

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

amend its Formal Complaint to address procedural deficiencies, the Formal Complaint would be dismissed without prejudice.⁵

4. On February 10, 2017, Complainant amended its Formal Complaint.⁶

II. DISCUSSION

5. While Complainant's Formal Complaint was under review, the Commission was engaged in a separate Formal Complaint investigation. Nine separate Formal Complaints had been filed challenging Westar and Kansas City Power & Light Company's use of AMI meters.⁷ The Commission consolidated these Formal Complaints (referred to in this Order as the 15-211 Docket).⁸

a. The 15-211 Order and Follow-Up General Investigation

6. The Commission's April, 5, 2018 Order in the 15-211 Docket evaluated claims pertaining to Westar and Kansas City Power & Light Company's use of AMI meters. The Commission determined there was no evidence indicating the subject utilities acted maliciously or unlawfully in their deployment of AMI meters.⁹ Additionally, the Commission determined the evidence presented by the parties did not support claims concerning health risks, cybersecurity risks or fire hazards posed by AMI meters.¹⁰ Ultimately, the Commission determined there was insufficient evidence to demonstrate AMI technology is dangerous to the public generally.¹¹ Accordingly, the Commission found and concluded the Formal Complaints should be dismissed for failure to state a claim upon which relief can be granted.¹²

⁵ See *id.*

⁶ See Amended Complaint (Feb. 10, 2017).

⁷ See Docket No. 15-WSEE-211-COM, *et al.*

⁸ See *id.*

⁹ Order on Smart Meter Complaints, Docket No. 15-WSEE-211-COM, *et al.*, pp. 11-12 (Apr. 5, 2018) (15-211 Order).

¹⁰ 15-211 Order, pp. 13-14.

¹¹ See *id.*

¹² See *id.* at pp. 10, 17.

7. As part of the 15-211 Docket's conclusion, the Commission directed its Staff to open a general investigation into the feasibility of opt-out programs for electric public utilities utilizing AMI meters. Specifically, the Commission directed Commission Staff to investigate the viability of a program that would allow a customer of an electric public utility to request a meter that is not an AMI type of meter.¹³ This investigation has been assigned Docket No. 19-GIME-012-GIE.

b. Herbie Harris' Formal Complaint

8. Having resolved outstanding Formal Complaints regarding AMI meters, the Commission now reviews Complainant's specific Formal Complaint. In the Commission's Order Adopting Staff's Memorandum, the Commission noted two procedural deficiencies. First, Complainant did not cite to a particular law, tariff, regulation, Commission order or statute being violated by Westar.¹⁴ Second, Complainant did not state the relief they were requesting.¹⁵

9. Complainant's Amended Complaint references high bills and asserts utilities are using "daily 'peak energy' charges" to calculate costs instead of actual usage.¹⁶ While demand charges can be a component of a utilities rate structure, Westar's general residential rate does not include a demand charge. Unless Complainant is on a special demand-based rate, Complainant's particular demand should have no impact on its bill. Complainant has provided no evidence indicating it is on a demand-based rate.

¹³ See *id.* at pp. 15, 17.

¹⁴ See Order Adopting Staff's Memorandum, p. 2.

¹⁵ See *id.*

¹⁶ See Amended Complaint, p. 1. (internal quotations retained).

10. Complainant requests its meter be checked and replaced with a correct “Smart Meter.”¹⁷ Westar’s Commission-approved rates and tariffs permit Complainant to request Complainant’s meter be checked for a nominal fee.¹⁸

11. Complainant questions why the customer does not have a choice in the type of meter installed to measure customer usage.¹⁹ As a result of previous Formal Complaints, the Commission has ordered a general investigation be opened to investigate the intricacies and feasibility of a meter opt-out program. However, it is premature to determine what, if any, program will result from the general investigation. Nevertheless, the Commission believes Complainant’s concern over meter selection will be addressed by this investigation and encourages Complainant to follow additional Commission proceedings.

