

**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	)	Docket No. 18-KAME-156-COM
Agency is Charging Unjust and Unreasonable	)	
Rates, By the City of Pratt, Kansas	)	
Complainant.	)	

**ANSWER AND RESPONSE TO COMPLAINT FILED BY THE CITY OF PRATT, KANSAS**

COMES NOW, the Kansas Municipal Energy Agency (“KMEA”) and files its Answer and Response to the Complaint filed by the City of Pratt, Kansas (“Pratt” or “City”) in accordance with K.A.R. 82-1-220(c) and the January 23, 2018 *Order Accepting Formal Complaint and Adopting Staff’s Memorandum* issued by the Kansas Corporation Commission (“KCC”) or (“Commission.”) In support of its Answer, KMEA hereby states as follows:

**I. Background**

1. KMEA is a municipal energy agency organized, authorized and existing pursuant to the laws of the State of Kansas, including K.S.A. 12-885 *et seq.* Its registered office is located at 6300 West 95<sup>th</sup> Street, Overland Park, Kansas. KMEA has over 80 member cities across the State of Kansas and provides wholesale capacity, energy, transmission, and other services to its member-owner municipal electric utilities. Municipal energy agencies are defined by statute as “a quasi-municipal corporation created by agreement between or among two or more cities pursuant to this act to exercise any of the powers granted by K.S.A. 12-885 to 12-8,111, and amendments thereto, and including the acquisition, reconstruction, operation, repair, extension or improvement of electric generation or transmission facilities or the acquisition of any interest

therein or any right to part of all of the capacity thereof.” The agreement creating KMEA was submitted to and approved by the Kansas Attorney General, and the approved agreement was then submitted to the Commission, all in accordance with K.S.A. 12-888.

2. On October 6, 2017, the City of Pratt, Kansas filed a formal complaint with the Commission against KMEA, alleging, *inter alia*, violations of K.S.A. 66-101(b) and K.S.A. K.S.A. 12-8,109. Specifically, Pratt asserts that violations of these statutes have occurred due to: (i) the monthly administrative fees charged by KMEA to Pratt for administering the GRDA and MKEC contracts<sup>1</sup> are not just and reasonable; (ii) KMEA has engaged in improper practices in its administration of the EMP 2 Agreement<sup>2</sup> through KMEA’s implementation of specific risk control policies; (iii) KMEA’s acceptance of its own in-house proposal for energy management services has resulted in unjust and unreasonable rates to Pratt; (iv) KMEA’s charges to Pratt pursuant to the GRDA and MKEC contracts are unreasonable and are not a “proportionate amount of deficits with respect to a particular project” as required by K.S.A. 12-8,109; and (v) KMEA charges its member cities for unreasonable and duplicative costs.

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<sup>1</sup> On May 11, 2005, KMEA and several of its members entered into a Power Purchase Agreement in which the members agreed to purchase energy from KMEA that KMEA purchased from the Grand River Dam Authority (“GRDA” and “GRDA Agreement”, respectively). The GRDA Agreement was amended on June 1, 2010, to add the City of Pratt and several other members. KMEA construes the 2005 agreement and all amendments collectively as the GRDA Agreement. Similarly, on September 15, 2008, KMEA and Pratt entered into a Power Purchase agreement in which Pratt agreed to purchase energy from KMEA that KMEA purchased from the Mid-Kansas Electric Company (“MKEC” and “MKEC Agreement”, respectively.)

<sup>2</sup> On behalf of member cities, KMEA manages eight wholesale power supply projects, including the Energy Management Project (“EMP”) 2 Project. The EMP 2 Project was created in 2007 between KMEA and now has thirteen participating member cities. Pursuant to the EMP 2 agreement, these cities operationally combine their municipal electric systems to purchase electric power and transmission as a centrally dispatched group and to manage power supplied from their respective entitlements in the GRDA, SPA, and WAPA projects. The EMP 2 agreement provides for project governance, establishes common reliability and metering standards, and sets rules for sharing and exchanging power supply resources and determining project power supply pricing. In addition, KMEA provides SPP market participation services for the EMP 2 cities.

