

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. Grubbs) Docket No. 19-WSEE-410-COM

**ORDER DISMISSING AMENDED FORMAL COMPLAINT AND
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 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 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. 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 that Complainant had not satisfied the procedural requirements of the Commission’s rules of practice and procedure.³ Litigation Staff specifically noted two deficiencies. Although the Initial Formal Complaint did cite to provisions

¹ Complaint Against Westar Energy, Inc. by Elvis J. Grubbs (Apr. 9, 2019) (Formal Complaint).

² *See id.*

³ *See* Memorandum Dated April 15, 2019 (Staff Memo).

of law, tariffs, and regulations that Westar is alleged to have violated, 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 statement is sufficient to determine what, if any, tariff, regulations, or statutes were violated. Additionally, Litigation Staff noted the Initial Formal Complaint failed to specify the relief sought.⁴

4. Ultimately, Litigation Staff recommended the Commission find the Initial Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220(b). Litigation Staff further recommended the Commission grant Complainant thirty (30) days to correct the procedural deficiencies contained within the Initial Formal Complaint.

5. On June 4, 2019, Complainant filed an Amended Complaint reciting the same allegation as those contained in the Initial Formal Complaint. At that time, Litigation Counsel for the Commission informed Complainant that the Amended Complaint would also fail the procedural requirements of K.A.R. 82-1-220(b), specifically subsection (3), for failure to state relief sought. However, an order dismissing the Amended Complaint with Leave to Amend was not issued until June 20, 2019.

6. On June 18, 2019, between the time Litigation Staff informed Complainant the Amended Complaint would not meet the procedural requirements of K.A.R. 82-1-220(b) and the issuance of the June 20, 2019, Order Dismissing Amended Complaint with Leave to Amend, Complainant filed a Second Amended Complaint. The Second Amended Complaint contained the same allegations contained in the Initial Formal Complaint and Amended Complaint.

7. Litigation Staff reviewed the Second Amended Complaint's underlying facts and allegations, and while making no recommendation regarding the *validity or truthfulness* of

⁴ See Staff Memo, pg. 2.

Complainant's claims, Litigation Staff determined Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedures.⁵

8. While the Second Amended Complaint does cite to provisions of law, tariffs, and statutes that Westar is alleged to have violated, and while the Second Amended Complaint does provide a narrative of the circumstances giving rise to the filing of the Second Amended Complaint, Complainant failed to specify a relief that may be granted by the Commission.⁶

9. Litigation Staff recommends the Commission find that the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Litigation Staff further recommends the Formal Complaint should be dismissed for lack of jurisdiction.

II. FINDINGS AND CONCLUSIONS

10. The Commission finds it lacks the jurisdiction to conduct the requested investigation. The Commission; however, may investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁷

11. Litigation Staff's Memorandum dated July 16, 2019, attached hereto is hereby adopted and incorporated by reference.

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

⁵ See Memorandum Dates July 16, 2019.

⁶ *Id.*

⁷ 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, 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). See K.S.A. 660191d, 101g; K.S.A. 6601,201, 204, 207.

13. The Commission finds that the Second Amended Complaint of Elvis J. Grubbs is hereby dismissed.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 07/25/2019



Lynn M. Retz
Executive Director

PZA

**MEMORANDUM
LEGAL DIVISION**

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

FROM: Phoenix Anshutz, Litigation Counsel

DATE: July 16, 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”) has filed a Formal Complaint¹ against Westar Energy, Inc. (“Westar”). The Formal Complaint does not satisfy the procedural requirements of the State Corporation Commission of the State of Kansas’ (“Commission”) rules of practice and procedure. Therefore, Legal Staff recommends the Commission dismiss the Formal Complaint and provide Complainant an opportunity to amend the Formal Complaint.

BACKGROUND & ANALYSIS:

On April 9, 2019, the Complainant filed a Formal Complaint against Westar, alleging that Westar wrongly charged him an additional security deposit without properly notifying him of the charge.² On April 23, 2019, the Commission issued an Order Dismissing Formal Complaint With Leave To Amend.³ Complainant was given thirty (30) days to amend the complaint to meet the procedural requirements of K.A.R. 82-1-220(b). On June 4, 2019, Complainant filed an Amended Complaint. At that time, Litigation Staff spoke with Complainant and informed him that the Amended Complaint would also fail the procedural requirements of K.A.R. 82-1-220(b); however, an order dismissing the Amended Complaint was not issued until June 20, 2019.

On June 18, 2019, between the time Complainant was informed the Amended Complaint would fail the requirements of 82-1-220(b) and the issuance of the June 20, 2019, Order Dismissing Amended Complaint with Leave to Amend, Complainant filed a Second

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

² *See id.*

³ Commission Order Dismissing Formal Complaint With Leave to Amend (Apr. 23, 2019)

Amended Complaint. The Second Amended Complaint alleged Westar improperly charged Complainant an additional security deposit without properly notifying him of the charge.⁴

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.”⁵

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 Second Amended Complaint shows that these procedural requirements have not been met. While the Complainant does cite law, tariffs, and statutes allegedly violated by Westar and does set forth concisely and in plain language the facts that constitute the violations, thus fulfilling procedural requirements (1) and (2), the Complainant has failed to set forth a relief that may be granted by the Commission, thus failing procedural requirement (3).

Due to the Complainant’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 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 Second Amended Complaint should be dismissed.

RECOMMENDATION:

Legal Staff recommends the Commission find the Second 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 Second Amended Complaint.

⁴ Complainant’s Second Amended Complaint (June 18, 2019).

⁵ K.A.R. 82-1-220(c)

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 07/25/2019.

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/S/ DeeAnn Shupe

DeeAnn Shupe