IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MISSOURI OFFICE OF THE PUBLIC COUNSEL,	)	
Appellant,	)	
v.	)	**WD87860**
	)	**OPINION FILED:**
EVERGY MISSOURI WEST, INC. d/b/a EVERGY MISSOURI WEST and PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,	)	**November 25, 2025**
Respondents.	)	

Appeal from the Missouri Public Service Commission

Before Division Three: Mark D. Pfeiffer, Presiding Judge, Edward R. Ardini, Jr., Judge, and Thomas N. Chapman, Judge

The Office of Public Counsel ("Public Counsel") appeals an order issued by the Public Service Commission of the State of Missouri ("the Commission") dismissing thirty *pro se* complaints filed against Evergy Missouri West ("Evergy") related to Evergy's efforts to obtain easements from the complainant landowners. Because Evergy abandoned its efforts to seek easements from the complainant landowners for its utility project, the Commission correctly concluded that there remained no live controversy

from which effectual relief could be granted to the complainant landowners and the case was, thus, moot. We affirm the Commission's dismissal ruling.

Factual and Procedural History

The present appeal arose out of Evergy's project plans to relocate an electrical line along an 8.7-mile-wide stretch of Missouri State Highway 13 in Johnson and Lafayette counties (the "Fayetteville Project"). On July 25, 2023, Timothy and Denise Allegri ("the Allegris") filed a formal complaint with the Commission, purporting to be on behalf of themselves and thirty-seven other landowners, alleging that Evergy engaged in unlawful acts in advancing the Fayetteville Project.

On July 26, 2023, the Commission notified the parties it would not act on the complaint because the Allegris, as non-attorneys, could not represent the interests of other landowners before the Commission. In response, the individual landowners filed their own complaints. A document was attached to each complaint containing allegations against Evergy that were identical to those raised by the Allegris. The complaints were later consolidated into a single case before the Commission.

In substance, the complaints opposed the Fayetteville Project, asserted that Evergy may have exceeded the bounds of authority granted to it in its certificate of convenience and necessity ("CCN")[1] issued by the Commission, and alleged that Evergy engaged in

[1] In 1938, the Commission issued an order granting a CCN to Missouri Public Service Corporation, which is now held by Evergy Missouri West, as authorization to provide electric services in the geographical areas relevant to the complaints in this case.

fraudulent conduct in order to obtain easements from the landowners along the planned project route. The complaints requested the following relief:[2]

1. We request utility service through West Central COOP be available to all MO-13 properties for the 8.7 miles impacted.

2. We request a hearing to discuss the issues contained in this protest/complaint.

3. We request your support in compelling Evergy to negotiate honestly with us as required by law and if needed, mediation.

On August 3, 2023, Evergy initiated condemnation proceedings against individual landowners in the circuit courts to obtain easements for the Fayetteville Project. On October 13, 2023, Evergy filed its Answer to the Commission and moved to dismiss the consolidated complaints, arguing the Commission lacked authority to issue a decision related to the eminent domain proceedings then pending in the circuit courts.

On November 16, 2023, the Commission Staff ("Staff") filed its Recommendation in the case. Staff recommended that the Commission hold a hearing related to the allegations in the complaints. In response, the Commission issued an order setting an evidentiary hearing in the case for January 23-25, 2024.

[2] Public Counsel suggests, on appeal, that complainants are entitled to relief in the form of penalties under section 386.570. However, complainants did not request penalties in their complaints. Moreover, the plain language of section 386.600 does not allow complainants or Public Counsel to request penalties under Chapter 386. § 386.600 ("An action to recover a penalty or a forfeiture under this chapter . . . may be brought in any circuit court in this state . . . and shall be commenced and prosecuted to final judgment by *the general counsel to the commission*, or for actions commenced under section 386.752 to 386.764, *the attorney general*."). (Emphasis added.)

On January 5, 2024, the Allegris moved the Commission to reschedule the evidentiary hearing so that the parties could discuss settlement. The Commission granted the Allegris' request and reset the evidentiary hearing for May 14-16, 2024. During settlement negotiations, Evergy reached settlements with several complainants, leaving thirty complainants in the case.

