

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 Lonnie & Patricia Dalrymple.                      )      Docket No. 20-WSEE-096-COM

**ORDER ACCEPTING FORMAL COMPLAINT**  
**AND ADOPTING LITIGATION 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 August 28, 2018, Lonnie and Patricia Dalrymple ("Complainants") filed a Formal Complaint against Westar Energy, Inc. ("Westar").<sup>1</sup> The Complaint alleges that Westar has violated safety requirements of the National Electric Safety Code (NESC) and stolen Complainants' property.<sup>2</sup> Along with these accusations, Complainants have alleged that certain Westar tariffs are unreasonable and discriminatory.<sup>3</sup>

2.      On September 9, 2019, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.

3.      Litigation Staff recommends the Commission find that the Formal Complaint's allegations regarding theft of Complainants' wire should be dismissed for lack of jurisdiction.

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<sup>1</sup> Complaint Against Westar Energy, Inc. by Lonnie & Patricia Dalrymple (August 28, 2019) (Formal Complaint).

<sup>2</sup> See Staff's Memorandum, p.1 (September 9, 2019) ("Memo").

<sup>3</sup> See *id.*

4. Litigation Staff recommends the Commission find the Formal Complaint's allegations of a safety violation and discriminatory and unreasonable tariffs substantially complies with the procedural requirements of K.A.R. 82-1-220. Litigation Staff recommends the Commission find that the Formal Complaint establishes a *prima facie* case for Commission action. Litigation Staff further recommends that Staff should proceed with forwarding the Complaint to Westar for them to file an Answer.

## II. FINDINGS AND CONCLUSIONS

5. The Commission may investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.<sup>4</sup> The Commission finds it has the jurisdiction to conduct the requested investigation into the discriminatory and unreasonable Westar tariffs, along with the alleged safety violation. The Commission finds it does not have jurisdiction to investigate the alleged theft of Complainants' wire.

6. Litigation Staff's Memorandum dated September 9, 2019, attached hereto, is hereby adopted and incorporated by reference.

7. The Commission finds that the Formal Complaint establishes a *prima facie* case for action by the Commission and shall be served upon Westar for an Answer and an investigation into the complaint.

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<sup>4</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 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. 66-191d, 101g; K.S.A. 66-1,201, 204, 207.

**THEREFORE, THE COMMISSION ORDERS:**

- (A) The Complainants' assertion of theft is dismissed for lack of jurisdiction.
- (B) The Complainants' assertions of NESC safety violations and unreasonable and discriminatory tariffs are accepted.
- (C) The Formal Complaint shall be served upon Westar for an Answer.
- (D) 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>5</sup>
- (E) 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.**

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 09/12/2019 \_\_\_\_\_



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Lynn M. Retz  
Executive Director

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<sup>5</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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

Laura Kelly, Governor

**MEMORANDUM  
LEGAL DIVISION**

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

**FROM:** Cole A. Bailey, Litigation Counsel

**DATE:** September 9, 2019

**SUBJECT:** 20-WSEE-096-COM  
In the Matter of the Complaint Against Westar Energy by Lonnie & Patricia Dalrymple

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**EXECUTIVE SUMMARY:**

Lonnie and Patricia Dalrymple (“Complainants”) filed a Formal Complaint against Westar Energy, Inc. (“Westar”) alleging that Westar has violated safety requirements of the National Electric Safety code (NESC) and stolen complainant’s property. Along with these accusations Complainants have alleged certain Westar tariffs are unreasonable and discriminatory.<sup>1</sup> Legal Staff recommends the Commission dismiss the Formal Complaint as it relates to the Complainants’ theft claims. However, Legal Staff recommends the Commission accept the Formal Complaint as it relates to NESC violations, discriminatory and unreasonable tariffs and serve the Formal Complaint on Westar for an Answer.

