

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

In the Matter of the Complaint Against Kansas )  
Municipal Energy Agency Respondent, for an )  
Order Declaring that Kansas Municipal Energy )  
Agency is Charging Unjust and Unreasonable ) Docket No. 18-KAME-156-COM  
Rates, By the City of Pratt, Kansas )  
Complainant. )

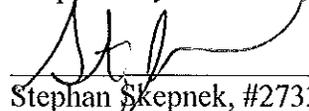
**NOTICE OF FILING OF LEGAL MEMORANDUM**

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. The Memorandum evaluates the Complaint filed by City of Pratt, Kansas (Pratt) on October 6, 2017, against the Kansas Municipal Energy Agency (KMEA) for compliance with the Commission's procedural regulations. As a result of this evaluation, Staff recommends the Commission find Pratt's Complaint complies with the procedural requirements set forth in K.A.R. 82-1-220 and should be served upon KMEA 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:** Chairman Pat Apple  
Commissioner Shari Feist Albrecht  
Commissioner Jay Scott Emler

**From:** Stephan Skepnek, Litigation Counsel  
Beth Reichenberger, Litigation Intern

**Date:** October 20, 2017

**Re:** 18-KAME-156-COM  
In the Matter of the Complaint against Kansas Municipal Energy Agency Respondent, for an Order Declaring that Kansas Municipal Energy Agency is Charging Unjust and Unreasonable Rates, By the City of Pratt, Kansas Complainant.

**EXECUTIVE SUMMARY:**

On October 6, 2017, the City of Pratt, Kansas (“Pratt”) filed a Complaint against Kansas Municipal Energy Agency (“KMEA”), pursuant to K.A.R. 82-1-220.<sup>1</sup> In its Complaint, Pratt alleges that KMEA’s billing practices and charges to administer Pratt’s contracts are not just and reasonable as required by Kansas law.<sup>2</sup> Additionally, Pratt alleges that KMEA is in violation of its contractual duties concerning Pratt’s Auction Revenue Rights (ARRs) and Transmission Congestion Rights (TCRs). Legal Staff recommends the Commission accept Pratt’s Complaint and serve the Complaint on KMEA for an Answer.

**BACKGROUND:**

On October 6, 2017, Pratt filed a Formal Complaint against KMEA. In its Complaint, Pratt alleges KMEA has violated K.S.A. 12-8,109, as KMEA’s charges to Pratt are “unreasonable and are not a ‘proportionate amount of deficits with respect to a particular project.’”<sup>3</sup> Pratt also alleges that KMEA has violated K.S.A. 66-101b because KMEA’s administrative charges are “not just and reasonable.”<sup>4</sup>

<sup>1</sup> Complaint of the City of Pratt, Kansas, against the City of Garden City, Kansas October 6, 2017. (Complaint and exhibits attached).

<sup>2</sup> Complaint.

<sup>3</sup> Complaint, ¶ 39.

<sup>4</sup> Complaint, ¶ 47.

Pratt further alleges that on June 1, 2010, KMEA and Pratt entered into a Power Purchase Agreement (“GRDA contract”) in which Pratt agreed to purchase energy from KMEA.<sup>5</sup> The GRDA contract terminates on April 30, 2026.<sup>6</sup> On September 15, 2008, KMEA and Pratt entered into a Power Purchase Agreement (“MKEC contract”) in which Pratt agreed to purchase energy from KMEA.<sup>7</sup> The MKEC contract terminates on December 31, 2018.<sup>8</sup>

Pursuant to the terms in both the GRDA and MKEC contracts, KMEA can charge a monthly administrative fee to Pratt.<sup>9</sup> For both the GRDA and MKEC contracts together, KMEA currently charges administrative fees which average in excess of \$13,000 per month.<sup>10</sup> The GRDA administrative fees charged to Pratt average in excess of \$6,500 per month.<sup>11</sup> Pratt alleges KMEA does not spend \$6,500 a month administering Pratt’s GRDA contract and believes that KMEA takes an average of 5 hours per month to administer the entire GRDA contract for all cities.<sup>12</sup>

KMEA’s Energy Management Project No. 2 (“EMP2”) provides energy to its members.<sup>13</sup> As a member of EMP2, Pratt and other cities form the Joint Operating Committee (“JOC”).<sup>14</sup> Members of the JOC have extensive duties, which include approving contracts and policies regarding KMEA’s energy services.<sup>15</sup> The EMP2 states that any action taken by the JOC must be approved by a majority vote and any action that requires a member city to obtain City approval must be unanimously approved by the JOC.<sup>16</sup>

KMEA drafted both the Transmission Congestion Cost Management Protocol and the General Marketplace Participation & Risk Control Protocol (“the Policies”) to be used in administering services to the EMP2 group.<sup>17</sup> The Policies concerned the handling of the cities’ Auction Revenue Rights (“ARRs”) and Transmission Congestion Rights (“TCRs”) in the SPP’s Integrated Market.<sup>18</sup> ARR and TCRs are generated by Pratt’s MKEC and GRDA Purchase Power Agreements.<sup>19</sup> The Policies allowed KMEA to have control over the ARR and TCRs and to contract with third party providers regarding those resources without approval by the JOC.<sup>20</sup> Pratt alleges that the ARR and TCRs are owned by the individual cities and that they should be managed separately with direction from the individual cities.<sup>21</sup>

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<sup>5</sup> Complaint, ¶ 11.

<sup>6</sup> *Id.*

<sup>7</sup> Complaint, ¶ 12.

