

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of the Complaint Against Westar)
Energy by Lonnie & Patricia Dalrymple.) Docket No. 20-WSEE-096-COM
)

ORDER DISMISSING FORMAL COMPLAINT WITHOUT PREJUDICE

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

I. BACKGROUND

1. On August 28, 2019, Lonnie and Patricia Dalrymple (Complainants) filed a Formal Complaint (Complaint) against Evergy Kansas Central (Westar).¹ In the Complaint, Complainants allege Westar violated the terms and conditions of its tariff and failed to follow electric code safety standards.² To rectify the alleged violations, Complainants requested the Commission require Westar follow its tariff and replace the underground service line that serves the Complainant's home, at no cost to Complainants.³

2. On September 12, 2019, Commission Staff (Staff) filed its Order Accepting Formal Complaint and Adopting Litigation Staff's Memorandum, wherein Staff set forth the details of the Complaint and recommended the Commission find the Complaint's allegations of

¹ Formal Complaint Against Westar Energy by Lonnie & Patricia Dalrymple (Aug. 28, 2019).

² *See id.*

³ *See id.*

safety violations comply with the procedural requirements of K.A.R. 82-1-220.⁴ Staff recommended the Complaint be served upon Westar for an answer.⁵

3. On October 7, 2019, Westar submitted its Answer to the Complaint. In that Answer, Westar generally denied all of the allegations contained in the Complaint.⁶ Specifically, Westar stated that Section 7.06.02(c)(iv) of its General Terms and Conditions, which pertains to failed existing underground direct buried service lines, was recently reviewed, revised, and approved by the Commission as just and reasonable in Docket Nos. 15-WSEE-580-COM and 18-WSEE-328-RTS.⁷ Moreover, Westar stated the provisions of Section 7.06.02(c)(iv) requiring the customer to take responsibility for conduit and trenching, but allowing for reimbursement for the cost of a standard installation, is consistent with certain principles seen throughout Westar's Tariff.⁸ Finally, Westar claimed it complied with Section 311 of the National Electric Safety Code (NESC) by initially restoring service using an insulated service line that posed no safety issue for Complainants, with Westar later returning to Complainant's home and adding additional protections for the temporary service line.⁹

4. On March 5, 2020, Staff submitted its Notice of Filing of Report and Recommendation (R&R).¹⁰ After reviewing the Complaint, and Westar's Answer, Staff determined Westar is currently following the terms and conditions of its tariff by installing a temporary service and advising the Complainant to install conduit for the permanent installation.¹¹ Moreover, Staff agreed with Westar that the terms of its tariff including the reimbursement mechanism for trenching are just and reasonable. However, Staff cautioned that

⁴ Order Accepting Formal Complaint and Adopting Litigation Staff's Memorandum, para. 1-5 (Sep. 12, 2019).

⁵ *See id.*

⁶ Answer of Westar Energy, Inc. para. 3 (Oct. 7, 2019).

⁷ *See id.*

⁸ *See id.*

⁹ *See id.*

¹⁰ Notice of Filing of Report and Recommendation (Mar. 5, 2020).

¹¹ *See id.*, pg. 3.

although the \$1,000 maximum reimbursement is expected to cover Complainant's excavation costs, it is possible that in the future, this amount may not be sufficient to cover all excavation costs associated with replacing the underground pathway. Staff also concluded that Westar is not in violation of application safety codes by installing a temporary service to serve the Complainant's home until a permanent line can be installed.¹²

5. Ultimately, Staff recommended the Commission dismiss the Complaint. Additionally, because there is a possibility that excavation costs for an average service line will exceed the \$1,000 maximum reimbursement, Staff recommended Section 7.06.02(c) of Westar's Tariff be revisited in the next general rate case and the reimbursement amount be updated as necessary.¹³ Lastly, Staff recommended the Commission require Westar set clear guidelines detailing the length of time a temporary line may remain in operation for any condition that requires temporary service; in Staff's opinion, a temporary line should not remain in operation more than 60 days.¹⁴ According to Staff, should that 60 day period be exceeded, Westar should follow its tariff and disconnect the service if it is deemed a safety hazard.¹⁵

6. On March 9, 2020, Westar submitted its Response to Staff Report and Recommendation.¹⁶ In its Response, Westar disagreed with Staff's R&R and explained that it does, in fact, already have a clear policy regarding temporary service lines and how long those lines are permitted to remain in place.¹⁷ According to Westar, there was a misunderstanding with Westar employees, who believed they could not implement the standard policy because of the Complaint.¹⁸ Once the misunderstanding was resolved, Westar proceeded with its standard

¹² See *id.*, pg. 6.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See *id.*, pg. 7.

