

**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 ADOPTING STAFF'S REPORT AND RECOMMENDATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

BACKGROUND

1. On January 8, 2018, Douglas Yoder (Mr. Yoder, Complainant) filed a Complaint seeking relief from Westar Energy, Inc. (Westar) for damages that he alleges were caused by the wanton failure of Westar to properly restore his electric service in a timely manner. Specifically, at 9:40 p.m. on August 21, 2017, Mr. Yoder experienced a weather-related power outage at his residence. The power was restored approximately three hours later. However, a second outage occurred 16 minutes after the power was restored. Mr. Yoder and several other customers called to report the second power outage. Mr. Yoder placed a second call to Westar at 7:35 a.m. Coincidentally, the power was restored 38 minutes after the second call by Mr. Yoder. Mr. Yoder alleged the prolonged second outage resulted in collateral damage to his basement because the electric sump pump was unable to prevent water from flooding his basement. Further, Mr. Yoder believes Westar misled him by estimating the power would be restored by 2 a.m.

2. On March 12, 2018, Commission Staff (Staff) filed its Legal Memorandum concerning Mr. Yoder's complaint. In its Legal Memorandum, Staff concluded that Mr. Yoder's complaint complied with the procedural requirements of K.A.R. 81-1-220, established a *prima facie* case for Commission action, and, pursuant to K.A.R. 82-1-220(c), should be served upon Westar for an answer.

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

4. On July 13, 2018, after conducting discovery pertaining to Mr. Yoder's complaint, Staff filed its Report and Recommendation, attached hereto and made a part hereof by reference, which recommended the Commission dismiss the complaint and find Westar complied with the terms and conditions of its tariffs.

ANALYSIS

5. Staff noted in its Report and Recommendation that Complainant believes that the second outage was not weather related, but a system breakdown in Westar's response and a failure to perform their duties under Notice and Due Diligence. Due to Westar's decision to leave the entire circuit de-energized while making repairs rather than working to restore service to part of the circuit, Mr. Yoder contends this decision prolonged the outage which caused his sump pump not to operate and allowed water in his basement. Based on discovery conducted in this Docket, the primary cable that failed was installed in conduit in 1988. Westar has seen failure of their direct buried primary cable of that vintage, but not when the cable is installed in conduit. Westar states that it had no prior indication that the underground primary cable was going to fail and had no reason to expect this failure to occur. Westar believes there is a high

probability that a lightning strike in Mr. Yoder's neighborhood caused the initial outage. Staff notes the energy contained in a lightning strike is tremendous and can stress the insulation of the underground cable, thus weakening the insulation and, over time, lead to cable failure. Although the storm activity on the night of the outage may not have been the first lightning strike that the underground cable has experienced, Westar considers it likely that the lightning activity that night was the cause of the failed cable. When the cable failed, the replaced fuse operated correctly and de-energized the circuit. Although Mr. Yoder takes exception to the term "likely" in determining the cause of the cable failure, Staff notes the cable failed shortly after a weather event with active lightning which had caused multiple outages in the area. This fact leads Staff to conclude that it is reasonable to consider both outages experienced by Mr. Yoder as weather related. The Complainant takes issue with Westar's decision to replace the cable in conduit instead of switching methods to restore power to the customers. Staff contends response to outages are dynamic and decisions need to be made based on existing conditions. In this case, Staff agrees with Westar's assertion that it would take the same amount of time to restore power by switching as to replace the cable, as the linemen chose to do.

6. Staff believes that Westar could not have reasonably known that an underground cable would fail within a short amount of time after the original outage. Therefore, Staff concludes the estimated restoration time provided by Westar that was based on historical information and not actual field conditions is a reasonable estimate. Staff also notes that failed underground cable takes longer to locate and repair than overhead conductors, but that specific information was not available to the Call Service Representative that spoke with Mr. Yoder on the morning of August 22, 2017. Also, Mr. Yoder would not have known that Westar crews had

been on site since 5:29 that morning repairing the circuit, and it was a coincidence that within 38 minutes after Mr. Yoder's call to Westar, power would be restored.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission hereby adopts Staff's Report and Recommendation and orders the dismissal of the Complaint, and a finding that Westar complied with the terms and conditions of its tariff with respect to the storm response related to the Complaint.

(B) Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹

(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.

Albrecht, Chairman, Emler, Commissioner, Keen, Commissioner

Dated: 07/31/2018



Lynn M. Retz
Secretary to the Commission

PZA

¹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

STATE OF KANSAS



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

FROM: Tim Stringer, Energy Engineer
Leo Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: July 12, 2018

SUBJECT: Docket Number: 18-WSEE-286-COM
In the Matter of the Complaint Against Westar Energy, Inc. by Douglas Yoder

EXECUTIVE SUMMARY:

On January 8, 2018, Douglas Yoder (Mr. Yoder, Complainant) filed a Complaint seeking relief from Westar Energy, Inc. (Westar) for damages that he alleges were caused by the wanton failure of Westar to properly restore his electric service in a timely manner. Westar believes the Complaint should be dismissed because the Complainant provides no basis for negligence on the part of Westar.

Based on discovery and positions filed in this Complaint, Staff recommends the Commission dismiss this Complaint and find Westar complied with the terms and conditions of its tariff.

