

**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 by Elvis J.    )                   Docket No. 19-WSEE-410-COM  
Grubbs.                                    )

**ORDER ON PETITION FOR RECONSIDERATION**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds the following:

**BACKGROUND:**

1.       On April 9, 2019, Elvis J. Grubbs (Complainant) filed an Initial Formal Complaint against Westar Energy, Inc. (Westar).<sup>1</sup> The Complainant alleged that Westar violated Kansas statutes and its General Terms and Conditions tariff (GTC) but did not state any underlying action by Westar that constituted the alleged violations.<sup>2</sup>

2.       On April 12, 2019, the Complainant filed a letter with the Commission addressed to the Commission’s Office of Public Affairs & Consumer Protection (PACP), stating he was “not notified of the 395.00 deposit” Westar had required him to pay and reiterating his allegations against Westar.<sup>3</sup>

3.       On April 15, 2019, Commission Litigation Staff (Staff) prepared a Memorandum analyzing the Initial Formal Complaint for compliance with Commission regulations.<sup>4</sup> Upon its

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<sup>1</sup> Complaint Against Westar Energy, Inc. by Elvis J. Grubbs, p. 1 (Apr. 9, 2019) (Initial Formal Complaint).

<sup>2</sup> *See id.*

<sup>3</sup> Letter of Elvis J. Grubbs of April 12, 2019, p. 1 (Apr. 12, 2019).

<sup>4</sup> Memorandum, Legal Division (Apr. 15, 2019), attached to *Order Dismissing Formal Complaint with Leave to Amend* (Apr. 23, 2019).

review of the stated facts and allegations, and while making no recommendation regarding the validity or truthfulness of the Complainant's claims, Staff determined the Complainant had not satisfied the procedural requirements for complaints under the Commission's regulations.<sup>5</sup> Staff specifically noted two deficiencies in the Complaint: (1) 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 whether the Complainant's factual statement is sufficient to determine any possible tariff, regulatory, or statutory violations; and (2) the Complainant failed to state the relief sought.<sup>6</sup>

4. Ultimately, Staff recommended the Commission dismiss the Initial Formal Complaint for failing to satisfy the procedural requirements of K.A.R. 82-1-220(b) and allow the Complainant 30 days to correct the procedural deficiencies and submit an Amended Complaint.<sup>7</sup>

5. On April 23, 2019, the Commission issued an *Order Dismissing Formal Complaint with Leave to Amend*, giving the Complainant 30 days to file an Amended Complaint.<sup>8</sup>

6. On April 29, 2019, the Complainant filed a second letter with the Commission, also addressed to PACP, reasserting that Westar did not properly notify him of the required \$395.00 deposit.<sup>9</sup> Content wise, the Complainant's second letter essentially mirrored his first letter.

7. On June 4, 2019, the Complainant filed an Amended Complaint, reciting the same allegations as contained in the Initial Formal Complaint.<sup>10</sup> The Complainant provided no specific request for relief.

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<sup>5</sup> Memorandum, p. 2.

<sup>6</sup> Memorandum, p. 2.

<sup>7</sup> Memorandum, p. 2.

<sup>8</sup> *Order Dismissing Formal Complaint with Leave to Amend*, Ordering Clause A (Apr. 23, 2019).

<sup>9</sup> Letter from Mr. Grubbs of April 29, 2019 of Non Notification of the Deposit, p. 1 (Apr. 29, 2019).

<sup>10</sup> Amended Complaint, pp. 1-2 (June 4, 2019).

8. On June 17, 2019, Staff prepared a second Memorandum, alleging the Complainant “did not set forth concisely and in plain language the facts that constitute the violations . . . [and] . . . did not specify the relief sought.”<sup>11</sup>

9. On June 18, 2019, the Complainant filed a Second Amended Complaint, containing the same allegations as in the previous Complaints, but also explaining the nature of Westar’s alleged violations and “pray[ing] that Wastar [sic] Energy be found liable for damages of the deposit in the amount of 395.00 as a result of no five days written notice to Mr. Grubbs.”<sup>12</sup>

10. On June 20, 2019, the Commission issued an Order in response to Staff’s June 17, 2019 Memorandum, finding that the Complainant’s June 4, 2019 Amended Complaint did not satisfy the procedural requirements for filing formal complaints as detailed in K.A.R. 82-1-220.<sup>13</sup> The Order gave the Complainant another 30 days to amend his Amended Complaint.<sup>14</sup>

11. On July 16, 2019, Staff filed a third Memorandum, stating that although the Complainant’s June 18, 2019 Second Amended Complaint properly cites law, tariffs and statutes and sets forth the facts that constitute the alleged violations, it does not “set forth relief that may be granted by the Commission, thus failing [the third] procedural requirement” of K.A.R. 82-1-220(b).<sup>15</sup>

12. On July 25, 2019, the Commission issued an *Order Dismissing Amended Formal Complaint and Adopting Staff’s Memorandum*, finding that the “Complainant failed to specify a relief that may be granted by the Commission,” and thus, “[t]he Commission . . . lacks the

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<sup>11</sup> Second Memorandum, Legal Division, p. 2 (June 17, 2019), attached to *Order Dismissing Amended Complaint with Leave to Amend* (June 20, 2019).

<sup>12</sup> Second Amended Complaint, p. 3 (June 18, 2019).

