

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

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

**NOTICE OF FILING OF COMMISSION STAFF'S
REPORT AND RECOMMENDATION**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission,” respectively) and files its Report and Recommendation (“R&R”) regarding the Formal Complaint filed by Elvis J. Grubbs against Westar Energy, Inc. (“Westar”).¹ The R&R details Staff’s investigation of Westar’s General Terms and Conditions regarding security deposit practices. Among other things, Staff recommends the Commission find Westar complied with its General Terms and Conditions. As such, Staff recommends the Commission dismiss the Formal Complaint without granting Mr. Grubbs’ requested relief.

WHEREFORE, Staff respectfully submits its Report and Recommendation regarding the Formal Complaint filed by Elvis J. Grubbs against Westar Energy, Inc., requests the Commission adopt the recommendations contained therein, and any additional relief the Commission deems just and reasonable.

Respectfully submitted,

/s/ Robert Elliott Vincent
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¹ Previously, Westar Energy, Inc. and Kansas Gas & Electric Company requested authority to change their names contained in their tariffs and Commission records to Evergy Kansas Central, Inc. and Evergy Kansas South, Inc., respectively, d/b/a collectively as “Evergy Kansas Central.” The Commission has approved this request. See Order Approving Name Change, Docket No. 20-WSEE-123-CCN (Oct 8, 2019). Since Mr. Grubbs’ Formal Complaint was filed against Westar Energy, Inc., Staff’s R&R refers to the Respondent as such.

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Susan K. Duffy, Chair
Shari Feist Albrecht, Commissioner
Dwight D. Keen, Commissioner

FROM: Douglas Hall, Research Economist
Justin Prentiss, Senior Research Economist
Lana Ellis, Deputy Chief of Economics and Rates
Robert Glass, Chief of Economics and Rates
Jeff McClanahan, Director of Utilities

DATE: February 18, 2020

SUBJECT: Docket No. 19-WSEE-410-COM: Formal Complaint by Elvis J. Grubbs Against Westar Energy

EXECUTIVE SUMMARY:

On June 18, 2019, Elvis J. Grubbs filed a Formal Complaint against Westar Energy, Inc. (Westar) alleging that Westar violated its General Terms and Conditions Section 3.02.02 by not providing five days written notice prior to requiring a security deposit.¹ Westar billed Mr. Grubbs \$395.00 for a security deposit after Mr. Grubbs defaulted on payment agreements two times within a twelve month period.² Mr. Grubbs does not dispute this in his Complaint. However, Mr. Grubbs did request Westar be found liable for not providing proper notice and damages be awarded. Westar timely filed its Answer.³

Section 3.02.02 of the GT&C requires that Westar provide five days written notice to a customer before requiring “a new or modified deposit to guarantee payment of the bills for electric service rendered”. Staff reviewed the documents of record and concluded that the deposit was warranted, that Westar sent notice of the deposit to Mr. Grubbs by e-mail, which was at the time his preferred method of contact, and that Westar provided notice five days prior to requiring the deposit.

¹ See Amended Complaint (Jun 18, 2019).

² Westar’s General Terms and Conditions (GT&C) Section 3.02.02(d) states:

3.02.02 Security Deposits After Time of Application of Service: Company may at any time after application of service, upon five (5) days written notice, require a new or modified deposit to guarantee payment of the bills for electric service rendered if:

d) The customer has defaulted on a payment agreement(s) two (2) or more times within the most recent twelve (12) month period;

³ See Answer of Westar Energy, Inc. (Sep. 16, 2019).

Therefore, Staff recommends the Commission find Westar complied with its General Terms and Conditions.

Staff concludes that because Westar did not violate its GT&C, no relief should be granted. In the event the Commission disagrees with Staff and finds that Westar did violate its GT&C, Staff notes that the Commission has no statutory authority to award damages. Per K.S.A. 66-176.

