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THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

by
State Corporation Commission
of Kansas

In the Matter of the Complaint Against Westar)
Energy, Inc. by Douglas Yoder.) Docket No. 18-WSEE-286-COM

STAFF'S RESPONSE TO COMPLAINANT'S PETITION FOR RECONSIDERATION

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), by and through its counsel, Phoenix Anshutz, hereby files its Response to Douglas Yoder's ("Complainant" or "Mr. Yoder") Petition for Reconsideration, Staff states as follows:

Background

1. On January 8, 2018, Douglas Yoder filed a complaint seeking relief from Westar Energy, Inc. (Westar) for damages he alleges were caused by the wanton failure of Westar to properly restore his electric service in a timely manner.
2. On March 12, 2018, Staff filed its Legal Memorandum concerning Mr. Yoder's complaint. In its Legal Memorandum, Staff concluded that Mr. Yoder's complaint complied with the procedural requirements set forth in K.A.R. 82-1-220, and established a *prima facie* case for Commission action; pursuant to K.A.R. 82-1-220(c) the complaint was served upon Westar for an answer.
3. On May 14, 2018, Westar filed a Motion to Dismiss alleging Mr. Yoder's complaint failed to demonstrate that Westar violated any provision of law, regulation or order.
4. On July 13, 2018, after conducting discovery pertaining to Mr. Yoder's complaint, Staff filed its Report and Recommendation which recommended the Commission dismiss the complaint and find Westar complied with the terms and conditions of its tariff.

5. On July 31, 2018, the Commission submitted its Order Adopting Staff's Report and Recommendation which ordered the dismissal of the Complaint and found that Westar complied with the terms and conditions of its tariff. Pursuant to K.S.A. 77-529(a)(1), Complainant was allotted 15 days after service of the Commission's Order to file a Petition for Reconsideration.¹

6. On August 17, 2018, Complainant filed a Petition for Reconsideration, attached hereto and incorporated by reference.

Analysis

7. Complainant's Petition attempts to introduce new information to this proceeding by alleging additional power outages have occurred, which Complainant posits evidence a pattern of negligent conduct on Westar's behalf. Complainant's introduction of new information not previously alleged in the initial complaint does not afford Staff the opportunity to fully analyze the new allegations to confirm their accuracy; because of that timing, Staff believes that Complainants' new allegations are best served in a separate docket which would afford Staff adequate time to fully examine their content.

8. Additionally, Complainant failed to serve the Petition for Reconsideration within the statutory time limit. As alluded to above, K.S.A. 77-529(a)(1) allows a party 15 days after service of a final order to file a petition for reconsideration.² The Commission's Order Adopting Staff's Report and Recommendation was served on July 31, 2018, it was not until August 17, 2018, that Complainant filed his Petition, 17 days after the Commission served its final order. Because Complainant failed to file the Petition for Reconsideration within the statutory time limit, Complainant forfeited the ability to challenge the Commission's final order.

¹ K.S.A. 77-529(a)(1).

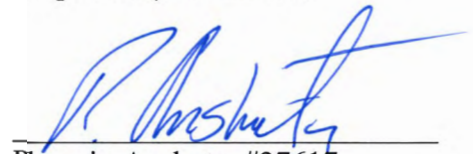
² Id.

Conclusion

9. Complainant's petition should be disqualified for the following reasons: firstly, the petition alleges new facts that were not raised in Complainant's initial complaint. Such new information has not been properly evaluated by Staff, and because of that, Staff believes the new information would be better served in a separate complaint docket that would allow Staff the time necessary to review the new allegations. Secondly, Complainant's petition was submitted outside of the statutory timeline provided in K.S.A 77-529(a)(1). Complainant's petition was submitted 17 days after service of the Commission's final order dismissing the complaint; Kansas law provides a party 15 days to petition for reconsideration, which Complainant clearly failed to do. Based on the foregoing, Staff respectfully requests the Commission dismiss Complainant's Petition for Reconsideration.

WHEREFORE, Staff respectfully requests the Commission uphold its July 31, 2018, Order, and dismiss Respondent's Petition for Reconsideration for the reasons cited herein.