¹⁶ Response to Staff Report and Recommendation of Evergy Kansas Central, Inc. (Mar. 9, 2020).

¹⁷ See *id.*, para. 3.

¹⁸ See *id.*

policy for handling temporary service lines and issued Complainants a 30-day notice indicating electric service would be disconnected if Complainants did not complete the required work necessary for Westar to install a permanent service line.¹⁹ Therefore, according to Westar, it is not necessary for the Commission to require Westar to develop and new policy or guidelines, as Westar has the appropriate policy in place.²⁰

7. On April 6, 2020, Complainants submitted a Response to Staff Report and Recommendation and to Evergy Kansas Central, Inc.'s Response to Staff Report and Recommendation.²¹

II. LEGAL STANDARDS

7. Pursuant to K.S.A. 66-101, the Commission is given full power, authority and jurisdiction to supervise and control the electric public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

8. Pursuant to 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.

¹⁹ See *id.*, para. 5.

²⁰ See *id.*, para. 7.

²¹ Response of Lonnie and Patricia Dalrymple to Staff Report and Recommendation and to Evergy Kansas Central, Inc.'s Response to Staff Report and Recommendation (Apr. 6, 2020).

III. FINDINGS AND CONCLUSIONS

9. After review of the pleadings submitted by the parties to the docket, the Commission has determined the Complaint shall be dismissed without prejudice. While the Commission recognizes the seriousness of Complainant's allegations, the Commission also recognizes that Westar's policy regarding temporary service lines was recently approved and deemed just and reasonable. Moreover, as noted in Staff Direct Testimony in Docket No. 18-WSEE-328-RTS, Westar's underground service line installation is designed to minimize the possibility that Westar will be required to perform any excavation activity connected with underground service lines by requiring the customer to provide the underground pathway for the electric conductors. Furthermore, consistent with past practices, the Commission believes it is appropriate that customers desiring underground service lines continue to be responsible for providing the underground pathway for the service line; this approach eliminates any excavation on the part of the utility, which helps control the utility's, and ratepayers, costs associated with service line replacement.

10. Additionally, the Commission adopts Staff's opinion that the requirement for customer contribution to underground construction costs minimizes the subsidization of customers served through underground service lines by those customers being served by conventional overhead service lines. Lastly, the Commission defers to Staff's expertise in finding that the \$1,000 maximum reimbursement for excavating is a sufficient amount to excavate a trench for Complainant's service line and should be sufficient for a typical service line replacement.

11. Regarding Staff's recommendation that Section 7.06.02(c)(iv) of Westar's Tariff be revisited in the next general rate case, the Commission is not ready to co-sign such a

pronouncement. As discussed above, Westar's current tariff has been deemed just and reasonable; as such, the Commission does not believe now is the time to declare such tariff in question. Should the parties to Westar's next general rate case, or possibly Staff via a general investigation, decide to revisit Section 7.06.02(c) of Westar's Tariff, the Commission would indulge any findings offered by those parties. Until that time, however, the Commission would ask that Westar strongly consider making information regarding its temporary service line policy readily available on its website; by doing so, Westar will provide important information to consumers who may not be aware of the responsibility they bear when it comes to trenching pathways for underground service lines.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. For the reasons set forth above, the Formal Complaint against Westar is dismissed without prejudice. This Order does not preclude Complainants from resubmitting a Formal Complaint with the Commission's Public Affairs and Consumer Protection division.

B. The parties have fifteen (15) days, plus three (3) days if service is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 77-529(a)(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.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 04/23/2020



Lynn M. Retz
Executive Director

PZA

CERTIFICATE OF SERVICE

20-WSEE-096-COM

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 04/23/2020.

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