

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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| In the Matter of the Complaint Against |) | |
| City of Garden City, Kansas |) | |
| Respondent, |) | Docket No. 17-GDCE-370-COM |
| |) | |
| For an Order Declaring Garden City is |) | |
| Illegally Servicing Conestoga Energy Partners, |) | |
| LLC, in Wheatland Electric Cooperative, |) | |
| Inc.'s Certified Service Territory, and an order |) | |
| to cease, |) | |
| |) | |
| By Wheatland Electric Cooperative, Inc. |) | |
| Complainant |) | |
| _____ |) | |

MOTION TO TAKE DEPOSITION

COMES NOW Wheatland Electric Cooperative, Inc. (Wheatland) and moves the State Corporation Commission of the State of Kansas (Commission) for an order allowing depositions pursuant to its authority in K.S.A. 66-106 and K.A.R. 82-1-227, and under the procedure set forth in the Kansas Code of Civil Procedure (KCCP). In support of its motion, Wheatland states as follows:

I. Background

1. On February 9, 2017, Wheatland filed a formal complaint against the City of Garden City, Kansas (City) asking the Commission to issue an order finding that City is illegally serving electricity to an electric customer within Wheatland's certified service territory and establishing Wheatland as the exclusive retail electric service provider.

2. On February 14, 2017, the Commission issued its *Order Accepting Formal Complaint and Adopting Staff's Memorandum* and the order requiring the complaint to be served on the City.

3. On March 27, 2017, the City answered the complaint, asking that it be dismissed, to enforce an oral agreement between Wheatland and the City, and to transfer of the certificated service territory from Wheatland to the City. The City also raised complex factual allegations of estoppel, laches, bad faith on the part of Wheatland, and that Wheatland's service would not be in the public interest. These issues are commonly raised and contested using the procedures in the KCCP.

4. On April 27, 2017, the Commission entered its order designating a prehearing officer, a protective order and a discovery order.

5. As of the date of this filing, Wheatland has served data requests on the City (1-29). The City has served data requests on Wheatland (1.1-1.4). Commission staff has served data requests on Wheatland (1-4, 6 and 9) and the City (5, 7, 8, 10 and 11-13).

6. Wheatland requests the deposition *duces tecum* of Michael Muirhead on the use of the sub-station serving Conestoga and Petrosantander and whether the City will be prejudiced if Wheatland is allowed to server these customers. Mr. Muirhead will also be deposed on all issues wherein he has signed and answered data requests, and he is an employee of the City. Wheatland requests the deposition *duces tecum* of G.C Sonnenberg on the understanding between the parties allowing the City to serve Conestoga. Mr. Sonnenberg is listed by the City as a witness on this issue and is an employee of the City. Wheatland also request the deposition *duces tecum* of the City employee that has the most knowledge of the use of the substation serving Conestoga on the factual issues raised by the City in its answer. This witness is to be named by the City.

II. Legal Authority

7. K.S.A. 66-106(a) states as follows:

The State Corporation Commission shall have power to adopt reasonable and proper rules and regulations to govern its proceedings, including the assessment and taxation of costs on any complaint provided for in K.S.A. 66-133, and amendments thereto, and to **regulate the mode and manner of all investigations, tests, audits, inspections and hearings not specifically provided for herein**, except that no person desiring to be present at any investigation or hearing by the commission shall be denied admission. (Emphasis added.)

This language gives the Commission broad authority over discovery procedures, unless prohibited by other enabling statutes.

8. K.A.R. 82-1-227 provides authority to the Commission to issue subpoenas commanding persons to appear and give testimony. This regulation further provides a procedure for serving and enforcing attendance of witnesses.

9. K.A.R. 82-1-230 demonstrates the Commission's authority to adopt the KCCP. K.S.A. 60-230 provides an appropriate procedure for taking depositions and K.S.A. 60-232 provides for the potential use of the depositions in judicial settings. The Commission, in past dockets, has permitted the taking of depositions even using as its authority the Federal Rules of Civil Procedure. See, 11-GIMM-548-KHP

III. Request

WHEREFORE, for the reasons set forth above, Wheatland respectfully requests the Commission issue an order to take depositions, set forth in numeric 6 above, under the procedure set forth in Article II of the KCCP, and using its authority to compel witnesses set forth in K.A.R. 82-1-227.

Respectfully submitted,

/s/ James M. McVay

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 26th day of July, 2017, the above and foregoing Motion to Take Deposition was served by electronic service to the following parties:

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