

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

In the Matter of the Complaint Against)
Westar Energy by Lonnie & Patricia) 20-WSEE-096-COM
Dalrymple.)

NOTICE OF FILING OF REPORT AND RECOMMENDATION

Staff hereby files a Report and Recommendation (R&R), attached hereto and made a part hereof by reference. The R&R provides analysis of Lonnie and Patricia Dalrymple's complaint against Westar Energy Inc. The Complaint questions the reasonableness of the current tariff which requires customers to pay for a portion of repairs or upgrades to Westar's failed service line, the tariff requirement that Westar provides a \$1,000 reimbursement to the customer to cover the cost of excavation for the new service line and allegations of a violation of electric safety codes and Westar service standards.

Staff recommends the Commission dismiss the Complaint estimating the \$1,000 reimbursement will be sufficient to cover the excavation cost for the Complainant. Staff notes there is a possibility that these cost for an average service line will exceed this amount in future cases. Therefore, Staff recommends this section of the tariff be revisited in the next general rate case and the reimbursement amount updated as necessary. Finally, Staff recommends the Commission require Westar to set clear guidelines that are provided to the customer regarding the length of time a "temporary" line may remain in operation for any condition that requires temporary service.

WHEREFORE, Staff submits its R&R, attached hereto, for Commission consideration.

Respectfully submitted,



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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

From: Leo Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

Date: March 5, 2020

Re: 20-WSEE-096-COM: In the Matter of the Complaint Against Westar Energy Inc. by
Lonnie and Patricia Dalrymple

EXECUTIVE SUMMARY:

On August 28, 2019, Lonnie and Patricia Dalrymple (Dalrymple or Complainant) filed the subject Complaint. In the opening paragraph of the Complaint, Dalrymple alleges Westar violated the terms and conditions of its tariff and failed to follow electric code safety standards. As a remedy, the Complainant requests the Commission order Westar to follow its tariff and replace Westar's underground service line that serves the Complainant's home at no cost to the Complainant.

While the above is the crux of the Complaint and the requested remedy, the Complaint raises several additional allegations regarding Westar's performance and the reasonableness of the tariff with respect to customer costs for replacing underground service lines. Staff's summary of the allegations and other concerns raised in the Complaint are as follows:

1. The current tariff requires Westar to provide a \$1,000 reimbursement to the customer in the form of bill credits to cover the cost of excavation for the new service line, backfill of the trench, and restoration of the surface over the trench.¹ The reimbursement essentially is a payment for an advance from the customer at 0% interest on the cost of the installation upgrade.
2. Westar owns the failed direct buried service line. The current tariff requires the customer to share in the cost of replacing a facility that is owned by Westar. It is unreasonable to expect the customer to pay for a portion of the repair and upgrade of Westar's failed service line when the failure was not due to any action taken by the customer.

¹ Every General Terms and Conditions 7.06.02(iv).

3. The temporary service installed by Westar resulted in violations of electric safety codes and Westar service standards.

Upon completing our investigation, Staff concludes Westar did not violate the terms of its tariff. Further, Staff concludes the \$1,000 reimbursement through bill credits for trenching costs is a reasonable means of compensating the Complainant for costs associated with trenching for installation of 135 feet of replacement service line.

Staff also concludes Westar did not violate the National Electric Safety Code (NESC) because the code allows the operator to waive certain code requirements for temporary or emergency installations. Of greater concern to Staff is the safety hazard created by leaving the temporary service line on top of the ground for the last seven months. In future situations where action regarding a temporary service line is disputed, Staff recommends the Commission direct Westar to follow the terms of its tariff and disconnect a temporary service line within 60 days, if the customer has not taken action to meet Westar's construction standards. Any considerations regarding the Complainant's due process rights and the merits of the Complaint can be resolved after the potential safety hazard has been mitigated.

