

**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

**ORDER ADOPTING LEGAL 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 March 23, 2017, Donald and Dottie Murphy (Complainants) filed a formal complaint (Complaint) against Westar Energy, Inc. (Westar) with the Commission.<sup>1</sup>

2. On April 26, 2017, Litigation Staff for the Commission reviewed the Complaint and prepared a Memorandum analyzing the Complaint for compliance with Commission regulations.<sup>2</sup>

3. Staff notes that the Complainants did not specifically cite to any violation of law, rule, or order in support of its contentions, and, therefore, is not in compliance with K.A.R. 82-1-220(b)(1).<sup>3</sup> However, Litigation Staff recommends the Commission waive K.A.R. 82-1-220(b)(1) for good cause.<sup>4</sup>

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<sup>1</sup> Formal Complaint filed March 23, 2017 (Attached hereto as Attachment A).

<sup>2</sup> Legal Staff's Memorandum, April 26, 2017 (Legal Memorandum) (Attached hereto as Attachment B).

<sup>3</sup> Legal Memorandum, pp. 2 - 4.

<sup>4</sup> *Id.*

4. Therefore, Litigation Staff recommends the Commission find that pursuant to K.A.R. 82-1-220(c), the Formal Complaint should be served on Westar for an Answer.

## **II. FINDINGS AND CONCLUSIONS**

5. The Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*<sup>5</sup> Specifically, the Commission is authorized to investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.<sup>6</sup>

6. The Commission agrees with Litigation Staff's analysis and recommendations and finds that Litigation Staff's Memorandum dated April 26, 2017, should be adopted and incorporated by reference.

7. Specifically, the Commission finds the Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220, and establishes a *prima facie* case for Commission action.

### **IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

(A) K.A.R. 82-1-220(b)(1) is waived for good cause.

(B) Westar shall be served a true copy of the Formal Complaint, and Westar shall either satisfy the matter complained of or file a written answer within 10 days.

(C) Staff is directed to investigate this matter and submit a Report and Recommendation to the Commission.

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<sup>5</sup> 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.")

<sup>6</sup> *See* K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.


(D) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.<sup>7</sup>

(E) 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.**

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: MAY 02 2017

  
\_\_\_\_\_  
Amy L. Gilbert  
Secretary to the Commission

SLS

Order Mailed Date

MAY 03 2017

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<sup>7</sup> K.S.A. 66-118b; K.S.A. 2016 Supp. 77-529(a)(1).

## **ATTACHMENT “A”**

KANSAS CORPORATION COMMISSION  
OFFICE OF PUBLIC AFFAIRS & CONSUMER PROTECTION  
**FORMAL COMPLAINT**

BND - 3/10/17  
Formal Complaint  
September 2016  
20170323022351  
Kansas Corporation Commission

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

IN THE MATTER OF THE COMPLAINT AGAINST

WESTAR ENERGY

(Respondent, name of utility company)

by

DOTTIE + DON MURPHY

(Complainant, your name)

For Commission  
use only

DOCKET NO.

17-WSEE-438-COM

Please provide complainant (your) contact information:

Full Name(s): DOTTIE L + DONALD MURPHY

Address: 1120 EDWARDSVILLE DR, EDWARDSVILLE, KS 66111

Daytime Phone: 913-441-7933

E-mail Address (optional): RETRACT57@YMAIL.COM

**FORMAL COMPLAINT**

DONALD + DOTTIE MURPHY

(Your name)

states that the above-named respondent is a public utility providing service in Kansas and is subject to the jurisdiction of the State Corporation Commission.

The facts and circumstances surrounding the complaint are set out in detail below:  
(Be specific and as brief as possible. If necessary, attach additional sheets.)

