

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

In the Matter of the Complaint Against Evergy )  
by Dr. Jeffrey F. Van Petten, DVM. ) Docket No. 24-EKCE-608-COM  
)

**NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION**

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby files its Report and Recommendation dated January 15, 2025.

Staff states the Complainant seeks a total of \$34,700 in damages as itemized below:

1. Compaction damage resulting in the loss of production for 3-years (\$3,600).
2. Loss of grass production utilized for hay (\$1,400).
3. Reseeding brome grass due to a drought (\$8,200).
4. Picking up rocks (\$1,000)
5. Oil contamination (\$2,500).
6. Trespassing on property outside of their easement (\$3,000).
7. Stress and work related to corralling horses (\$5,000).
8. Harassment during easement negotiations (\$10,000).

Staff recommends that with regard to allegations<sup>1</sup> through 4, Evergy should restore the property to the condition which existed prior to construction pursuant to K.S.A. 66-1,183. Evergy requested the Commission to determine whether Evergy's proposed settlement amount was fair, reasonable, and appropriate. Staff recommends the Commission reject Evergy's request since the amount of damages owed to the Complainant must be made by a court of competent jurisdiction, pursuant to K.S.A. 66-176. In regard to allegation 5, Staff recommends the Commission require Evergy to remove and properly dispose any remnant oil in accordance with applicable federal, state, and local laws to the extent practical or provide evidence suggesting they did comply with

all applicable laws. Because allegations 6-8 do not relate to the restoration of property, Staff recommends allegations 6-8 be dismissed.

WHEREFORE, Staff respectfully requests that the Commission issue an order adopting its recommendation.

Respectfully Submitted,

*/s/ Ahsan Latif*

---

Ahsan Latif, S. Ct. #24709  
Litigation Counsel  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: 785-271-3118  
Fax: 785-271-3167

Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Annie Kuether, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION**  
**UTILITIES DIVISION**

**TO:** Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Annie Kuether, Commissioner

**FROM:** Ashlyn Hefley, Utilities Engineer  
Paul Owings, Chief Engineer  
Jeff McClanahan, Director of Utilities

**DATE:** January 15, 2025

**SUBJECT:** Docket Number: 24-EKCE-608-COM In the Matter of the Complaint Against  
Evergy by Dr. Jeffrey F. Van Petten, DVM.

**EXECUTIVE SUMMARY**

On March 1, 2024, Dr. Jeffrey F. Van Petten, DVM (Complainant) filed a formal complaint accusing Evergy of multiple wrong doings including property damage, trespassing, endangerment of livestock, harassment, and pain and suffering in the form of stress. The Complainant seeks \$34,700 in damages for the allegations. In its response, Evergy states they have exercised reasonable care while performing work and communicating with the Complainant. Evergy negotiated with the Complainant and offered approximately \$5,200 in reparations. To Staff's knowledge, there was damage to the property and the property has not yet been returned to the condition prior to the construction. Staff does not have any opinion regarding the reasonability of the amounts offered by Evergy. Staff believes assessment of compensation for damages relating to the Complainant's claims are the duty of a court of competent jurisdiction per K.S.A. 66-176<sup>1</sup>. Staff recommends the Commission require Evergy to dispose of soil contaminated by oil in accordance with federal, state, and local laws. Furthermore, Staff recommends Evergy restore the property to the condition which existed prior to construction per K.S.A. 66-1,183. Staff recommends allegations 6 through 8 be dismissed.

**BACKGROUND**

---

<sup>1</sup> K.S.A. 66-176 **Damages for violations; attorney fees.** Any public utility or common carrier which violates any of the provisions of law for the regulation of public utilities or common carriers shall forfeit, for every offense, to the person, company or corporation aggrieved thereby, the actual damages sustained by the party aggrieved, together with the costs of suit and reasonable attorney fees, to be fixed by the court. If an appeal is taken from the judgment or any part thereof, it shall be the duty of the appellate court to include in the judgment additional reasonable attorney fees for services in the appellate court or courts.

Evergy replaced a 69 kV electric transmission line with a single circuit 115 kV electric transmission line. The replacement electric transmission line required Evergy to widen the right of way (ROW) corridor by 25'. The Complainant owns property along the alignment of the electric transmission line. The parties could not reach an agreement to modify the easement adding 25' to the corridor. After an eminent domain proceeding, Evergy acquired the easement and began replacing the line.

The Complainant alleges Evergy damaged his property, harassed him, and caused stress to him and his family.<sup>2</sup> The Complainant seeks a total of \$34,700 in damages as itemized below:

1. Compaction damage resulting in the loss of production for 3-years (\$3,600).
2. Loss of grass production utilized for hay (\$1,400).
3. Reseeding brome grass due to a drought (\$8,200).
4. Picking up rocks (\$1,000)
5. Oil contamination (\$2,500).
6. Trespassing on property outside of their easement (\$3,000).
7. Stress and work related to corralling horses (\$5,000).
8. Harassment during easement negotiations (\$10,000).

In Evergy's response, they address each item included in the complaint. Evergy acknowledges that the Complainant's property was damaged stating, "The replacement work caused damage to his property..."<sup>3</sup> In relation to property damage allegations, Evergy states they offered \$5,000 for the compaction damage, loss of grass production, and reseeding of four acres of land. Evergy offered the \$5,000 in response to item 1, 2, and 3 above.