3. On October 20, 2017, the Staff of the Commission filed its legal Memorandum analyzing Pratt's complaint for compliance with Commission regulations. While making no recommendation concerning the validity or truthfulness of Pratt's claims, Staff recommended that the Commission find that the complaint satisfied the procedural requirements for formal complaints as specified in K.A.R. 82-1-220 and established a prima facie case for action by the Commission.

4. On January 23, 2018, the Commission issued an Order finding that it has jurisdiction to investigate the complaint, accepting Staff's Memorandum, and directing that the complaint be served upon KMEA.

5. Pratt organizes its complaint using specific headings, and KMEA will utilize the same headings in this response to ensure consistency.

6. As additional context for Pratt's complaint, on April 15, 2016, Pratt submitted to KMEA its three-year notice of termination of its participation in the EMP 2 Agreement in accordance with Section 3.03 of that Agreement. Since filing its notice, Pratt has attempted to either accelerate the termination process or leverage its position with respect to the EMP 2 and GRDA Agreements. KMEA views the instant complaint as merely the latest maneuver by Pratt to hasten its termination of the GRDA and EMP 2 agreements with KMEA.

## **II. Parties, Jurisdiction, and Operative Facts**

7. KMEA generally admits and concurs with Pratt's statements regarding the parties, the jurisdiction of the Commission, and the operative facts, as contained in paragraphs 1-10 of Pratt's Complaint, while noting that Pratt's statement of facts is not necessarily inclusive of all facts relevant to the complaint. KMEA will supplement the operative facts as necessary in this Answer. Any allegations not specifically admitted or denied in this Answer are hereby denied.

### **III. GRDA and MKEC Contracts**

8. KMEA admits the factual statements concerning the existence and execution of the GRDA and MKEC contracts as stated in paragraphs 11-13 of Pratt's Complaint.

9. Pratt states that on June 1, 2010, KMEA and Pratt entered into the GRDA agreement, in which Pratt agreed to purchase energy from KMEA that KMEA purchased from GRDA. The GRDA agreement terminates on April 30, 2026. Similarly, on September 15, 2008, KMEA and Pratt entered into the MKEC contract in which Pratt agreed to purchase energy from KMEA that KMEA purchased from MKEC. The MKEC contract terminates on December 31, 2018.

10. In accordance with the terms of both the GRDA agreement and the MKEC agreement, KMEA charges an administrative fee to Pratt. Pratt alleges that for the GRDA and MKEC contracts together, KMEA currently charges administrative fees which average in excess of \$13,000 per month. The GRDA administrative fees charged to Pratt average in excess of \$6,500 per month. KMEA admits that it charges administrative fees to Pratt in accordance with the GRDA and MKEC agreements. The \$13,000 in monthly administrative fees cited by Pratt is correct as of 2016.

11. Pratt asserts in its complaint that it is charged for the monthly administrative fees or agency expenses without any description of the basis for those charges. Pratt states its belief that KMEA does not spend \$6,500 per month administering Pratt's GRDA contract and asserts that the entire GRDA contract for all cities takes an average of approximately five hours per month for KMEA to administer due to the Integrated Market.

### **IV. KMEA Response to Allegations of Improper Administrative Fees**

12. KMEA denies Pratt's allegations in paragraphs 15-16 that Pratt has been provided no description for the basis of the charges or that it has assessed improper administrative fees to Pratt. All administrative fees were assessed to Pratt in accordance with KMEA's member-approved cost allocation methodology, and which are included in the annual budget and reviewed and approved by Pratt.

