provided in K.S.A.66-1220a to determine whether disclosure of the confidential information is warranted.⁴⁷ The Commission can decide to release the information in its entirety to the public. Alternatively, the Commission can determine a less extensive release of information is appropriate, such as providing certain information only to the parties to the regulatory proceeding under a nondisclosure agreement provided for in a protective order.⁴⁸

⁴⁶ Staff's Reply to Complainant's Response, ¶ 3.

⁴⁷ *Southwestern Bell Tel. Co. v. Kansas Corporation Commission*, 6 Kan. App. 2d 444, 456-57, rev. denied 230 Kan. 819 (1981).

⁴⁸ See K.S.A. 66-1220a.

40. K.A.R. 82-1-221a(b)(2) provides, “No party shall request disclosure from the commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied.” By requesting all correspondence between Staff and Evergy regarding his Complaint, and having it denied by Staff, Complainant met the procedural requirements of K.A.R. 82-1-221a(b)(2).⁴⁹

41. Evergy notified Staff of the confidential designation in the response to DR 10.⁵⁰ Evergy provided sufficient notice of its request to designate the document as confidential. Evergy designated each page of the TVMP confidential and provided a written explanation of the confidential nature of the document, with one explanation applying to more than one page of the document.⁵¹

42. K.A.R. 82-1-221a(a)(5) provides that one written explanation may apply to more than one page “if the identify and confidential nature of each individual page is clearly stated in the explanation.” K.A.R. 82-1-221a(a)(5) requires the explanation of the confidential designation “shall further specify the harm or potential harm that disclosure would cause to the entity seeking nondisclosure.”

43. The party claiming confidentiality has the burden of proving the confidential status of the information.⁵² A blanket claim of confidentiality does not satisfy a party’s burden to establish grounds for keeping information confidential.⁵³ Evergy has failed to meet its burden and has failed to satisfy the requirements in K.A.R. 82-1-221a(a)(5). Evergy provided boilerplate

⁴⁹ Complainant Response to Notice of Filing of Staff’s Report and Recommendation Dated August 24, 2020.

⁵⁰ Staff’s Filing of Confidential Discovery Response (DR 10) Under Seal, Attachment (Sept. 17, 2020).

⁵¹ See *id.*; K.A.R. 82-1-221a(a)(5).

⁵² *Southwestern Bell*, 6 Kan. App. 2d at 455-56.

⁵³ See e.g., Order on Motions Challenging Confidential Designations, Docket No. 02-UTCG-701-GIG (Jul. 12, 2005).

language without further explanation regarding the confidential designation. Evergy had an additional opportunity to explain the confidential designation in a response to Complainant's September 24, 2020, filing, however, Evergy elected not to file a response. Evergy provided no specific information regarding the confidentiality or the harm disclosure would cause.

44. Deciding what information should be treated as confidential is an important undertaking. On the one hand, the Kansas Legislature has determined that the general policy of the state of Kansas is that public agencies operate in the open and not in secret.⁵⁴ Public access to the Commission and information presented for its consideration makes the Commission accountable not only for the decision it makes but also for the manner in which it makes the decision. On the other hand, the Kansas Legislature has recognized that a party to a regulatory proceeding has an appropriate expectation that its trade secrets and sensitive commercial information shall remain confidential and may be disclosed only in specific circumstances.⁵⁵

45. The Kansas Supreme Court discussed the question of what constitutes a trade secret, noting that an exact definition may not be possible but that several factors should be considered in making this determination.⁵⁶ The Court noted that a trade secret consists of any formula, pattern, device, or compilation of information that is used in one's business and that gives a business an opportunity to gain an advantage over a competitor who does not know or use it.⁵⁷

46. The information contained in the TVMP does not meet the definition of a trade secret or confidential commercial information, and Evergy has provided no information

⁵⁴ See K.S.A. 75-4317, *et seq.* (The Kansas Open Meetings Act); K.S.A. 45-215, *et seq.* (The Kansas Open Records Act).

⁵⁵ See K.S.A. 66-1220a.

⁵⁶ *Koch Engineering Co. v. Faulconer*, 227 Kan. 813, 826-27 (1980).