PLEASE ACCEPT MY TYPED STATEMENT. I TRIED TO BE BRIEF

(Continued on the other side)

**Formal Complaint** *continued*

Complainant requests that the respondent utility be required to provide an answer to the complaint and requests the following action be ordered by the Commission. *(State action or result desired.)*

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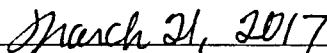
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and for such further order or orders as the Commission may deem necessary.

VERIFICATION: I do solemnly, sincerely, and truly declare and affirm that the statements made in this complaint form are true and accurate to the best of my knowledge, and I do this under the pains and penalties of perjury.

  
Complainant's (your) signature

  
Date signed

**FILING INSTRUCTIONS**

This form may be filed in person at the Kansas Corporation Commission's Office or by mail. All formal complaints, whether filed by mail or delivered in person, must be directed to:

Secretary to the Commission  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

For more information about the formal complaint process please refer to the instructions provided with this form or visit the KCC website: <http://kcc.ks.gov/>, Consumer Assistance, Filing a Complaint. You may also contact our Consumer Assistance staff toll-free at 1-800-662-0027 or by e-mail at [public.affairs@kcc.ks.gov](mailto:public.affairs@kcc.ks.gov).

*Sers,*

In April 2005 we added electric for our utility barn. Westar set the meter. Westar had our barn and house on the same rate. One month later they changed the rate from residential to commercial. However, we did not know the rate was commercial because it was never stated as commercial on our bill.

In February 2017, I attempted to put our electric bills on auto pay because we travel to see our grandchildren and didn't want to miss a payment. I was successful in placing the house on auto pay, but was unable to complete the barn autopay. I called Westar representative and Erica told me our barn was being charged as a commercial building. Our barn has never been commercial and is not commercial now and asked for the rate to be changed and the money we overpaid to be reimbursed. I was told an agent needed to check the meter. On Feb 27, 2017, the agent read the meter and said his report would state our barn is not and never had been a commercial building.

I contacted Westar and was transferred to the billing department. I was told Westar usually puts a barn on commercial without knowing whether it is or not. We had requested a reimbursement of all the money we had unknowingly overpaid Westar since 2005.

March 7, 2017, Heather called me stating she had good news. Our barn was not commercial and the base rate would be decreased from \$22.50 to \$ 14.50 each month. I sent two requests for reimbursement of the money overcharge since 2005. March 9, 2017 was told by a spokeswoman Rita that each year a mandated rate summary insert is included in the bill. I asked for a copy of that insert but have not received it. Because of that Westar would not reimburse the over payment. Brandon sent me a copy of an insert and I couldn't see anything that would direct a consumer to question the rate they were being charged. I found nothing that states the codes seen on our bill equates to being billed commercially.

I have front copies of bills from 2015 and nothing on the bills would trigger anyone to believe they were billed commercially. We believed the code and statement description on the bill just denoted the fact the meter was on the barn and used very little electric.

My husband said Westar sent an agent several years ago to check the meter. The agent, which we knew because he came every time we had an outage, named J.J., said Westar sent him to check the meter because we used so very little electric. So, we know they knew this was not commercial from his report. We just don't have the exact date but they do. If they increased the rate one month after the meter was set without cause, I believe they knowingly overcharged us.

I also believe that we are not the only customer Westar has overcharged without their knowledge. If nothing else comes from this I would like to have them changed the statement to have wording that is clear and concise for the customer. The current wording on the barn states Small General Service. We had belief this just denoted a meter that would have a small usage, not a commercial usage. This wording is deliberately clouded to confuse the consumer. I believe that Westar should be required to reduce the rate billed when they know the consumer has such a small usage. They should be required to make sure the meter rate is changed and not make the consumer bear the burden of requesting that rate change.