Respectfully submitted,



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PETITION FOR RECONSIDERATION

Kansas Corporation Commission
1500 SW Arrowhead Rd
Topeka, KS 66604

Date: 8-17-18

Docket No. 18-WSEE-286-COM

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of the Complaint Against Westar Energy,
by Douglas Yoder.

MOTION TO RECONSIDER.

Comes now Douglas Yoder and submits this Motion to Reconsider regarding the Commission's Order of 7/31/2018 Adopting Staff's Report and Recommendation.

BACKGROUND

1. Douglas Yoder, (Complainant) filed a complaint on January 8, 2018 related to a power outage that Westar failed to restore in a workmanlike or timely manner. Further, Westar provided unreliable and inconsistent information about the power outage to the customer and to the KCC in Westar's defense of the complaint.
2. KCC staff filed a Legal Memorandum dated 3/12/2018 and recommended that "... the Commission accept Mr. Yoder's Complaint and have it served upon Westar for an Answer." The Certificate of Service for that Memorandum is dated 3/13/2018.
3. The Commission issued an Order Adopting Staff's Memorandum on 4/3/2018. Westar had 10 days to file an answer, or 15 days to petition for reconsideration or request a hearing. Those deadlines were therefore April 13, and April 18, 2018.
4. On May 14, 2018, some 30 days past the deadline Westar filed a Motion to Dismiss, and had provided no other Answer or Petition prior to that.
5. Based on information and discovery, on July 12, 2018 KCC staff filed its Report recommending that the Commission dismiss the complaint and find that Westar complied with the terms and conditions of its tariff.

ANALYSIS

6. Additional information has come to light since the submission of the original complaint. This information shows that potential errors were made, likely based upon faulty explanations provided by Westar.

7. There have been 5 additional power outages at the Complainant's residence during a **six-week** period. These occurred as follows:

- May 25, 2018. Reported to Westar at 4:50 pm.
- June 2, 2018. Reported to Westar at 6:54 a.m.
- June 27, 2018. Reported to Westar at 8:18 pm.
- June 28, 2018. Reported to Westar at 1:45 a.m.
- July 10, 2018. Reported to Westar at 7:25 pm.

8. The five outages in a 45-day period were all related to the same issues (explained below) which are also the cause of the breakdown in the complaint that was filed.

Westar acknowledges that these outages occurred for no apparent reason on sunny days and there have never been storm-damaged cables involved.

9. In total there have been 7 power outages in our neighborhood during the past 12 months. Westar admits that their equipment is faulty, and that they are aware of it. They also admit that 5 outages in a 45-day period does not meet their standards.

On more than one occasion the power was restored, only to go out again a short time later. We've learned that this is not due to storm damage. It's caused by circuits that are not correctly open or closed. This is the same condition that existed in the complaint.

10. Complainant sent a letter to Westar on July 14, 2018 advising them of their failure to deliver reliable service. See Attachment A.

11. Complainant was contacted by two Westar representatives following that letter, and was informed of the following facts; this according to Westar.

- There have been 7 power outages at our location over the past 12 months.
- Having five outages in a 6 week period is not within their accepted standards.
- Most of those outages have been on sunny, clear days.
- The underground cable in our neighborhood is "direct-buried" cable. It is not in conduit. It is an insulated cable and it deteriorates over time.
- When the ground shifts due to wet or dry conditions, it cracks the insulation on the cable. Then moisture can get in and cause a fuse to blow.
- An overhead line provides one of the feeds for our neighborhood. The insulators on that overhead line are also going bad.
- Westar currently has no means to locate a power outage in our area. They are improvising a system to assist with this in the future.
- Westar staff has indicated directly that Westar's grid maps are not accurate and that after repairs are made circuits have been found to be open or closed incorrectly.

12. With this information, staff should reconsider their conclusions and recommendations for the following reasons.

A. In the incident of August 21, 2017 the power was back out again before the repair crew could have been assigned to another job or left the site. It was irresponsible to leave a repair site with an inoperable circuit which had no electrical service.

