

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

Before Commissioners:      Shari Feist Albrecht, Chair  
                                 Jay Emler  
                                 Pat Apple

In the Matter of the Complaint Against Westar    ) Docket No. 15-WSEE-384-COM  
Energy by Richard Schulze                                )

**ORDER ADOPTING STAFF'S 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 finds as follows:

**I.      BACKGROUND**

1.      On March 2, 2015, Richard Schulze (Complainant) filed a formal complaint against Westar Energy, Inc. (Westar) with the Commission.<sup>1</sup> The complaint, among other things, alleges that Westar is attempting to utilize a revert to owner agreement, to collect for service utilized by a different customer nearly 14 years after the Complainant had sold the property and notified Westar by phone to terminate the revert to owner agreement.

2.      On April 1, 2015, Litigation Staff for the Commission prepared a Memorandum analyzing the formal complaint for compliance with Commission regulations.

3.      Litigation Staff reviewed the formal complaint's underlying facts and allegations, and while making no recommendation regarding the *validity or truthfulness* of the formal complaint's claims, believes that the Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedure. Litigation Staff specifically noted three deficiencies. First, the Complaint does not cite to any tariff, regulation, or statute. Second,

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though the Complaint provides a detailed narrative it is not possible to ascertain if the factual statement is sufficient to determine what if any tariff, regulations, or statutes were violated.

Third, the Complaint does not specifically state the relief sought.

4. Litigation Staff recommends the Commission find the formal complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Litigation Staff further recommends the Commission grant the Complainant thirty (30) days to correct the procedural deficiencies addressed above. However, Litigation Staff further recommends that if the Complainant fails to amend his complaint within thirty (30) days of the Commission's order the complaint should be dismissed.

## **II. FINDINGS AND CONCLUSIONS**

5. The Commission is satisfied that jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq*<sup>2</sup>. Specifically, the Commission may investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.<sup>3</sup>

6. Litigation Staff's Memorandum dated April 1, 2015, attached hereto as Attachment A, is hereby adopted and incorporated by reference.

7. The Commission finds that the Complainant has not satisfied the procedural requirements required for the filing of formal complaints as detailed in K.A.R. 82-1-220.

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<sup>2</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."); *see also* K.S.A. 66-1,205(a).

<sup>3</sup> *See* K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

8. The Commission finds that the Complainant has thirty (30) days to amend his complaint to correct the procedural deficiencies above.

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

(A) The Complainant shall have thirty (30) days from the date of this order to file an Amended Formal Complaint that addresses the procedural deficiencies addressed above. The Commission shall deem failure to file an Amended Formal Complaint as a voluntary withdrawal of the complaint and shall deem the matter resolved.


(B) The parties have fifteen (15) days, plus three (3) days if service of this order 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. 2014 Supp. 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.**

Albrecht, Chair, Emler, Commissioner, Apple, Commissioner

Dated: APR 14 2015

  
ORDER MAILED APR 15 2015  
Amy L. Gilbert  
Secretary

SRF

**MEMORANDUM  
LEGAL DIVISION**

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

**FROM:** Samuel Feather, Litigation Counsel

**DATE:** April 1, 2015

**SUBJECT:** 15-WSEE-384-COM  
In the Matter of the Complaint Against Westar Energy by Richard Schulze

**EXECUTIVE SUMMARY:**

Richard Schulze (Complainant) has filed a formal complaint against Westar Energy, Inc. (Westar). The formal complaint does not satisfy the procedural requirements of the Kansas Corporation Commission's (Commission) rules of practice and procedure. Legal Staff recommends the Commission grant the Complainant an opportunity to amend his complaint.

**BACKGROUND & ANALYSIS:**

On March 2, 2015, the Complainant filed a formal complaint arising out of a dispute between the Complainant and Westar regarding Westar's attempt to utilize an old revert to owner agreement 14 years after the Complainant had sold the property. Upon the filing of a formal complaint, the Commission must determine "whether or not the allegations, if true, would establish a prime facie case for action by the commission and whether or not the formal complaint conforms to [the Commission's] regulations."<sup>1</sup>

K.A.R. 82-1-220 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

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

(3) state the relief sought by the complainant.

A review of the formal complaint shows that these procedural requirements have not been met. The Complainant does not cite to any tariff, regulation, or statute and thus does not conform to procedural requirement (1). The Complaint does provide a detailed account of the events leading up to filing his complaint. However, without citing any specific tariff, regulation, or statute violated by Westar, it is not possible to determine if the factual statement is sufficient to meet the procedural requirement (2). Finally, the Complainant does not specifically state the relief sought. Though the Commission could infer that the Complainant is either seeking to change Westar's practices regarding termination of revert to owner agreements or may be disputing the invoice Westar sent to him the wording of the complaint is unclear and thus does not conform to procedural requirement (3).

Due to the Complaint's failure to meet the procedural requirements a determination of *prima facie* is not possible at this time.

No recommendation regarding the *validity or truthfulness* of the complaint'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 Commission should find that: the formal complaint does not comply with the procedural requirements of K.A.R. 82-1-220, and that a determination of a *prima facie* case for Commission action, is not yet warranted. However, K.A.R. 82-1220(c) allows for a complainant to amend his complaint if it fails to meet the procedural requirements or allege sufficient facts for a *prima facie* determination.

**RECOMMENDATION:**

Legal Staff recommends the Commission find the formal complaint does not satisfy the procedural requirements of the Commission's rules of practice and procedure. Legal Staff further recommends the Commission grant the complainant thirty days from the date of this order to amend his complaint. Furthermore, if the Complainant fails to correct the procedural deficiencies addressed herein the complaint should be dismissed.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET  
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
SAMUEL FEATHER, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
RICHARD L. SCHULZE 5444 W 152 TERR LEAWOOD, KS 66224		
CATHRYN J. DINGES, SENIOR CORPORATE COUNSEL WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889		
JEFFREY L. MARTIN, VICE PRESIDENT, REGULATORY AFFAIRS WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889		

ORDER MAILED APR 15 2015

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.