

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

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

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

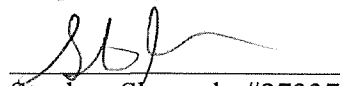
NOTICE OF FILING OF LEGAL MEMORANDUM

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files the attached Legal Memorandum and states as follows:

1. Staff hereby files the attached Legal Memorandum analyzing the allegations set forth in the above-captioned Formal Complaint against Westar Energy, Inc. (Westar). As a result of its investigation, Staff recommends the Commission accept Mr. Yoder's Complaint and have it served upon Westar for an Answer.

WHEREFORE Staff submits its Legal Memorandum for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully submitted,



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**MEMORANDUM
LEGAL DIVISION**

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

FROM: Stephan Skepnek, Litigation Counsel

DATE: March 12, 2018

SUBJECT: 18-WSEE-286-COM
In the Matter of the Formal Complaint Against Westar Energy, Inc.
(Westar) by Douglas Yoder.

EXECUTIVE SUMMARY:

On January 8, 2018, Douglas Yoder (Complainant) filed a Formal Complaint against Westar Energy, Inc. ("Westar"), pursuant to K.A.R. 82-1-220.¹ Legal Staff has determined that the Complaint satisfies the procedural requirements of the State Corporation Commission of the State of Kansas' (Commission) rules of practice and procedure and recommends the Commission accept the Complaint and serve the Complaint on Westar for an Answer.

BACKGROUND:

On January 8, 2017, the Complainant filed a Formal Complaint against Westar, pursuant to K.A.R. 82-1-220 seeking relief for damages which he alleges were caused by the wanton failure by Westar to properly restore electric service to his residence.² As set forth in greater detail in his Complaint, Mr. Yoder alleges that Westar "failed to uphold their responsibilities in Sections 2, 7, and 10 of the Terms and Conditions" by failing to properly restore power to his residence after an initial weather-related outage, which had occurred earlier in the night on August 21, 2017. According to Mr. Yoder's version of events, Westar initially restored power to his residence and by midnight, "[e]verything was repaired and working."³ However, a "very short time later, 10-15 minutes" the power went out again, this time not caused by the weather, but by the wanton failure on

¹ See Complaint Against Westar by Douglas Yoder (Jan. 8, 2018) ("Complaint").

² See Formal Complaint at page 3.

³ See Formal Complaint at page 6.

Westar's part to ensure that power had been properly re-established. After the second outage, power was not re-restored to Mr. Yoder's residence until the next morning

According to Mr. Yoder, "[i]n the morning I called the Westar office (not the report line) and talked to a real person. And here's where the issue lies. They sounded somewhat surprised that the power was out. I explained that it needed immediate attention. AND WITHIN 10 MINUTES OF MY CALL THE POWER WAS BACK ON."⁴

Mr. Yoder alleges that Westar's failure to ensure power remained restored after initially restoring amounted to wanton conduct and resulted compensable damage to his property. Legal Staff has determined that the information contained in the Complaint satisfies the low procedural requirements of K.A.R. 82-1-220 and therefore recommends the Commission accept Mr. Yoder's Formal Complaint and serve the Complaint on Westar for an Answer.

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.⁵ If the Commission determines these conditions are satisfied, the Complaint is served on the subject utility for an Answer.

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.

Regarding procedural requirement (1) above, Mr. Yoder cites to specific tariffs which were established by Commission orders and policy pursuant to Kansas statutes and Kansas administrative regulations. Specifically, Mr. Yoder cites to Westar General Terms and Conditions, Section 2.06.01 regarding wanton conduct. He further cites to numerous paragraphs under Section 7 regarding Emergency Electric Service Policy, reasonable period of time, and applicable limitations. Finally, he cites to Section 10.02 regarding proper repairs and 10.04 regarding waiver.

⁴ See Formal Complaint at page 6.

⁵ See K.A.R. 82-1-220(c).

Therefore, Mr. Yoder's Formal Complaint complies with K.A.R. 82-1-220(b)(1) which requires that he "...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..." The Complainant cites to multiple provisions of law or the regulations or orders of the commission that would entitle the Complainant to relief.

Regarding (2) above, Mr. Yoder has set forth facts claimed by him to constitute the violations. And, lastly Mr. Yoder has stated relief sought, namely, reimbursement for damages caused by Westar's alleged violation of their tariff.

Wester is subject to Commission jurisdiction.⁶ The Commission has been given full power, authority, and jurisdiction to supervise and control the electric public utilities doing business in Kansas.⁷ The Commission is also charged with ensuring the provision of efficient and sufficient service at just and reasonable rates.⁸ Furthermore, the Commission's powers are to be liberally construed, and the Commission is expressly granted all incidental powers necessary to carry into effect the provisions of the public utility statutes.⁹ Finally, the Formal Complaint satisfies the procedural requirements of K.A.R. 82-1-220.¹⁰ Therefore, Staff recommends the Commission find that Mr. Yoder's allegations present a jurisdictional *prima facie* case for Commission action.

This memorandum makes no recommendation regarding the *validity or truthfulness* of the Mr. Yoder's claim(s). While the Commission may have *jurisdiction* to grant the relief sought by Mr. Yoder, this memorandum makes no recommendation on the merits of the Complaint.

RECOMMENDATION:

Legal Staff recommends the Commission find:

- The Formal Complaint filed on January 8, 2018, complies with the procedural requirements of K.A.R. 82-1-220;
- The Formal Complaint establishes a *prima facie* case for Commission action; and
- Pursuant to K.A.R. 82-1-220(c), the Formal Complaint should be served upon Westar for an Answer.

⁶ See K.S.A. 66-101, K.S.A., 2016 Supp. 66-101b, 2016 Supp. 66-101e, and K.S.A. 2016 Supp. 66-104.

⁷ K.S.A. 66-101.

⁸ K.S.A. 66-101b.

⁹ K.S.A. 66-101g.

¹⁰ K.A.R. 82-1-220.

CERTIFICATE OF SERVICE

18-WSEE-286-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Legal Memorandum was placed in the United States mail, postage prepaid, or hand-delivered this 13th day of March, 2018, to the following:

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