BACKGROUND:

The Westar tariff considers overhead service lines as the standard service configuration for Westar customers. However, since at least 1955², Westar tariffs have addressed underground service lines. Since that time, it is Staff's belief that Westar or its predecessor companies have always required the customer to pay for underground service installation costs over and above the cost to install 135 feet of equivalent overhead service. A compilation of the relevant tariff terms that were in effect when the Complainant constructed his home is attached as Exhibit 1 to this Report. Currently, Westar estimates it has 362,000 customers served by underground service lines with as many as 137,000 served by direct buried service lines.³ Staff notes this number does not include the direct buried service lines in former Kansas City Power & Light territory which recently was merged with Westar to form Evergy.

The Complainant's home was constructed in 1979 with electric service provided by a direct buried underground service line that is approximately 190 feet long. For a residential home, a direct buried service line consists of three insulated electric conductors that are typically buried at least 24 inches below the surface. The insulation of the cables is designed to resist moisture and prevent a short circuit condition to ground. Over the years, presumably because of conductor failures, Westar changed its construction standards to require all underground conductors to be placed inside plastic pipe conduits. While the insulation of the cable placed inside the conduit still resists groundwater penetration, the conduit provides additional protection to the electric cable, and it also allows the cable to be removed and replaced at minimal installation costs. Westar is unsure as to the time at which its construction standard changed, but acknowledges conduit has been required for underground conductors installed in northeast Kansas for at least the last 20 years.⁴

In Docket 18-WSEE-328-RTS (18-328 Docket), the Commission approved a tariff change that requires Westar to pay for 135 feet of excavation costs associated with replacing direct buried

² Sheet 16, Kansas Power and Light Company, Rules and Regulations, March 1, 1955.

³ Response to Staff Data Request 331, Docket 18-WSEE-328-RTS.

⁴ Response to Staff Data Request 7D, Docket 15-WSEE-580-COM.

service lines.⁵ As noted in Staff Direct Testimony⁶ describing the requirement, Westar customers with underground service lines have always participated in the construction of underground service installations by providing the pathway for the cable installation. In the case of direct buried cable, this pathway was a trench. Under the current construction standards, the pathway is conduit buried at a depth of 30 inches. For underground services, Westar's contribution to the project has been installing the cable in the pathway provided by the customer and maintaining the electric conductor after installation. Any other costs associated with the new service line installation such as conduit, any footage beyond 135 feet, and any cost of extraordinary excavation would remain the responsibility of the customer.

The tariff change in the 18-328 Docket also prescribes the process of how Westar will "normally" reimburse the customer for any expenses associated with providing the trench for the replacement service line. A copy of the tariff is attached to this Report and Recommendation as Exhibit 2. The tariff requires Westar to reimburse the customer for trenching costs of up to \$1,000 by issuing bill credits to the customer's account with Westar. At an estimated cost of \$5.45 per foot⁷ to open and close a trench, the maximum reimbursement amount was expected to fully reimburse 135 feet of ordinary trenching costs at the time the tariff was approved.

When an underground service line fails, Westar's tariff requires a temporary service line to be installed on top of the ground in order to minimize the customer outage. The tariff does not define how long a temporary condition should exist, but it does allow Westar to disconnect a customer if the service is considered to present an unsafe condition.⁸

To address electric distribution safety issues, the Commission adopted the 1997 edition of the National Electric Safety Code (NESC) in K.A.R. 82-12-2. Although not adopted as a regulation by the Commission, the most recent version of the NESC allows a service line to lie upon the surface of the ground if it is considered an emergency installation.⁹ In these circumstances, the only code requirements are that the supply cable does not obstruct traffic and that it is appropriately marked. Although the NESC recognizes the existence of temporary installations as something different than an emergency installation, it does not define the conditions that warrant an emergency or temporary installation. In any case, the NESC allows its rules to be waived in the case of emergency or temporary installations¹⁰ provided that construction and maintenance are performed in accordance with accepted good practice for the given local conditions¹¹.

