

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

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

In the Matter of the Complaint Against Kansas)
Municipal Energy Agency, Respondent by) Docket No. 18-KAME-156-COM
City of Pratt, Complainant.)

ORDER DISMISSING FORMAL COMPLAINT

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined the record in this matter and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. BACKGROUND

1. In October 2017, the City of Pratt, Kansas (City) brought a Formal Complaint against the Kansas Municipal Energy Agency (KMEA).¹ The City alleged, in part, KMEA's administrative charges assessed to the City pursuant to two contracts were not a "proportionate amount of deficits with respect to a particular project" and were thus in violation of K.S.A. 12-8,109.² Additionally, the City alleged KMEA's administrative charges assessed pursuant to the same two contracts were unjust and unreasonable and thus in violation of K.S.A. 66-101b.³

¹ Complaint Against Kansas Municipal Energy Agency, p. 1. (Oct. 6, 2017) (Formal Complaint).

² See *id.* at ¶ 37 – 41.

³ See *id.* at ¶ 42 – 47.

2. The Commission accepted the City's Formal Complaint and served it upon KMEA for an Answer.⁴ KMEA timely filed an Answer,⁵ and the parties have since responded to one-another's responsive pleadings.⁶

3. In early 2018, the Kansas Legislature amended K.S.A. 12-8,111 which affected the Commission's jurisdiction over Municipal Energy Agencies like KMEA. Commission Staff filed a Memorandum stating the Commission no longer has subject matter jurisdiction to hear the City's Formal Complaint, as filed.⁷ No party responded to Staff's Memorandum.

II. DISCUSSION

4. The City is a member of the Kansas Municipal Energy Agency (KMEA).⁸ Municipal Energy Agencies like KMEA are subject to the Commission jurisdiction in the same manner as other public utilities.⁹ With the amendments to K.S.A. 12-8,111, Municipal Energy Agencies may, at their discretion, elect to be exempt from the Commission's jurisdiction similar to a partially deregulated electric cooperative.¹⁰

5. In June 2018, KMEA submitted a Report to the Commission indicating its members had elected to self-regulate pursuant to K.S.A. 12-8,111.¹¹ The Commission issued its Order Affirming Election to Deregulate regarding KMEA on August 2, 2018.¹² The Commission did

⁴ Order Accepting Formal Complaint and Adopting Staff's Memorandum (Jan. 23, 2018).

⁵ Kansas Municipal Energy Agency Answer and Response to Complaint Filed by the City of Pratt, Kansas (Feb. 2, 2018).

⁶ *See e.g.* Kanas Municipal Energy Agency Motion to Dismiss Portions of the Complaint Filed by the City of Pratt, Kansas (Feb. 2, 2018); *See also* Response to Motion to Dismiss Portions of the Complaint Filed by the City of Pratt, Kansas (Feb. 12, 2018).

⁷ *See* Notice of Filing of Staff Memorandum (Oct. 24, 2018).

⁸ *See* Formal Complaint, p. 1.

⁹ *See* K.S.A. 12-8,111(b).

¹⁰ *See* K.S.A. 12-8,111(c) through (f).

¹¹ *See* Report for Kansas Municipal Energy Agency, Docket No. 18-KAME-557-DRC (Jun. 21, 2018) (Report).

¹² *See* Order Affirming Election to Deregulate, Docket No. 18-KAME-557-DRC (Aug. 2, 2018).

note certain aspects of KMEA would remain subject to the Commission's jurisdiction pursuant to K.S.A. 12-8,111(g) and (h).¹³

6. K.S.A. 12-8,111 limits the Commission's jurisdiction to decide issues presented by the City. While K.S.A. 12-8,111(g) was not in place when the City filed its Formal Complaint against KMEA, the amended law and subsequent vote to self-regulate deprives the Commission jurisdiction to decide the matter.¹⁴

7. Pursuant to K.S.A. 12-8,111(g)(3) the contract of power for resale between KMEA and the City (a member of KMEA) is not subject to the Commission's jurisdiction. The City cites to K.S.A. 12-8,109 in Count I of its Formal Complaint.¹⁵ K.S.A. 12-8,109 allows member-cities to enter into contracts with their Municipal Energy Agencies for: (1) planning/studying projects, (2) providing services related to the energy system of a city, and (3) purchasing electricity from the Municipal Energy Agency.¹⁶ The contract (and terms) complained of relate to a sale of power for resale between a Municipal Energy Agency (KMEA) and its member (City). K.S.A. 12-8,111(g)(3) indicates the Commission retains jurisdiction over a Municipal Energy Agency's sales of power for resale, other than sales to its own members. Accordingly, the Commission no longer has jurisdiction to review this particular count.

8. The City alleges KMEA's administrative charges assessed pursuant to the same two contracts are unjust and unreasonable and thus in violation of K.S.A. 66-101b.¹⁷ K.S.A. 12-8,111(h) permits the Commission to investigate rates, joint rates, tolls, charges and exactions, classifications and schedules of charges or rates of Municipal Energy Agencies. However, K.S.A.

¹³ See *id.* at p. 3.

¹⁴ See *Chelf v. State*, 46 Kan. App. 2d 522, 529, 263 P.3d 852, 858 (2011) (Finding when a tribunal determines it lacks subject matter jurisdiction it must dismiss the case before it.).

¹⁵ See Formal Complaint at ¶¶ 37 – 41.

¹⁶ See K.S.A. 12-8,109(a)-(c).

¹⁷ See *id.* at ¶¶ 42 – 47.

12-8,111(h) has specific timing and threshold member-petitioning requirements that must be satisfied before a Commission investigation may commence. The Formal Complaint brought by the City against KMEA does not satisfy the requirements of K.S.A. 12-8,111(h).

III. FINDINGS AND CONCLUSIONS

9. The Commission finds it has the authority and jurisdiction to investigate Formal Complaints brought against Electric Public utilities.¹⁸ Specifically, the Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.¹⁹

10. However, the Commission finds K.S.A. 12-8,111 limits the Commission's investigative powers when a Formal Complaint pertains to a Municipal Energy Agency. Specifically, the Commission finds the items and areas of a Municipal Energy Agency subject to review by Formal Complaint are delineated in K.S.A. 12-8,111(g) and (h). The Commission finds the City's Formal Complaint does not satisfy the requirements of K.S.A. 12-8,111.

11. Accordingly, the Commission finds and concludes it does not possess subject matter jurisdiction to hear or decide the Formal Complaint brought by the City as filed. Therefore, the City's Formal Complaint against KMEA must be dismissed.

¹⁸ 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).

¹⁹ *See* K.S.A. 66-101d, -101g; K.S.A. 66-1,201, -204, -207.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Formal Complaint filed by the City of Pratt, Kansas against the Kansas Municipal Energy Agency is dismissed and the docket shall be closed.

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.²⁰

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: 11/15/2018



Lynn M. Retz
Secretary to the Commission

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²⁰ See K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

18-KAME-156-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 11/15/2018.

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