

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Complaint Against Westar)
by Douglas A. Wine.) Docket No. 18-WSEE-011-COM

ORDER 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 makes the following findings and conclusions:

I. BACKGROUND

1. On July 11, 2017, Douglas Wine (Complainant) filed a Formal Complaint against Westar Energy, Inc. (Westar) with the Commission.¹ The Formal Complaint centers on costs to extend Westar's facilities to a cabin Complainant wants to build.²

2. On August 14, 2017, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations. A copy of Litigation Staff's Memorandum is attached to this Order and is further detailed below.

II. DISCUSSION

3. Litigation Staff reviewed the Formal Complaint's underlying facts and allegations.³ Upon this review, Litigation Staff determined the Formal Complaint has not yet satisfied the Commission's complaint procedural requirements.⁴ Because the Formal Complaint

¹ See Complaint Against Westar Energy by Douglas Wine (Jul. 11, 2017) (Formal Complaint).

² See *id.* at p. 1.

³ See Memorandum, pp. 1-2.

⁴ See *id.* at p. 2.

has not satisfied the Commission's procedural requirements, Litigation Staff was unable to determine whether the Formal Complaint establishes a *prima facie* case for Commission action.⁵

4. The Formal Complaint does not cite to any provision of law, tariff, regulation, Commission order or statute.⁶ Accordingly, the Formal Complaint does not satisfy the procedural requirement of K.A.R. 82-1-220(b)(1). Further, by not stating what Westar has violated, it is not possible to determine if the facts as presented by the Complainant constitute a violation.⁷ Accordingly, the Formal Complaint does not satisfy the procedural requirement of K.A.R. 82-1-220(b)(2). Though not explicitly detailed, Litigation Staff surmised Complainant's requested relief is for Westar to extend facilities to Complainant's proposed cabin without charge.⁸ Accordingly, Litigation Staff determined Complainant has substantially complied and satisfied the procedural requirement of K.A.R. 82-1-220(b)(3).

5. Litigation Staff recommends the Commission find the Formal Complaint does not yet establish a *prima facie* case for Commission action.⁹ Litigation Staff further recommended the Commission permit the Complainant to supplement its Formal Complaint with citation(s) to a specific law, regulation, or order of the Commission that has been, or is being, violated by Westar.¹⁰ In addition to permitting the Complainant to provide any additional facts, Litigation Staff also recommended the Commission grant the Complainant thirty (30) days to correct the procedural and informational deficiencies identified above.¹¹

⁵ See *id.*

⁶ See Memorandum at p. 2.

⁷ See *id.*

⁸ See *id.*

⁹ See Memorandum at p. 3.

¹⁰ See *id.*

¹¹ See *id.*

6. Litigation Staff further recommends if the Complainant fails to amend its Formal Complaint within thirty (30) days to remedy procedural and informational deficiencies, the Formal Complaint be dismissed without prejudice and the docket be closed.¹²

III. FINDINGS AND CONCLUSIONS

7. The Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*¹³ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.¹⁴

8. Litigation Staff's Memorandum dated August 14, 2017, attached hereto is hereby adopted and incorporated by reference.

9. The Commission finds the Complainant has not satisfied the procedural requirements required for the filing of Formal Complaints as detailed in K.A.R. 82-1-220. The Commission finds the Complainant has not articulated a provision of law, tariff, regulation, Commission order or statute Westar is currently or has violated as required by K.A.R. 82-1-220(b)(1).

10. The Commission finds the Complainant has not alleged sufficient facts to indicate a violation of a provision of law, tariff, regulation, Commission order or statute by Westar as required by K.A.R. 82-1-220(b)(2).

¹² See Memorandum at p. 3.

¹³ 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).

¹⁴ See K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

11. The Commission finds and concludes the Complainant has not established a *prima facie* case for Commission action at this time.

12. The Commission finds the Complainant shall be granted thirty (30) days to amend its Formal Complaint to correct the procedural and informational deficiencies identified above.

