

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Complaint Against	)	
City of Garden City, Kansas	)	
<b>Respondent,</b>	)	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.	)	
<b>Complainant</b>	)	
_____	)	

**RESPONSE OF WHEATLAND  
TO THE REPLY OF GARDEN CITY TO  
MOTION TO TAKE DEPOSITION**

COMES NOW Wheatland Electric Cooperative, Inc. (Wheatland) and files its response to Garden City's Reply to Motion to Take Deposition (City). In support of its Response, Wheatland states as follows:

**I. Background**

1. Wheatland incorporates by reference paragraphs 1-9 of its Motion to Take Deposition.

2. The City filed its reply to Wheatland's Motion to Take Deposition on August 4, 2017, and objects on several grounds.

**II. Legal Authority**

3. In Docket #04-AQLE-1065-RTS, the Kansas Corporation Commission (Commission), in part, stated:

While depositions are not prohibited, they are also not encouraged in the normal course of a proceeding. The Commission has typically reserved the use of depositions for **extraordinary**

**matters.** Like a trial court, the Commission is vested with broad discretion and supervised in the course and scope of discovery. See, *Ryan v. Kansas Power and Light Co.*, 249, Kan. 1, 815 P.2d 528 (1991). Under its discretion in the past, the Commission has ordered depositions in extraordinary circumstances.... (Emphasis added.)

4. In the present case, the City is attempting to enforce an alleged oral contract between the parties, and to date, has not provided any specific terms of this agreement. We do not know the alleged length of the agreement, we do not know if the alleged agreement allows the City to serve other customers, we do not know the alleged intent of the parties, we do not know the circumstances surrounding the agreement, we do not know what the alleged consideration was/is to Wheatland; to name a few. These answers cannot be extracted from the City's witnesses without violating the prohibition against cross-examination by data requests.

5. As stated in the Motion to Take Deposition, this case also involves issues that are normally contested in the district court. The City has raised several affirmative defenses. Primarily, the City is claiming that it is somehow prejudice because of the facilities that it has constructed to serve the Conestoga area. The determination of these equitable defenses will be complicated and depositions under oath will be the best method of discovery.

6. Wheatland believes that this is an extraordinary matter. The legal citations in the City's reply do not remotely fit the allegations and issues in the present case. It is difficult to prove a negative, but Wheatland finds no research indicating the Commission has addressed these issues in the past.

7. The issues presented in this case of an unwritten and unknown agreement between the parties, and the affirmative common law defenses raised by the respondent show that this is an extraordinary matter worthy of full discovery.

WHEREFORE, Wheatland files its Response to the City's Reply in opposition to deposition.

Respectfully submitted,

By /s/ James M. McVay

James M. McVay, #13046  
Watkins Calcara, Chtd.  
1321 Main Street - Suite 300  
P.O. Drawer 1110  
Great Bend, Kansas 67530  
(620) 792-8231 telephone  
(620) 792-2775 facsimile  
Attorneys for Wheatland Electric  
Cooperative, Inc.

### **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 8<sup>th</sup> day of August, 2017, the above and foregoing Response of Wheatland to the Reply of Garden City to Motion to Take Deposition was served by electronic service to the following parties:

Matthew Allen, City Manager  
City of Garden City  
301 N. 8<sup>th</sup> Street  
P.O. Box 998  
Garden City, Kansas 67846  
[matt.allen@gardencityks.us](mailto:matt.allen@gardencityks.us)

Michael Muirhead, Director of Utilities  
City of Garden City  
301 N. 8<sup>th</sup> Street  
P.O. Box 998  
Garden City, Kansas 67846  
[mike.muirhead@gardencityks.us](mailto:mike.muirhead@gardencityks.us)

Celyn Hurtado, City Clerk  
City of Garden City  
301 N. 8<sup>th</sup> Street  
P.O. Box 998  
Garden City, Kansas 67846  
[Celyn.Hurtado@GardenCityks.us](mailto:Celyn.Hurtado@GardenCityks.us)

Randall D. Grisell, Attorney  
DOERING, GRISELL  
& CUNNINGHAM  
124 Grant Avenue  
Garden City, Kansas 67846  
[randyg@gcnet.com](mailto:randyg@gcnet.com)

Michael Duenes, Assistant General Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, Kansas 66604-4027  
[m.duenes@kcc.ks.gov](mailto:m.duenes@kcc.ks.gov)

Stephan Skepnek, Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, Kansas 66604-4027  
[s.skepnek@kcc.ks.gov](mailto:s.skepnek@kcc.ks.gov)

Gary Dawdy  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, Kansas 66604-4027  
[g.dawdy@kcc.ks.gov](mailto:g.dawdy@kcc.ks.gov)

Andrew O. Schulte, Attorney  
POLSINELLI PC  
900 W. 48<sup>th</sup> Place, Ste. 900  
Kansas City, Missouri 64112  
[aschulte@polsinelli.com](mailto:aschulte@polsinelli.com)

Jake Fisher, Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, Kansas 66604-4027  
[j.fisher@kcc.ks.gov](mailto:j.fisher@kcc.ks.gov)

Frank A. Caro, Attorney  
POLSINELLI, PC  
904 W. 48<sup>th</sup> Place, Ste. 900  
Kansas City, Missouri 64112  
[fcaro@polsinelli.com](mailto:fcaro@polsinelli.com)

Leo Haynos  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, Kansas 66604-4027  
[l.haynos@kcc.ks.gov](mailto:l.haynos@kcc.ks.gov)

By /s/ James M. McVay  
James M. McVay, #13046