

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

IN THE MATTER OF THE COMPLAINT
AGAINST:
KANSAS MUNICIPAL ENERGY AGENCY,
Respondent

by

CITY OF PRATT,
Complainant.

DOCKET NO. 18-KAME-156-COM

**RESPONSE TO MOTION TO DISMISS PORTIONS
OF THE COMPLAINT FILED BY THE CITY OF PRATT, KANSAS**

COMES NOW Complainant City of Pratt (“Pratt”) and for its *Response to Motion to Dismiss Portions of the Complaint filed by the City of Pratt, Kansas* filed by the Kansas Municipal Energy Agency (“KMEA”) states as follows:

1. On October 6, 2017, Pratt filed its Formal Complaint against KMEA with the Kansas Corporation Commission (the “Commission”), asking the Commission to exercise its jurisdiction and authority to investigate KMEA for breaching K.S.A. 12-8,109 and K.S.A. 66-101b and to undertake such action as is necessary to prevent KMEA from continuing to breach these statutory provisions.

2. Commission Staff filed a Legal Memorandum on October 19, 2017, finding that the Formal Complaint satisfied the requirements of K.A.R. 82-1-220 and established a prima facie case for the Commission to act upon the Complaint.

3. The Commission issued an Order accepting Staff’s Legal Memorandum and finding that it had jurisdiction to investigate the Complaint on January 23, 2018.

4. On February 2, 2018, KMEA filed a Motion to Dismiss Portions of the Complaint Filed by Pratt, asserting that all allegations in the Complaint pertaining to the EMP 2 Agreement should be dismissed based on an arbitration provision contained therein.

5. In determining the applicability of an arbitration clause, it must first be determined if the arbitration provision is broad or narrow. *See Cummings v. FedEx Ground Package Sys., Inc.*, 404 F.3d 1258, 1260–61 (10th Cir. 2005). If the clause is narrow, parties will only be required to submit to arbitration in those specific situations allowed by the language found therein. *Id.* at 1262. Matters collateral to those specifically discussed in such an arbitration clause will generally be beyond the purview of the clause. *Id.*

6. In citing only a portion of the arbitration clause contained in the EMP 2 Agreement, KMEA would like for the Commission to believe that such arbitration clause is broad in its scope. This is not the case. Section 20.04 in EMP 2 Agreement, which is part of the arbitration clause, provides that:

The Board of Arbitrators shall have no authority, power or jurisdiction to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement nor to consider any issues arising other than from the language in and that authority derived from this Agreement.

When Section 20.04 in EMP 2 Agreement is properly considered, it narrows the scope of those claims which are subject to arbitration to only those issues arising from the language in and the authority derived from such Agreement.

7. While Pratt does believe that KMEA has breached the terms of the EMP 2 Agreement, this is not the issue that Pratt is seeking to have the Commission decide. Instead, Pratt is asking the Commission to decide whether the actions of KMEA were in violation of

certain statutory provisions governing the conduct of all electric public utilities, and by extension, municipal energy agencies, specifically K.S.A. 12-8,109 and K.S.A. 66-101b.

8. Regardless of what is stated in the EMP 2 Agreement, KMEA is required by statute to establish just and reasonable charges, make just and reasonable rules, and provide efficient and sufficient services. K.S.A. 66-101b. While KMEA suggests that arbitration is required because it claims its rates were established pursuant to, and certain actions it has taken were authorized by, the EMP 2 Agreement, Pratt's request to have the Commission determine whether KMEA has complied with K.S.A. 66-101b requires the Commission to simply look at the rates being charged and services being performed by KMEA, and to decide whether such rates and services meet the standards set forth in K.S.A. 66-101b. Even if KMEA has technically complied with aspects of the EMP 2 Agreement, something which Pratt disputes but does not ask the Commission to decide, the Commission would still be tasked with determining if KMEA has established just and reasonable charges, made just and reasonable rules, and provided efficient and sufficient services within the context of Pratt's situation.

9. After finding itself on the wrong side of an investigation into the jurisdiction of the Commission over municipal energy agencies, KMEA is attempting to use the arbitration provision in the EMP 2 Agreement as another attempt to limit, or prevent altogether, the Commission from exercising its statutorily authorized jurisdiction over such agencies to ensure that they are held to the same standards required of electric public utilities and municipal energy agencies.¹ Investigating and determining whether KMEA has violated statutes governing its conduct is, at most, collateral to the agreements between KMEA with Pratt. Because the arbitration clause found in the EMP 2 Agreement specifically limits arbitration to those issues arising from the language in and authority derived from the Agreement, a statutory mandate such

¹ See Docket No. 18-GIME-217-GIE, *Order on Jurisdiction* (January 9, 2018).

as KMEA's compliance with statutes and the KCC's duty to regulate them is not covered or limited by the arbitration clause. *Cummings*, 404 F.3d at 1260–61. Therefore, Pratt is not required to pursue arbitration to address any of the matters set forth in its Complaint. Instead, in accordance with the Legal Memorandum filed and Order accepting such Legal Memorandum filed in this Docket, the Commission should continue to exercise its authority to determine whether KMEA has violated its statutory duties set forth in K.S.A. 12-8,109 and K.S.A. 66-101b. Statutory compliance is not something to be held captive to private arbitration.

WHEREFORE, Pratt respectfully requests that the Commission deny KMEA's Motion to Dismiss Portions of the Complaint filed by the City of Pratt, Kansas, and for any such further relief as the Commission deems just and reasonable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2018, a true and correct copy of the above and foregoing RESPONSE TO MOTION TO DISMISS PORTIONS OF THE COMPLAINT FILED BY THE CITY OF PRATT, KANSAS was e-mailed to:

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