

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Dwight D. Keen, Chair
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Complaint Against Westar)
Energy, Inc. by Elvis J. Grubbs) Docket No. 19-WSEE-410-COM

ORDER DISMISSING FORMAL COMPLAINT WITH LEAVE TO AMEND

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 finds as follows:

I. BACKGROUND

1. On April 9, 2019, Elvis J. Grubbs ("Complainant") filed a Formal Complaint against Westar Energy, Inc. ("Westar") with the Commission.¹ The complaint alleges that Westar wrongly assessed Complainant an additional security deposit without proper notification of its intent to do so.²

2. On April 15, 2019, Litigation Staff ("Staff") for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.³

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 determined the Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedure.⁴

¹ Complaint Against Westar by Elvis J. Grubbs (Apr. 9, 2019) (Formal Complaint).

² *See id.*

³ *See* Memorandum Dated April 15, 2019 (Staff Memo).

⁴ *See id.*

4. While the Formal Complaint does cite to provisions of law, tariffs, and statutes that are alleged to have violated or be in violation of, Staff noted that Complainant failed to provide a narrative of the circumstances giving rise to the filing of the Formal Complaint, making it difficult to ascertain if the factual statements are sufficient to determine what, if any, law, tariff, regulation, Commission order or statute may have been violated.⁵ Additionally, Staff noted the Complainant failed to specify the relief sought.⁶

5. Litigation Staff recommends the Commission find that 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 therein. Litigation Staff further recommends that if the Complainant fails to amend its Formal Complaint within thirty (30) days the Formal Complaint should be dismissed without prejudice.

II. FINDINGS AND CONCLUSIONS

6. The Commission finds and concludes jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101, *et seq.*⁷ The Commission may investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁸

7. The Commission finds and concludes the Complaint has not satisfied the procedural requirements for the filing of Formal Complaints as detailed in K.A.R. 82-1-220.

⁵ *See id.*

⁶ *See id.*, p. 2.

⁷ 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 regulations, 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,

⁸ *See* K.S.A. 66-101d, -101g; K.S.A. 66-1,201, -204, -207.

8. The Commission finds and concludes 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 addressing 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. 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).⁹

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.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 04/23/2019



Lynn M. Retz
Secretary to the Commission

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⁹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

**MEMORANDUM
LEGAL DIVISION**

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

FROM: Phoenix Anshutz, Litigation Counsel

DATE: April 15, 2019

SUBJECT: Docket No. 19-WSEE-410-COM
In the Matter of the Complaint Against Westar Energy by Elvis J. Grubbs

EXECUTIVE SUMMARY:

Elvis J. Grubbs (“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. Therefore, Legal Staff recommends the Commission dismiss the Formal Complaint and provide Complainant an opportunity to amend the Formal Complaint.

BACKGROUND & ANALYSIS:

On April 9, 2019, the Complainant filed a Formal Complaint against Westar, alleging that Westar wrongly charged him an additional security deposit without properly notifying him of the charge.² Upon the filing of a formal complaint, the Commission must determine “whether or not the allegations, if true, would establish a prime [sic] facie case for action by the commission and whether or not 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;

¹ Complaint Against Westar Energy, Inc. (Apr. 9, 2019) (Formal Complaint).

² See *id.*

³ K.A.R. 82-1-220(c)

(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.

A review of the Formal Complaint shows that these procedural requirements have not been met. While the Complainant does cite law, tariffs, and statutes allegedly violated by Westar, thus satisfying procedural requirement (1), the Complainant does not set forth concisely and in plain language the facts that constitute the violations, thus failing procedural requirement (2). Moreover, the Complainant does not specify the relief sought, thus failing procedural requirement (3).

Due to the Complainant's failure to meet the procedural requirements, a determination of *prima facie* is not possible at this time.

No recommendation regarding the *validity or truthfulness* of the Complainant's claims is made, nor should they in any way be assumed or concluded with the filing of this memorandum. The *only* recommendation made within this memorandum is that the requirements of K.A.R. 82-1-220, and that a determination of a *prima facie* case for Commission action is not warranted and the Formal Complaint should be dismissed.

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 in its current iteration and grant the Complainant thirty (30) days to amend the Formal Complaint. Should Complainant fail to correct the procedural deficiencies discussed above, Legal Staff recommends the Formal Complaint be dismissed without prejudice and the docket be close.

CERTIFICATE OF SERVICE

19-WSEE-410-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 and electronic service on 04/23/2019.

PHOENIX ANSHUTZ, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
p.anshutz@kcc.ks.gov

CATHRYN J. DINGES, CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8136
cathy.dinges@westarenergy.com

ELVIS J GRUBBS
3324 SW MAUPIN COURT
TOPEKA, KS 66614

/S/ DeeAnn Shupe

DeeAnn Shupe