

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of the Formal Complaint Against)
Westar Energy by Cecilia M. Greene.) Docket No. 17-WSEE-472-COM

ORDER DISMISSING FORMAL COMPLAINT

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed the record in the proceeding and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. CONDENSED BACKGROUND

1. In April 2017, Cecilia M. Greene (Complainant) filed a Formal Complaint against Westar Energy, Inc. (Westar).¹ The Formal Complaint, among other things, alleged Advanced Metering Infrastructure (AMI) meters (commonly referred to as “Smart Meters”) presented health concerns and cybersecurity risks.² Additionally, the Complainant’s Formal Complaint asserted Westar’s use of AMI meters constituted an invasion of privacy and violated state and federal wiretapping laws.³

2. On August 9, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.⁴

3. On August 16, 2018, the Commission issued its Order Adopting Staff’s Memorandum.⁵ The Commission found it had jurisdiction to investigate concerns raised in Formal

¹ See Complaint Against Westar Energy by Cecilia M. Greene (Apr. 24, 2017) (Formal Complaint).

² See Formal Complaint, p. 2.

³ See *id.* at pp. 1-2.

⁴ See Memorandum Dated August 9, 2018 (Staff Memo).

⁵ Order Adopting Staff’s Memorandum (Aug. 18, 2018).

Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁶ The Commission adopted Staff's Report and Recommendation finding the Formal Complaint was procedurally deficient.⁷ Accordingly, the Commission granted the Complainant an opportunity to amend its Formal Complaint.⁸

II. THE SEPTEMBER FILING

4. On September 17, 2018, the Complainant mailed a Notice of Liability Regarding Trespassing Technology to the Commission's Secretary (the "Filing").⁹ The Filing is styled as a contract. The contract appears to attempt to bind Westar's Chief Executive Officer, the Chair of the Commission, the Governor of the State of Kansas and a United States Congressman based on Westar's use of AMI meters.¹⁰

A. Amended Complaint

5. The Commission's August 16, 2018 Order found the Complainant's Formal Complaint did not cite a provision of law, tariff, regulation, Commission order or statute Westar was in violation of.¹¹ The Complainant's Filing has not addressed this deficiency. The Filing does not indicate what law, tariff, regulation, Commission order or statute, if any, Westar has violated. The Filing does reference the Constitution of the United States.¹² However, as an administrative body the Commission may not decide whether a particular act is constitutional.¹³

⁶ See *id.* at p. 2.

⁷ See *id.* at pp. 2-3.

⁸ See *id.* at p. 3.

⁹ See Amended Complaint (Sep. 25, 2018).

¹⁰ See *id.* at p. 1.

¹¹ See Order Adopting Staff's Memorandum, pp. 2-3.

¹² See Amended Complaint, pp. 3, 6.

¹³ See *Stinemetz v. Kansas Health Policy Auth.*, 45 Kan. App. 2d 818, 829, 252 P.3d 141, 148 (2011).

6. Kansas is a notice-pleading state, meaning initial petitions must only indicate a “short and plain statement of the claim showing that the pleader is entitled to relief.”¹⁴ Still, K.A.R. 82-1-220(b)(1) requires a Complainant to:

Fully and completely advise each respondent and the Commission as to the provisions of law or the regulations or orders of the Commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;

7. Alleging an act “violates the law” does not advise the Commission or a respondent what a utility has violated. Because the Filing does not address the procedural deficiencies contained within the Complainant’s Formal Complaint, dismissal of the Complainant’s Formal Complaint is appropriate.

B. Contract

8. The Filing contains numerous references to biblical passages, oaths of office, foundational documents for the United States of America, as well as the coronation oath of Queen Elizabeth Alexandra Mary.¹⁵ The Filing appears to attempt to prevent the installation of an AMI meter at the Complainant’s residence via a “self-executing contract.”¹⁶ The Complainant accepts an individual’s oath of office as a conditional offer to contract,¹⁷ and then presents a counteroffer.¹⁸ The legal references in the Filing are not correct and the Filing is not a valid contract.

The Laws of the State of Kansas

9. The Filing refers to the “Common Law” as the “highest jurisdiction of man-made law and jurisprudence.”¹⁹ Legislatively enacted statutes override the common law. Common law

¹⁴ See T.H. v. Univ. of Kansas Hosp. Auth., 53 Kan. App. 2d 332, 338, 388 P.3d 181, 186 (2017) (internal quotations omitted).

¹⁵ See Amended Complaint, p. 3.

¹⁶ See Amended Complaint, p. 1.

¹⁷ See Amended Complaint, p. 4.

¹⁸ See Amended Complaint, pp. 10 – 12.