<sup>13</sup> *Order Dismissing Amended Complaint with Leave to Amend*, ¶ 12 (June 20, 2019).

<sup>14</sup> *Id.* at Ordering Clause A.

<sup>15</sup> Third Memorandum, Legal Division, p. 2 (July 16, 2019), attached to *Order Dismissing Amended Formal Complaint and Adopting Staff’s Memorandum* (July 25, 2019).

jurisdiction to conduct the requested investigation . . . [and] . . . the Second Amended Complaint of Elvis J. Grubbs is hereby dismissed.”<sup>16</sup>

13. On August 9, 2019, the Complainant timely filed a Petition for Reconsideration (PFR) of the Commission’s July 25, 2019 Order. The Complainant noted K.A.R. 82-1-220(b)’s three procedural requirements for a formal complaint.<sup>17</sup> The Complainant argued that his June 18, 2019 Second Amended Complaint alleged that Westar violated Section 3.02.02 of its GTC tariff.<sup>18</sup> The Complainant further argued that the Complaint stated the facts constituting the violation, namely, Westar’s failure to provide the Complainant with five days written notice regarding his need to make a \$395.00 security deposit payment.<sup>19</sup> Finally, the Complainant argued that the Complaint stated the relief he sought, namely, the return of his \$395.00 security deposit payment.<sup>20</sup>

**LEGAL STANDARDS:**

14. K.A.R. 82-1-220(b) requires formal complaints to be submitted in writing and to meet the following conditions: (1) fully and completely advise each respondent and the Commission as to the provisions of law or the regulations or Commission orders 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.

15. A Petition for Reconsideration must state the specific grounds upon which relief is requested.<sup>21</sup> The purpose of requiring matters to be raised in a Petition for Reconsideration is to inform other parties and the Commission “where mistakes of law and fact were made in the

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<sup>16</sup> *Order Dismissing Amended Formal Complaint and Adopting Staff’s Memorandum*, ¶¶ 8, 10, 13 (July 25, 2019).

<sup>17</sup> PFR, p. 2 (Aug. 9, 2019).

<sup>18</sup> PFR, p. 2.

<sup>19</sup> PFR, p. 2.

<sup>20</sup> PFR, p. 2.

<sup>21</sup> K.S.A. 77-529(a).

order.”<sup>22</sup> An order is lawful if it is within the statutory authority of the Commission and if the statutory rules are followed.<sup>23</sup> All actions of an administrative agency have a rebuttable presumption of validity.<sup>24</sup> As the party challenging the legality of the Commission’s Order, the Petitioner bears the burden of proving the Commission’s action was invalid.<sup>25</sup>

#### **FINDINGS AND CONCLUSIONS:**

16. In its July 25, 2019 *Order Dismissing Amended Formal Complaint and Adopting Staff’s Memorandum*, the Commission found that the Complainant’s June 18, 2019 Second Amended Complaint met the first two procedural requirements of K.A.R. 82-1-220(b), but had failed to meet the third procedural requirement of specifying “a relief that may be granted by the Commission.”<sup>26</sup>

17. Upon reconsideration of the Complainant’s June 18, 2019 Second Amended Complaint, the Commission finds that the Complainant “pray[ed] that Wastar [sic] Energy be found liable for damages of the deposit in the amount of 395.00.”<sup>27</sup> The Commission construes this statement as a prayer for relief, and thus, it meets K.A.R. 82-1-220(b)(3)’s procedural requirement that the Complainant “state the relief sought.”

18. Therefore, the Commission finds the Complainant, by his June 18, 2019 Second Amended Complaint, has satisfied the procedural requirements for making a formal complaint under K.A.R. 82-1-220(b). The Commission finds the Complainant’s allegations, if true, would establish a prima facie case for action by the Commission.<sup>28</sup> Thus, the Commission grants the

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<sup>22</sup> *Citizens’ Util. Ratepayer Bd. v. State Corp. Comm’n*, 24 Kan. App. 2d 222, 228 (1997) (citing *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm’n*, 7 Kan. App. 2d 519, 525 (1982)).

<sup>23</sup> *Kan. Gas & Elec. Co v. State Corp. Comm’n*, 239 Kan. 483, 496 (1986).

<sup>24</sup> *Trees Oil Co. v. State Corp. Comm’n*, 279 Kan. 209, 226, 105 P.3d 1269 (2005).

<sup>25</sup> K.S.A. 77-621(a)(1). See *Trees Oil Co.*, 279 Kan. at 226.

<sup>26</sup> *Order Dismissing Amended Formal Complaint and Adopting Staff’s Memorandum*, ¶ 8.

<sup>27</sup> Second Amended Complaint, p. 2.

<sup>28</sup> See K.A.R. 82-1-220(c).

Complainant's Petition for Reconsideration and finds that Westar shall be served with a true copy of the June 18, 2019 Second Amended Complaint in accordance with K.A.R. 82-1-220(c).

**THEREFORE, THE COMMISSION ORDERS:**

- A. The Complainant's Petition for Reconsideration is granted.
- B. Westar shall be served with a true copy of the Complainant's June 18, 2019 Second Amended Complaint.
- C. 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).<sup>29</sup>
- D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 08/29/2019



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Lynn M. Retz  
Executive Director

MJD/zc

<sup>29</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

**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 first class mail and electronic service on 08/29/2019.

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