

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

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

NOTICE OF FILING OF STAFF MEMORANDUM

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and files its Memorandum regarding the Formal Complaint filed by the City of Pratt, Kansas against the Kansas Municipal Energy Agency. Recent amendments to Kansas law have affected the Commission's jurisdiction over the Formal Complaint. As filed, the Commission no longer maintains subject matter jurisdiction to hear the Formal Complaint.

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

Respectfully submitted,

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MEMORANDUM LEGAL DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Dwight D. Keen

FROM: Robert Elliott Vincent, Senior Litigation Counsel

DATE: October 1, 2018

SUBJECT: 18-KAME-156-COM
In the Matter of the Complaint Against Kansas Municipal Energy Agency,
Respondent by City of Pratt, Complainant

BACKGROUND

The City of Pratt, Kansas (City) is a member of the Kansas Municipal Energy Agency (KMEA).¹ In October 2017, the City brought a Formal Complaint against KMEA.² 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. 12-8,109.³ 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.⁴

AMENDMENTS TO K.S.A. 12-8,111

Municipal Energy Agencies like KMEA are subject to the Kansas Corporation Commission's (Commission) jurisdiction in the same manner as other public utilities.⁵ 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. In essence, Municipal Energy Agencies may, at their discretion, elect to be exempt from the Commission's jurisdiction similar to a partially deregulated electric cooperative.⁶ Specifically, K.S.A. 12-8,111 was amended in part to read:

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

² See *id.*

³ See *id.* at ¶ 37 – 41.

⁴ See *id.* at ¶ 42 – 47.

⁵ See K.S.A. 12-8,111(b).

⁶ See K.S.A. 12-8,111(c) through (f).

(h)(1) Notwithstanding a municipal energy agency's election to be exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of charges or rates of such municipal energy agency if there is filed with the commission, not more than one year after a change in such municipal energy agency's rates, joint rates, tolls, charges and exactions, classifications or schedules of charges or rates, a petition signed by not less than 20% of the municipal energy agency's voting members as established in the governing documents of the municipal energy agency. If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of charges or rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges and exactions, classifications or schedules of charges or rates as are just and reasonable.

Additionally, K.S.A. 12-8,111(g)(3) makes clear sales of power for resale from a Municipal Energy Agency to its own members are not jurisdictional to the Commission if a Municipal Energy Agency exempts itself from the Commission's jurisdiction.

In June 2018, KMEA submitted a Report to the Commission indicating its members had elected to self-regulate pursuant to K.S.A. 12-8,111.⁷ The Commission issued its Order Affirming Election to Deregulate regarding KMEA on August 2, 2018.⁸ The Commission did note certain aspects of KMEA would remain subject to the Commission's jurisdiction pursuant to K.S.A. 12-8,111(g) and (h).⁹

The amendments to K.S.A. 12-8,111 limit the Commission's jurisdiction to decide issues presented by the City. While K.S.A. 12-8,111(g) was not in place at the time the City filed its Formal Complaint against KMEA, the amended law and subsequent vote to self-regulate (of which the City did not participate in)¹⁰ deprives the Commission jurisdiction to decide the matter. Specifically, 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. Additionally, the Formal Complaint brought by the City against KMEA does not satisfy the complaint requirements of K.S.A. 12-8,111(h). The Commission no longer has jurisdiction to hear or decide the City's Formal Complaint against KMEA.

RECOMMENDATION

Legal Staff recommends the Formal Complaint submitted by the City against KMEA be dismissed and closed due to lack of subject matter jurisdiction.

⁷ See Report for Kansas Municipal Energy Agency, Docket No. 18-KAME-557-DRC (Jun. 21 2018) (Report).

⁸ See Order Affirming Election to Deregulate, Docket No. 18-KAME-557-DRC (Aug. 2, 2018).

⁹ See *id.* at p. 3.

¹⁰ See Report at pp. 1-2.

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 Staff Memorandum was served by electronic service on this 4th day of October, 2018, to the following:

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