ANALYSIS:

After reviewing the Complaint and Westar's Answer to the Complaint, Staff has determined that Westar is following the terms and conditions of its tariff by installing a temporary service and advising the Complainant to install conduit for the permanent installation. To date, Dalrymple has failed to install the conduit that will allow Westar to complete the service line replacement. Based

⁵ See Para. 35 of Order Approving Non-unanimous Stipulation and Agreement, Docket 18-WSEE-328, September 27, 2018.

⁶ See Docket 18-WSEE-328-RTS, Direct Testimony of Leo M. Haynos.

⁷ Response to Staff Data Request 332, Docket 18-WSEE-328-RTS.

⁸ See Section 5.01(A)(4) of General Terms & Conditions, Westar Tariff.

⁹ See Section 311, National Electric Safety Code, 2017 edition.

¹⁰ Ibid. Section 014.

¹¹ Ibid. Section 012.

on the Complaint, Dalrymple considers the customer's obligations for replacing the service line ostensibly to be an unjust and unreasonable burden placed on the customer. However, in the 18-328 Docket, the Commission has determined the replacement policy to be just and reasonable. In its Order approving the terms of the tariff, the Commission stated:

The Commission finds that approval of the NS&A will result in nondiscriminatory, just and reasonable rates that are not unduly preferential and that will enable Westar to continue to provide sufficient and efficient service. The Commission finds the NS&A represents a fair and reasonable compromise of the disputed issues in this case and establishes rates that properly balance the interests of the parties to this proceeding, both current and future ratepayers, and the public.¹²

Staff's further discussion on the reasonableness of the tariff and analysis of the additional allegations and concerns listed in Dalrymple's Complaint is as follows:

- 1. The current tariff requires Westar to provide a \$1,000 reimbursement to the customer in the form of bill credits to cover the cost of excavation for the new service line, backfill of the trench, and restoration of the surface over the trench. The reimbursement essentially is a payment for an advance from the customer at 0% interest on the cost of the installation upgrade;*
- 2. Westar owns the failed direct buried service line. The current tariff requires the customer to share in the cost of replacing a facility that is owned by Westar. It is unreasonable to expect the customer to pay for a portion of the repair and upgrade of Westar's failed service line when the failure was not due to any action taken by the customer.*

Staff views the sequential process contemplated by the approved tariff for installing any service line (new or replacement) in Westar territory and the party responsible for the step is as follows:

1. Determining the path desired for the service line – Customer
2. Excavating the trench from the transformer pole to the meter box – Customer (if replacement, costs for standard excavating reimbursable by Westar)
3. Purchasing and installing 3" conduit with pull rope from transformer pole to meter box - Customer
4. Inspecting the conduit installation to ensure it meets construction specifications – Westar
5. Installing, connecting testing service line – Westar
6. Closing trench and restoring surface – Customer (if replacement, costs for closure and restoration reimbursable by Westar)

To Staff, Westar's underground service line installation process appears to be 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. To do this, the customer must work with the excavator/conduit-installer to design the placement for the new service line and to minimize disruption of existing landscaping and other underground facilities serving the customer. Westar's involvement in the process only occurs when the service line is ready to be installed.

¹² Para. 101, Order Approving Non-unanimous Stipulation and Agreement, Docket 18-WSEE-328-RTS.

Consistent with past practices over the last 65 years, Staff believes it is appropriate that customers desiring underground service lines to continue to be responsible for providing the underground pathway for the service line. Also, that responsibility should include any construction standard upgrades such as requiring conduit for conductor placement when replacement of the existing service lines become necessary. This approach eliminates any excavation activity on the part of Westar, which should help control Westar's (and ratepayer's) costs associated with service line replacement. In Staff's opinion, the requirement for a customer contribution to underground construction costs minimizes the subsidization of customers served through underground service lines by those customers that are served by conventional overhead service lines. Also, because the customer is providing an up-front payment of the construction costs, there is an incentive to the customer to choose the most economic route and means of line installation.