<sup>8</sup> *Id.*

<sup>9</sup> Complaint, ¶ 13.

<sup>10</sup> Complaint, ¶ 14.

<sup>11</sup> *Id.*

<sup>12</sup> Complaint, ¶ 16.

<sup>13</sup> Complaint, ¶¶ 9, 17.

<sup>14</sup> Complaint, ¶ 17.

<sup>15</sup> Complaint, ¶ 17.

<sup>16</sup> Complaint, ¶ 18.

<sup>17</sup> Complaint, ¶ 19.

<sup>18</sup> *Id.*

<sup>19</sup> Complaint, ¶ 20.

<sup>20</sup> Complaint, ¶ 22.

<sup>21</sup> Complaint, ¶ 23.

On February 25, 2016, the JOC voted to approve the Policies, at a JOC meeting.<sup>22</sup> Pratt was the only member that voted against the Policies.<sup>23</sup> Pratt's City Commission later voted to reject the Policies.<sup>24</sup> Although the Policies did not receive unanimous approval by the JOC they were implemented by the KMEA.<sup>25</sup> As a result, KMEA has retained the sole ability to make decisions regarding the handling of Pratt's resources.<sup>26</sup>

### ANALYSIS:

Upon the filing of a formal complaint, the Commission must determine "whether or not the allegations, if true, would establish a [prima] facie case for action by the Commission and whether or not the formal complaint conforms to [the Commission's] regulations."<sup>27</sup> 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.

In support of its argument that KMEA is charging unjust and unreasonable rates, Pratt cites to Kansas statutes and existing agreements between itself and KMEA.<sup>28</sup> Therefore, the Complaint fully and completely advises the respondent and the Commission as to the provisions of law that have been allegedly violated in compliance with procedural requirement (1).

Pratt's Complaint also plainly and concisely describes the circumstances giving rise to its Complaint.<sup>29</sup> Therefore, the Complaint complies with procedural requirement (2) above.

Finally, the Complaint seeks specific relief. As noted above, Pratt asks the Commission to Order KMEA to charge a reasonable and just amount to administer the MKEC and GRDA contracts, Order KMEA to follow the provisions of the EMP2, GRDA, and KMEC contracts, Order KMEA to revoke the Policies and enjoin KMEA from restricting Pratt from involvement in its resources, and Order KMEA to reopen the RFP process for energy management services, allow each EMP

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<sup>22</sup> Complaint, ¶ 27.

<sup>23</sup> Complaint, ¶ 28.

<sup>24</sup> Complaint, ¶ 29.

<sup>25</sup> Complaint, ¶ 30.

<sup>26</sup> Complaint, ¶ 31.

<sup>27</sup> K.A.R. 82-1-220(c).

<sup>28</sup> Complaint, ¶¶ 1-47.

<sup>29</sup> Complaint, ¶¶ 17-47.

group to choose who it wants to handle its assets, and allow every City Participant to vote on the RFP process.<sup>30</sup> Therefore, the Complaint states the relief sought in compliance with procedural requirement (3).

The Commission has jurisdiction over both Pratt and KMEA. KMEA is a municipal energy agency, created pursuant to K.S.A. 12-885. Under that statute, KMEA is authorized to plan, study, and develop supply, transmission, and distribution facilities and programs and to secure an adequate, economical and reliable supply of electricity and other energy for transmission and distribution through the distribution systems of its member cities. By statute, KMEA is not required to obtain a certificate from the Commission pursuant to K.S.A. 66-131.<sup>31</sup> However, it is otherwise subject to the Commission's jurisdiction in the same manner as any other public utility.<sup>32</sup> Pratt is a municipality operating as an electric supplier and subject to Commission jurisdiction and authority.<sup>33</sup>

The Commission has been given full power, authority, and jurisdiction to supervise and control the electric public utilities doing business in Kansas.<sup>34</sup> The Commission is also charged with ensuring the provision of efficient and sufficient service at just and reasonable rates.<sup>35</sup> 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.<sup>36</sup> Finally, the rates and services of all public utilities, including Pratt and KMEA, must be approved by the Commission.<sup>37</sup>

Pratt's Complaint implicates the Commission's broad powers by invoking the concepts of inefficient service and unjust and unreasonable rates resulting from KMEA's alleged improper administration of its various contracts with the City of Pratt. Furthermore, the ability to hear and decide disputes between Kansas public utilities related to jurisdictional issues is an incidental power necessary to carry into effect the provisions of Kansas public utility statutes. Therefore, Staff recommends the Commission find that Pratt's allegations present a jurisdictional *prima facie* case for Commission action.

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

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<sup>30</sup> Complaint, "Relief Sought" at p. 7.

<sup>31</sup> K.S.A. 12-8,111(a).

<sup>32</sup> K.S.A. 12-8,111(b).

<sup>33</sup> See K.S.A. 66-101, K.S.A. 2016 Supp. 66-104, K.S.A. 2016 Supp. 66-104f(c), and K.S.A. 2016 Supp. 66-1,174.

<sup>34</sup> K.S.A. 66-101.

<sup>35</sup> K.S.A. 66-101b.

<sup>36</sup> K.S.A. 66-101g.

<sup>37</sup> K.S.A. 66-117.

**RECOMMENDATION:**

Legal Staff recommends the Commission find:

- The Formal Complaint 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 the Kansas Municipal Energy Agency for an Answer.

**CERTIFICATE OF SERVICE**

18-KAME-156-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Legal Memorandum was served via electronic service this 19th day of October, 2017, to the following:

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