

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

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

In the Matter of the Complaint Against)
Westar Energy Inc. by Shawnsa Christy.) Docket No. 19-WSEE-037-COM

ORDER ADOPTING LEGAL 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 and concludes as follows:

I. BACKGROUND

1. On July 26, 2018, Shawnsa Christy (“Complainant”) filed a Formal Complaint against Westar Energy Inc. (“Westar”).¹ The Formal Complaint alleges incorrect charges by estimating electric usage.²

2. On August 13, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.³

3. Litigation Staff reviewed the Formal Complaint’s underlying facts and allegations. While making no recommendation regarding the validity or truthfulness of the Complainant’s claims, Litigation Staff determined the Complainant has not satisfied the procedural requirements of the Commission’s rules of practice and procedure.⁴ Litigation Staff specifically identified several deficiencies. The Formal Complaint does not cite to any provision of law, tariff, regulation,

¹ See Compliant against Westar Energy, Inc. by Shawnsa Christy (July 26, 2018) (Formal Complaint).

² Id. at 1.

³ Legal Staff’s Memorandum (Aug. 13, 2018) (Legal Memorandum).

⁴ Id. at 2.

Commission order or Statute.⁵ Furthermore, the facts given by the Complainant are ambiguous and it is not possible to ascertain if the factual statement is sufficient to determine what, if any, law, tariff, regulation, Commission order, or statute has been violated.⁶

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 identified therein. Litigation Staff further recommends that if the Complainant fails to amend its Formal Complaint within thirty (30) days the Formal Complaint should be dismissed without prejudice.

II. FINDINGS AND CONCLUSIONS

5. Upon review of Litigation Staff's Legal Memorandum, the Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.* Specifically, the Commission is authorized to investigate formal complaints regarding rates, rules regulations, or practices of gas and electric public utilities.⁷ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁸

⁵ Id.

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 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).

⁸ *See* K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

6. Litigation Staff's Memorandum dated August 13, 2018, attached hereto as Attachment "A" is hereby adopted by the Commission and incorporated by reference into this Order.

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 addressing the procedural deficiencies identified above. If the Complainant does not amend its Formal Complaint within thirty (30) days, the Formal Complaint shall be dismissed without prejudice.

(B) Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.

(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; Keen, Commissioner

Dated: 08/16/2018 _____



Lynn M. Retz
Secretary of the Commission

CAB

ATTACHMENT “A”

STATE OF KANSAS



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SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

MEMORANDUM LEGAL DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Dwight D. Keen

FROM: Cole Andrew Bailey, Litigation Counsel

DATE: August 13, 2018

SUBJECT: 19-WSEE-037-COM
In the Matter of the Complaint Against Westar Energy by Shawnsa Christy

EXECUTIVE SUMMARY:

Shawnsa Christy ("Complainant") filed a Formal Complaint against Westar Energy, Inc. ("Westar").¹ The Formal Complaint does not satisfy the procedural requirements of the State Corporation Commission of the State of Kansas' ("Commission's") rules of practice and procedure. Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant an opportunity to amend its Formal Complaint.

BACKGROUND & ANALYSIS:

On July 26, 2018, Complainant filed a Formal Complaint against Westar due to a possibly incorrect estimation of Complainant's electric usage.² 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.³

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

¹ See Compliant against Westar Energy, Inc. by Shawnsa Christy (July 26, 2018) (Formal Complaint).

² Id.

³ K.A.R. 82-1-220(c).

(3) state the relief sought by the Complainant.

Review of the Formal Complaint shows Complainant has not satisfied these procedural requirements. The Complainant does not cite to any provision of law, tariff, regulation, Commission order or statute, and thus does not comply with procedural requirement (1). The Complainant provides a very brief explanation of the circumstances surrounding the complaint but the description is ambiguous, lacking substantial information to fully explain the foundation of the complaint.⁴ Without citing any specific tariff, regulation, Commission order or statute violated by Westar, it is not possible to determine if this description of the facts is sufficient to meet procedural requirement (2). The request for relief in the Formal Complaint states, "Please give account substantial reductions & compensation."⁵ Because of the lack of facts provided and the ambiguity as to what Complainant should be compensated for, the relief does not satisfy procedural requirement (3).

Because the Formal Complaint does not satisfy all necessary procedural requirements, a determination of *prima facie* is not possible at this time.

No recommendation regarding the validity or truthfulness of the Complainant's claim(s) is made, nor should they in any way be assumed or concluded with the filing of this memorandum. The only recommendations made within this memorandum are the Commission should find: the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220, and a determination of *prima facie* is not yet possible. K.A.R. 82-1-220(c) allows a Complainant to amend its Formal Complaint if it fails to meet the procedural requirements or allege sufficient facts for a *prima facie* determination.

RECOMMENDATION:

Litigation Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of the Commission's rules of practice and procedure. Likewise, Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant thirty (30) days from such denial to amend its Formal Complaint. Finally, if the Complainant fails to correct the procedural deficiencies discussed herein Legal Staff recommends that the Formal Complaint be dismissed without prejudice and the docket be closed.

⁴ Formal Complaint, at 2-4.

⁵ Id. at 4.

CERTIFICATE OF SERVICE

19-WSEE-037-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
first class mail/hand delivered on 08/17/2018.

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/S/ DeeAnn Shupe

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