BACKGROUND:

At 9:40 p.m. on August 21, 2017, Mr. Yoder experienced a weather-related power outage at his residence. The power was restored approximately three hours later. However, a second outage occurred 16 minutes after the power was restored. Mr. Yoder and several other customers called to report the second power outage. Mr. Yoder placed a second call to Westar at 7:35 a.m. Coincidentally, the power was restored 38 minutes after the second call by Mr. Yoder.¹ Mr. Yoder alleged the prolonged second outage resulted in collateral damage to his basement because the electric sump pump was unable to prevent water from flooding his basement. Further, Mr. Yoder believes Westar misled him by estimating the power would be restored by 2 a.m.

In its Response to the Complaint, Westar states the first outage was caused by a lightning strike on the circuit. Westar crews responded to the first outage and replaced a blown fuse. The crew then proceeded to restore other customers that had lost service from the storm. At 12:23 a.m. Westar was alerted by multiple callers that an additional outage had occurred. Westar returned

¹ Para. 8, Motion to Dismiss of Westar Energy, Inc.

to the site at 5:29 a.m. and found the recently replaced fuse had blown. Subsequently, Westar determined a section of underground distribution cable in conduit between transformers in the circuit serving Mr. Yoder had failed. Westar pulled the failed section of cable from the conduit and replaced the cable. Power was restored at 8:13 am on August 22, 2017.²

ANALYSIS:

According to Westar, there were 155 customers on the circuit for both outages and 59 customers reported the loss of power.³

The Complainant believes that the second outage was not weather related, but a system breakdown in Westar's response and a failure to perform their duties under Notice and Due Diligence.⁴ Due to Westar's decision to leave the entire circuit de-energized while making repairs rather than working to restore service to part of the circuit, the Complainant contends this decision prolonged the outage which caused his sump pump not to operate and allowed water in his basement.

Based on discovery conducted in this Docket, the primary cable that failed was installed in conduit in 1988.⁵ Westar has seen failure of their direct buried primary cable of that vintage, but not when the cable is installed in conduit. Westar states that it had no prior indication that the underground primary cable was going to fail and had no reason to expect this failure to occur.⁶ Westar believes there is a high probability that a lightning strike in Mr. Yoder's neighborhood caused the initial outage.⁷ Staff notes the energy contained in a lightning strike is tremendous and can stress the insulation of the underground cable, thus weakening the insulation and, over time, lead to cable failure. Although the storm activity on the night of the outage may not have been the first lightning strike that the underground cable has experienced, Westar considers it likely that the lightning activity that night was the cause of the failed cable⁸. When the cable failed, the replaced fuse operated correctly and de-energized the circuit. Although Mr. Yoder takes exception to the term "likely" in determining the cause of the cable failure,⁹ Staff notes the cable failed shortly after a weather event with active lightning which had caused multiple outages in the area. This fact leads Staff to conclude that it is reasonable to consider both outages experienced by Mr. Yoder as weather related. The Complainant takes issue with Westar's decision to replace the cable in conduit instead of switching methods to restore power to the customers. Staff contends response to outages are dynamic and decisions need to be made based on existing conditions. In this case, Staff agrees with Westar's assertion that it would take the same amount of time to restore power by switching as to replace the cable, as the linemen chose to do.¹⁰

Based on the information contained in the Formal Complaint, Mr. Yoder either spoke or received correspondence from Westar which seemed conflicting about the outages, outage times and

² Response to Data Request 5.

³ Response to Data Request 4.

⁴ Formal Complaint, Page 3.

⁵ Response to Data Request 2.

⁶ Motion To Dismiss of Westar Energy, Inc., Page 4.

⁷ Formal Response, Page A-1.

⁸ Motion To Dismiss of Westar Energy, Inc., Page 3.

⁹ Response to Motion Filed by Westar Energy, Inc., Page A-1.

¹⁰ Response to Data Request 8.

cause of the outage. Since there were two separate, but related outages on the same circuit within a short time frame, Staff believes that the information exchange between all parties became muddled as to the specific outage, the equipment that failed or worked as designed, and the timeframe of events.

In response to his first call, Mr. Yoder received a recorded message from Westar that estimated the outage restoration time. The restoration times that Westar provided in this script are based on historical averages for the type of outage¹¹ being experienced, and the recording clearly states that the outage is based on historical averages when the outage is reported.¹² However, Mr. Yoder believes Westar should have known the cause of the second outage and stated a more accurate restoration time.¹³ Because of the ongoing storm restoration activity, Westar's crew did not arrive on site for the second outage until 5:29 am on August 22, 2018.¹⁴ Until the second outage could be fully investigated by a crew on site, Staff contends the estimate based on historical averages is reasonable.

CONCLUSION:

Staff believes that Westar could not have reasonably known that an underground cable would fail within a short amount of time after the original outage. Therefore, Staff concludes the estimated restoration time provided by Westar that was based on historical information and not actual field conditions is a reasonable estimate. Staff also notes that failed underground cable takes longer to locate and repair than overhead conductors, but that specific information was not available to the Call Service Representative that spoke with Mr. Yoder on the morning of August 22, 2018. Also, Mr. Yoder would not have known that Westar crews had been on site since 5:29 that morning repairing the circuit, and it was a coincidence that within 38 minutes after Mr. Yoder's call to Westar, power would be restored.

After reviewing the provided information, Staff can find no willful or wanton conduct on Westar's part to restore service to the Complainant.

RECOMMENDATION:

Staff recommends the Commission dismiss this Complaint and find Westar complied with the terms and conditions of its tariff with respect to the storm response related to the Complaint.

¹¹ Response to Data Request 1.

¹² Motion To Dismiss of Westar Energy, Inc., Page 4.

¹³ Formal Complaint, Page B-2.

¹⁴ Response to Data Request 5.

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 08/01/2018.

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