

**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

FORMAL COMPLAINT

COMES NOW Complainant City of Pratt (“Pratt”) for its Formal Complaint against Respondent, the Kansas Municipal Energy Agency (“KMEA”), alleges and states the following:

Parties

1. Respondent KMEA is a Municipal Energy Agency pursuant that was created by municipalities pursuant to K.S.A. 12-888. The address of its principal place of business in Kansas is 6300 West 95th Street, Overland Park, KS 66212.

2. Complainant Pratt is a municipality and a member of KMEA located in Pratt, Kansas at 117 W. 3rd Street, Pratt, KS 67124.

Jurisdiction

3. KMEA is subject to the jurisdiction of the State Corporation Commission in the “same manner as a public utility” pursuant to K.S.A. 12-8,111(b).

4. Pursuant to K.S.A. 66-101e, the KCC has authority to investigate a formal complaint against an electric public utility.

5. As KMEA contracts with Pratt to provide electricity, KMEA is an electric public utility.

Operative Facts

6. KMEA is made up of approximately 77 member municipalities.
7. KMEA was created by municipalities for the purpose of “securing an adequate, economical and reliable supply of electricity.” K.S.A. 12-885.
8. These member cities rely on KMEA to provide its services in an economical fashion for the benefit of the cities and the citizens of Kansas.
9. KMEA is involved in several projects that provide energy to its members. Those projects include Energy Management Project No. 2 (“**EMP2**”), EMP1, EMP3, Mid-Kansas Electric Co. (“**MKEC**”), Grand River Dam Authority Power Project (“**GRDA**”) and others.
10. Pratt is a Participant of EMP2.

GRDA and MKEC Contracts

11. On June 1, 2010 KMEA and Pratt entered into a Power Purchase Agreement (“**GRDA contract**”) in which Pratt agreed to purchase energy from KMEA that KMEA purchased from the Grand River Dam Authority (“**GRDA**”). The GRDA contract terminates on April 30, 2026.
12. On September 15, 2008, KMEA and Pratt entered into a Power Purchase Agreement (“**MKEC contract**”) in which Pratt agreed to purchase energy from KMEA that KMEA purchased from the Mid-Kansas Electric Company (“**MKEC**”). The MKEC contract terminates on December 31, 2018.
13. Pursuant to the terms of both the GRDA and MKEC contracts, KMEA can charge a monthly administrative fee to Pratt.
14. For both 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.

15. Pratt is charged for the monthly administrative fee or agency expense without any description of the basis for those charges.

16. Upon information and belief, KMEA does not spend \$6,500 a month administering Pratt's GRDA contract. Rather, Pratt believes that the entire GRDA contract for all cities takes an average of approximately 5 hours per month for KMEA to administer due to the Integrated Market.

Improper Practices by KMEA in Administering the EMP2 Contract

17. As a member of EMP2, Pratt and other cities, who are EMP2 members, form the Joint Operating Committee ("JOC"). The members of the JOC have extensive duties under the EMP2, which include approving contracts and policies regarding the energy services provided by KMEA.

18. The EMP2 sets forth several provisions regarding JOC duties. The EMP2 states that any action taken by the JOC must be approved by a majority vote. Notably, however, any action that requires a member city to obtain City approval must be unanimously approved by the JOC.

19. In 2012, KMEA's Executive Committee adopted the Energy Risk Control Policy which called for the EMP groups to draft their own risk policies. KMEA drafted both the Transmission Congestion Cost Management Protocol and the General Marketplace Participation & Risk Control Protocol ("**the Policies**") to be used in administering services to the EMP2 group.

20. The Policies concerned the handling of the cities' Auction Revenue Rights ("**ARRs**") and Transmission Congestion Rights ("**TCRs**") in the SPP's Integrated Market.