12. Complainant calculated alleged credits due to it resulting from errors in Westar’s billing.²⁰ The evidence submitted by Complainant does not definitively indicate errors in Westar’s billing practices. Complainant asserts Westar installed a Smart Meter at Complainant’s residence in June of 2016.²¹ Complainant also details that since Westar’s Smart Meter was installed Complainant has limited its use of air-conditioning and heating.²² Year-over-year periods where Complainant’s energy use is the lowest indicates Westar’s old meter and Smart Meter register similar usage. For example:²³

Date	Meter Type	Kilowatt Hours Used	Days in Billing Period	Kilowatt Hours Per Day
12/5/2014	Analog	844	32	26.375
12/7/2015	Analog	682	34	20.059
12/6/2016	Smart Meter	840	34	24.706

¹⁷ See Amended Complaint at p. 1.

¹⁸ See Westar Energy Inc. and Kansas Gas and Electric Company d/b/a Westar Energy GT&C § 12.11, § 9.05 B (7).

¹⁹ See *id.* at pp. 1-2.

²⁰ See *id.* at p. 2.

²¹ See Formal Complaint, p. 1.

²² See Amended Complaint, p. 1.

²³ See Formal Complaint, Attachment B; See also Amended Complaint, p. 4.

13. Metering information provided by Complainant does indicate increased summer consumption.²⁴ However, it also indicates usage from December 2014 (metered by an analog meter according to Complainant) is practically identical to usage from December 2016 (metered by a Smart Meter according to Complainant). Given the increased period billed for in December 2016 compared to December 2014, the Smart Meter indicates Complainant used *less* electricity. If the meter were reading incorrectly, the error should be apparent when Complainant's usage is at its lowest (during the winter Complainant uses wood for heat supplemented with a gas furnace if needed).²⁵ The data provided by Complainant regarding errors in Westar's billing is inconclusive.

14. Complainant also request monetary compensation for the time and effort used to prepare and submit its Formal Complaint.²⁶ By law, the Commission does not have jurisdiction to award monetary damages.²⁷

15. Finally, Complainant's Amended Formal Complaint does not cite to a particular law, tariff, regulation, Commission order or statute being violated by Westar.

III. FINDINGS AND CONCLUSIONS

16. The Commission has jurisdiction to conduct the requested investigation pursuant to K.S.A. 66-101 *et seq.*²⁸ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.²⁹

²⁴ *See id.*

²⁵ *See* Amended Formal Complaint, p. 2.

²⁶ *See id.*

²⁷ *See* Grindsted Prod., Inc. v. Kansas City Power & Light Co., 21 Kan. App. 2d 435, 441, 901 P.2d 20, 24 (1995).

²⁸ 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,

17. The Commission finds the Formal Complaint provided by Complainant, and as amended, does not satisfy the Commission's procedural requirements pertaining to Formal Complaints. Specifically, the Formal Complaint in total does not indicate what, if any, law, tariff, regulation, Commission order or statute Westar has, or is, violating.

18. The Commission finds that, upon review of the Formal Complaint and information provided therein, good cause does not exist to permit a waiver of this requirement. Analysis of Complainant's usage during winter months pre- and post-smart meter installation do not reveal any potential billing error.

19. The Commission finds it does not have jurisdiction to award Complainant monetary damages.

20. The Commission finds it has jurisdiction to consider developing an opt-out program related to an electric public utility's use of Smart Meters. The Commission has opened a general investigation into the feasibility and intricacies of such a program and has assigned the matter Docket No. 19-GIME-012-GIE. The Commission encourages Complainant to follow further Commission action in this separate proceeding.

21. For the foregoing reasons, the Commission finds and concludes the Formal Complaint submitted by Herbie Harris, as amended, should be dismissed. Because dismissal of the Formal Complaint is premised on failing to fulfill procedural requirements, the Commission finds and concludes this dismissal shall be without prejudice.

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).

²⁹ *See* K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Formal Complaint as amended filed in this matter 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.

(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, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 08/02/2018



Lynn M. Retz
Secretary to the Commission

REV

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 08/03/2018.

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/S/ DeeAnn Shupe

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