

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

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

MOTION TO DISMISS OF THE CITY OF GARDEN CITY

COMES NOW, the City of Garden City, Kansas ("Garden City") and files a Motion to Dismiss the Complaint of Wheatland Electric Cooperative, Inc. ("Wheatland"). As explained below, there is no longer a case or controversy for the Kansas Corporation Commission ("Commission") to decide, so the Complaint must be dismissed.

I. Background

1. On February 9, 2017, Wheatland filed a complaint against Garden City alleging that Garden City is serving a retail electric customer, Conestoga Energy Partners, LLC ("Conestoga"), in Wheatland's certified territory and asking the Commission to issue an order establishing Wheatland as the exclusive retail electric service provider in the territory at issue (the "Complaint").

2. On February 20, 2017, the Staff of the Commission ("Staff") filed its Legal Memorandum, which found—based on the facts as they existed at that time—that the Complaint complied with the procedural requirements and established a *prima facie* case for Commission action, and recommended that the Complaint be served upon Garden City for an Answer.

3. On March 14, 2017, the Commission issued its Order Accepting Formal Complaint and Adopting Staff's Memorandum, which found that the Complaint should be served on Garden City, based on the facts as they existed at that time.

4. Garden City answered the Complaint on March 28, 2017 (the “Answer”). The Answer explained that Wheatland ceded the territory at issue to Garden City eleven years ago, with the knowledge and consent of the customer, pursuant to an unconditional oral agreement and that Garden City has incurred substantial costs to initially provide service to Conestoga and over the past eleven years in reliance upon its agreement with Wheatland. Garden City asked the Commission to dismiss the Complaint and approve and enforce the transfer of territory necessary to serve Conestoga from Wheatland to Garden City.

5. The Commission has not ruled on Garden City’s original request to dismiss the Complaint. Instead, discovery has proceeded in accordance with the Commission’s April 27, 2017 Order Designating Prehearing Officer, Protective Order and Discovery Order.

6. In the intervening months since the Complaint was filed, Garden City has taken all the necessary steps to annex the territory encompassing Conestoga’s facilities. Details of the City’s annexation were provided to the Commission in a filing in this docket on September 22, 2017. The annexation was effective on September 21, 2017. Due to this change in facts, there is no longer a case or controversy on which the Commission may rule.

II. No Case or Controversy

7. The Complaint asks the Commission for an order “finding that Garden City is illegally serving electricity to Conestoga in Wheatland’s certified service territory” and directing Garden City “to cease serving electricity to Conestoga and establishing Wheatland as the exclusive retail electric service provider in the area of the Conestoga ethanol plant.” Wheatland Complaint, Section IV(a) and (b). Now that Garden City has legally annexed the territory encompassing Conestoga, Wheatland cannot claim—and the Commission cannot find—that the City is illegally serving electricity to Conestoga. Additionally, Wheatland cannot claim—and

the Commission cannot find—that Conestoga is in Wheatland’s certified service territory or that Wheatland is the exclusive retail electric service provider for Conestoga. Thus, there is no case or controversy for the Commission to decide and the Compliant must be dismissed.

III. Prayer for Relief

8. Garden City respectfully requests that the Commission issue an order dismissing the Complaint.

Respectfully Submitted,



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ATTORNEYS FOR GARDEN CITY

VERIFICATION

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

Andrew O. Schulte, being first duly sworn upon his oath, deposes and states that he is Counsel for The City of Garden City, Kansas, 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.

Andrew O. Schulte
Andrew O. Schulte

Subscribed and sworn to before me this 10th day of October, 2017.

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

Brenda L. Lee

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and forgoing was emailed, this 10th day of October, 2017, to:

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