

**BEFORE 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 Energy, Inc. by Douglas Yoder) Docket No. 18-WSEE-286-COM

**ORDER DISMISSING COMPLAINANT'S PETITION FOR
RECONSIDERATION**

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 January 8, 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 restore electric service in a timely manner.¹

2. On March 12, 2018, Commission Staff (Staff) filed its Legal Memorandum regarding Mr. Yoder's complaint.² In its Legal Memorandum, Staff concluded that Mr. Yoder's complaint complied with the procedural requirements set forth in K.A.R. 82-1-220 and established a *prima facie* case for Commission action.³ Pursuant to K.A.R. 82-1-220(c), the complaint was served upon Westar for an answer.

¹ Complaint Against Westar by Douglas Yoder [Jan. 8, 2018].

² Staff Notice of Filing of Legal Memorandum [Mar. 12, 2018].

³ *Id.*

3. On May 14, 2018, Westar filed a Motion to Dismiss alleging Mr. Yoder's complaint failed to demonstrate that Westar violated any provision of law, regulation or order.⁴

4. On July 13, 2018, Staff filed its Report and Recommendation which recommended the Commission dismiss Mr. Yoder's complaint based on a finding that Westar complied with the terms and conditions of its tariff.⁵

5. On July 31, 2018, the Commission submitted its Order Adopting Staff's Report and Recommendation which ordered the dismissal of Mr. Yoder's complaint. Pursuant to K.S.A. 77-529(a)(1), Mr. Yoder was allotted 15 days after service of the Commission's Order to file a Petition for Reconsideration.⁶

6. On August 20, 2018, Mr. Yoder filed a Petition for Reconsideration (Petition) requesting the Commission reverse its Order Adopting Staff's Report and Recommendation.⁷

7. On September 5, 2018, Staff filed its Response to Complainant's Petition.⁸ In that Response, Staff stated that Mr. Yoder's Petition attempted to introduce new information to the proceedings by alleging that additional power outages occurred at his home due to a pattern of negligent conduct on Westar's behalf. Specifically, Complainant's Petition stated, "Additional information has come to light since the submission of the original complaint," and "There have been 5 additional power outages at Complainant's residence during a six-week period."⁹ In addition to the introduction of

⁴ Westar Energy, Inc. Motion to Dismiss [May 14, 2018].

⁵ Staff's Report and Recommendation [Jul. 13, 2018].

⁶ Order Adopting Staff's Report and Recommendation [Jul. 31, 2018].

⁷ Complainant's Petition for Reconsideration [Aug. 20, 2018].

⁸ Staff's Response to Complainant's Petition for Reconsideration [Sept. 5, 2018].

⁹ Complainant's Petition for Reconsideration, pg. 2.

new allegations, Staff noted that Mr. Yoder's Petition was not submitted until 20 days after service of the Commission's Order, outside the time period stipulated in K.S.A. 77-529. Ultimately, because Mr. Yoder's Petition was not submitted within the statutory time period, and because it introduced new allegations not previously raised, Staff recommended it be dismissed.

ANALYSIS AND DISCUSSION

8. As elaborated in Staff's Response, the allegations set forth in Complainant's Petition introduce new information not previously cited. These allegations set forth claims that may evidence a serious, ongoing problem concerning Westar's ability to properly and efficiently serve its customers. Such serious allegations require adequate Staff research to ascertain their veracity; by introducing these allegations so late in the proceeding, Staff has not been afforded the opportunity to conduct that necessary research. Based on the preceding, the Commission believes that Mr. Yoder's new allegations are better served in a separate docket that will allow Staff the necessary opportunity to fully investigate the allegations.

9. Moreover, the Commission finds that Mr. Yoder's Petition for Reconsideration was not submitted within the statutorily authorized time period. Pursuant to K.S.A. 77-529(a)(1), within 15 days after service of a Commission final order, a party may file a petition for reconsideration with the agency.¹⁰ As alluded to above, the Commission Order Adopting Staff's Report and Recommendation was submitted on July 31, 2018. On August 20, 2018, Complainant submitted his Petition, five days beyond the statutory time limit. Because Complainant failed to submit a

¹⁰ K.S.A. 77-529(a)(1).

Reconsideration in a timely manner, the Commission finds Complainant's Petition to be improper.

10. Lastly, the Commission notes that its findings regarding Mr. Yoder's Petition for Reconsideration pertain only to the procedural requirements that Mr. Yoder has failed to meet; the Commission makes no findings regarding the merits of the new allegations raised in Mr. Yoder's Petition.

IT IS THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Complainant's Petition for Reconsideration 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.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 10/04/2018



Lynn M. Retz
Secretary to the Commission

PZA

CERTIFICATE OF SERVICE

18-WSEE-286-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 10/05/2018.

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