

**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 Consolidated Complaints	)	Docket No. 15-WSEE-211-COM
filed Against Kansas City Power & Light and	)	Docket No. 15-KCPE-265-COM
Westar Energy Regarding the Required Use of	)	Docket No. 15-KCPE-474-COM
Advanced Metering Infrastructure Digital	)	Docket No. 16-WSEE-066-COM
Electric Meters.	)	Docket No. 16-WSEE-365-COM
	)	Docket No. 16-WSEE-392-COM
	)	Docket No. 16-WSEE-396-COM
	)	Docket No. 16-WSEE-397-COM
	)	Docket No. 16-WSEE-404-COM

**ORDER ON RECONSIDERATION**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas. Having examined the files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. Starting in November of 2014, the Commission began receiving formal complaints from customers of Westar Energy Inc. and Kansas Gas and Electric Co. (Westar) and Kansas City Power & Light Company (KCP&L), regarding the public utilities' respective implementation and roll out of Advanced Metering Infrastructure (AMI or Smart Meters).<sup>1</sup> The nine Complainants generally allege that AMI negatively affects human health, causes fires and threatens an invasion of privacy through inadequate cyber security.<sup>2</sup>

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<sup>1</sup> The Commission received complaints from Austin Lowry, Eric L. and Ramona E. Ryker, Richard S. and Barbara R. Henderson Brooks, Alan and Susan Peterson, Richard J. and Monika R. Hesse, Steven N. and Mary Kay Ricke, Keith S. and Barbara D. Carpenter, Denese Roberts and Jami Riehm (collectively "Complainants").

<sup>2</sup> See generally Complaint Against Westar Energy by Austin Lowry, Docket No. 16-WSEE-404-COM (Mar. 10, 2016) [*hereinafter* Docket No. 16-WSEE-404-COM]; Complaint Against Westar Energy by Eric L. and Ramona E. Ryker, Docket No. 16-WSEE-397-COM (Mar. 7, 2016) [*hereinafter* Docket No. 16-WSEE-397-COM]; Application for WESTAR ENERGY, INC., Docket No. 16-WSEE-396-COM (Mar. 7, 2016) [*hereinafter* Docket No. 16-WSEE-396-COM]; Complaint Against Westar Energy by Alan & Susan Peterson, Docket No. 16-WSEE-392-COM (Mar. 7, 2016) [*hereinafter* Docket No. 16-WSEE-392-COM]; Complaint Against Westar Energy, Inc., Docket No. 16-WSEE-365-COM (Feb. 4, 2016) [*hereinafter* Docket No. 16-WSEE-365-COM]; Amended Complaint, Docket No.

2. On April 5, 2018, the Commission issued a final order in the matter. The Commission dismissed all of the Complaints for failure to state a claim because no Complainant sufficiently alleged an actual harm that could be attributable to a violation of law within the Commission's jurisdiction.<sup>3</sup>

3. Between April 13 and April 23, 2018, Keith and Barbara Carpenter, Linda Hunninghake, Steven N. and Mary Kay Ricke, Alan and Susan Peterson, Denese Roberts, Jami Riehm, Barbara Brooks and Austin Lowry filed petitions for reconsideration or responses to the Commission's final order.

4. A petition for reconsideration must state the specific grounds upon which relief is requested.<sup>4</sup> The purpose of requiring matters to be raised in a petition for reconsideration is to inform the other parties and the Commission "wherein mistakes of law and fact were made in the order."<sup>5</sup>

5. While the various petitions and responses to the Commission's final order suffer from a multitude of legal deficiencies, the Commission will accept and consider the pleadings as petitions for reconsideration. However, none of the pleadings identify anything beyond or in addition to what the Commission considered originally. The filings only reiterate the complaints and voice general disapproval with the outcome. None of the pleadings sufficiently identify how the Commission erred in fact or at law.

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7, 2016) [*hereinafter* Docket No. 16-WSEE-392-COM]; Complaint Against Westar Energy, Inc., Docket No. 16-WSEE-365-COM (Feb. 4, 2016) [*hereinafter* Docket No. 16-WSEE-365-COM]; Amended Complaint, Docket No. 16-WSEE-066-COM (Aug. 13, 2015) [*hereinafter* Docket No. 16-WSEE-066-COM]; Amended Complaint, Docket No. 15-KCPE-474-COM (May 18, 2015) [*hereinafter* Docket No. 15-KCPE-474-COM]; Amended Complaint, Docket No. 15-KCPE-265-COM (Jan. 23, 2015) [*hereinafter* Docket No. 15-KCPE-265-COM]; Amended Complaint Against Westar Energy by Jami Riehm, Docket No. 15-WSEE-211-COM (Dec. 12, 2014) [*hereinafter* Docket No. 15-WSEE-211-COM].

<sup>3</sup> Order at 10-15 (Apr. 5, 2018).

<sup>4</sup> K.S.A. 77-529(a).

<sup>5</sup> *Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n*, 24 Kan. App. 2d 222, 228 (1997) (citing *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm'n*, 7 Kan. App. 2d 519, 525 (1982)).

6. For those pleadings that allege discrimination or constitutional ramifications, the Commission lacks the authority to decide such matters.<sup>6</sup> The Commission appropriately dismissed any and all constitutional matters. Concerning fire hazard and cyber security, the Commission ordered additional scrutiny be placed on those areas sufficient to nullify any concerns consistent with the Commission's technical Staff's findings and recommendations.

7. Many of the pleadings re-raise the issue of opt-out programs and the expenses associated therewith. In a bit of confusion, the Commission's initial order mistakenly contained the wrong remedy in the ordering clause. On April 10, 2018, the Commission issued the Order Nunc Pro Tunc correcting the erroneous clause. The Commission required that a separate docket be opened for consideration of opt-out programs due to the fact that less than all public utilities utilizing AMI were before the Commission in the current dockets.<sup>7</sup> As such, that matter has not been finally determined but rather deferred to a more appropriate forum for additional proceedings.

**THEREFORE, THE COMMISSION ORDERS:**

A. The petitions for reconsideration of the Commission's final order are denied.

B. This Order constitutes final agency action.<sup>8</sup> Any request for review of this action shall be in accordance with K.S.A. 77-613. Lynn M. Retz, Secretary to the Commission, is the proper party to receive service of a petition for judicial review on behalf of the Commission.<sup>9</sup>

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

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<sup>6</sup> Administrative agencies do not have the authority to determine constitutional matters. *See Board of Education of Unified School District No. 443, Ford County v. Kansas State Board of Education*, 266 Kan. 75, 81 (1998).

<sup>7</sup> Order Nunc Pro Tunc at 1 (Apr. 10, 2018).

<sup>8</sup> K.S.A. 77-607(b)(1).

<sup>9</sup> K.S.A. 77-613(e).

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

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/10/2018

A handwritten signature in cursive script, reading "Lynn M. Retz", written in dark ink.

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Lynn M. Retz  
Secretary to the Commission

DLK/sc

**CERTIFICATE OF SERVICE**

15-WSEE-211-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 05/10/2018.

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