BACKGROUND:

On April 9, 2019, Elvis J. Grubbs filed a Formal Complaint against Westar, alleging Westar violated K.S.A. 12-822, K.S.A. 50-6,107, Westar's General Terms and Conditions Section 3.02.02, and the federal CAN-SPAM Act by charging a \$395 Security Deposit without first providing written notice and by sending him an e-mail on April 1, 2019. On April 23, 2019, the Commission ordered Mr. Grubbs' initial Complaint be dismissed with leave to amend.⁴

Subsequently, Mr. Grubbs sent a letter to the Commission restating his grievance and, on June 4, 2019, filed an Amended Formal Complaint.⁵ Litigation Staff informed Mr. Grubbs his June 4, 2019 Amended Formal Complaint did not meet the Commission's procedural requirements as it failed to specify relief sought.⁶ On June 18, 2019, Mr. Grubbs filed a Second Amended Formal Complaint.⁷ While Mr. Grubbs' Second Amended Formal Complaint was pending, on June 20, 2019, the Commission issued an Order dismissing Mr. Grubbs First Amended Formal Complaint with leave to amend.⁸ On July 25, 2019, the Commission ordered Mr. Grubbs' Second Amended Formal Complaint be dismissed.⁹

On August 9, 2019, Mr. Grubbs filed a Petition for Reconsideration,¹⁰ which was granted by the Commission on August 29, 2019.¹¹ The Commission ordered Westar to be served a copy of Mr. Grubbs' Second Amended Complaint.¹² Westar submitted its Answer on September 6, 2019, noting that Mr. Grubbs was charged a deposit as a result of two broken payment agreements within a 12 month period. Westar states that an e-mail was sent to Mr. Grubbs prior to the charge informing him of the deposit.¹³ On October 1, 2019, Mr. Grubbs filed a rebuttal to Westar's response.¹⁴

ANALYSIS:

Mr. Grubbs defaulted on a payment agreement on November 21, 2018. He was then placed on a second payment agreement and defaulted again on January 24, 2019.¹⁵ On January 25, 2019,

⁴ See Order Dismissing Formal Complaint With Leave To Amend (Apr. 23, 2019).

⁵ See Amended Complaint (Jun. 4, 2019).

⁶ See Order Dismissing Amended Formal Complaint and Adopting Staff's Memorandum, pg. 2 (Jul. 25, 2019).

⁷ See Amended Complaint (Jun. 18, 2019).

⁸ See Order Dismissing Amended Formal Complaint With Leave to Amend (Jun. 20, 2019).

⁹ See Order Dismissing Amended Formal Complaint and Adopting Staff's Memorandum (Jul. 25, 2019).

¹⁰ See Petition for Reconsideration (Aug. 9, 2019).

¹¹ See Order on Petition for Reconsideration (Aug. 29, 2019).

¹² See Order on Petition for Reconsideration, p. 6 (Aug. 29, 2019).

¹³ See Answer of Westar Energy, Inc. (Sep. 16, 2019).

¹⁴ See Elvis J. Grubbs Answer Westar Energy, Inc. (Oct. 1, 2019).

¹⁵ Westar's General Terms and Conditions (GT&C) Section 3.02.02(d) states:

Westar sent an e-mail notification that a \$395.00 security deposit would be required and charged to the next bill. Staff notes that a third payment agreement was started on February 4, 2019. Mr. Grubbs does not dispute the appropriateness of the deposit requirement in his Complaint. In the Complaint before the Commission, Mr. Grubbs alleges he was not properly notified of the \$395.00 deposit, thus Westar had violated Westar's General Terms and Conditions (GT&C) Section 3.02.02.¹⁶ Mr. Grubbs further requests the Commission find Westar liable for damages in the amount of \$395.00. Therefore, Staff will examine whether Westar violated Section 3.02.02 its GT&Cs and whether Westar is liable for damages.

General Terms and Conditions

Westar's General Terms and Conditions establish that the Company may require an additional deposit for existing customers upon five days written notice. Specifically, Section 3.02.02 states:

3.02.02 Security Deposits After Time of Application of Service: Company may at any time after application of service, *upon five (5) days written notice*, require a new or modified deposit to guarantee payment of the bills for electric service rendered...(emphasis added).