*Sincerely*  
*Dottie Murphy*

## **ATTACHMENT “B”**



**MEMORANDUM  
LEGAL DIVISION**

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

**FROM:** Stephan Skepnek, Litigation Counsel

**DATE:** April 26, 2017

**SUBJECT:** 17-WSEE-438-COM  
In the Matter of the Complaint Against Westar Energy by Donald and Dottie Murphy

**EXECUTIVE SUMMARY:**

Donald and Dottie Murphy (Complainants) filed a Formal Complaint<sup>1</sup> wherein Complainants allege Westar Energy (Westar) reclassified their utility barn electric meter from residential service to commercial service without providing proper notice. Complainants further allege that they were knowingly overcharged for electric service from approximately April 2005 to February 2017 (142 months) and seek compensation for any overpayment due to incorrect and improper reclassification of their electric meter service from residential to commercial. Litigation Staff recommends the Commission accept the Formal Complaint, serve the Formal Complaint on Westar for an Answer, and direct Commission Staff to investigate the matter.

**BACKGROUND:**

On March 23, 2017, Complainants filed a Formal Complaint against Westar. In their Formal Complaint, Complainants allege that in April 2005, when they added electric service to their utility barn, Westar initially set the meter for the barn and house on the same rate.<sup>2</sup> However, according to Complainants, the following month and without notice, Westar changed the rate on the barn from residential to commercial service. Unaware that the rate had been changed, Complainants continued to pay the commercial rate on their barn until February 2017 when Complainants were unable to place their barn on autopay. Complainants contacted Westar and learned for the first time that their barn

<sup>1</sup> Complaint Against Westar Energy by Donald and Dottie Murphy, March 23, 2017 (Formal Complaint).

<sup>2</sup> Formal Complaint typed statement of Dottie Murphy.

was being charged as a commercial building.<sup>3</sup> Complainants informed Westar that their barn was not a commercial building and asked “for the rate to be changed and the money we overpaid to be reimbursed.”<sup>4</sup> According to the Complainant, on February 27, 2017, a Westar agent was sent out to read the meter and said his “report would state our barn is not and never has been a commercial building.”<sup>5</sup> Complainants subsequently contacted Westar to request reimbursement for overpayment, and were told “Westar usually puts a barn on commercial without knowing whether it is or not.”<sup>6</sup>

On March 7, 2017, Westar informed Complainants that their barn was indeed not commercial and that the base rate would be decreased. Two days later, on March 9, Westar informed Complainants that they were not entitled to reimbursement for overpayment because “each year a mandated rate summary insert is included in the bill.”<sup>7</sup> Complainants requested a copy of the insert but have not received it.<sup>8</sup> Complainants were later sent “a copy of an insert” but could not see anything that would direct a consumer to question the rate they were being charged. Specifically, Complainants note that they “found nothing that states the codes seen on our bill equates to being billed commercially.”<sup>9</sup> Complainants seek reimbursement for overpayment because Westar increased their rate one month after their meter was set without cause and knowingly overcharged them.<sup>10</sup>

### **ANALYSIS:**

Upon the filing of a formal complaint, the Commission must determine, “whether or not the allegations, if true, would establish a [prima] facie case for action by the commission and whether or not the formal complaint conforms to the commission’s regulations.”<sup>11</sup> If the Commission determines these conditions are satisfied, the Complaint is served on the subject utility for an Answer.<sup>12</sup>

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

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Staff notes that Complainants seek as an alternative remedy modification of Westar’s billing statements to clarify language which they believe is deliberately clouded to confuse the consumer. Specifically, Complainants would have the Commission clarify the statements to have wording that is clear and concise for the consumer. Additionally, Complainants would have the Commission require Westar to “reduce the rate billed when they know the consumer has such a small usage” and require Westar to “make sure the meter rate is changed and not make the consumer bear the burden of requesting that rate change”.

<sup>11</sup> K.A.R. 82-1-220(c).

<sup>12</sup> *Id.*

have been or are being violated by the acts or omissions complained of, or that will be violated by the continuance of acts or omissions;

(2) set forth concisely in plain language the facts claimed by the complainant to constitute the violation; and

(3) state the relief sought by the complainant.