B. KCC staff indicated that there was a failure in the underground cable which their report says is in conduit.

I don't know where staff got this information, but Westar's Operations Manager for the Lawrence district has indicated that the cable in question is a direct-buried cable, and that the insulation on that cable has become faulty. This caused the 5 outages noted in #7 above which have affected the same area as the event in question; again agreed upon by Westar.

C. According to Westar's defense of the Complaint, they had no reason to expect the cable failure to occur. But more recent acknowledgements now tell a different story.

With 6 more power outages in the same area Westar admits knowing the cable was a problem. Westar has further indicated that they are extremely concerned that additional failures will occur. As validation of that, they are improvising a system to identify those failures as quickly as possible when they happen.

The repair times for the 5 outages noted above have been between 4-11 hours. Westar admits they cannot locate outages in this neighborhood and they are improvising a system to identify outages quicker; yet they still gave a 2-hour indication of repair time based on historical averages when they know full well their system can't meet that expectation in this neighborhood. That constitutes some level of negligence.

D. KCC staff accepted the notion that the cable in question was likely damaged by lightning.

We now know that the cable was faulty due to deterioration and cracks in the insulation, not lightning damage. See Westar staff explanations noted in #11.

E. It appears that staff may have received faulty information in their data requests or may have relied too heavily on Westar's Motion to Dismiss. New information now provided by Westar and the evidence from 5 power outages negates information that staff based some of their recommendations upon and should be reconsidered.

F. Staff contended in their recommendation that Westar's response to outages is dynamic and decisions need to be based on existing conditions.

Complainant agrees, and existing conditions clearly indicated that the circuit in question was not operable. It was irresponsible to leave a repair incomplete that Westar knew was out of service at that very time.

G. Staff observed that information, times, and cause of outages were inconsistent and muddled. But we now have information that clears up those inconsistencies, and it should be taken into consideration.

H. The time-estimate of repairs was irresponsible by Westar, and staff should be given the opportunity to re-think their conclusion that the estimate was reasonable. The estimate in question indicated that repairs would be completed some 3 1/2 hours **before** a crew was even on site to re-start the work. Westar knew there was an outage and that no crew was working on it, yet still gave completely erroneous information.

Westar obviously didn't take into account any of the information at hand and acted negligently in both the repairs and their communication.

13. Westar has indicated to their customers in writing that "Your service will remain reliable." See Attachment B.

14. Earlier in the process when staff recommended that the Commission accept Mr. Yoder's complaint, staff made note in their Legal Memorandum that:

- "The Commission is also charged with ensuring the provision of efficient and sufficient service at just and reasonable rates."

- Further, "... the Commission is expressly granted all incidental powers necessary to carry into effect the provision of the public utility statutes."

Appeal of this Motion: The citizens in our neighborhood have not received efficient nor sufficient service in any way, shape, or form, including the Complainant.

Simply stated, Westar has not met the provisions of the public utility statutes.

15. Westar clearly had a system breakdown and they now acknowledge that they had faulty equipment and systems. Westar knows this faulty equipment is still in place and they are extremely concerned about it. Staff should be given the opportunity to include that information in their analysis.

16. Given the repeated outages and the acknowledgements from Westar, it's clear that Westar did not, and has not, complied with the terms and conditions of its tariff.

Conclusion:

17. If you had 5 power outages at your house in a six-week period I'm confident you would not conclude that Westar met its tariff or was providing efficient and sufficient service.

Please require Westar to be accountable for their systems and their actions.

THEREFORE, Claimant respectfully requests that the Commission consider all of the information now evident regarding Westar's responsibilities and failures thereof and reconsider the Order that was issued.

If this appeal is not the proper next step for the Claimant, or if I should file a whole new complaint relating to the violation of its tariff by Westar please advise at your earliest convenience.

Respectfully Submitted,

Douglas Yoder

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CERTIFICATE OF SERVICE

18-WSEE-286-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Complainant's Petition for Reconsideration was served by electronic service or by United States mail on this 5th day of September, 2018, to the following:

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