21. ARR and TCRs are generated by Pratt's MKEC and GRDA Purchase Power Agreements. ARR are financial rights which are awarded during the ARR allocation process and entitle the holder to a share of the auction revenues that were generated in the TCR auction

or that can be converted into TCRs. TCRs are financial rights that entitle the holder to a share of the congestion revenue collected in the SPP's Day-Ahead Market.

22. The Policies allowed KMEA to have control over the ARR and TCRs and to contract with third party providers regarding those resources without approval by the JOC.

23. The Policies were presented to the EMP2 group on several occasions in 2015 and 2016. Pratt explicitly took the position before KMEA that the ARR and TCRs are owned by the individual cities and that they should be managed separately with direction from the individual cities.

24. At a February 25, 2016, JOC meeting, Pratt suggested revisions to the Policies which would allow Pratt to have continued involvement in its resources. Pratt's revisions were rejected by KMEA.

25. Pratt also informed KMEA that the Policies required approval by its City Commission as they took away Pratt's abilities to approve contracts regarding its resources. As such, unanimous approval of the action approving the Policies was required by the JOC.

26. KMEA ignored the fact that Pratt's City Commission's approval of the Policies was required. Due to KMEA's failure to provide a final copy of the Policies, Pratt's City Commission did not have an opportunity to review the Policies prior to the vote by the JOC.

27. The Policies were designated as "drafts" up to the time of the JOC vote, which occurred on February 25, 2016. Although Pratt rightfully asserted that approval of its City Commission was required before the JOC could approve the Policies, this was ignored and a vote was held.

28. Pratt was the only member that voted against the policies.

29. Pratt's City Commission later voted to reject the Policies.

30. Although the Policies did not receive unanimous approval by the JOC, they were implemented by the KMEA.

31. As a result, KMEA has retained the sole ability to make decisions regarding the handling of Pratt's resources.

Unreasonable Prices and Inefficient Practices

32. In early 2016, KMEA drafted an RFP for energy management services.

33. The RFP received several responses. In addition, KMEA submitted a response to its own RFP.

34. KMEA's Executive Committee voted to approve KMEA's in-house bid over bids that were substantially lower.

35. Additionally, KMEA bills its member cities almost \$4 million dollars a year for energy management services.

36. Those services could be provided to Pratt and other member cities by third party providers for substantially less than KMEA is charging for the same services.

Count I - K.S.A. 12-8,109

37. Pratt incorporates by reference the allegations set forth in paragraphs 1 through XX above, as if set forth fully herein.

38. K.S.A. 12-8,109 states that KMEA may enter into a contract with member cities for the purchase of electricity and require the member city to pay "a proportionate amount of deficits with respect to a particular project."

39. Upon information and belief, KMEA's charges to Pratt under both the MKEC and GRDA contracts are unreasonable and are not a "proportionate amount of deficits with respect to a particular project."

40. Therefore, KMEA's actions in charging more than \$13,000 a month for administrative charges under both the MKEC and GRDA contracts violate K.S.A. 12-8,109.

41. As a result, Pratt and other member cities have suffered damages.

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

42. Pratt incorporates by reference the allegations set forth in paragraphs 1 through XX above, as if set forth fully herein.

43. An electric public utility is any public utility which sells electricity. K.S.A. 66-101a.

44. Pursuant to K.S.A. 12-8,111(b), KMEA is subject to the jurisdiction of the KCC in the same manner as a public utility.

45. KMEA is therefore subject to the electric public utility statute that requires efficient and sufficient service with just and reasonable rates. K.S.A. 66-101b.

46. Pursuant to K.S.A. 66-101b, KMEA must establish just and reasonable charges, make just and reasonable rules and provide efficient and sufficient service.

47. KMEA has violated 66-101b in the following:

- a. KMEA's administrative charges under the MKEC and GRDA contracts are not just and reasonable.
- b. KMEA's administrative charges are inefficient as a third party provider can provide services at a lower cost to Pratt and the member cities.
- c. KMEA charges member cities for unnecessary and duplicative costs.
- d. KMEA's decision to accept its own bid resulted in unjust and unreasonable charges to Pratt and other member cities.