However, the approved tariff does not hold the customer entirely responsible for constructing the pathway for a replacement service line. As discussed in the 18-328 Docket, Staff contends Westar should be responsible for the cost of excavating the replacement trench because it was the failure of Westar's service line that caused the Complainant's original trench no longer to be a viable underground pathway for the replacement line.

The current tariff acknowledges Westar's responsibility for the replacement trench, but it still requires the customer to provide the entire underground pathway. After the replacement pathway is constructed, the tariff requires Westar to reimburse the customer up to \$1000 for 135 feet of excavation costs by providing bill credits. The Complainant contends the reimbursement practice amounts to requiring the customer to give Westar a loan. Staff notes, however, the tariff states that reimbursements will *normally* be provided through bill credits. Staff views the use of the word "normally" to imply that immediate reimbursement for costs incurred by the customer that are Westar's responsibility is an option that could be requested by the customer. If the customer decides to accept bill credits as a means of reimbursement for excavation, the period of reimbursement may take several months depending on how much power the customer consumes. As noted in Staff's testimony in the 18-328 Docket, the average bill for a Westar residential customer is \$131/month.¹³ Therefore, a \$1000 excavation cost would be recovered by the average customer over an 8-month billing period.

At the present time, Staff believes the \$1000 maximum reimbursement for excavating is a sufficient amount to excavate a trench for the Complainant's service line and should be sufficient for a typical service line replacement. We note that Westar has up to 137,000 direct buried service lines that are at least 20 years old and eventually will need to be replaced. Therefore, Staff anticipates the situation experienced by the Complainant will become a common occurrence over the next few decades. In the future, it is possible the \$1,000 maximum reimbursement allowed in the approved tariff may not be sufficient to cover all excavation costs associated with replacing the underground pathway that failed because of Westar's failed direct buried service lines. Therefore, Staff recommends this section of the tariff be revisited in the next general rate case and the reimbursement amount updated as necessary.

3. The temporary service installed by Westar resulted in violations of electric safety codes and Westar service standards.

¹³ Response to Staff Data Request 123, total proof of revenue tab, Docket 18-WSEE-328-RTS.

The final relevant issue raised by the Complainant alleges Westar violated the NESC by not protecting the temporary service line laid on top of the ground. After reviewing the facts in this case, Staff believes Westar was not in violation of the NESC because the code allows the operator to waive code requirements for emergency or temporary lines. Staff agrees with the Complainant that Westar's initial installation created a potential safety hazard because the line was not well protected across a roadway before energizing the line. However, Staff notes Westar promptly remedied the situation after it was brought to their attention by the Complainant. As shown in Exhibit 3, Westar installed the service line in conduit, which in Staff's opinion provides adequate marking of the temporary line and offers some protection from outside force damage. Although the temporary line is somewhat protected, Staff notes two 120-volt energized cables strung across the surface of the ground with no adequate upstream fusing present a safety hazard even if they are in plastic conduit. Westar's tariff allows it to disconnect any customer if Westar believes the electric service results in an unsafe condition. Staff recognizes that in this case the investigation and discovery process associated with this Complaint have been lengthy and have contributed to the amount of time the temporary service has been in use. Staff contends addressing potential safety hazards should take precedence over resolving tariff disputes. Therefore, Staff recommends the Commission require Westar to set clear guidelines that are provided to the customer regarding 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 of this nature should not remain in operation more than 60 days. When that time is exceeded, Westar should follow its tariff and disconnect the service if it presents a safety hazard. In Staff's opinion, any billing disputes can be resolved before the Commission if necessary after the safety issues are addressed.

CONCLUSION:

Staff concludes Westar is following its approved tariff by directing the Complainant to construct the underground pathway for a replacement service line. Staff agrees with Westar that the terms of the tariff including the reimbursement mechanism for trenching are just and reasonable. Although the \$1,000 maximum reimbursement is expected to cover the 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 concludes Westar is not in violation of applicable safety codes by installing a temporary service to serve the Complainant's home until the permanent line can be installed.