⁵⁷ *Id.* at 827; K.S.A. 60-3320. See also *Southwestern Bell*, 6 Kan. App. 2d at 457 ("For purposes of disclosure, any distinction between trade secrets and confidential information would appear immaterial.").

indicating otherwise.⁵⁸ The TVMP does not contain a formula, pattern, device, or compilation of information which gives Evergy an opportunity to obtain an advantage over competitors. The TVMP follows the North American Reliability Corporation (NERC) requirements for vegetation management and provides general information regarding Evergy's tree trimming practices. Evergy is required to disclose the TVMP without a confidential designation to Complainant within 15 days of this order.⁵⁹ Because the Commission finds the TVMP is not confidential and shall be disclosed, the Commission need not address the factors set forth in K.S.A. 60-1220a.

V. Complainant's Motion for Protective and Discovery Orders

47. Complainant's requests states he is seeking a protective order and a discovery order. Based on the support for his request, however, Complainant is seeking only a protective order. Complainant seeks access to confidential information.⁶⁰

48. Nonetheless, an earlier request for a discovery order would have been beneficial here. A discovery order formalizes the discovery procedures and clarifies parties' discovery obligations. A discovery order further governs the conduct of discovery.

49. The Commission notes that neither party filed a motion for a protective order until Complainant's request on March 19, 2021. A protective order sets out the procedures for parties dealing with confidential information, including the requirement to execute a nondisclosure agreement. The parties in this docket should have sought a protective order when they first became aware of a request for a document designated confidential.

50. Complainant's requests on March 19 and 23, 2021, are for a protective order so that Complainant can have access to the TVMP, and any other discovery that may be designated as

⁵⁸ See *Koch*, 227 Kan. at 828 (analyzing factors to consider in determining the existence of a trade secret).

⁵⁹ Evergy may file a petition for reconsideration, which shall stay the requirement of providing the TVMP until resolution of the petition.

⁶⁰ See, *i.e.*, Motion for Protective Order, ¶¶ 1-2 (Mar. 19, 2021).

confidential in the future. A protective order and discovery order are no longer necessary here, and Complainant's requests are moot. The TVMP is not confidential, and Evergy is ordered to disclose the TVMP to Complainant. All of the claims in the Complaint are resolved by this final order and no additional discovery is necessary.

VI. Staff's Objections to Complainant's Discovery and Request for Discovery Deadline

51. Because no additional discovery is needed for the Commission to resolve all of Complainant's issues asserted in the Complaint, Staff's filing is moot.

VII. Complainant's Remaining Issues

52. Complainant raises 11 issues to be addressed by the Commission.⁶¹

53. Complainant asserts Evergy is not in compliance with Docket No. 02-GIME-365-GIE (02-365 Docket) because Evergy did not provide him a copy of the TVMP.⁶²

54. The 02-365 Docket established criteria for utilities to report annually on their electric service reliability; the docket did not establish a requirement for a public utility to provide tree trimming guidelines to customers upon request. Complainant's allegation is unfounded and his request for the Commission to bring Evergy into compliance is denied.

55. Complainant asked Evergy for vegetation guidelines that were approved by the Commission. Such guidelines do not exist, because, as Staff and Evergy correctly state, there is not a Commission rule or regulation requiring utilities to file vegetation management policies/plans/ or guidelines for approval with the Commission. Complainant repeats the allegation that Evergy is unwilling to provide vegetation management policies, but that is not what Complainant requested. Furthermore, Evergy is to disclose the TVMP it provided in response to DR 10 and Complainant's allegation is resolved.

⁶¹ Complaint.

⁶² *Id.*

56. Complainant states the Commission “has gone on the record stating that, “the topic of “line sag[]” has been overemphasized.” Complainant again alleges Evergy has not provided a copy of its TVMP and seeks resolution from the Commission.⁶³

57. Complainant’s allegation regarding the Commission’s statement is false. There is no record of the Commission making such statement. Further, Evergy is to disclose the TVMP, thus Complainant’s request is resolved.