On April 10, 2024, Evergy filed a Notice to Commission and Motion to Dismiss for Lack of Controversy. In its motion, Evergy stated: "Due to a change in the project, the Company has dismissed the Missouri circuit court condemnation cases in Lafayette and Johnson counties." Evergy attached the dismissals to its motion and argued that the Commission should dismiss the complaints because Evergy had abandoned its efforts to seek easements from the complainants and because "none of the complainants," at that point, were "involved in a condemnation lawsuit involving a CCN issued by the Commission." As a result, there was no live controversy at issue in the case.

On April 11, 2024, the Allegris opposed the Motion to Dismiss and alleged that there remained live issues in the case that the Commission must resolve. They alleged the live issues included whether Evergy had, in the past, acted beyond the scope of the CCN by planning the project and seeking new easements, and whether Evergy engaged in fraudulent conduct directed at landowners during the planning phase of the project.

On May 7, 2024, Staff recommended the Commission dismiss the complaints because no live controversy then existed due to Evergy's decision to abandon its plan to obtain easements from the complainants and because any hearing reviewing Evergy's

business practices would amount to the Commission improperly managing a public utility.

On May 9, 2024, the Commission cancelled the evidentiary hearing, and eventually, on December 19, 2024, the Commission issued an order dismissing all outstanding complaints because there remained no live controversy and because it lacked authority to manage a public utility, stating in its ruling:

> As noted previously, Evergy dismissed its circuit court condemnation suits involving the complainants and those cases are now closed. Moreover, the Fayetteville Project is on hold. The complaints in this matter stem from Evergy's efforts to secure easements on complainants' property related to that project. With the project on hold and Evergy no longer pursuing easements, the Commission agrees with Evergy's position that a controversy no longer exists for which the Commission should receive evidence and render a decision on whether Evergy has violated a statute, tariff, or Commission rule, decision, or order. To do so, regarding what Evergy may or may not do in the future, would be to issue an advisory opinion, for which Commission has no authority.
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> . . . .
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> While the Commission acknowledges its authority to receive evidence and render a decision on whether Evergy has violated the CCN, since the allegation is that Evergy would be exceeding the authority granted by the CCN in relocating the electric line outside of MoDOT's right-of-way and it has not yet done so or presented a plan to do so to the affected landowners, the Allegris are requesting an advisory opinion from the Commission, which, again, it lacks the authority to issue.
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> As to a complaint regarding the methods and practices used by Evergy in the transaction of their business, the Commission does have authority to "[e]xamine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business." However, the Commission agrees with Staff's position in its May 7th filing that, while it is proper for the Commission to investigate and review Evergy's methods and practices during a general rate case, it must refrain from managing any public utility.

On January 9, 2025, and January 10, 2025, the Allegris and Public Counsel each filed a timely Application for Rehearing and Reconsideration. On January 29, 2025, the Commission denied both applications for rehearing. Public Counsel appeals.

Standard of Review

> Pursuant to section 386.510, appellate review of an order by the PSC is two-pronged: first, the reviewing court must determine whether the PSC's order is lawful; and second, the court must determine whether the order is reasonable. All questions of law, including whether statutory authority exists to support an order of the PSC, are reviewed *de novo*. An order of the PSC is reasonable when the order is supported by substantial, competent evidence on the whole record; the decision is not arbitrary or capricious; and where the PSC has not abused its discretion. The PSC's orders are presumed to be valid, and the burden is on those challenging the orders to prove their invalidity.

In re Amend. of Comm'n's Rule Regarding Applications for Certificates of Convenience & Necessity, 618 S.W.3d 520, 523 (Mo. banc 2021) (citation modified). Justiciability is a question of law reviewed *de novo*. *Mercy Hosps. E. Cmtys. v. Missouri Health Facilities Rev. Comm.*, 362 S.W.3d 415, 417 (Mo. banc 2012). "[M]ootness implicates the justiciability of a case . . . ." *State ex rel. Chastain v. City of Kansas City*, 968 S.W.2d 232, 237 (Mo. App. W.D. 1998).