**BACKGROUND:**

On August 28, 2018, Complainants filed a Formal Complaint against Westar. The Formal Complaint explains that Complainants’ property has an underground direct service line that failed on July 21, 2019.<sup>2</sup> Complainants notified Westar, Westar came out to the property made the determination that the service line failed and laid approximately 300 feet of temporary service cable directly on grade or directly on the ground.<sup>3</sup> On July 24, 2019, Westar met with Complainant to discuss repair of the service line. Westar informed Complainants the failed service line was installed in 1980 and Complainants would be responsible for trenching and installing three inch conduit so Westar can install a new line pursuant to Westar Tariff Section 7.06 or Complainants service would be disconnected in 30 days.<sup>4</sup>

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<sup>1</sup> See Complaint against Westar Energy, Inc. by Lonnie & Patricia Dalrymple (August 28, 2019) (Formal Complaint).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 4.

Complainants make four specific allegations: 1) Westar has violated NESC 311C by not protecting the temporary service line installed on the Complainants' property<sup>5</sup>; 2) Westar has committed theft in violation of K.S.A. 21-5801 (b)(4)(c)(2) by taking Complainant's wires in the meter enclosure<sup>6</sup>; 3) Westar's tariff section 7.06.02 (c) (iv) is discriminatory because it treats residential customers different from mobile home park owners<sup>7</sup>; and 4) Westar's tariff section 7.06 is unreasonable.<sup>8</sup>

### **ANALYSIS:**

Upon the filing of a Formal Complaint, the Commission must determine whether the allegations, if true, would establish a *prima facie* case for action by the Commission and whether the Formal Complaint conforms to the Commission's regulations.<sup>9</sup>

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.

The Formal Complaint explicitly cites to NESC 311C that Complainants allege Westar has violated. Therefore, the Formal Complaint complies with the procedural requirement of K.A.R. requirement (1). The Formal Complaint details the facts and circumstances in plain language explaining the events giving rise to the Formal Complaint and alleged violations.<sup>10</sup> This description of the facts is sufficient to meet procedural requirement (2). The Formal Complaint also states the relief sought. Complainant seeks Commission's assistance with restoring failed service, at no expense to Complainants, to a working state that meets or exceeds the service commitments Westar agreed to in the beginning of this service, and an improvement to voltage defects. The relief sought is in compliance with procedural requirement (3).<sup>11</sup>

### ***NESC Violation***

The Formal Complaint asserts Westar has violated NESC 311C by installing a temporary service line laid directly on the ground.<sup>12</sup> Complainant states Westar did not initially "protect" the cable and Complainants' vehicles have been blocked in by the temporary service line.<sup>13</sup> Complainant states Westar had to be called back out to the property to protect the cable so Complainants can

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> K.A.R. 82-1-220(c).

<sup>10</sup> Formal Complaint, at 2-4.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 3.

drive over the temporary install. Furthermore, Complainant asserts “propane delivery to the house is not possible at the current time.”<sup>14</sup>

The Kansas Corporation Commission (KCC) has adopted the 1997 NESC. Section 311C of the 1997 NESC is not the exact same language as the current section 311C. The 1997 NESC Section 311C reads “Supply and communication cables may be laid directly on grade if they are guarded or otherwise located so that they do not unduly obstruct pedestrian or vehicular traffic and are appropriately marked.” The current NESC Section 311C adds the words “For emergency installations,...” at the beginning of the section. Litigation Staff contends the difference in sections does not make a difference in this situation. If what Complainants state is true, the assertion would establish a prime facie case for action by the Commission and Litigation Staff recommends the Commission investigate the allegation to determine if Westar has indeed violated NESC Section 311C.

### ***Theft Claim***

The KCC does not have jurisdiction to hear this allegation and can provide no determination to the truth of the matter or relief for the Complainants if the allegation is true. Litigation Staff recommends the Commission dismiss Complainants’ theft argument centered on the accusation that a Westar employee has uninstalled and taken wire that belonged to the Complainants.<sup>15</sup>

### ***Westar Tariff Section 7.06***

The Formal Complaint explicitly cites Westar Tariff Section 7.06 and claims it to be discriminatory and unreasonable.