- e. By enforcing the Policies, KMEA has adopted an unjust and unreasonable policy as KMEA failed to comply with EMP2 in adopting the Policies and has taken away Pratt's ability to make decisions regarding its resources.

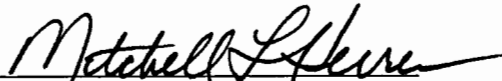
Relief Sought

WHEREFORE, Pratt requests that the KCC investigate KMEA's practices and conduct set forth in this complaint pursuant to its authority over KMEA. *See* K.S.A. 12-8,111(b); K.S.A. 66-101e. Pratt requests that the KCC provide the following relief:

1. Investigate to determine if all of KMEA's charges to Pratt are just and reasonable.
2. Order KMEA to charge a reasonable and just amount to administer the MKEC and GRDA contracts.
3. Order KMEA to be transparent in the billing of the administrative fees and specifically identify the basis of the administrative fees.
4. Revoke the Policies and enjoin KMEA from restricting Pratt from involvement in its resources.
5. Order KMEA to reopen the RFP process for energy management services, allow each EMP group to choose who it wants to handle its assets, and allow every City Participant to vote on the RFP process.
6. Order KMEA to follow the provisions of the EMP2, GRDA and MKEC contracts.

Respectfully Submitted,

HINKLE LAW FIRM LLC
1617 North Waterfront Parkway, Suite 400
Wichita, Kansas 67206
Telephone: 316-267-2000
Facsimile: 316-630-8466
E-mail: mherren@hinklaw.com
E-mail: rsilva@hinklaw.com

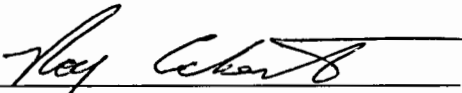
By 
Mitchell L. Herren, SC No. 20507
Rachael M. Silva, SC No. 26953
Attorneys for Complainant

VERIFICATION

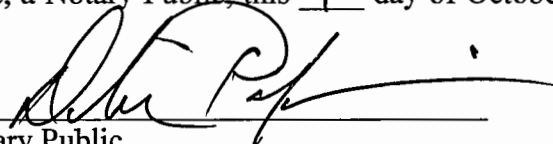
I do solemnly, sincerely, and truly declare and affirm that the statements made in this complaint are true and accurate to the best of my knowledge, and I do this under the pains and penalties of perjury.

I understand the Formal Complaints filed with the KCC become a public record and may be posted on the KCC's website. Any information provided in the complaint or other documents related to the complaint, including, but not limited to, my name, address, city, state, zip code, telephone number, email address, and the facts of the case may be available online for public viewing.

On Behalf of the City of Pratt, Kansas

By: 
Roy Eckert, City Manager
City of Pratt
619 South Main
P.O. Box 807
Pratt, Kansas 67124
Telephone: 620-672-6446
Facsimile: 620-672-6415
E-mail: reckert@cityofprattks.com

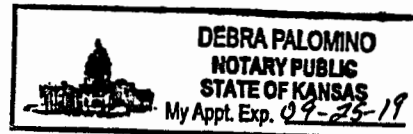
SUBSCRIBED AND SWORN to before me, a Notary Public, this 4th day of October, 2017.


Notary Public

My Appointment Expires:

09-25-2019

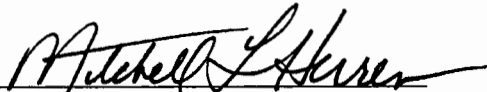
[Seal]



CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2017, a true and correct copy of the above and foregoing FORMAL COMPLAINT was mailed, postage prepaid and properly addressed to:

Secretary, Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604

By 
Mitchell L. Herren, SC No. 20507
Rachael M. Silva, SC No. 26953
Attorneys for Complainant