Although courts or administrative agencies ruling on a motion to dismiss must generally accept all factual allegations in the petition as true, *Graves v. Mo. Dep't of Corr., Div. of Prob. & Parole*, 630 S.W.3d 769, 772 (Mo. banc 2021), it may also consider matters outside of the pleadings when determining mootness. *See, e.g.*, *State ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 793 (Mo. banc 1986) ("The court of appeals may take notice of facts outside the record in determining

mootness . . . ."); *Norton v. McDonald*, 590 S.W.3d 450, 452 (Mo. App. W.D. 2020) ("The appellate court may consider facts outside the record in determining mootness."); *see also Bradford v. Dobbs*, 609 S.W.3d 901, 902 (Mo. App. S.D. 2020) ("Appellant argues that we must accept the allegations in the petition as true and not address whether the action is now moot. We disagree."). This is because mootness is a "threshold issue" that all Missouri courts and administrative agencies have an independent obligation to investigate and determine[3] before reaching the substantive issues of any case. *Osage Util. Operating Co. v. Mo. Pub. Serv. Comm'n*, 637 S.W.3d 78, 85 (Mo. App. W.D. 2021) ("We are 'obligated, either upon motion of a party or acting *sua sponte*, to examine an appeal for mootness because mootness implicates the justiciability of a controversy and is a threshold issue for appellate review.'" (quoting *In re Am. Water Co.*, 516 S.W.3d 823, 828 (Mo. banc 2017))). "If a court disposes of a case on the grounds of . . . mootness, it cannot reach the merits."[4] *Mo. State Conf. of NAACP v. State*, 633 S.W.3d 843, 848 (Mo. App. W.D. 2021).

[3] *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 392 S.W.3d 24, 38 (Mo. App. W.D. 2012) ("Like other administrative agencies, the Commission is not authorized to issue advisory opinions. The Commission, the circuit court, and this court should not render advisory opinions.").

[4] This Court may exercise its discretion to decide an otherwise moot case under the "public interest" exception where "an issue is presented of a recurring nature, is of general public interest and importance, and will evade appellate review." *State ex rel. City of Joplin v. Pub. Serv. Comm'n*, 186 S.W.3d 290, 295 (Mo. App. W.D. 2005). This is a very narrow exception. *Bernhardt v. McCarthy for Bd. of Prob. & Parole*, 467 S.W.3d 348, 351 (Mo. App. W.D. 2015). Even assuming the issue raised here is one of "general public interest" and will recur, we see no reason why these issues would evade review in any future live controversy. *See id.*

Analysis

Public Counsel raises five points on appeal. It claims the Commission erred in dismissing the plaintiff's complaints because (1) the Commission misapplied the standard for dismissing cases for lack of controversy; (2) the Commission failed to recognize all the complainant's claims in its dismissal; (3) the Commission misapplied the legal standard on advisory opinions; (4) the Commission misinterpreted the law by concluding it is not proper to examine a public utility's unreasonable acts; and (5) it was unreasonable for the Commission to conclude that the acts of public utilities, which may amount to fraud, should be left to the discretion of public management.

The mootness issue is dispositive in this case, preventing this Court from reaching the merits of any of Public Counsel's other points on appeal challenging the Commission's decision.

"It is well-settled that Missouri courts do not determine moot cases or render advisory opinions." *WMAC 2013, LLC v. Metro. St. Louis Sewer Dist.*, 714 S.W.3d 457, 460 (Mo. App. E.D. 2025). Likewise, "the [Public Service] Commission is not authorized to issue advisory opinions." *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 38 (Mo. App. W.D. 2012). "The Commission [i]s restricted to determining the complaint before it, and it should not be issuing decisions with no practical effect and that are only advisory as to future, hypothetical situations." *Id.* (internal quotation marks omitted) (quoting *State ex rel. Mo. Parks Ass'n v. Mo. Dep't of Nat. Res.*, 316 S.W.3d 375, 384 (Mo. App. W.D. 2010)).

"[A] cause of action is moot when the question presented for decision seeks a [decision] upon some matter which, if the [decision] was rendered, would not have any practical effect upon any then existing controversy." *WMAC 2013, LLC*, 714 S.W.3d at 460 (quoting *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2001)). "Mootness is also implicated when circumstances change so as to alter the position of the parties or subject matter so that the controversy ceases and a decision can grant no relief." *Lamar Co. v. City of Kansas City*, 330 S.W.3d 767, 771 (Mo. App. W.D. 2010) (citation modified).

