

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)
by Douglas Yoder) Docket No. 19-WSEE-212-COM

ORDER DISMISSING FORMAL COMPLAINT WITH LEAVE TO AMEND

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined Litigation Staff's Memorandum submitted in this matter and being duly advised in the premises, the Commission finds as follows:

I. BACKGROUND

1. On November 30, 2018, Douglas Yoder (Complainant) filed a Formal Complaint against Westar Energy, Inc. (Westar) with the Commission.¹ The complaint alleges that due to a pattern of negligence on the part of Westar, Complainant suffered seven (7) separate power outages at his residence during a 12-month period ending July 2018.²

2. On December 21, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.

3. Litigation Staff reviewed the Formal Complaint's underlying facts and allegations, and while making no recommendation regarding the *validity or truthfulness* of the Complainant's claims, believes that the Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedure contained in K.A.R. 82-1-220. Litigation Staff noted one deficiency in the Formal Complaint: Complainant failed to properly state the relief he seeks. Specifically, Complainant requests the Commission award damages in

¹ Complaint Against Westar by Douglas Yoder (Nov. 30, 2018) (Formal Complaint).

² *Id.*

the amount of \$5,649.33, for physical damages incurred as a result of power outages. As explained by Litigation Staff in the memorandum attached hereto, the Commission does not have statutory authority to award damages; as such, Complainant has stated a claim for relief which cannot be granted.

4. Litigation Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Furthermore, Litigation Staff recommends the Formal Complaint be dismissed with leave to amend the deficiency discussed above.

II. FINDINGS AND CONCLUSIONS

5. K.S.A. 66-101 *et seq.* grants the Commission jurisdiction to investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.³

6. Litigation Staff's Memorandum dated December 21, 2018, attached hereto, is hereby adopted and incorporated by reference.

7. The Commission finds that the Complainant has not satisfied the procedural requirements required for filing of formal complaints as detailed in K.A.R. 82-1-220.

8. The Commission finds the Complainant shall be granted thirty (30) days to amend the Formal Complaint to correct the deficiencies identified above.

³ The Commission is granted broad authority to review formal complaints. See K.S.A. 66-101 e ("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.").

IT IS, THEREFORE, ORDERED BY THE COMMISSION THAT:

A. The Formal Complaint filed by Douglas Yoder is dismissed with leave to amend pursuant to K.A.R. 82-1-220(c).

B. Complainant shall have thirty (30) days from the date of this Order to file an amended formal complaint that addresses the procedural deficiencies noted above. Should Complainant fail to amend her Formal Complaint in a timely manner, the Formal Complaint shall dismissed without prejudice.

C. Parties have fifteen (15) days, plus three (3) days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as set forth in K.S.A. 77-542.⁴

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 01/03/2019



Lynn M. Retz
Secretary to the Commission

PZA

⁴ See also K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

STATE OF KANSAS



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SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

MEMORANDUM LEGAL DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Dwight D. Keen

FROM: Phoenix Anshutz, Litigation Counsel

DATE: December 21, 2018

SUBJECT: Docket No. 18-WSEE-212-COM
In the Matter of the Complaint Against Westar by Douglas Yoder

EXECUTIVE SUMMARY:

Douglas Yoder (Complainant) has filed a Formal Complaint¹ against Westar Energy, Inc. (Westar). The Formal Complaint does not satisfy the procedural requirements of the State Corporation Commission of the State of Kansas' (Commission's) rules of practice and procedure. Legal Staff recommends the Commission reject the Formal Complaint, and provide Complainant with an opportunity to amend its Formal Complaint.