RECOMMENDATION:

Staff recommends the Commission dismiss the subject Complaint. Staff estimates the \$1,000 maximum reimbursement will be sufficient to cover the excavation costs for the Complainant. However, there is a possibility that excavation costs for an average service line will exceed this amount in future cases. Therefore, Staff recommends this section of the tariff be revisited in the next general rate case and the reimbursement amount updated as necessary.

Lastly, Staff recommends the Commission require Westar to set clear guidelines that are provided to the customer regarding 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 of this nature should not remain in operation more than 60 days. When that time is exceeded, Westar should follow its

tariff and disconnect the service if it is deemed a safety hazard. In Staff's opinion, any billing disputes can be resolved before the Commission if necessary after the safety issues are addressed.

Exhibit 1
The Kansas Power and Light Company
General Terms and Conditions-Electric Rules and Regulations, Sheets 17-18
Effective October 1, 1976

5.03 EQUIPMENT FURNISHED BY UTILITY

5.03.01 Overhead Electric Service Lines: Utility will furnish and install overhead electric service lines, free of charge, from distribution pole lines to exterior of Customer's premises, provided not more than one hundred thirty-five (135) feet of service line is required in addition to extensions of distribution lines as provided under Section 7 herein. Such extension less than or equal to one hundred thirty-five (135) feet shall be designated as a standard service line extension. If Customer requests a service line extension in excess of one hundred thirty-five (135) feet, Customer shall be responsible for all costs incurred by Utility in excess of those costs associated with a standard extension.

5.03.02 Underground Electric Service Lines: If Customer desires that existing overhead service lines be replaced by underground service lines such service lines may be installed by Utility according to standards of Utility and at Customer's sole cost and expense. If Customer desires an underground service line where an overhead service line is not in use or is inadequate, such may be installed by Utility according to standards of Utility. Customer will contribute to Utility upon request, an amount equal to the estimated cost differential between the cost of the underground service line and the cost of a standard overhead service line.

5.03.04 Ownership of Equipment: All meters, service lines, and other equipment installed by Utility shall remain the property of Utility.

5.04 MAINTENANCE AND REPLACEMENT:

Utility will maintain and replace when necessary all service lines and appurtenances furnished by Utility to serve Customer.

Exhibit 2
Westar Energy, Inc & Electric Company, d.b.a. Westar Energy
GT&C, Sheets 3-5
Effective September 27, 2018

7.06 Facilities Furnished by Company:

Company may designate the point on the exterior of the premises to which its Electric Service lines shall be brought for attachment to a customer's Electric Service entrance wires. Customer may choose a different point on the exterior of the premises for attachment of Electric Service but shall be required to pay any additional cost. Company shall furnish meter receptacles without charge and said meter receptacle(s) shall be installed by customer. Customer shall be responsible for the maintenance, replacement or repair of the meter receptacle after it is installed. Company shall furnish and set meter without charge to customer. All meters, service lines, and other equipment installed by Company shall remain Company's property.

