

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint Against)
Evergy Kansas Metro, Inc. by Wayne C.) Docket No. 25-EKME-189-COM
Young.)

MOTION TO DISMISS OF EVERGY KANSAS METRO, INC.

Evergy Kansas Metro, Inc. (“Evergy”) submits the following Motion to Dismiss (Motion) the Complaint filed by Wayne C. Young (“Complainant”).

1. On or about October 14, 2024, Mr. Young filed a Complaint in this matter. The Commission authorized service on Evergy of the Complaint in an Order on October 30, 2024, and service was completed after that.

2. Complainant contends that several of his household items were damaged on February 19, 2024, as a result of Evergy’s alleged failure to maintain power lines, which caused a surge into his home. Complainant asks the Commission to order Evergy to review all fuses between the occurring outage and the Complainants meter, replace any fuse found to be oversized, and to provide a full and complete explanation of the initial outage. Complainant lists costs incurred by the alleged surge but does not ask for Evergy to pay for the damage.

3. None of the allegations made by Complainant constitute a violation of any law, regulation, or Evergy Kansas Metro’s Electric Tariffs (Tariffs). In fact, Evergy Kansas Metro’s Tariff make it clear that Evergy Kansas Metro is not liable to customers for loss or damage that occurs from interruptions in electric service or from damage caused by the installation, maintenance or replacement of Evergy Kansas Metro’s facilities used to serve customer unless such damage is the result of Evergy Kansas Metro’s willful misconduct or gross negligence.

4. Section 7.06 of the Rules Regulations (“Rules”) of Evergy Kansas Metro’s Tariffs provide:

The Company will use reasonable diligence to supply continuous electric service to the Customer but does not guarantee the supply of electric service against irregularities and interruptions. Except where due to the Company’s willful misconduct or gross negligence, the Company shall not be considered in default of its service agreement and shall not be liable in negligence or otherwise for any claims for loss, expense or damage (including indirect, economic, special or consequential damage) regardless of cause.

5. Section 7.12 of the Rules provides:

Except where due to the Company’s willful misconduct or gross negligence, the Company shall not be liable in negligence or otherwise for any claims for loss, expense or damage (including indirect, economic, special or consequential damage) on account of fluctuations, interruption in, or curtailment of electric service; or for any delivery delay, breakdown; or failure of or damage to facilities; or any electric disturbance originating on or transmitted through electric systems with which the Company’s system is interconnected, act of God, or public enemy, strike, or other labor disturbance involving the Company or the Customer, civil, military or governmental authority.

6. Complainant has not demonstrated that the interruption in service that led to the alleged damage to his personal property was caused by any gross negligence or willful conduct by Evergy Kansas Metro. In fact, in this instance Complainant contradicts his own claim of gross negligence by alleging that he spoke with someone at the Company and claims to have been told “the crossarms and pin insulator was being replaced” on a 34kV pole prior to the surge.¹ Complainant then suggests if work was being done prior to the surge it could have been human error or equipment malfunction instead of ordinary usage failure.² Complainant’s own theory is

¹ Formal Complaint at 3, KCC Docket No. 25-EKME-189-COM.

² *Id.*

the power outage could have been caused by human error or equipment malfunction and not gross negligence.³

7. Complainant's allegation that Evergy Kansas Metro had been working on the 34kV line prior to the outage and surge is untrue, however, Complainant's allegation only highlights that Evergy could not have acted grossly negligent even under the Complainant's own theory of events.

8. Kansas courts have defined wanton conduct (also known as gross negligence) as "an act performed with a realization of the imminence of danger and a reckless disregard or complete indifference to the probable consequences of the act. For an act to be wanton, the actor must realize the imminence of danger and recklessly disregard and be indifferent to the consequences of his or her act." *Reeves v. Carlson*, 266 Kan. 310, 313-314 (1998). For an act to be willful, "there must be a design, purpose, or intent to do wrong or to cause the injury." *Unruh v. Purina Mills, LLC*, 289 Kan. 1185, 1195 (2009).

9. Evergy Kansas Metro's conduct in this instance does not meet the definition of gross negligence or willful conduct.

10. Although the Kansas Commission does not mandate how often poles must be inspected, Evergy Kansas Metro follows Missouri Public Service Commission inspection guidelines, which require eight-year detailed inspections and twelve-year intrusive inspections.

11. Evergy Kansas Metro personnel determined that equipment failure caused the outage. Evergy Kansas Metro believes a 34 kV line broke loose and hit a 12 kV causing the outage and surge. This is the only outage the Complainant has experienced in the past 12 months and only the 4th outage in over three years.

³ *Id.*

12. Complainant has provided no basis for the Commission to disregard the liability provisions of Evergy Kansas Metro's Tariff.

13. Therefore, the Complaint should be dismissed for failure to state a claim.

WHEREFORE, having fully answered, Evergy Kansas Metro 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 KANSAS CENTRAL, INC.

/s/ Cathryn J. Dinges

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STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

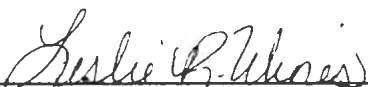
VERIFICATION

The undersigned, Cathryn Dinges, upon oath first duly sworn, states that she is Senior Director and Regulatory Affairs Counsel for Evergy Kansas Central, Inc. and Evergy Kansas South, Inc., that she has reviewed the foregoing pleading, that she is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of her knowledge and belief.



Cathryn J. Dinges

Subscribed and sworn to before me this 8th day of November, 2024.



Notary Public

My Appointment Expires *May 30, 2026*



CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November 2024, the foregoing Answer was electronically served on the following parties of record:

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/s/ Cathryn J. Dinges

Cathryn J. Dinges