BACKGROUND & ANALYSIS:

On November 30, 2018, Complainant filed a Formal Complaint against Westar alleging that Westar failed to properly maintain and restore power to his residence. Specifically, Complainant alleges that during a 12-month period ending in July 2018, he experienced 7 power outages at his residence, with all of the outages being related to the breakdown of the same lines and equipment. Moreover, Complainant alleges that several of the outages occurred on "clear sunny days for no apparent reason" and that "Westar was unable to identify the cause or location of several of these outages at the time of the occurrence."² Ultimately, Complainant alleges that Westar violated their Commission-approved tariffs, including:

¹ Formal Complaint Against Westar, Docket No. 19-WSEE-212-COM (Nov. 30, 2018) (Formal Complaint).

² Id. pg. 2.

- General Terms and Conditions, Section 2.06.01; Errors and delays were caused by Westar's failure to act with due diligence;
- Failure to meet Section 7.05, 7.06.03, 7.07, and 7.08; and
- Failure to meet Section 10.02 and 10.04

Upon the filing of a formal complaint, the Commission must determine "whether or not the allegations, if true, would establish a prime [sic] facie case for action by the commission and whether or not the formal complaint conforms to [the Commission's] regulations."³

K.A.R. 82-1-220(b) requires formal complaints to satisfy three procedural requirements:

- (1) 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;
- (2) set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and
- (3) state the relief sought by the complainant.

A review of the Formal Complaint, as filed, indicates the Complainant has not established a *prima facie* case. While Complainant does cite provisions of tariffs believed to have been violated, and also sets forth concisely and in plain language the facts claimed that constitute the violations, thus fulfilling procedural requirements (1) & (2), Complainant has failed to properly set forth the relief he seeks and thus fails to meet procedural requirement (3). Specifically, Complainant has requested the Commission award damages in the amount of \$5,649.33 for physical damage, and "for all other damages and relief as allowed by law."⁴

While the Commission is within its statutory authority to assess civil penalties upon public utilities or common carriers which violate any of the provisions of law for the regulation of public utilities or common carriers, it is not within the Commission's authority to award damages. This principle was established in *Western Kansas Express, Inc. v. Dugan Truck Line, Inc.* In *Western Kansas Express*, the Commission determined a defendant had transported goods to certain locations in Kansas without authority and through territory served by the plaintiffs. Plaintiffs filed suit in district court seeking damages arising out of the unauthorized transportation of good, while also seeking treble damages and attorney fees pursuant to K.S.A. 66-176. The Kansas Court of Appeals, in overturning the district court's ruling that the Commission had authority to award damages, held that K.S.A. 66-176 did not contain language which vests the power to award damages with the KCC [Commission]." Additionally, the Court of Appeals held "the statute [K.S.A. 66-176] does not invest the KCC [Commission] with the power to

³ K.A.R. 82-1-220(c).

⁴ Formal Complaint, pg. 4.

award damages to a party aggrieved by a violation of the law regulating common carriers.”⁵

Given the preceding, it is evident that the Commission does not have statutory authority to award the damages Complainant seeks. Thus, because Complainant’s Formal Complaint has not yet satisfied procedural requirement (3), a determination of *prima facie* is not possible at this time.

No recommendation regarding the *validity or truthfulness* of Complainant’s claim(s) is made, nor should they be assumed or concluded with the filing of this memorandum. The only recommendations made within this memorandum are the Commission should find the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220, and a determination of *prima facie* for Commission action is not warranted. K.A.R. 82-1-220(c) allows a Complainant to amend its Formal Complaint if it fails to meet the procedural requirements or allege sufficient facts for a *prima facie* determination.

RECOMMENDATION:

Litigation Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of the Commission's rules of practice and procedure. Likewise, Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant thirty (30) days from such denial to amend the Formal Complaint. Finally, if the Complainant fails to correct the procedural deficiencies discussed herein, Legal Staff recommends that the Formal Complaint be dismissed without prejudice and the docket be closed.

⁵ Western Kansas Express, Inc. v. Dugan Truck Line, Inc., 11 Kan.App.2d 336, 720 P.2d 1132 (1986).

CERTIFICATE OF SERVICE

19-WSEE-212-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/hand delivered on 01/04/2018.

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/S/ DeeAnn Shupe

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