58. Complainant contends Evergy “has been asked for a copy of their Transmission Vegetation Management Plan (TVMP),” but provided a training slide.⁶⁴ Complainant, however, did not submit such a request. Complainant argues Evergy was required to file a copy of the TVMP with its last rate case.⁶⁵ There is no requirement for Evergy to file a TVMP with the Commission or to get the Commission approval of the TVMP. Nonetheless, Evergy is to provide the TVMP, therefore, Complainant’s request is resolved.

59. Complainant claims he asked Evergy for a copy of the “NERC (or other) regulations that apply to this 161kV line. They provided nothing.”⁶⁶

60. Complainant’s exhibits do not support Complainant’s allegation. Evergy provided Complainant a copy of a slide from a contractor training presentation that addressed side clearing expectations.⁶⁷ Additionally, Complainant did not request a copy of NERC or other regulations, rather Complainant sought tree-trimming guidelines “approved by” the Commission. Nonetheless, Evergy is to provide the TVMP and the request is resolved.

⁶³ *Id.*

⁶⁴ Complaint.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*, Exhibit 5.

61. Complainant alleges, “The trees in question are 33 feet tall, so the tops of the trees do not come close to the 44 feet that KCP&L claims the power lines are currently from the ground. Therefore, they did not follow the guidelines they set out.”⁶⁸ Presumably, one of the “trees in question” is the tree Complainant claims is now “unsafe and a hazard” due to the tree trimming. Complainant claims Staff should have performed an onsite inspection and should have retained a licensed arborist.⁶⁹

62. There is no Commission rule, regulation, or law that requires Staff to perform onsite inspections of Complainant’s trees. Staff is also not required to retain licensed arborists to perform inspections. The Commission agrees with Staff; the record does not support Complainant’s allegation that one of his trees was left unsafe or hazardous. Further, Complainant’s statement regarding the height of the trees is incomplete and inaccurate. Complainant asked Evergy for “A measurement from the ground to the lowest point of the transmission line on the subject property.”⁷⁰ Mr. Geoff Vossen, Evergy Companies Manager, responded, “Depending on the conditions, the wire can be between 36 and 44 feet from the ground over this property.”⁷¹ Additionally, in the “Reliability Expectations” presentation slide attached to the Complaint, Evergy provides that to achieve required clearances, “161kV-Trees will be cleared ground to sky at least 20’ or edge of ROW and to at least 25’ below the lowest conductor.”⁷² Based on this information, it is clear the 33’ trees were within the clearance range. Additionally, Staff noted the tree trimming Evergy provided met the minimum requirements of NERC.

⁶⁸ *Id.*

⁶⁹ Complainant Response to Notice of Filing of Staff’s Report and Recommendation, ¶ 6.

⁷⁰ Complaint, Exhibit 5.

⁷¹ *Id.*

⁷² *Id.*

63. Moreover, as addressed by Staff, there is an easement between the Complainant (grantor/landowner) and Evergy (grantee/public utility). The easement gives Evergy the right to trim or remove trees located within the right-of-way. The easement provides, “Grantee may trim and/or cut and clear away any trees, limbs and brush on or adjacent to above described land whenever in its judgment such will interfere with or endanger the construction, operation or maintenance of said lines.”⁷³ Evergy acted within its discretion to trim Complainant’s trees.

64. Complainant responded to Staff’s R&R, accusing Staff of taking a “‘pick and choose’ approach,” by failing to address all aspects of the easement. According to Complainant, the easement states, “The grantee...agrees to pay for any reasonable permanent damage caused.”⁷⁴

65. Complainant, however, fails to provide the complete sentence in the easement. Although the copy of the easement provided by Staff is difficult to read, the easement states, “The grantee...agrees to pay for any reasonable permanent damage caused to land growing crops, fence livestock, machinery or other personal property of grantor from the construction, operation or maintenance of said lines.” The easement does not require Evergy to pay landowners for trees trimmed, as Complainant implies.

66. Moreover, Evergy argues that it would not be liable to Complainant even if damage to the tree occurred while trimming. Section 6.12 of Evergy’s General Rules and Regulations, states:

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.