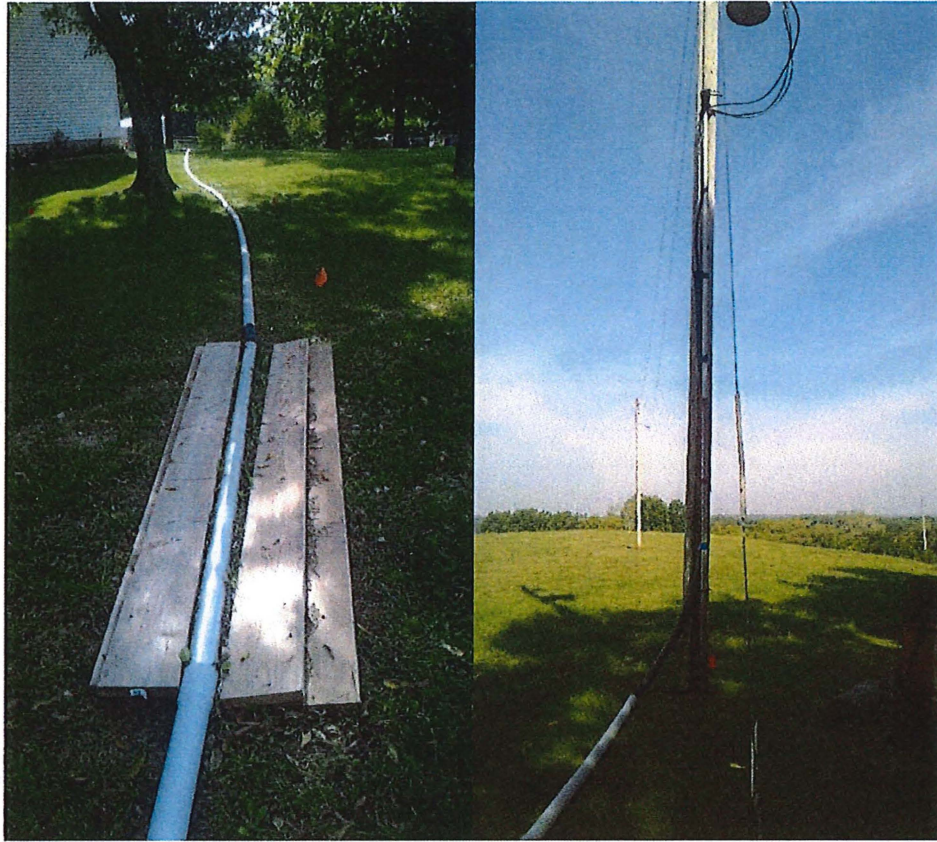
7.06.01 Overhead Electric Service Lines: Company shall install 135 feet of overhead Electric Service line as a standard service line from distribution feeder lines to the exterior wall of a customer's premises. This standard service line shall be free of charge and is in addition to extensions of electric distribution feeder lines as described in Section 8, Line Extension Policy. Customer shall pay all costs incurred by Company for installation of service lines longer than the standard service line.

7.06.02 Underground Electric Service Lines:

- a) When requested, underground service lines can be provided when the customer has:
 - i) forwarded to Company a properly completed application form provided an adequate Electric Service entrance, and
 - ii) properly installed three-inch conduit, including any trenching, and
 - iii) backfilling in accordance with service standards, and all federal, state, county, and city code requirements.
- b) When requesting new underground service lines, Company shall install 135 feet of underground Electric Service line as a standard service line from distribution feeder lines to the exterior wall of a customer's premises. This standard service line shall be limited to the cost of a standard overhead service line and is in addition to extensions of electric distribution feeder lines as described in Section 8, Line Extension Policy. Customer shall pay all costs incurred by Company for installation of service lines longer than the standard service line.
- c) In the event of a failed existing underground direct buried service line,
 - i) The Company will install a temporary above ground service line to reestablish temporary service to the customer.
 - ii) The customer will properly install three-inch conduit, including any trenching, and backfilling in accordance with service standards, and all federal, state, county, and city code requirements.
 - iii) Upon completion of item ii) the Company will provide, install in customer provided conduit, and terminate up to 135 feet of underground electric service line and reestablish permanent underground electric service.

iv) The Company will provide a reasonable reimbursement to the customer to cover up to 135 feet of trenching and backfill costs associated with the underground service, not to exceed \$1,000. Reimbursements will normally be provided through bill credits for residential customers and through direct payment for landlords and mobile home park owners.

EXHIBIT 3
PHOTOGRAPH OF TEMPORARY LINE
INSTALLED TO COMPLAINANT'S HOME



CERTIFICATE OF SERVICE

20-WSEE-096-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Report and Recommendations was served via electronic mail and was served as indicated below via United States mail, postage prepaid, or hand-delivered this 5th and 6th day of March, 2020, to the following:

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/s/ Vicki Jacobsen
Vicki Jacobsen