Evergy disagrees with the Complainant on Allegation 6. Evergy indicates in their response to the complaint that prior to construction, the Complainant requested that Evergy utilize a path outside of their ROW. Evergy does not have documentation of this agreement. Additionally, Evergy indicated in their response that they improved the access point by adding gravel to widen the path on the property and removing trees.

Evergy acknowledges that oil was discharged on the Complainant's property. However, Evergy states both parties and their contractor agreed any small amount of oil should be deposited in the spoils pile. Evergy was under the impression that this issue was resolved.

Evergy acknowledges the Complainant had to corral as a result of their construction. Evergy offered the Complainant \$200 for the time spent moving horses to another area of the property.

Evergy acknowledges item 8 insofar as the Complainant did not like their agent. However, they qualify that they have no records of impropriety or any contemporaneous complaints about the field agent's activities being improper.

## **ANALYSIS**

---

<sup>2</sup> See Formal Complaint Against Evergy by Jeffrey F. Van Petten (Mar.1, 2024).

<sup>3</sup> Answer of Evergy Kansas Central, Inc. p. 2, item 8 (March 22, 2024).

Allegations 1 through 4 relate to restoration of property. K.S.A 66-1,183<sup>4</sup> requires the utility to restore the property to its prior condition. Evergy acknowledged they damaged the Complainants property. In lieu of restoring the property, Evergy negotiated with and offered the Complainant a fee. The Complainant was sent a check from Evergy, though the check has not been cashed as of December 18, 2024. Considering the Complainant continues to pursue this complaint, the restoration of this property remains an issue between the parties. Evergy has a statutory duty to restore the land, but the assessment of compensation for damages relating to the restoration of that land is the duty of a court of competent jurisdiction per K.S.A. 66-176. Based on the facts in the record, Staff finds that the land was damaged by Evergy and no evidence has been presented that the land has been returned to the condition prior to construction, pursuant to K.S.A. 66-1183. Staff makes no opinion on the reasonability of the amount offered; however, Evergy has an obligation to restore the property to the original conditions.

Allegation 5 also relates to restoration of property. Staff does not believe placing used motor oil in a “Spoils Pile” constitutes proper disposal of the oil regardless of whether the property owner agrees to the disposal or not. Staff contends that Evergy and their contractors have an obligation to properly dispose of motor oil. Staff recommends the Commission require Evergy to remove and properly dispose any remanent oil in accordance with applicable federal, state, and local laws to the extent practical or provide evidence suggesting they did comply with all applicable laws. If it is not possible to locate and dispose the motor oil, Evergy should negotiate a fair fee.

Allegation 6 relates to Evergy trespassing on the Complainant’s property outside of their easement. Evergy acknowledges they left their ROW and trespassed on the Complainants property but argues they did so in response to the Complainants request. Evergy has no written documentation of the Complainants supposed request. Generally, Staff believes Evergy should document such a request in writing to avoid miscommunications and conflicts of this very nature. Allegation 7 relates to corralling horses and the stress associated with the event. Evergy acknowledges the work associated with corralling the horses but disputes incidental damages relating to the event. Allegation 8 relates to harassment during easement negotiations, which remains disputed. Items 6 through 8 do not relate to restoration of property, and therefore per K.S.A. 66-176, determination of an appropriate fee for violation of any provisions of the law are the duty of a court of competent jurisdiction. Staff believes the matters and corresponding damage payments presented in items 6 through 8 are most appropriately addressed by a court of competent jurisdiction, and therefore should be dismissed.

### **RECOMMENDATION**

In Staff’s opinion, Evergy acknowledged to damaging Complainant’s land and that land has not been restored to its prior condition. Therefore, Staff recommends Evergy restore the property to the condition which existed prior to construction per K.S.A. 66-1,183. Evergy requested the Commission to determine whether the proposed fee was fair, reasonable, and appropriate. Staff recommends the Commission reject Evergy’s request since the amount of damages owed to the Complainant must be made by a court of competent jurisdiction. In regard to allegation 5, Staff

---

<sup>4</sup> K.S.A 66-1183 **Same; duty of utility to restore land.** It shall be the duty of every electric utility which constructs an electric transmission line to restore the land upon which such line is constructed to its condition which existed prior to such construction.

recommends the Commission require Evergy to remove and properly dispose any remnant oil in accordance with applicable federal, state, and local laws to the extent practical or provide evidence suggesting they did comply with all applicable laws. Because allegations 6-8 do not relate to the restoration of property, Staff recommends allegations 6-8 be dismissed.

## CERTIFICATE OF SERVICE

24-EKCE-608-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing was served via electronic service this 27th day of January, 2025, to the following:

CATHRYN J. DINGES, SR DIRECTOR & REGULATORY  
AFFAIRS COUNSEL  
EVERGY KANSAS CENTRAL, INC  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
cathy.dinges@evergy.com

JEFFREY F VAN PETTEN DVM  
JEFFREY VAN PETTEN DVM  
4861 Detlor Rd.  
Meriden, KS 66512  
jeff@meriden-animal.com

BRIAN G. FEDOTIN, GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
brian.fedotin@ks.gov

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
ahsan.latif@ks.gov

*Ann Murphy*

---

Ann Murphy