13. Section 4.02 of the MKEC agreement provides that "Participant agrees to pay budgeted KMEA Administrative Fees allocated to the MKEC Project, in the amounts set forth in the annual KMEA budgets approved by KMEA's Board of Directors." Likewise, Section 4.04 of the MKEC agreement provides that "in the event the Participant, acting in good faith, disagrees with the amount of the Monthly Power Costs (which includes administrative fees), it shall notify KMEA in writing within ninety (90) days of receiving the bill from KMEA." Failure of the Participant to send written notice to KMEA within the ninety (90) day period shall constitute final agreement with the invoice." The GRDA agreement mirrors the MKEC agreement with the inclusion of these same provisions in the same sections; with the exception that Section 4.04 of the GRDA agreement requires Pratt to notify KMEA in writing of a disagreement with a monthly bill within eighty (80) days, rather than the ninety (90) day time period required by the MKEC agreement.

14. In May of each year, KMEA presents its Board of Directors with a preliminary budget for the upcoming calendar year. At the same time, the preliminary budget is posted to KMEA's website for members to access and review following the May Board meeting. Members therefore have nearly five months to review the preliminary budget, comment on the budget, or pose questions regarding the budget, prior to Board approval of the budget in October or November. Pratt's City Manager, Dave Howard, served on KMEA's Executive Committee

for nearly eight years, concurrent with the time period associated with the MKEC and GRDA agreements, as a voting Member, President, or Vice-President. In this capacity, Mr. Howard was provided extremely detailed budgetary information as it related to each KMEA project and KMEA's administrative fees. Further, as a KMEA member, Pratt representatives were provided detailed budgetary information each year at KMEA's annual meetings. Each KMEA member, including Pratt, voted unanimously to approve the annual budget each year until 2017. Notably, the first year Pratt voted against the annual budget was in the fall of 2017 (for the 2018 budget year), subsequent to Pratt's filing of the instant complaint against KMEA.

15. The City of Pratt was fully aware of the process to allocate KMEA administrative costs to each energy project, including EMP 2, GRDA, and MKEC, and thus can make no valid claim that the administrative costs are unreasonable or that it is unaware of the basis for such costs. At no time since the execution of the MKEC and GRDA Agreements has the City of Pratt provided notice, written or otherwise, that it disagreed with or disputed the Monthly Power Cost (including Administrative Fees) invoices sent by KMEA. In accordance with Section 4.04 of those agreements, KMEA submits that Pratt has waived any opportunity to dispute the Administrative Fees.

#### **V. Alleged Improper Practices by KMEA in Administering the EMP 2 Contract and Motion to Dismiss**

16. Concurrently with the filing of this Answer, KMEA has filed a Motion to Dismiss those portions of Pratt's complaint that pertain to alleged improper administration of the EMP 2 Agreement. As detailed more fully in its Motion to Dismiss, all of Pratt's allegations pertaining to the EMP 2 Agreement should be dismissed because any and all controversies or claims arising

out of or relating to the EMP 2 Agreement must be settled by arbitration in accordance with Article XX of the EMP 2 Agreement.

17. Notwithstanding KMEA's Motion to Dismiss portions of Pratt's complaint that pertain to administration of the EMP 2 Agreement, pursuant to K.S.A. 60-212(b),<sup>3</sup> which permits the assertion of affirmative defenses in both a responsive pleading and a separate motion, KMEA hereby provides its answer and response to Pratt's EMP 2 allegations.

18. Regarding paragraphs 17-23, KMEA admits that the Joint Operating Committee ("JOC") has duties pursuant to the EMP 2 Agreement, that any action taken by the JOC must be approved by a majority vote, and that KMEA's Executive Committee adopted certain risk control Policies, as discussed further herein.

19. Pratt alleges that the Policies were improperly adopted by the JOC. Pratt asserts that it explicitly took the position that Auction Revenue Rights ("ARRs") and Transmission Congestion Rights ("TCRs") are owned by the individual cities and that they should be managed separately from KMEA with direction from the individual cities. Pratt further states that it

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<sup>3</sup> K.S.A. 60-212(b) states: *How to present defenses*. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) Lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under K.S.A. 60-219, and amendments thereto.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

voiced its objection to the adoption of the Policies and noted that the Policies required City Commission approval. As such, Pratt argues, the JOC was required to have a unanimous vote on the Policies. Pratt was the only city that voted against adoption of the Policies. All other EMP cities voted for the policies unanimously and no other city went to its governing body for approval.