Complainants' Formal Complaint plainly describes the facts and circumstances giving rise to the complaint.<sup>13</sup> Further, the Complainants seek specific relief by asking that Westar reimburse them for money they had overpaid from approximately April 2005 to February 2017.<sup>14</sup> However, the Formal Complaint does not expressly cite the provisions of law or the regulations or orders of the Commission that have been or are being violated by the acts or omissions of the utility. Therefore, the Formal Complaint does not comply with procedural requirements of K.A.R. 82-1-220(b); specifically, subsection (1) as noted above. Nevertheless, the Commission has the discretion to waive its regulations for good cause if it is in the public interest to do so, unless otherwise required by law.<sup>15</sup>

Westar is subject to Commission jurisdiction.<sup>16</sup> The Commission has been given full power, authority and jurisdiction to supervise and control the electric public utilities doing business in Kansas.<sup>17</sup> The Commission is also charged with ensuring the provision of efficient and sufficient service at just and reasonable rates.<sup>18</sup> Furthermore, the Commission's powers are to be liberally construed, and the Commission is expressly granted all incidental powers necessary to carry into effect the provisions of the public utility statutes.<sup>19</sup> Litigation Staff believes that the Formal Complaint provides sufficient detail to notify Westar and the Commission that the Complainants are asking the Commission to exercise its authority and make determinations with regard to Westar's service obligations under Kansas law as well as the utility's Commission-approved tariffs.

The detailed requirements of K.A.R. 82-1-220 are more restrictive than those required by Kansas courts or by the Kansas Rules of Civil Procedure.<sup>20</sup> Further, the public interest is not served by dismissing the complaints of customers not represented by legal counsel for

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<sup>13</sup> Formal Complaint, p. 3.

<sup>14</sup> *Id.*

<sup>15</sup> K.A.R. 82-1-202.

<sup>16</sup> K.S.A. 66-101, K.S.A. 66-101b, K.S.A. 66-101e, and K.S.A. 66-104.

<sup>17</sup> K.S.A. 66-101.

<sup>18</sup> K.S.A. 66-101b.

<sup>19</sup> K.S.A. 66-101g.

<sup>20</sup> See, *Boydston v. Bd. of Regents for State of Kan.*, 242 Kan. 94, 99, 744 P.2d 806, 811 (1987) (as long as the opponent is apprised of the facts that entitle the plaintiff to relief, it is not necessary to spell out a legal theory of relief in the pleadings). See also, K.S.A. 60-208(a) (A pleading that states a claim for relief must contain: (1) A short and plain statement of the claim showing that the pleader is entitled to relief).

deficiencies related to stringent procedural requirements.<sup>21</sup> Therefore, because the Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220, Litigation Staff recommends the Commission waive the requirements of K.A.R. 82-1-220(b)(1) for good cause.

**RECOMMENDATION:**

Litigation Staff recommends the Commission find:

- The Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220;
- K.A.R. 82-1-220(b)(1) should be waived for good cause;
- The Formal Complaint establishes a *prima facie* case for Commission action;
- Pursuant to K.A.R. 82-1-220(c), the Formal Complaint should be served upon Westar for an Answer; and
- Staff should be directed to investigate this matter and submit a Report and Recommendation to the Commission.

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<sup>21</sup> K.S.A. 66-155 obligates “the attorney of the corporation commission” to prosecute suits on behalf of parties complaining of unjust discriminations by a public utility or other violations of the Public Utility Act. Litigation Staff believes full representation of the Complainant in this case would be an unnecessary use of Commission resources and is evidence of further good cause for the Commission to waive the requirements of K.A.R. 82-1-220(b)(1).

## CERTIFICATE OF SERVICE

17-WSEE-438-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 **MAY 02 2017** \_\_\_\_\_.

DONALD AND DOTTIE MURPHY  
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/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe

Order Mailed Date  
**MAY 03 2017**