¹⁹ See Filing, p. 4

exists only where there is no statutory law – it is the law of necessity.²⁰ Once the legislature has spoken, the legislative statement supersedes the common law.²¹ Moreover:

The common law as modified by constitutional and statutory law, judicial decisions, and the conditions and wants of the people, shall remain in force in aid of the General Statutes of this state; but the rule of the common law, that statutes in derogation thereof shall be strictly construed, shall not be applicable to any general statute of this state, but all such statutes shall be liberally construed to promote their object.²²

Contracts Regarding Utility Service

10. In Kansas, the “contract” between the utility and its customer is contained within the utility’s tariffs. Tariffs contain the terms and conditions which govern the relationship between a utility and its customers.²³ Tariffs and rate schedules should be construed in the same manner as statutes.²⁴ Tariffs and rate schedules duly filed with the Commission bind both the utility and its customers.²⁵ Duly filed tariffs and rate schedules also bind the utility and the Commission.²⁶ By taking service from Westar, the Complainant has agreed to the terms and conditions governing the service. As indicated in the Order Adopting Staff’s Memorandum, the Complainant’s Formal Complaint does not cite to a provision of law, tariff, regulation, Commission order or statute Westar has violated.²⁷ The Complainant has not provided sufficient evidence for the Commission to find Westar’s practice of utilizing AMI meters violates its Commission-approved tariffs or contravenes any other applicable law.

²⁰ In re Marriage of Traster, 301 Kan. 88, 108, 339 P.3d 778, 791 (2014).

²¹ See *id.*

²² K.S.A. 77-109.

²³ Farmland Indus., Inc. v. Kansas Corp. Comm’n, 29 Kan. App. 2d 1031, 1043, 37 P.3d 640, 648 (2001).

²⁴ See *id.* (“Legally established tariffs are construed in the same manner as statutes.”).

²⁵ See *id.* (“Tariffs contain those terms and conditions which govern the relationship between a utility and its customers. Tariffs duly filed with the regulatory agency are generally binding on both the utility and its customers.”).

²⁶ Kansas Gas & Elec. Co. v. State Corp. Comm’n of State of Kan., 14 Kan. App. 2d 527, 536–37, 794 P.2d 1165, 1172 (1990) (“We conclude that the KCC and the utility were bound by the provisions of the tariff until changed by further order of the KCC. . . . This conclusion in no way diminishes or infringes upon the powers of the KCC, which are admittedly expansive. It does, however, assure that “[a] rate once fixed remains established until changed in some manner allowed by law.”).

²⁷ See Order Adopting Staff’s Memorandum, pp. 2-3.

Silence as Acceptance

11. The Filing asserts that if the Commission does not respond, the Commission will become bound to the terms contained within the Filing.²⁸ Notwithstanding Kansas-specific statutory provisions regarding contracting with state agencies,²⁹ the Complainant's recitation of "silence as acceptance" is incorrect. In Kansas, a generally recognized principle of contract law is "mere silence when an offer is made does not constitute acceptance; something more than silence is required."³⁰

12. To be clear, the Commission unequivocally rejects any request of the Complainant to enter into any agreement whatsoever.

III. FINDINGS AND CONCLUSIONS

13. The Commission finds jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*³¹ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.³²

14. The Commission finds the Filing submitted by the Complainant on September 17, 2018, does not address previously identified procedural deficiencies.

²⁸ See Amended Complaint, pp. 11-12.

²⁹ See *e.g.* K.S.A. 75-3739, -3740, -3740a, -3744.

³⁰ See *Foodbrands Supply Chain Servs., Inc. v. Terracon, Inc.*, No. CIV.A. 02-2504-CM, 2004 WL 955989, at *6 (D. Kan. Mar. 5, 2004) *citing* *Caterpillar Tractor Co. v. Sickler*, 149 Kan. 457, 460, 87 P.2d 503 (1939) (holding that mere silence when an offer is made does not constitute an acceptance of an offer; something more than silence is required); See also E. Allan Farnsworth, *Contracts* § 3.15 at 155 (2d ed.1990) (citing general rule that a promise will not be inferred from the offeree's mere inaction).

³¹ Specifically, the Commission is granted broad authority to review formal complaints. See K.S.A. 66-101e ("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."); See also K.S.A. 66-1,205(a).

³² See K.S.A. 66-101d, -101g; K.S.A. 66-1,201, -204, -207.

15. The Commission finds the Complainant has not satisfied the procedural requirements for the filing of Formal Complaints as detailed in K.A.R. 82-1-220.

16. Because the Complainant has not satisfied previously articulated procedural deficiencies, the Commission finds and concludes the Formal Complaint brought by the Complainant shall be dismissed.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Formal Complaint filed by Cecilia M. Greene is dismissed.

B. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration.³³

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 10/09/2018



Lynn M. Retz
Secretary to the Commission

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³³ See K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

17-WSEE-472-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 10/09/2018.

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