⁷³ R&R, Exhibit 2; R&R, Docket No. 10-KCPE-809-COM, p. 7.

⁷⁴ Complainant’s Response to Notice of Filing of Staff’s Report and Recommendation, ¶ 1.

67. The Commission agrees that Evergy would not be liable for any damage to the trees or property. Evergy followed its TVMP and met the minimum requirements of NERC. Evergy acted accordingly under the easement. Nothing in the record supports Complainant's claim that his tree was left in an unsafe or hazardous condition. To the extent Complainant requests reimbursement for the trimmed trees, the request is denied.

68. Complainant expresses dissatisfaction with two of Evergy's notices. Complainant alleges the notice on June 27, 2019, was invalid because it was completed improperly. Complainant contends that no one rang the doorbell when placing the door hanger on March 6, 2020. He further states no one from Evergy returned his call.⁷⁵

69. Evergy provided a door hanger on June 27, 2019, informing Complainant that the "Trees along the edge of right of way will be cut back ____ feet to provide sufficient long-term conductor clearance" and the removal of tree limbs will be hauled away.⁷⁶ The hanger also informed Complainant that if he had any questions about the work required on his property, he could contact Thornes' Tree Service at the number provided.⁷⁷ Further, Evergy provided a second notice of the schedule maintenance with contact information for the Evergy representative.⁷⁸ As previously addressed, it was within Evergy's discretion to trim trees within the easement boundaries. The Commission finds Evergy provided sufficient notice to Complainant and his claim is denied. Also, there is no requirement for a person to ring the doorbell or knock on the door prior to hanging a door hanger and the claim is denied.

⁷⁵ Complaint.

⁷⁶ *Id.*, Exhibits 1 and 5.

⁷⁷ *Id.*, Exhibit 1.

⁷⁸ *Id.*, Exhibit 4.

70. Complainant asked the Commission to instruct Evergy not to enter his property to perform any tree trimming until “all legal avenues of this complaint have been addressed.”⁷⁹

71. Evergy’s General Rules and Regulations require Complainant to provide access across his property for Evergy to trim and remove trees. Further, as previously addressed, there is an easement between Evergy and Complainant, which was executed in 1959. The easement is a private contract regarding property rights between Complainant and the utility.⁸⁰ The easement gives Evergy the right to trim or remove trees located within the right-of-way. The Commission does not have jurisdiction to modify the terms of the easement.⁸¹ Complainant’s claim is denied.

72. The Complainant prematurely asked the Commission to deny a request for extension of time if Evergy sought an extension to answer. Evergy did not seek an extension of time. Complainant’s request is moot.

73. The remaining points in the Complaint do not require Commission action. These appear to be attempted discovery requests to Evergy and to Thorne Tree Service or ECI, who are not parties to the docket. There is no evidence in the record to determine whether Complainant sought the information requested from Evergy. Even if Complainant sought the information from Evergy, the Commission concludes Evergy is not required to provide the requested information. Further, the requested information is not relevant to the Commission’s order.

THEREFORE, THE COMMISSION ORDERS:

- A. Evergy’s motion to dismiss for failure to state a claim is denied.
- B. Mr. Flohrs’ motion for extension of time is moot.
- C. Mr. Flohrs’ motion for an indefinite stay is denied.

⁷⁹ *Id.*

⁸⁰ *See Brown v. ConocoPhillips Pipeline Co.*, 47 Kan. App. 2d 26, 33 (2012).

⁸¹ *See id.*

D. Evergy's Transmission Vegetation Management Program (TVMP) provided in response to Staff's Data Request No. 10 is not appropriately designated confidential. Evergy shall provide the TVMP to Mr. Flohrs without the confidential designation within 15 days after service of this order.

E. Mr. Flohrs' motions for protective and discovery orders are moot.

F. Staff's motion objecting to discovery and requesting a discovery deadline is moot.

G. The remainder of Mr. Flohrs' Formal Complaint is denied for the reasons stated above.

H. 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).⁸²

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 04/08/2021 _____



Lynn M. Retz
Executive Director

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⁸² K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-EKME-397-COM

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
electronic service on 04/08/2021.

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