

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

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

In the Matter of the Complaint Against Westar                     )  
Energy by Daniel Smalley.   )             Docket No. 18-WSEE-209-COM

**ORDER ADOPTING LEGAL MEMORANDUM**

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. On November 16, 2018, Daniel Smalley (“Complainant”) filed a Formal Complaint against Westar Energy, Inc., (“Westar”) with the Commission.<sup>1</sup> The Formal Complaint, among other things, alleges Westar’s mandatory program that replaces electric meters with an AMI meter (commonly referred to as “Smart Meters”) at Complainants residence will be a fire hazard and cause an increase to Complainants electric bill.<sup>2</sup>

2. On August 15, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.<sup>3</sup>

3. While making no recommendation regarding the validity or truthfulness of the Complainant’s claims, Litigation Staff determined the Complainant has not satisfied the procedural requirements of the Commission’s rules of practice and procedure.<sup>4</sup> Litigation Staff specifically identified key deficiencies. The Formal Complaint does not cite to any provision

---

<sup>1</sup> See Complaint against Westar Energy by Daniel Smalley (Nov. 16, 2018) (Formal Complaint).

<sup>2</sup> Id. at 2.

<sup>3</sup> Legal Staff’s Memorandum (August 15, 2018) (Legal Memorandum).

<sup>4</sup> Id. at 2.

of law, tariff, regulation, Commission order or statute.<sup>5</sup> Furthermore, in recent history, the Commission has consolidated several complaints similar to this one into Docket No. 15-WSEE-211-COM ("15-211 Docket"), this docket deals puts to rest the alleged issues with Westar's AMI meters.<sup>6</sup>

4. The Commission's April, 5 2018 Order in the 15-211 Docket evaluated claims pertaining to Westar and Kansas City Power & Light Company's use of AMI meters. The Commission determined there was no evidence indicating the subject utilities acted maliciously or unlawfully in their deployment of AMI meters.<sup>7</sup> Additionally, the Commission determined the evidence presented by the parties did not support claims concerning health risks, cybersecurity risks or fire hazards posed by AMI meters.<sup>8</sup> The Commission determined there was insufficient evidence to demonstrate AMI meters are dangerous to the public and concluded the Formal Complaints should be dismissed for failure to state a claim upon which relief can be granted.<sup>9</sup>

5. Litigation Staff recommends the Commission find this Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220.<sup>10</sup> Litigation Staff also recommends the Commission grant the Complainant thirty (30) days to correct the procedural deficiencies identified therein. Litigation Staff further recommends that if the Complainant fails to amend its Formal Complaint within thirty (30) days the Formal Complaint should be dismissed without prejudice.

---

<sup>5</sup> *Id.*

<sup>6</sup> Order on Smart Meter Complaints, Docket No. 15-WSEE-211-COM, *et al.*, pp. 11-12 (Apr. 5, 2018) (15-211 Order).

<sup>7</sup> *Id.* at pp. 11-12.

<sup>8</sup> *Id.* at pp. 13-14.

<sup>9</sup> *Id.* at pp. 10, 17.

<sup>10</sup> Legal Staff Memorandum at 3.

## II. FINDINGS AND CONCLUSIONS

6. Upon review of Litigation Staff's Legal Memorandum, the Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*<sup>11</sup> The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.<sup>12</sup>

7. The Commission finds the Formal Complaint does not satisfy the Commission's procedural requirement pertaining to Formal Complaints. Specifically, the Formal Complaint does not indicate what, if any, law tariff, regulation, Commission order or statute Westar has or is violating. Furthermore, based on the Order from Docket 15-211, the Formal Complaint does not state a claim upon which relief can be granted.

8. The Commission finds it has jurisdiction to consider developing an opt-out program related to an electric public utility's use of AMI meters. The Commission has opened a general investigation into the feasibility and intricacies of such a program and has assigned the matter to Docket No. 19-GIME-012-GIE. The Commission encourages Complainant to follow further Commission action in this separate proceeding.

---

<sup>11</sup> 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).

<sup>12</sup> *See* K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

9. Litigation Staff's Memorandum dated August 15, 2018, attached hereto as Attachment "A" is hereby adopted by the Commission and incorporated by reference into this Order.

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

(A) The Complainant shall have thirty (30) days from the date of this Order to file an amended Formal Complaint addressing the procedural deficiencies identified above. If the Complainant does not amend its Formal Complaint within thirty (30) days, the Formal Complaint shall be dismissed without prejudice.

(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 or request a hearing, as provided in K.S.A. 77-542.

(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, Commission; Keen, Commissioner

Dated: 10/25/2018



---

Lynn M. Retz  
Secretary to the Commission

REV/CAB

# STATE OF KANSAS



CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

PHONE: 785-271-3100  
FAX: 785-271-3354  
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

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:** Cole Andrew Bailey, Litigation Counsel  
Robert Elliott Vincent, Senior Litigation Counsel

**DATE:** October 18, 2018

**SUBJECT:** 18-WSEE-209-COM  
In the Matter of the Complaint Against Westar Energy by Daniel Smalley

### **EXECUTIVE SUMMARY:**

Daniel Smalley ("Complainant") filed a Formal Complaint against Westar Energy, Inc. ("Westar").<sup>1</sup> The Formal Complaint does not satisfy the State Corporation Commission of the State of Kansas' ("Commission's") rules of practice and procedure. Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant an opportunity to amend its Formal Complaint. In the alternative, Legal Staff notes the opening of a general investigation that may be of interest to the Complainant and encourages Complainant to follow any developments in the general investigation.

