

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

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

In the Matter of the Complaint Against     )  
Westar Energy, Inc. by Douglas Yoder     )     Docket No. 19-WSEE-212-COM

**ORDER DISMISSING FORMAL COMPLAINT**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and records and being fully advised on the premises, the Commission finds and concludes as follows:

**BACKGROUND**

1.       On November 30, 2018, Douglas Yoder (Complainant or Mr. Yoder) filed a complaint seeking relief from Westar Energy, Inc. (Westar) for damages allegedly caused by the failure of Westar to properly maintain and service lines and equipment at Complainant’s residence; resulting in seven (7) separate power outages during a 12-month period ending July 2018.<sup>1</sup>

2.       According to Complainant, some of the outages “occurred on clear sunny days for no apparent reason.” Moreover, Complainant alleges that Westar was unable to identify the cause or location of several of the outages at the time of occurrence.<sup>2</sup> Complainant asserts that “on some of the outages, the field staff had not even located the

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<sup>1</sup> Complaint Against Westar by Douglas Yoder (Nov.30, 2018).  
<sup>2</sup> Complaint, pg. 2.

problem within the time frame that the Westar customer service line indicated would be repaired.” Additionally, Complaint alleges the outages were caused by line failures and equipment breakdowns, and according to Westar, “the lines in question had deteriorated and had needed to be replaced.”<sup>3</sup>

3. Based on the abovementioned information, Complainant asserted Westar was negligent in their conduct, along with failing to meet their tariffs on file with the Commission. Specifically, Complainant alleged:

- 1) Errors and delays were caused by Westar’s failure to act with due diligence in violation of General Terms and Conditions Section 2, paragraph 2.06.01;
- 2) Westar failed to meet electrical service standards in violation of Section 7, paragraphs 7.05, 7.06.03, 7.07, and 7.08; and
- 3) Section 10, paragraphs 10.02 and 10.04 were violated due to Westar not making proper repairs in a timely manner and not serving the interests of the customer.

4. Finally, Complaint requested the approval of a claim for \$5,649.33 for physical damages incurred.<sup>4</sup>

5. On December 21, 2018, after reviewing Mr. Yoder’s complaint, Legal Staff (Staff) issued a Legal Memorandum (Memo) regarding the allegations therein. Staff noted that pursuant to K.A.R. 82-1-220(b), formal complaints must satisfy three procedural requirements. Those requirements are:

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<sup>3</sup> Id.

<sup>4</sup> Id. pg. 4.

- 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.<sup>5</sup>

6. According to Staff, Complainant's complaint failed to establish a *prima facie* case. While noting that Complainant did satisfy procedural requirements (1) and (2), Staff noted that Complainant failed to properly set forth the relief sought, thus failing to satisfy procedural requirement (3). Specifically, Complainant 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."

7. In their Memo, Staff showed that while the Commission is within its statutory authority to assess civil penalties upon public utilities or common carriers that violate provisions of the law, the Commission does not have authority to award damages to a party aggrieved by a violation of the law regulating common carriers.<sup>6</sup>

8. Based on the forgoing, and while explicitly noting that it makes no recommendation regarding the truthfulness or validity of Complainant's claims, Staff recommended the Commission find that Mr. Yoder's complaint did not satisfy the procedural requirements of K.A.R. 82-1-220(b) and dismiss the complaint while granting Complainant 30 days to amend the complaint.

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<sup>5</sup> Staff's Legal Memorandum (Dec. 21, 2018).

<sup>6</sup> *Western Kansas Express, Inc. v. Dugan Truck Line, Inc.*

9. The Commission accepted Staff's recommendation and issued an Order dismissing the formal complaint with leave to amend on January 3, 2019.

10. On January 11, 2019, Complainant submitted an amended complaint. Complainant's amended complaint set forth identical factual assertions and allegations as those in the initial complaint, with the only change coming in the relief Complainant sought. Whereas Complainant's initial complaint sought relief in the form of a claim for physical damages and all other damages allowed by law, Complainant's amended complaint sought reimbursement of costs and repairs from Westar in the amount of \$5,649.33.<sup>7</sup>

#### **ANALYSIS AND DISCUSSION**

11. While the Commission is cognizant of Complainant's attempts to comply with the procedural requirements of K.A.R. 82-1-220(b), the Commission notes that Complainant's amended complaint fails the procedural requirement referenced above. While the initial complaint explicitly sought damages, which extend beyond the Commission's purview and authority, Complainant's amended complaint seeks a Commission-authorized reimbursement from Westar for costs and repairs incurred due to Westar's negligence. Were the Commission to approve such a reimbursement, the Commission would effectively be awarding Complainant compensatory damages based on Westar's alleged wrongful conduct; as such, the request for reimbursement is nearly identical to the request for damages sought initially.

12. Because Complainant's request for relief requires the Commission to order Westar to compensate Complainant for its alleged violations, thus effectively

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<sup>7</sup> Complainant's Amended Complaint (Jan. 11, 2019).

awarding Complainant damages, the Commission finds it does not possess the authority to grant such relief. Additionally, the Commission notes that its findings regarding Mr. Yoder's amended complaint pertain only to the procedural requirements that Mr. Yoder has failed to meet; the Commission makes no findings regarding the merits of the allegations raised in Mr. Yoder's amended complaint.

**IT IS THEREFORE, BY THE COMMISSION ORDERED THAT:**

- (A) Complainant's Amended Complaint is hereby dismissed, without prejudice.
- (B) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 02/14/2019



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Lynn M. Retz  
Secretary to the Commission

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**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 02/15/2019.

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/s/ DeeAnn Shupe  
DeeAnn Shupe