**VI. KMEA Response to Allegations of Improper JOC Action in Adopting the Policies**

20. KMEA denies all allegations of improper JOC action in adopting the Policies as detailed in paragraphs 24-27. KMEA admits that Pratt was the only member that voted against the policies. KMEA is without sufficient information to either admit or deny whether the Pratt City Commission later voted to reject the policies, as stated in paragraph 29 of Pratt's complaint.

21. KMEA's actions were appropriate and in the best interests of the EMP 2 members and in accordance with the policies and procedures established by KMEA, the EMP 2, the JOC, and the Southwest Power Pool ("SPP").

22. Pratt incorrectly notes in its complaint that ARR's and TCR's are generated by Pratt's interests in the MKEC and GRDA agreements. Rather, the ARR's and TCR's are generated by the Network Integration Transmission Service Agreements KMEA has in place to govern transmission service for the EMP 2 Agreement, MKEC Agreement, and the GRDA Agreement. ARR's are financial rights awarded during the ARR allocation process and entitle the holder (which is KMEA) to a share of the auction revenues that were generated in the TCR auction process or that can be converted into TCR's. TCR's are financial rights that entitle the holder to a share of the congestion revenue collected in SPP's Day-Ahead Market.



23. KMEA, not the individual cities, is both an SPP Market Participant and Transmission Customer. As Transmission Customer, KMEA owns firm transmission on behalf of its member cities. As the Market Participant for Pratt, KMEA is required to take all necessary actions to responsibly manage the City's load and resource assets, and KMEA maintains that it has continually done so. The Market Participant Agreement was approved by KMEA's Executive Committee, pursuant to a motion for approval from Pratt's City Manager Dave Howard.

24. The City of Pratt receives payments or charges from KMEA for its ARR and TCRs on a monthly basis, and the City has never refused payment or objected to the receipt of these payments. KMEA's management of the ARR and TCRs on behalf of the EMP 2 cities has resulted in over \$217,000 in savings to the City of Pratt, and Pratt cannot claim any damages or prejudice that have resulted from KMEA's management of these congestion hedging instruments.

## **VII. Alleged "Unreasonable Prices and Inefficient Practices"**

25. KMEA admits that in early 2016 KMEA drafted a Request for Proposals ("RFP") for energy management services, that the RFP received several responses, that KMEA itself submitted an option to bring energy management services in-house, and that KMEA's Executive Committee voted to approve KMEA's in-house option, as detailed in paragraphs 33-34 of the complaint. KMEA denies the allegation in paragraph 34 that KMEA's in-house option was approved over bids that were "substantially lower." KMEA denies that it bills its member cities almost \$4 million dollars a year for energy management services, and that those services could be provided for "substantially less than KMEA is charging for the same services," as suggested

in paragraphs 35 and 36. KMEA denies all allegations of unreasonable prices and inefficient practices.

#### **VIII. KMEA Response to “Alleged Unreasonable Prices and Inefficient Practices”**

26. Pratt makes several erroneous statements that require correction. Pratt posits that KMEA bills its member cities approximately \$4 million in annual fees for “energy management services.” KMEA’s entire annual operating budget is approximately \$4 million, and the energy management services represented by the RFP are only a fraction of the many services provided by KMEA. Pratt is confusing the value of the energy management services requested in the RFP with the full slate of member services KMEA provides. In addition to energy management services, KMEA provides representation at SPP, advocacy at FERC, SPP, KCC, and the state legislature, an equipment loan program, power supply planning, identification of power supply options, and many other services.

27. Pratt’s allegation that the energy management services KMEA provides to its members could be provided by third party providers for “substantially less” than what KMEA is charging for the same services fails to consider the significant benefits of the in-house option and the synergies it provides. Further, the transition to provision of in-house energy management services still significantly reduced Pratt’s administrative fees due to the overall reduction in costs. Finally, Pratt’s confusion of the value of the energy management services listed in the RFP with KMEA’s total annual operating budget merely adds to Pratt’s distorted perception of the bids submitted in response to the RFP.

