

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

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

In the Matter of the Complaint Against Westar Energy by Donald and Dottie Murphy.) Docket No. 17-WSEE-438-COM

NOTICE OF FILING OF STAFF REPORT & RECOMMENDATION

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files the attached Report and Recommendation (R&R) and states as follows:

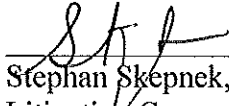
1. Staff hereby files the attached R&R analyzing the allegations set forth in the above-captioned Formal Complaint against Westar Energy, Inc. (Westar). As a result of its investigation, Staff believes Westar has reissued the maximum number of bills allowed by its General Terms & Conditions (GT&C) and recommends the Commission find Westar's reissuance of bills to be appropriate compensation for the Complainants.

2. Staff also recommends the Commission find Westar appropriately followed its policy regarding choice of rate schedules.

3. Finally, Staff recommends the Commission not require any further action of Westar and, therefore, recommends dismissal of the above-captioned Complaint.

WHEREFORE Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully submitted,


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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

FROM: Josh Frantz, Senior Research Economist
Lana Ellis, Deputy Chief of Economics and Rates
Robert Glass, Chief of Economics and Rates
Jeff McClanahan, Director of Utilities

DATE: September 6, 2017

SUBJECT: Docket No. 17-WSEE-438-COM: In the Matter of the Complaint Against Westar Energy by Donald and Dottie Murphy.

EXECUTIVE SUMMARY:

On March 23, 2017, Donald and Dottie Murphy (the Complainants) filed a Formal Complaint Against Westar Energy (Complaint) with the Kansas Corporation Commission (KCC or Commission) contending that their barn was billed a commercial rate, but was used for residential purposes and should have been billed under the residential rate schedule. Thus, the Complainants request reimbursement for the difference between the commercial and residential rates for electric service to their barn from 2005 through March 2017. The Complainants further assert in their Complaint that the burden should not be upon Westar's customers to request a change to the most economical rate schedule.

In the Answer of Westar Energy, Inc. (Answer), filed May 15, 2017, Westar denies reimbursement is owed to the Complainants. Section 2.04.01(b) of Westar's General Terms and Conditions (GT&C) sets parameters for when Westar may reissue bills that were originally issued under an incorrect rate schedule, but does not require Westar to reissue such bills. Even so, in August 2017, Westar voluntarily reissued the maximum number of the Complainants' bills allowed by its GT&C.

Furthermore, in its Answer, Westar denies the Complainants were improperly billed for electric service, citing to Section 2.04 of its GT&C which establishes each customer, not Westar, is responsible for choosing the most economical rate schedule for which the requested electric service is eligible. Accordingly, Westar's contention that it is not responsible for a customer's selection of rate schedules is accurate.

Because Westar has reissued the maximum number of the Complainants' bills allowed by its GT&C, Staff recommends the Commission find Westar's voluntary compensation for the Complainants appropriate. Staff also recommends the Commission find Westar appropriately followed its policy regarding choice of rate schedules and require no further action of Westar. Therefore, Staff recommends dismissal of the Complaint.

BACKGROUND:

The Complainants, Mr. and Mrs. Murphy, contend that in April 2005, separately-metered electric service was established for their barn on the same rate schedule as their residence, but then one month later the rate schedule for the barn was changed from residential to commercial.¹ When Mrs. Murphy attempted to initiate automatic payment in February 2017, she was told by Westar that the account for the barn was not eligible for automatic payment because of its commercial rate schedule. This is when the Complainants first became aware the barn was not on a residential rate schedule. Since the barn was not used for commercial purposes, Mrs. Murphy requested the rate schedule for the barn be changed to residential and requested reimbursement for any overpayment since 2005.

In March 2017, Westar agreed to move service for the Complainants' barn to the residential rate schedule. Although the Complainants informed Westar they were unaware their barn was being billed a commercial rate, Westar would not provide reimbursement for prior billing periods, stating the Company does not assume responsibility for customer's selection of rate schedules and the Company provides a rate summary to its customers annually.

On March 23, 2017, the Complainants filed a Complaint against Westar with the Commission. In the Complaint, the Complainants formally request reimbursement of the difference between the commercial and residential rates for electric service to their barn from 2005 through March 2017. Furthermore, the Complainants argue the burden should not be upon Westar's customers to request a change to the most economical rate schedule.

On April 26, 2017, Litigation Staff for the Commission reviewed the Complaint and, since the Complainants did not specifically cite to any violation of law, rule, or order in support of its contentions, prepared a Memorandum recommending the Commission waive K.A.R. 82-1-220(b)(1) for good cause.

¹ Westar's General Service rate schedules are commonly referred to as "commercial" rates; however, Westar does not actually offer a "Commercial" rate schedule. Prior to being moved to Residential Standard Service in 2017, the Complainants' barn received service under the Small General Service and General Service Urban rate schedules.