Mr. Grubbs does not dispute that he was appropriately billed for a security deposit, only that he was not provided proper notice by Westar. Per the requirements of the Section 3.02.02, Staff will address whether written notice was provided prior to the requirement of the deposit and whether five day notice was provided prior to the requirement of the deposit.

Written Notice Provided

Westar was required, per its GT&C Section 3.02.02, to provide Mr. Grubbs written notice before requiring a new or modified security deposit. GT&C Section 2.06.A defines Notices as follows:

Company shall give written notice to customer and customer's agent. Notice shall be delivered or mailed to customer's address as shown in customer's service agreement or other Company records.

Mr. Grubbs asserts he did not receive notice and that Westar provided no evidence that notice was sent.¹⁷ Westar's customer contact inquiry log indicates an e-mail was sent to Mr. Grubbs on January 25, 2019, to notify him a deposit would be required in order to restore service.¹⁸ Documents submitted by Westar further indicate Mr. Grubbs set up an e-mail address as his preferred method of contact when he established electric service.¹⁹ Section 2.06.A does not specify that notice shall be sent by postal mail or other courier service, or that notice shall be sent to a physical address, only that notice be sent to the address shown in the customer's service agreement or other Company records. Westar's customer logs show that an e-mail address was

3.02.02 Security Deposits After Time of Application of Service: Company may at any time after application of service, upon five (5) days written notice, require a new or modified deposit to guarantee payment of the bills for electric service rendered if:

d) The customer has defaulted on a payment agreement(s) two (2) or more times within the most recent twelve (12) month period;

¹⁶ See Amended Complaint (Jun. 18, 2019).

¹⁷ See Amended Complaint, p. 2 (Jun. 18, 2019).

¹⁸ See DR 1.

¹⁹ See Answer of Westar Energy, Inc., p. 1 (Sep. 16, 2019).

added to the customer's account on September 23, 2018. Therefore, Staff concludes an e-mail sent to the address on file in the Company records would constitute proper notice.

Mr. Grubbs also challenges the sufficiency of Westar's email retention policies and asserts Westar has provided no proof the January Security Deposit Notice e-mail was sent.²⁰ While Staff was not able to retrieve or review the specific e-mail sent to Mr. Grubbs, evidence exists to support finding a deposit notification e-mail was sent. Specifically, Westar's e-mail logs indicate a security deposit message was e-mailed to Mr. Grubbs at the e-mail address on file with the Company.²¹ Therefore, Staff concludes Westar properly e-mailed the required security deposit notice, which provided written notice.

Five Day Notice Provided

Westar was required to provide Mr. Grubbs five days notice before requiring a new or modified security deposit. The first of four deposit installments in the amount of \$98.75 was charged to Mr. Grubbs' account on February 21, 2019,²² with a due date of March 19, 2019. Over seven weeks passed from the time that the deposit notification e-mail was sent, January 25, 2019, and the due date of bill including the first deposit installment, March 19, 2019. Because a sufficient amount of time was provided between written notice of the security deposit requirement and the due date of said deposit, Staff concludes that the deposit notification e-mail satisfies the requirement for five day notice per GT&C Section 3.02.02.d.

Liability for Damages

Mr. Grubbs requests that Westar be found liable for damages in the amount of \$395.00. Westar did not violate its GT&C, therefore, no relief should be granted. In the event the Commission disagrees with Staff and finds that Westar did violate its GT&C, Staff notes that per K.S.A. 66-176, the Commission has no statutory authority to award damages.

RECOMMENDATION:

Because the deposit requirement was warranted, written notice was provided, and five day notice was provided, Staff recommends the Commission find Westar complied with its General Terms and Conditions and dismiss the Complaint, and that no further relief be granted.

²⁰ See Amended Complaint, p. 2 (Jun. 18, 2019).

²¹ See Answer of Westar Energy, Inc., p. 3 (Sep. 16, 2019).

²² See Letter of Elvis J. Grubbs of April 12, 2019, p. 2 (Apr. 12, 2019).

CERTIFICATE OF SERVICE

19-WSEE-410-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was placed in the United States mail, postage prepaid, or electronically served this 24th day of February, 2020, to the following:

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/s/ Vicki Jacobsen

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