

Kansas Corporation Commission
1500 SW Arrowhead Rd
Topeka, KS 66604

Date: 5-30-18

Docket No. 18-WSEE-286-COM

RESPONSE TO MOTION FILED BY WESTAR ENERGY, INC.

Douglas Yoder submits the following response to Westar's Motion to Dismiss submitted by Cathryn Dinges, Senior Corporate Counsel, Westar on 5-14-18.

Position Statement: Westar's argument for dismissal is faulty and therefore the complaint filed with the KCC should not be dismissed and should be given full review by the Commission. In support of that I would simply offer 2 points for consideration.

First, there are some troublesome inconsistencies contained in the Motion filed by Ms Dinges which contradict what I was told directly by Westar staff, and what I've learned since the time of the event.

A) On 1-3-18 I called the Division Operations Manager of Westar, and talked to a person named Vince. Vince stated the following: Yes, we can serve the grid from 2 directions in order to maintain or restore power; but it takes an hour to switch the service over. We didn't do that. We didn't realize it was needed until later, and then didn't respond because it was already delayed. Maybe we should have switched it over.

Vince went on to say: We have a lot of underground cable in that area and it takes longer to diagnose and fix a problem. But we didn't adjust the time or methods of repair in this case.

A logical conclusion from this discussion with Vince is that Westar had a system breakdown in the event in question, which resulted in a case of wanton neglect. They had the means to restore power in one hour or less; but chose not to use it even when they knew an unwarranted delay was in progress, and that delay was extended even further by Westar's actions.

B) I spoke with Heidi Mitchell on 8-22-17 and she indicated that the power outage was weather related. I then went through the process of proving that the second outage was not weather related and submitted a claim to Westar. It was denied.

I spoke with Heidi again on 12-1-17 about the claim being denied and during that conversation she stated: The repair crews had been working all night on this outage and just got finished at the same time I called in the morning. They worked all night on this equipment failure and it was coincidental that it was completed right after I called.

Please note that both of these explanations are in direct conflict with what Ms Dinges asserts in the Motion to Dismiss, most pointedly in Section 2 paragraph 9, Section 3 paragraph 20, and Section 4 paragraph 22.

Ms Dinges indicates that crews moved on to other repairs on the night of the event, and that all the crews were working on other outages. But Heidi indicated that a repair crew worked continuously on this repair all night, and Vince stated that they didn't adjust the time or method of repair.

Ms Dinges further indicates that Westar acted reasonably and restored the power outage as soon as reasonably possibly. According to Vince, this clearly was not the case.

Additionally, Ms Dinges indicates in Section 2, paragraph 9 that the replaced fuse held for a few hours. I'll simply point out that in paragraph 8 Ms Dinges herself states that the power was restored from the first outage at 12:07 and went out again at 12:23. That's 16 minutes; not "a few hours." In this instance Ms Dinges doesn't contradict the staff, she contradicts herself to the point that it discredits the whole motion. It further shows Westar's intention to cover up their system failure rather than take responsibility for the neglect and failure that is self-evident in this matter.

Secondly, an interesting event unfolded recently that further shows Westar's responsibility in this complaint. On 5-25-18 our power went out at approximately 4:45 pm. It was a nice, sunny day with no wind or weather issues whatsoever. Furthermore, there was no construction being done in our neighborhood. For no explainable reason the power simply went out. Ironically, it was the same section of our neighborhood that was affected by the power outage explained in the complaint. Our neighbors across the street had power, etc. and all other factors mirrored exactly what happened back on 8-21-17.

I noticed a Westar truck and 2 repair workers less than a block to the north on our street and I stopped to inquire what they had found. They said (quote): "We found that our maps are wrong." They further stated: There's a lot of underground wiring here, and it's not shown correctly on our grid/maps. A circuit was open that was supposed to be closed.

I asked if they had it figured out and they replied: Yes, they should be able to get it repaired fairly quickly. Our power was back on when I returned home at 5:25 so I know it was restored sometime prior to that.

At 5:30 my neighbor 2 doors to the south was standing in his driveway and the Westar truck was in front of his house. I asked if his power was working and he said: It went out, came back on, and now is out again. During the unfolding process he asked the workers when his power might be restored and they said: It's on now. He said, no it's not and went inside to confirm it in fact was not on. The workers then said: Well, our maps are wrong and our systems aren't working.

At that point they couldn't accurately determine if a customer had power while standing on the very premises. Their equipment showed the power was on when visual

evidence showed it wasn't. The workers then said: we don't really know who has power right now.

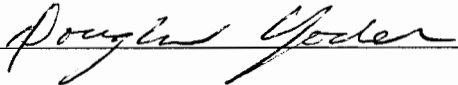
Westar's systems, methods, and performance have at times been shown to be negligent in mapping and managing their power distribution and grid. They have had circuits open that need to be closed and found them by causing power failures; a negligent practice and one that would explain the extended outage that occurred in the complaint that has been filed. In that instance, after the first outage was fixed their circuits and maps weren't right and they caused the second outage.

For these and other reasons described in the formal complaint, said complaint should be upheld by the Commission.

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Attachment A.

The motion filed by Westar contains inconsistencies and errors. The following outline will address these in numerical order that follows the motion.

1. Section I, 3-A says the company shall use "commercially reasonable efforts."

They didn't, according to my direct conversation with Vince.

Same paragraph says "...by irregularities of or interruptions in Electric Service... after same has passed the Point of Delivery..."

In this case, it hadn't passed the point of delivery.

Same paragraph says "...or damage to property complained of has been caused by Company's willful or wanton conduct."

In this complaint there is clear evidence of wanton "conduct."

2. Section I, paragraph 4 states "... violated by the acts or omissions complained of..."

In this complaint there were faulty "acts" by the Company; but even more so there were clear omissions, or failures to act.

3. Section I, paragraph 6 states that "Mr. Yoder does not contend that Westar acted willfully or wantonly..."

Mr. Yoder clearly contends that Westar acted wantonly, violated the tariffs, failed in their duties, and was negligent in doing so. Westar's failure and wanton conduct is self-evident.

4. Section II, paragraph 7 says that "Mr. Yoder alleges that his power went out at around 9:30 pm..."

This is not an allegation. It's a fact as evidenced by Westar's own logs, which also show that it was 9:39 pm.

5. Section II, paragraph 9 has numerous errors.

A. It says "the weather **likely** weakened the primary cable..."

This statement is a sham. Likely?! Did it or didn't it? This matter cannot be defended by "likely." And further, how could weather "weaken" a cable?

B. It says "...the replaced fuse only held for a few hours..."

The power was back out 16 minutes later. Ms Dinges outlines this herself in paragraph 8. Sixteen minutes is not a few hours.

C. Next it says: "...until the primary cable failed..."

It's impractical for the fuse to go out in 16 minutes and then the primary cable to fail a few hours later. If the fuse went out, and the power went out, there was nothing to cause the cable to fail. On the other hand, if the cable failed a few hours later then the fuse didn't go out-- but we all know the power was out 16 minutes after it had been restored. So this whole statement and explanation by Ms Dinges is fraught with problems. They can't decide which failed, the fuse or the cable. And Ms Dinges thinks the fuse held for a few hours until the cable failed when in fact there was no power 16 minutes after it was initially fixed.

D. Later in the same paragraph, it states that the crews "...moved on to other areas to repair other outages..."

However, Heidi Mitchell indicated very clearly on 12-1-17 that a crew was working on this outage continuously throughout the night until it was repaired the next morning. That's a verbal representation that Ms Dinges completely contradicts.

6. Section II, paragraph 10 says "...Westar had no reason to expect this failure to occur."

Apparently they should have, since they asserted that the weather "likely" weakened a cable, and they know their maps are wrong.

7. Section II paragraph 11 says: "The times provided are merely estimates and that is made clear to the customer when the estimate is provided."

It's not made clear to the customer and in this case it was negligently faulty. In fact, it was so far off that it was a misrepresentation.

If their estimate is going to be that misguided, they shouldn't give an estimate at all.

8. Section III, paragraph 12 generally says that Mr. Yoder fails to offer an explanation of how the provisions of the tariffs have been violated.

Explanation: Westar simply didn't meet the requirements of the regulations through the failures and omissions that were pointed out. There is no explanation needed when it's self-evident.

9. Section III, paragraph 13 talks about notices.

Response: The complaint isn't in reference to notices. The tariff says that Westar is not responsible **unless** a **delay** was caused by the wanton conduct on the part of the Company. Clearly the delay and the wanton conduct have been shown, which indicates that Westar **IS** responsible.

10. Section III, paragraph 14 includes a statement about "...wanton acts of the Company."

The interruption of electrical service in this case was caused by wanton acts, conduct, or omissions of the Company.

11. Section III, paragraph 15 talks about being irrelevant.

Answer: It's relevant in that Westar didn't meet its own service standards.

12. Section III, paragraph 16 says both "... for reasonable periods of time..." and "...and there was no violation of this provision of the GT&C."

However, there was a clear violation of this provision in that:

A. It wasn't a reasonable time by any means, and

B. Westar had other means to restore power much more quickly than was done and further they realize that "maybe" they should have used other methods when the delay became more extended.

13. Section III, paragraph 17 says section 7.08 is irrelevant.

Answer: It is relevant because it identifies certain limitations and none of these limitations can be cited to defend Westar's actions in this complaint.

14. Section III, paragraph 18 says section 10.02 is irrelevant.

Answer: It's relevant because Westar was negligent in not following the rules and regulations; and this is part of the definition of wanton neglect or failure to act appropriately to meet their obligations.

15. Section III, paragraph 20 says Mr. Yoder offers no evidence.

A. The issues and failures here are self-evident.

B. Later in that paragraph it says that Westar "...restored the power outage as soon as reasonably possible."

That has been proven to be false by 2 separate statements given by Westar's own staff.

16. Section IV, paragraph 21 indicates that Westar is not responsible unless "... he demonstrates that Westar's conduct... was willful or wanton."

Answer: Westar's acts and omissions were wanton. This has been demonstrated.

17. Section IV, paragraph 22 states that Westar "...acted reasonably to restore power..."

This has been proven false by statements from Westar's own staff.

18. Section IV, paragraph 25 talks about rates.

This complaint will have no impact on Westar's rates.

19. Section IV, paragraph 29... Failure to state a claim.

Note: This complaint was not submitted as a lawsuit. I was not advised by Westar nor KCC staff to "state a claim."

I simply submitted the materials and information through the process that I was instructed to follow. I hope that process will be followed to its completion.