On May 2, 2017, the Commission found the Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220 and establishes a prima facie case for Commission action. The Commission, therefore, waived K.A.R. 82-1-220(b)(1) for good cause.²

On May 15, 2017, Westar filed its Answer. In it, Westar contends service to the Complainants' barn was established in June 2001 (rather than April 2005, as the Complainants stated) on the General Service Urban rate schedule and was not changed until 2006, when the General Service Urban schedule was eliminated and all of those customers were assigned to Small General Service (SGS).³ Westar further contends the barn did not meet the criteria of the residential rate schedule at the time service was established,⁴ but became eligible for residential service when Section 1.05.01 of its GT&Cs was changed, effective May 16, 2005.⁵

Additionally, in its Answer, Westar acknowledges it did change the rate schedule for the Complainants' barn to residential upon the customer's request after verification of the barn's usage, beginning with the most recent read date for the meter, which was February 14, 2017.⁶ However, pursuant to Section 2.04 of its GT&C, Westar contends it cannot be held responsible for a customer's selection of rate schedules and each customer is responsible for choosing the most economical rate schedule for which the requested electric service is eligible.⁷ Westar, therefore, denies the Complainants were improperly billed for electric service for their barn and denies reimbursement is owed to the Complainants.⁸

Although Westar maintains reimbursement is not owed to the Complainants, in August 2017, Westar did reissue the Complainants' bills for the twelve billing cycles from March 15, 2016–February 14, 2017, as a courtesy.⁹

ANALYSIS:

Reissuance of Bills for Service Taken Under an Incorrect Rate Schedule

Although the Complainants' barn was on a general service rate schedule until March 2017, Westar acknowledges the Complainants' barn was eligible for residential service when Section 1.05.01 of its GT&C was changed, effective May 16, 2005. Residential Standard Service and SGS are mutually exclusive rate schedules;¹⁰ therefore, the Complainants were billed under an incorrect rate schedule from May 2005 through March 2017.

² Order Adopting Legal Memorandum, p. 2 (May 2, 2017).

³ Answer of Westar Energy, Inc., ¶¶4–6 (May 15, 2017) (Answer).

⁴ Answer, ¶4.

⁵ Answer, ¶7.

⁶ Answer, ¶7.

⁷ Answer, ¶10–11.

⁸ Answer, ¶3.

⁹ Per Westar's response to data request KCC-07, this 12-month reissuance resulted in a credit to the Complainants of \$121.13.

¹⁰ SGS is available to "any customer using electric service supplied at one point of delivery for which *no specific schedule* is provided." [emphasis added]

Section 2.04.01(b) of Westar's GT&C defines Company's policy for incorrect rate schedules:

Company *may* change customer's rate schedule and/or rider if Company discovers customer's Electric Service is no longer eligible for the rate schedule and/or rider under which customer is taking Electric Service. Company *may* reissue bills under the correct rate schedule for Electric Service taken under the incorrect rate schedule. Reissued bills shall cover only that portion of the previous 12-month period during which customer received Electric Service under the incorrect rate schedule and/or rider. [emphasis added]

Because the reissuance of bills for service taken under the incorrect rate schedule is limited to the last twelve months in which service was taken under the incorrect schedule, the discrepancy over whether service to the barn was established in 2001 or 2005 is immaterial.

Westar has switched the customer to the correct rate schedule and reissued the Complainants' bills for the previous 12-month period during which service was received under the incorrect rate schedule—this is the maximum number of reissued bills allowed under Section 2.04.01(b) of Westar's GT&C. Therefore, Staff recommends the Commission find Westar's reissuance of bills to be appropriate compensation for the Complainants and not require any further action of Westar.

Responsibility for Choice of Rate Schedule

The Complainants argue the burden should not be upon Westar's customers to request a change to the most economical rate schedule.

Section 2.04 of Westar's GT&C defines the company's policy for choice of rate schedules and/or riders:

Each customer is responsible for choosing the most economical rate schedule and/or rider for which the requested Electric Service is eligible. Company, shall upon request, provide advice on the rate schedule and/or rider best adapted to existing or anticipated service requirements, as provided by customer. Company does not assume responsibility for customer's selection of rate schedules...

Accordingly, Westar's contention that it is not responsible for a customer's selection of rate schedules is accurate; thus, Staff recommends the Commission find Westar appropriately followed its policy regarding choice of rate schedules and not require any further action of Westar.

RECOMMENDATIONS:

Although Section 2.04.01(b) of Westar's GT&C sets parameters for when Westar may reissue bills that were originally issued under an incorrect rate schedule, it does not require Westar to reissue such bills. Nevertheless, Westar has reissued the maximum number of the Complainants' bills allowed by its GT&C. Therefore, Staff recommends the Commission find Westar's reissuance of bills to be appropriate compensation for the Complainants.

Staff also recommends the Commission find Westar appropriately followed its policy regarding choice of rate schedules.

Staff recommends the Commission not require any further action of Westar and, therefore, recommends dismissal of the Complaint.

CERTIFICATE OF SERVICE

17-WSEE-438-COM

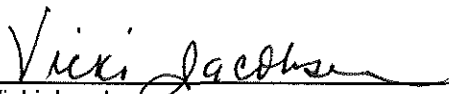
I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was served via electronic service this 8th day of September, 2017, to the following:

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