

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

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Complaint Against Westar)
Energy by Herbie Harris.) Docket No. 17-WSEE-195-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. On November 7, 2016, Herbie Harris (Complainant) filed a Formal Complaint against Westar Energy, Inc. (Westar) with the Commission.¹ The Formal Complaint, among other things, alleges Westar's replacement of the Complainant's electric meter with an AMI Meter (commonly referred to as a "Smart Meter") at the Complainant's residence resulted in increased electric consumption.²

2. On December 28, 2016, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.

3. Litigation Staff reviewed the Formal Complaint's underlying facts and allegations. While making no recommendation regarding the *validity or truthfulness* of the Complainant's claims, Litigation Staff believes the Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedure.

¹ See Complaint Against Westar Energy by Herbie Harris (Nov. 7, 2016) (Formal Complaint).

² See *id.* at p. 1.

4. The Formal Complaint does not cite to any provision of law, tariff, regulation, Commission order or statute. By not stating what Westar has violated, it is not possible to determine if the facts as presented by the Complainant constitute a violation. 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. Finally, the Complainant has not stated the relief they are requesting.

5. 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 above. However, Litigation Staff further recommends that if the Complainant fails to amend its Formal Complaint within thirty (30) days the Formal Complaint be dismissed without prejudice.

II. FINDINGS AND CONCLUSIONS

6. The Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*³ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁴

7. Litigation Staff's Memorandum dated December 28, 2016, attached hereto is hereby adopted and incorporated by reference.

³ 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).

⁴ *See* K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

8. The Commission finds the Complainant has not satisfied the procedural requirements required for the filing of Formal Complaints as detailed in K.A.R. 82-1-220.

9. 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 that addresses 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.

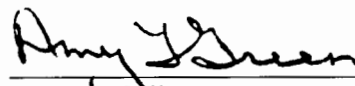
(B) Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.⁵

(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.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: JAN 05 2017



Amy L. Gilbert
Secretary to the Commission

REV

Order Mailed Date
JAN 06 2017

⁵K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

**MEMORANDUM
LEGAL DIVISION**

TO: Jay Scott Emler, Chairman
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

FROM: Robert Elliott Vincent, Litigation Counsel

DATE: December 28, 2016

SUBJECT: 17-WSEE-195-COM
In the Matter of the Complaint Against Westar Energy by Herbie Harris

EXECUTIVE SUMMARY:

Herbie Harris (Complainant) has filed a Formal Complaint¹ against Westar Energy, Inc. (Westar). The Formal Complaint does not satisfy the procedural requirements of the State Corporation Commission of the State of Kansas' (Commission) 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.

BACKGROUND & ANALYSIS:

On November 7, 2016, the Complainant filed a Formal Complaint against Westar due to Westar's installation of an AMI meter (Smart Meter) at Complainant's residence.² Upon the filing of a Formal Complaint, the Commission must determine whether the allegations, if true, would establish a *prima facie* case for action by the Commission and whether the Formal Complaint conforms to the Commission's regulations.³

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.

¹ See Complaint Against Westar Energy by Herbie Harris (Nov. 7, 2016) (Formal Complaint).

² See *id.* at p. 1.

³ See K.A.R. 82-1-220(c).

A review of the Formal Complaint, as filed, indicates the Complainant has not established a *prima facie* case. The Complainant does not cite any provision of law, tariff, regulation, Commission order or statute, and thus does not satisfy procedural requirement (1). The Complainant does provide an account of the events leading up to the filing of the Formal Complaint. However, it is difficult to determine if Westar's installation of a Smart Meter, in and of itself, caused Complainant's electric usage to increase.

The Formal Complaint does not provide any evidence, other than usage statements, indicating Westar's Smart Meter is the cause of the Complainant's increased electric usage. Moreover, the provided electric usage records indicate a wide range of monthly energy usage totals both pre and post-Smart Meter installation. Regardless, without citing any specific 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). Finally, the Complainant has not detailed the requested relief as necessary to satisfy procedural requirement (3).

Because the Complainant's Formal Complaint has not yet satisfied the Commission's 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 a *prima facie* for Commission action is not yet warranted. 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.

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 addressed herein Legal Staff recommends the Formal Complaint be dismissed without prejudice and the docket be closed.

CERTIFICATE OF SERVICE

17-WSEE-195-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 JAN 05 2017.

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/S/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date
JAN 06 2017