### **BACKGROUND & ANALYSIS:**

Over the last 3.5 years, the Commission and Commission Staff have investigated nine Formal Complaint dockets regarding the required use of Advanced Metering Infrastructure Digital Electric Meters (AMI meters). Because the Formal Complaints raised similar issues, the Commission consolidated the nine Formal Complaints into one docket. On April 5, 2018, the Commission issued an Order in the consolidated docket (which is referred to in this Memorandum as Docket No. 15-WSEE-211-COM (15-211 Docket)).

The Commission's April, 5, 2018 Order in the 15-211 Docket evaluated claims pertaining to Westar and Kansas City Power & Light Company's use of Smart Meters (also referred to as "AMI meters"). The Commission determined there is no evidence indicating the subject utilities acted maliciously or unlawfully in their deployment of AMI meters.<sup>2</sup>

---

<sup>1</sup> See Formal Complaint Against Westar Energy by Daniel Smalley (Nov. 16, 2017) (Formal Complaint).

<sup>2</sup> Order on Smart Meter Complaints, Docket No. 15-WSEE-211-Com, *et al.*, pp 11-12 (Apr. 5, 2018)(15-211 Order).

Additionally, the Commission determined the evidence presented did not support claims concerning health risks, cybersecurity risks or fire hazards posed by AMI meters.<sup>3</sup> Ultimately, the Commission determined there was insufficient evidence to demonstrate AMI technology is dangerous to the public generally.<sup>4</sup> Accordingly, the Commission found and concluded the Formal Complaints should be dismissed for failure to state a claim upon which relief can be granted.<sup>5</sup>

Legal Staff has reviewed the Formal Complaint in the light of the Commission's conclusions regarding the deployment of AMI meters. Like previous formal complaints, the Complainant asserts AMI meters present health concerns and privacy risks.<sup>6</sup> Additionally, the Formal Complaint alleges the AMI meter may cause "unexplained high bills".<sup>7</sup>

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 omission;
- (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 indicates the Complainant has not satisfied these procedural requirements. The Complainant does not cite to any provision of law, tariff, regulation, Commission order or statute, and thus does not satisfy procedural requirement (1). The Complainant does provide a brief overview of the facts leading up to the filing of the Formal Complaint, satisfying procedural requirement (2).<sup>8</sup>

The burden of establishing evidence to support a Formal Complaint rests with the Complainant. The basis for establishing jurisdiction to rule on a Formal Complaint is the responsibility of the Complainant. Accordingly, by not referencing any specific law, tariff, regulation, Commission order or statute violated by Westar, it is not possible to determine if the factual statement is sufficient to meet procedural requirement (2). It is possible the claims asserted by the Complainant are beyond the Commission's jurisdiction.

---

<sup>3</sup> 15-211 Order, pp. 13-14.

<sup>4</sup> *See id.*

<sup>5</sup> *See id.* at pp. 10, 17.

<sup>6</sup> *See* Formal Complaint, p. 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The Complainant requests the Commission allow him to be exempt from the AMI meter program. Accordingly, the Complainant has stated relief sought in accordance with procedural requirement (3).

No recommendation regarding the validity or truthfulness of the Complainant's claim(s) is made, nor should they in any way 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* is not yet possible. 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.

Complainant's concerns may be alleviated if it was no longer required to take electric service metered with an AMI meter. In the 15-211 Docket, the Commission directed Staff to open a general investigation into the feasibility of opt-out programs for electric public utilities utilizing AMI meters. Specifically, the Commission directed Commission Staff to investigate the viability of a program that would allow a customer of an electric public utility to request a meter that is not an AMI type meter. This investigation has been assigned to Docket No. 19-GIME-012-GIE. Staff cannot predict what Commission action, if any will result from this investigation. Still, Staff encourages Complainant to follow any developments in the general investigation pertaining to Westar's use of AMI meters.

**RECOMMENDATION:**

Legal 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 its Formal Complaint. Finally, if the Complainant fails to correct the procedural deficiencies discussed herein Legal Staff recommends the Formal Complaint be dismissed without prejudice and the docket be closed.

**CERTIFICATE OF SERVICE**

18-WSEE-209-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 10/25/2018.

COLE BAILEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
c.bailey@kcc.ks.gov

DANIEL F. SMALLEY  
PO BOX 175  
3677 FRONT STREET  
GRANTVILLE, KS 66429

CATHRYN J. DINGES, CORPORATE COUNSEL  
WESTAR ENERGY, INC.  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
Fax: 785-575-8136  
cathy.dinges@westarenergy.com

ROBERT VINCENT, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
r.vincent@kcc.ks.gov

/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe