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April 3, 2018

Toni R. Wheeler, City Attorney  
Lawrence City Attorney's Office  
P.O. Box 708  
Lawrence, KS 66044

Re: Lawrence Alliance for Responsible Lighting

Dear Ms. Wheeler

You provided me with various documents regarding a proposal from the Lawrence Alliance for Responsible Lighting (LARL). Your communication included (1) a two page unsigned document with sections designated, "Complaint Detail", "Company Response" and "Suggested Resolution", (2) a one page document entitled LARL's Response to Tariff with Westar, by Reid Nelson, (3) the City Commission Agenda Item considering the LARL request from the Commission Meeting Feb. 20, 2018, and (4) the eight-page Westar Tariff on Street Lighting filed at the Kansas Corporation Commission (KCC) October 28, 2015.

LARL requests Westar to replace existing "old" lights with lights having a CCT level of no greater than 3000k. LARL requests that this replacement be done with no additional charge by Westar. It is LARL's stated request that this be done for health concerns.

There is no record on the KCC website indicating that a formal complaint has been filed. It appears that LARL has had "informal" contact with the KCC. It is presumed that the "informal" contact was by telephone or an office meeting.

You request an opinion on the following questions:

1. Does Westar Energy's Street Lighting Tariff, filed October 28, 2015, permit Westar Energy to determine unilaterally what is or is not a standard street lighting fixture?
2. Does a city have any authority to require Westar to install a specific, or nonstandard fixture that is different from its standard street lighting fixture?
3. Does the City of Lawrence have any authority to compel or require Westar to install and provide service to streetlight fixtures that Westar deems to be nonstandard?
4. Is Westar Authorized to charge the City of Lawrence a premium rate, different than the rates charged for standard streetlight service, for service provided to streetlight fixtures it deems to be nonstandard? If so, what is the basis of calculation for that premium rate?

**Response:**

Westar is an electric public utility as defined by KSA 66-101(a). As such, Westar is required to file its tariffs with the KCC. These tariffs establish the terms and conditions governing the relationship between a public utility and its customers. Tariffs, when filed and approved by the KCC, generally bind both the public utility and its customers. KSA 66-101(c) requires every public utility doing business in Kansas to publish and file with the KCC copies of all schedules and rates as well as copies of all rules, regulations, and contracts.

Westar undoubtedly drafted the Street Lighting Tariff (SLT). The Kansas Supreme Court in *Southwestern Bell Tel. Co. V. Kansas Corporation Commission*, 233 Kan. 375, explained: "Tariffs may be, and usually are, the handiwork of the regulated utility but when duly filed with the KCC they generally bind both the utility and the Customer. See also *Danisco Ingredients USA, Inc., vs Kansas City Power & Light Company*, 267 Kan.760. (1999).

The SLT was filed October 28, 2015, and approved by the Commission on June 8, 2017. Both Westar and the customer, Lawrence, are bound by them. Filed

and approved tariffs are not governed by the rules of contracts of adhesion. The SLT can be changed by the KCC subject to review by the Courts.

The Electric Public Utilities Act, KSA 66-101, et seq. gives the KCC “full power, authority and jurisdiction to supervise and control the electric public utilities” and empowers the KCC to “do all things necessary and convenient for the exercise of such power, authority and Jurisdiction”. Further, KSA 101(b) provides “Every electric public utility governed by this act shall be required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility, to establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations.”

The provisions of the Electric Public Utilities Act and all grants of power, authority and jurisdiction made to the KCC are to be liberally construed, and all incidental powers necessary to carry into effect the provisions of the Act are expressly granted and conferred upon the KCC. KSA 66-115 provides that all orders, regulations, practices, services, rates, fares, charges, classifications, tolls, and joint rates fixed by the KCC are *prima facie reasonable unless, or until, changed or modified* either by the KCC or in pursuance of proceedings initiated in Court.

#### **Question 1. Who decides what a standard fixture is?**

Sheet 6 of the approved SLT under the Definitions and Conditions section provides that “Standard fixtures available for installation hereunder shall be determined by the Company on the basis of their quality, capital and maintenance costs, long term availability, general customer acceptance and other factors.” There is nothing ambiguous or unclear regarding the question of which party is directed to decide what a “standard fixture” is. The use of the word “shall” leaves no doubt about who decides on what is standard. Westar would have an option to confer with a customer regarding the question but ultimately the utility decides what a standard fixture is.

If the complainants believe that the SLT as filed and approved is unreasonable, the KCC is the proper entity to consider any proposed change.

**Question 2. Does the city have any authority to require Westar to install a specific, or nonstandard fixture?**

Sheet 2 of the SLT, under the heading Non-Standard Public Street Lighting states: "The Company, at its option and upon customer's request, will install own and operate nonstandard fixtures, poles or other items to meet the customer's need. Again, it is clear that a utility has the call on the installation of what it determines to be a non-standard fixture. Since the utility owns and operates the fixtures, the law, as reflected in the SLT, gives it the option regarding installation of non-standard equipment.

**Question 3. Can the City compel Westar to install fixtures Westar considers nonstandard?**

The answer to this question is the same as the two previous questions. If the SLT gives Westar the option to install nonstandard items, the city of Lawrence, the customer, would not have authority to compel or require Westar to install streetlight fixtures deemed by Westar to be nonstandard.

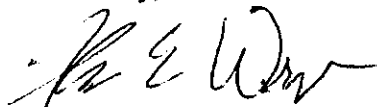
**Question 4. "Is Westar Authorized to charge the City of Lawrence a premium rate. . ."**

Westar is authorized to charge the City of Lawrence a premium rate for service provided to nonstandard fixtures. SLT Sheet 2 provides: "All nonstandard components shall be priced at one and three fourths percent (1  $\frac{3}{4}$ %) of total investment in such facilities plus 4.202 cents per kWh for all kWh supplied to nonstandard fixtures, plus one-twelfth of the annual cost of nonstandard lamp renewals and pole painting (if applicable)." Again, there is nothing ambiguous or unclear about the language of this provision.

**Conclusion.**

The City of Lawrence is being asked to weigh the risks and benefits of 3,000K and 4000K Street lights. Regardless of its opinion on this subject, only the KCC can change the language of the existing SLT.

Sincerely,



(Thomas E. Wright