

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

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

ORDER DISMISSING AMENDED 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 an Initial Formal Complaint against Westar Energy, Inc. (“Westar”) with the Commission.¹ The complaint alleged that Westar wrongly assessed Complainant an additional security deposit without proper notification.²

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

3. Litigation Staff reviewed the Initial 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 had 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 Initial Formal Complaint did cite to provisions of law, tariffs, and regulations that Westar is alleged to have violated or be in violation of,⁵ Legal Staff noted the Complainant failed to provide a narrative of the circumstances giving rise to the filing of the Initial Formal Complaint, making it difficult to ascertain if the factual statements are sufficient to determine what, if any, law, tariff or regulation that may have been violated.⁶ Additionally, Legal Staff noted the Complainant failed to specify the relief sought.⁷

5. Ultimately, Legal Staff recommended the Commission find the Initial Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Legal Staff further recommended the Commission grant the Complainant thirty (30) days to correct the procedural deficiencies identified therein.

6. On June 4, 2019, Complainant filed an Amended Complaint with the Commission.⁸ The Amended Complaint again alleged that Westar failed to properly notify Complainant of a new security deposit that was being assessed to him.⁹

7. On June 17, 2019, Legal Staff prepared a memorandum analyzing the Amended Complaint for compliance with Commission regulations.¹⁰

8. Legal Staff reviewed the Amended Complaint's underlying facts and allegations. While making no recommendation regarding the *validity or truthfulness* of Complainant's claims, Legal Staff determined the Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedures.¹¹

⁵ See Staff Memo, p. 2.

⁶ *Id.*

⁷ *Id.*

⁸ Amended Complaint Against Westar by Elvis J. Grubbs (Jun. 4, 2019) (Amended Complaint).

⁹ *Id.*

¹⁰ See Memorandum Dated June 17, 2019.

¹¹ See *id.*

9. While the Amended Complaint does cite to provisions of law, tariffs, and statutes that Westar is alleged to have violated, and while the Amended Complaint does provide a narrative of the circumstances giving rise to the filing of the Amended Complaint, Complainant failed to specify the relief sought.¹²

10. Based on the foregoing, Legal Staff recommends the Commission find the Amended Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Legal Staff further recommends the Commission grant Complainant thirty (30) days to correct the procedural deficiencies identified therein. Legal Staff further recommends that should the Complainant fail to amend the Amended Complaint within thirty (30) days, the Amended Complaint be dismissed without prejudice.

II. FINDINGS AND CONCLUSIONS

11. The Commission finds and concludes jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101, *et seq.*¹³ The Commission may investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.¹⁴

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

13. The Commission finds and concludes the Complainant shall be granted thirty (30) days to amend its Amended Complaint to correct the procedural deficiencies identified above.

¹² *See id.*

¹³ 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,

¹⁴ *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 Complainant shall have thirty (30) days from the date of this Order to file a second Amended Formal Complaint addressing the procedural deficiencies identified above. If the Complainant does not amend its Amended Complaint within thirty (30) days, the Amended 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).¹⁵

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; Duffy, Commissioner

Dated: 06/20/2019



Lynn M. Retz
Secretary to the Commission

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¹⁵ 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 Susan K. Duffy

FROM: Phoenix Anshutz, Litigation Counsel

DATE: June 17, 2019

SUBJECT: Docket No. 10-WSEE-410-COM
In the Matter of the Complaint Against Westar Energy by Elvis J. Grubbs

EXECUTIVE SUMMARY:

Elvis J. Grubbs (“Complainant”) filed an initial Formal Complaint¹ against Westar Energy, Inc. (“Westar”) on April 9, 2019. It was determined the initial Formal Complaint did not satisfy the procedural requirements of the State Corporation Commission of the State of Kansas’ (“Commission”) rules of practice and procedure. Therefore, Legal Staff recommended the Commission dismiss the Formal Complaint and provide Complainant an opportunity to amend the Formal Complaint. On June 4, 2019, Complainant filed an Amended Complaint² that again failed to satisfy the procedural requirements of the Commission’s rules of practice and procedure. Therefore, Legal Staff recommends the Commission dismiss the Amended Complaint and provide Complainant an opportunity to amend.

BACKGROUND & ANALYSIS:

On April 9, 2019, Complainant filed a Formal Complaint against Westar, alleging that Westar wrongly charged him an additional security deposit without properly notifying him of the charge.³ 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.”⁴

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

² Amended Complaint Against Westar Energy, Inc. (Jun. 4, 2019) (Amended Complaint).

³ *See id.*

⁴ K.A.R. 82-1-220(c)

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;
- (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 showed that the procedural requirements were not met. While the Complainant did cite law, tariffs, and statutes allegedly violated by Westar, thus satisfying procedural requirement (1), the Complainant did not set forth concisely and in plain language the facts that constitute the violations, thus failing procedural requirement (2). Additionally, the Complainant did not specify the relief sought, thus failing procedural requirement (3).

On June 4, 2019, Complainant submitted an Amended Complaint (“Amended Complaint”) alleging that Westar failed to notify Complainant of an additional \$390.00 security deposit assessed to him. A review of the Amended Complaint shows that Complainant has once again failed to meet the procedural requirements of the Commission’s rules of practice and procedure. While Complainant does cite law, tariffs, and statutes allegedly violated by Westar, and does set forth in plain language the facts that constitute the violation, thus meeting procedural requirements (1) and (2), 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* was 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 Amended Complaint should be dismissed.

RECOMMENDATION:

Legal Staff recommends the Commission find the Amended Complaint does not satisfy the procedural requirements of the Commission’s rules of practice and procedure. Likewise, Legal Staff recommends the Commission deny the Amended Complaint in its current iteration and grant the Complainant thirty (30) days to amend the Amended Complaint. Should Complainant fail to correct the procedural deficiencies discussed above, Legal Staff recommends the Amended Complaint be dismissed without prejudice and the docket be close.

CERTIFICATE OF SERVICE

19-WSEE-410-COM

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
06/20/2019
first class mail and electronic service on _____.

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/S/ DeeAnn Shupe

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