

**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 Formal Complaint Against)
Westar Energy by Cecilia M. Greene.) Docket No. 17-WSEE-472-COM

ORDER ADOPTING STAFF'S MEMORANDUM

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 makes the following findings and conclusions:

I. BACKGROUND

1. In April 2017, Cecilia M. Greene (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") present health concerns and cybersecurity risks.² Additionally, the Complainant's Formal Complaint asserts Westar's use of AMI meters constitutes an invasion of privacy and violates state and federal wiretapping laws.³

2. On August 9, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.⁴

3. Litigation Staff reviewed the Formal Complaint's underlying facts and allegations. While making no recommendation regarding the validity or truthfulness of the

¹ See Complaint Against Westar Energy by Cecilia M. Greene (Apr. 24, 2017) (Formal Complaint).

² See Formal Complaint, p. 2.

³ See *id.* at pp. 1-2.

⁴ See Memorandum Dated August 9, 2018. (Staff Memo).

Complainant's claims, Litigation Staff determined the Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedure.⁵ Litigation Staff specifically noted one deficiency. The Formal Complaint does not cite to any provision of law, tariff, regulation, Commission order or statute.⁶ Though the Complainant provides a narrative of the circumstances giving rise to the filing of the Formal Complaint, it is not possible to ascertain if the factual statement is sufficient to determine what, if any, law, tariff, regulation, Commission order, or statute has been violated.⁷ However, the Complainant has identified the relief it is seeking.⁸

4. Litigation Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Litigation Staff further 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.

II. FINDINGS AND CONCLUSIONS

5. The Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*⁹ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.¹⁰

⁵ See *id.* at pp. 2-3.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.* at p. 3 (i.e. removal of "Medusa" meter at Complainant's property; prohibition of AMI meter installation).

⁹ 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,

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

7. 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.

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

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.

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).

¹⁰ *See* K.S.A. 66-101d, -101g; K.S.A. 66-1,201, -204, -207.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 08/16/2018 _____

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

Lynn M. Retz
Secretary to the Commission

REV

STATE OF KANSAS



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MEMORANDUM LEGAL DIVISION

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

FROM: Robert Elliott Vincent, Senior Litigation Counsel

DATE: August 9, 2018

SUBJECT: 17-WSEE-472-COM
In the Matter of the Complaint Against Westar Energy by Cecilia M. Greene

EXECUTIVE SUMMARY:

Cecilia M. Greene ("Complainant") filed a Formal Complaint against Westar Energy, Inc. ("Westar").¹ 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 Report and Recommendation 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.²

¹ See Formal Complaint Against Westar Energy by Cecilia M. Greene (Apr. 24, 2017) (Formal Complaint).

² 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.³ Ultimately, the Commission determined there was insufficient evidence to demonstrate AMI technology is dangerous to the public generally.⁴ Accordingly, the Commission found and concluded the Formal Complaints should be dismissed for failure to state a claim upon which relief can be granted.⁵

While this investigation was proceeding, on April 24, 2017, the Complainant filed a Formal Complaint against Westar. Legal Staff has reviewed the Formal Complaint for adherence to the Commission's procedural rules. Additionally, Legal Staff has reviewed the Formal Complaint in 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 cybersecurity risks.⁶ Additionally, the Complainant's Formal Complaint asserts Westar's use of AMI meters constitutes an invasion of privacy and violation of state and federal wiretapping laws.⁷

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 shows 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 comply with procedural requirement (1). However, the Complainant does provide an account of the events leading up to the filing of the Formal Complaint.⁸

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. Without detailing which law, tariff, regulation, Commission order or statute Westar has allegedly violated, Legal Staff cannot determine whether the Commission has jurisdiction to investigate and rule on the Complainant's

³ 15-211 Order, pp. 13-14.

⁴ *See id.*

⁵ *See id.* at pp. 10, 17.

⁶ *See* Formal Complaint, p. 2.

⁷ *See id.* at pp. 1-2.

⁸ Attachment to Formal Complaint, p. 1.

allegations. 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 Complainant are asserting are beyond the Commission's jurisdiction.

The Complainant requests the Commission prevent Westar from installing an AMI meter on its property.⁹ The Complainant also request Westar remove any "Medusa" meter installed on a utility pole located on Complainant's property.¹⁰ Accordingly, the Complainant has stated relief sought in accordance with procedural requirement (3).

Because the Formal Complaint does not satisfy all necessary procedural requirements, a determination of *prima facie* is not possible at this time.

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.

Upon review of the Formal Complaint, it appears part of Complainant's concerns would be alleviated if it was no longer required to take electric service metered with an AMI meter. As part of the 15-211 Docket's conclusion, the Commission directed its 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 of meter. This investigation has been assigned 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.

⁹ See Letter Attached to Formal Complaint, p. 1.

¹⁰ See *id.*

CERTIFICATE OF SERVICE

17-WSEE-472-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 08/17/2018.

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/S/ DeeAnn Shupe

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