#### **IX. Count I K.S.A. 12-8,109**

28. In Count I of its complaint, Pratt incorporates by reference its prior allegations. KMEA hereby reiterates its prior answers to those allegations.

29. KMEA admits that a portion of K.S.A. 12-8,109 is quoted correctly in paragraph 38 of Pratt's complaint. KMEA denies that its charges to Pratt are unreasonable and denies all allegations that it has violated K.S.A. 12-8,109, as stated in paragraphs 39 and 40 of the complaint. KMEA specifically denies that Pratt has suffered any damages through its payment of KMEA's administrative fees, as stated in paragraph 41 of the complaint.

30. Pratt misquotes K.S.A. 12-8,109, which states that any member of a municipal energy agency may enter into a contract with the agency "upon such terms and conditions as the parties shall deem reasonable, including provisions requiring payment whether actually received or not and provisions requiring the contracting city to pay a proportionate amount of deficits with respect to a particular project." As detailed above, Pratt was well aware of KMEA's member-driven and approved practices in allocating administrative fees and in fact voted to approve the allocation methodology. Pratt has no tenable basis for making a claim that such fees are unreasonable, and its claim for damages is both without merit and is not a remedy the Commission is empowered to award. KMEA denies any violations of K.S.A. 12-8,109.

**X. Count II K.S.A. 66-101b**

31. In Count II, Pratt incorporates by reference all prior allegations and alleges violations of K.S.A. 66-101b, which requires an electric public utility to furnish efficient and sufficient service at just and reasonable rates. KMEA hereby reiterates its prior answers to those allegations.

32. KMEA admits the allegations contained in paragraphs 43-46 of Pratt's complaint. KMEA denies all allegations in paragraph 47 and denies that it has violated K.S.A. 66-101b.

33. KMEA has responded to each of Pratt's claims above and denies all allegations of violations of K.S.A. 66-101b.

## **XII. Conclusion**

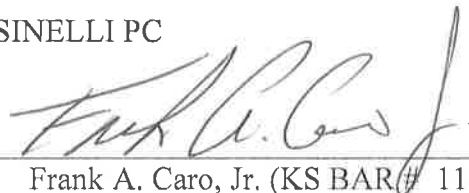
34. KMEA requests that the Commission bifurcate the complaint issues by dismissing the allegations pertaining to claims and disputes arising out of the EMP 2 Agreement as set forth in its Motion to Dismiss. KMEA further requests that all of Pratt's requests for relief be denied.

WHEREFORE, KMEA respectfully requests that the Commission bifurcate the complaint issues and grant KMEA's motion to dismiss, deny all of Pratt's claims for relief, and for any such further relief as the Commission may deem just and appropriate.

Respectfully submitted,

POLSINELLI PC

By:



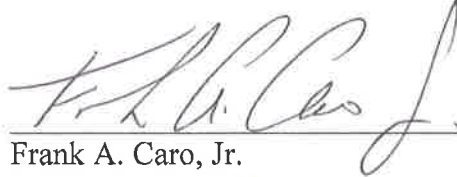
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**VERIFICATION**

STATE OF MISSOURI                    )  
  ) SS.  
COUNTY OF JACKSON                )

Frank A. Caro, Jr., being first duly sworn upon his oath, deposes and states that he is Counsel for Kansas Municipal Energy Agency, that he has read and is familiar with the foregoing and that the statements therein are true to the best of his knowledge, information and belief.

  
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Frank A. Caro, Jr.

Subscribed and sworn to before me this 2<sup>nd</sup> day of February, 2018.

**BRENDA L. LEE**  
**NOTARY PUBLIC-NOTARY SEAL**  
**STATE OF MISSOURI**  
**CLAY COUNTY**  
**MY COMMISSION EXPIRES 9/29/2018**  
**COMMISSION # 14428629**

  
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CERTIFICATE OF SERVICE

I hereby certify, that a true and correct copy of this Response was mailed, postage prepaid,  
this 2<sup>nd</sup> day of February, 2018, to:

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