The Formal Complaint asserts Westar Tariff Section 7.06.02(c)(iv) is discriminatory as it separates and treats residential customers different from mobile home park owners and landlords. In the event of a failed existing underground direct buried service line, Westar Tariff Section 7.06.02(c)(iv) states:

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.

Litigation Staff agrees that from a plain reading the Tariff does appear to treat residential customers different than mobile home park owners. Litigation Staff speculates the reason the two types are treated differently is because mobile home park owners do not have electric bills that can be credited. However, Complainants allegation does establish a prime facie case for action by the Commission under K.A.R. 82-1-220(b) and Litigation Staff recommends the Commission investigate.

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<sup>14</sup> *Id.*

<sup>15</sup> Formal Complaint at 5-6.

Finally, the Formal Complaint makes a general assertion that Westar Tariff Section 7.06 is unreasonable.<sup>16</sup> While this specific tariff's language was recently analyzed in the Westar Rate Case Docket No. 18-WSEE-328-RTS and found to be reasonable, the Commission's Order did not specifically address the language in the Westar Tariff. Complainants' allegation does conform to K.A.R. 82-1-220(b) and Litigation Staff recommends the Commission investigate the veracity of the claim.

The Commission has been given full power, authority and jurisdiction to supervise and control electric public utilities doing business in Kansas.<sup>17</sup> The Commission is also charged with ensuring utilities provide efficient and sufficient service at just and reasonable rates and establish just and reasonable rules and regulations.<sup>18</sup> Additionally, the Commission is granted authority over each electric public utility's equipment, manner of conduct, and management to protect public safety; and shall inquire into any neglect or violation of the laws of this state by any electric public utility.<sup>19</sup>

The detailed requirements of K.A.R. 82-1-220 are more restrictive than those required by the Kansas Public Utilities Act and Kansas courts.<sup>20</sup> The public interest is not served by dismissing complaints of customers not represented by legal counsel for insufficiencies related to strict procedural requirements.<sup>21</sup> The Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220. No recommendation regarding the validity or truthfulness of the Complainants' claim(s) is made, nor should they in any way be assumed or concluded with the filing of this memorandum.

### **RECOMMENDATION:**

Litigation Staff Recommends the Commission find:

- The issues regarding theft of Complainants' wire should be dismissed for lack of jurisdiction;
- The Formal Complaint's allegations of a safety violation and discriminatory and unreasonable tariffs substantially complies with the procedural requirements of K.A.R. 82-1-220;
- The Formal Complaint establishes a *prima facie* case for Commission action; and
- The Formal Complaint should be served upon Westar for an Answer.

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<sup>16</sup> *Id.* at 7.

<sup>17</sup> K.S.A. 66-101.

<sup>18</sup> K.S.A. 66-101b.

<sup>19</sup> K.S.A. 66-101h.

<sup>20</sup> *See*, K.S.A. 66-101e (The specific language of the statute allows for a complaint based solely on an unreasonable practice. K.A.R. 82-1-220(b) places the additional burden of alleging a specific violation of law, tariff or order which is not required by statute and may place an undue burden on complainants not represented by legal counsel); *See also*, *Boydston v. Bd. Of Regents for State of Kan.*, 242 Kan. 94, 99, 744 P.2d 806, 811 (1987) (As long as the opponent is apprised of the facts that entitle the plaintiff to relief, it is not necessary to spell out a legal theory of relief in the pleadings).

<sup>21</sup> K.S.A. 66-155 obligates Commission attorneys to prosecute suits on behalf of parties complaining of unjust discriminations by a public utility or other violations of the public utility act. Legal Staff believes full representation of the Complainant in this case would be an unnecessary use of commission resources and is evidence of further good cause for the Commission to waive K.A.R. 82-1-220(b)(1).

**CERTIFICATE OF SERVICE**

20-WSEE-096-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 09/12/2019.

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