

**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 Complaint Against Westar Energy by Karine Tyrrell.) Docket No. 18-WSEE-076-COM

ORDER DISMISSING FORMAL COMPLAINT

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

I. BACKGROUND

1. In August 2017, Karine Tyrrell (Complainant) filed a Formal Complaint against Westar Energy, Inc. (Westar) with the Commission.¹ The Formal Complaint, among other things, alleges Advanced Metering Infrastructure (AMI) meters (commonly referred to as “Smart Meters”) presented health concerns, cybersecurity risks, and fire concerns.² Additionally, the Complainant’s Formal Complaint identified noise pollution, dirty electricity, undisclosed meter aggregation locations, meter accuracy, and liability concerns.³

2. On July 16, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.⁴ Litigation Staff determined the Complainant had not satisfied the procedural requirements of the Commission’s

¹ See Complaint Against Westar Energy by Karine Tyrrell (Aug. 15, 2017) (Formal Complaint).

² Attachment to Formal Complaint, pp. 1-3.

³ See *id.* at pp. 1-4.

⁴ See Memorandum Dated July 16, 2018. (Staff Memo).

rules of practice and procedure.⁵ Litigation Staff recommended the Commission deny the Formal Complaint and give the Complainant an opportunity to amend its Formal Complaint.⁶

3. On July 24, 2018, the Commission issued an Order Adopting Staff's Memorandum.⁷

4. On August 2, 2018, the Complainant filed an Amended Formal Complaint.⁸

II. DISCUSSION

5. The Complainant's initial Formal Complaint did not cite to any provision of law, tariff, regulation, Commission order or statute Westar was in violation of.⁹ Litigation Staff noted the majority of the requested relief sought by the Complainant was beyond the Commission's jurisdiction to grant.¹⁰

6. With one exception, the Complainant's Amended Formal Complaint mirrors its initial Formal Complaint. The Amended Formal Complaint requests Westar observe an order not to trespass and references certain statutes.¹¹ The "Notice of Criminal Trespass" attached to the Complainant's Amended Formal Complaint references Kansas and federal law, and attempts to establish a "constructive contract" between any person(s) violating the terms of the notice.¹²

7. The Complainant has not alleged Westar has violated Kansas or federal law. Rather, the Complainant's "Notice of Criminal Trespass" appears to claim installing a smart meter on the Complainant's premises may violate Kansas or federal law. Westar's Commission-

⁵ See *id.* at pp. 3-4.

⁶ See *id.* at p. 4.

⁷ Order Adopting Staff's Memorandum (Jul. 24, 2018).

⁸ Amended Application (Aug. 2, 2018). Note: The Complainant's Amended Formal Complaint is listed in the Commission's electronic filing system as "Amended Application."

⁹ See Staff Memo at p. 3.

¹⁰ See *id.* at p. 2.

¹¹ See Amended Application, p. 2.

¹² See Attachment to Amended Application.

alleged criminal activity. The Complainant has not provided sufficient evidence for the Commission to find that Westar's practice of utilizing AMI meters violates Westar's Commission-approved tariffs or contravenes any other applicable law.

III. FINDINGS AND CONCLUSIONS

12. The Commission finds jurisdiction to conduct portions of the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*¹⁸ Specifically, the Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.¹⁹

13. The Commission finds the Amended Complaint submitted by the Complainant on August 2, 2018, does not address previously identified procedural deficiencies.

14. 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.

15. 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.

¹⁸ 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).

¹⁹ *See* K.S.A. 66-101d, -101g; K.S.A. 66-1,201, -204, -207.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. The Formal Complaint filed by Karine Tyrrell 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.²⁰
- 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

REV

²⁰ See K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

18-WSEE-076-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 10/10/2018.

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