In this case, the Commission dismissed all outstanding complaints because the conduct the landowners complained of—Evergy's efforts to obtain easements from them—had ceased. This fact is *undisputed*. And, once Evergy abandoned its plans to obtain easements from the complainants and dismissed the condemnation proceedings, the complaints became moot. Any decision rendered by the Commission after Evergy abandoned its effort to obtain easements from the complainants would have been a hypothetical one since it would have no practical effect on the parties or their rights.

Public Counsel argues that, even after Evergy abandoned the project, there remained a live controversy between the parties—namely, whether Evergy had violated the terms of the CCN order *in the past* when it allegedly made false statements to complainants in order to obtain easements. This court rejected a similar argument in *Citizens for Safe Waste Mgmt. v. St. Louis Cnty. Air Pollution Control Appeal Bd.*, 896 S.W.2d 643 (Mo. App. W.D. 1995).

In *Citizens for Safe Waste Management*, appellants brought a declaratory judgment action to stop the construction and operation of a landfill site adjacent to their properties. *Id.* at 644. The petition sought a declaration that the permits issued for the landfill were invalid and requested the court set aside the decision to issue permits because of various procedural and hearing errors. *Id.* Just before oral argument, the permit holder for the site abandoned the project, sought to decommission the landfill, and began removing waste already in the landfill. *Id.* Nevertheless, appellants persisted in their request that this Court set aside the Appeal Board's decision issuing the permits because the respondents had allegedly violated a fifteen-day statutory notice requirement in the process of obtaining the permits for the site. *Id.* We held that the case was moot because the project the landowners complained of had been abandoned, prohibiting the Court from granting any effectual relief to the appellants. *Id.* ("In the case at bar, it would seem that with the site being abandoned as a landfill site, and the decommissioning of the site Citizens sought to stop, this court cannot grant Citizens any effectual relief.").

We also refused to issue a decision interpreting the effect of the defendants' alleged non-compliance with the statutory notice requirement, holding that any determination regarding an alleged *past* violation of the notice requirement would amount to an improper advisory opinion because the underlying subject matter of the plaintiff's complaint, the construction of the landfill, had become moot. *See id.* at 645 ("As to the issue in Count I dealing with interpretation of the statutory language of the fifteen day notice in § 643.140.2, the court exercises its discretion to not render an

advisory opinion when this site which was the focus of interest to Citizens, will no longer be used for a landfill. The court will not decide a question disconnected from the granting of actual relief.").

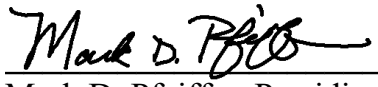
In the current case, Public Counsel requests the same relief. Public Counsel also alleges that the case is not moot because the complainants have alleged that Evergy, in the past, violated an order issued by the Commission. However, as in *Citizens of Safe Waste Management*, the "focus of interest" to the complainants—Evergy's plans to obtain easements from them—no longer exists. *See id.* Public Counsel's fears that Evergy might, at some point in the future, resume its attempt to obtain easements from the complainants is not sufficient to create or maintain a live controversy capable of remediation by the Commission.[5] *See id.* Without a *current* controversy between the parties, it was proper for the Commission to dismiss the complaints. Therefore, the Commission's order dismissing the complaints was not unlawful or unreasonable.

Points I-V are denied.

[5] Public Counsel argues that approximately fourteen complainant landowners were induced to grant easements to Evergy as a result of false statements made to those plaintiffs about Evergy's authority. Our decision today does not address whether those individual landowners may separately seek a remedy for losses they may have incurred before an appropriate tribunal with authority to hear those claims. However, that does not change the fact that the complaints and the remedies they requested before the Commission were moot.

Conclusion

The Commission's order dismissing the complaints is affirmed.



Mark D. Pfeiffer, Presiding Judge

Edward R. Ardini, Jr., Judge, and Thomas N. Chapman, Judge, concur.