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

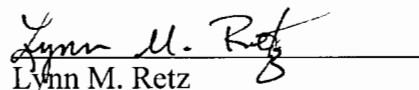
(B) Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.¹⁵

(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.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: AUG 17 2017


Lynn M. Retz
Secretary to the Commission

REV

Order Mailed Date

AUG 18 2017

¹⁵See also K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

**MEMORANDUM
LEGAL DIVISION**

TO: Pat Apple, Chairman
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Robert Elliott Vincent, Litigation Counsel

DATE: August 14, 2017

SUBJECT: 18-WSEE-011-COM
In the Matter of the Complaint Against Westar by Douglas A. Wine

EXECUTIVE SUMMARY:

Douglas Wine (Complainant) has 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) 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 11, 2017, the Complainant filed a Formal Complaint against Westar regarding the cost to extend Westar's facilities to a cabin Complainant wants to build.² Complainant discusses the quoted cost to extend the facilities, Westar's monopoly status and potential use of extended facilities by others without aid in construction costs.³ 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.⁴

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;

¹ See Complaint Against Westar Energy by Douglas A. Wine (Jul. 11, 2017) (Formal Complaint).

² See *id.* at p. 1.

³ See *id.* at pp. 1-2.

⁴ See K.A.R. 82-1-220(c).

(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 Formal Complaint, as filed, indicates the Complainant has not established a *prima facie* case. The Complainant does not cite any provision of law, tariff, regulation, Commission order or statute, and thus does not satisfy procedural requirement (1).

The Complainant provides a narrative of facts and circumstances giving rise to the Formal Complaint.⁵ Complainant provided estimated cost information for extending Westar's facilities to a cabin Complainant would like to build.⁶ Complainant also supplied maps indicating the presence of utility poles at one time abutted Complainant's property.⁷ However, without detailing the grounds for bringing a complaint before the Commission (e.g. the provision of law, tariff, regulation, Commission order or statute violated by Westar), the facts presented at this time do not indicate Westar's estimated costs for the required line extension are in violation of Westar's established tariffs or are otherwise unlawful. Without establishing the grounds for bringing a complaint as detailed in procedural requirement (1), Litigation Staff cannot determine whether the facts presented by the Complainant constitute a violation. Accordingly, the Formal Complaint does not satisfy procedural requirement (2).

Finally, Complainant states Westar should not charge the Complainant to provide service. Though not explicitly stated, Legal Staff has surmised Complainant's requested relief is for Westar to extend facilities to Complainant's proposed cabin without charge. Accordingly, Legal Staff has determined Complainant has substantially complied and satisfied procedural requirement (3).

Because the Complainant's Formal Complaint has not yet satisfied the Commission's 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 a *prima facie* for Commission action is not yet warranted. 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.

⁵ See Formal Complaint at pp. 1-2.

⁶ See *id.*

⁷ See Supplement to Complaint (Aug. 7, 2017).

RECOMMENDATION:

Litigation Staff recommends the Commission:

1. Find the Formal Complaint does not yet establish a *prima facie* case for Commission action;
2. Request the Complainant supplement its Formal Complaint with citation(s) to a specific law, regulation, or order of the Commission that has been, or is being, violated by Westar;
3. Permit the Complainant to incorporate any and all additional facts they deem appropriate or relevant; and
4. Grant the Complainant thirty (30) days to amend its Formal Complaint to remedy the procedural and informational deficiencies. If the Complainant fails to correct the procedural and informational deficiencies identified herein Litigation Staff recommends the Formal Complaint be dismissed without prejudice and the docket be closed.

CERTIFICATE OF SERVICE

18-WSEE-011-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 **AUG 17 2017**.

CATHRYN J. DINGES, SENIOR CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8136
cathy.dinges@westarenergy.com

ROBERT VINCENT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
r.vincent@kcc.ks.gov

DOUGLAS A. WINE
2810 N EDWARDS
WICHITA, KS 67204
dawine@cox.net

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

AUG 18 2017