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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of a General Investigation to
Determine the Commission's Jurisdiction over
Municipal Energy Agencies

Docket No. 18-GIME-217-GIE

CITY OF PRATT, KANSAS'
BRIEF REGARDING JURISDICTION

COMES NOW, the City of Pratt, Kansas ("Pratt"), by and through its undersigned counsel, and for its Brief Regarding Jurisdiction states as follows:

I. PROCEDURAL AND FACTUAL BACKGROUND

1. Pratt is a municipality which utilizes the services of Kansas Municipal Energy Agency ("KMEA") to provide electricity to Pratt.

2. KMEA is a municipal energy agency (a "MEA") organized and operating under the same laws as Kansas Power Pool ("KPP").

3. Pratt is currently engaged in a dispute with KMEA regarding the charging of unreasonable rates and KMEA's inefficient and self-serving practices in managing the services provided to Pratt which have caused unnecessary rate increases.

4. On September 8, 2016, Southern Pioneer Electric Company ("Southern Pioneer") filed a Complaint with the Corporation Commission of the State of Kansas (the "KCC") against Kansas Power Pool ("KPP"), alleging that KPP was illegally attempting to by-pass Southern

Pioneer's facilities contrary to the public interest, which Complaint was docketed on December 15, 2016.

5. On October 3, 2017, KPP filed a Motion to Dismiss Southern Pioneer's Complaint, asserting that the KCC did not have jurisdiction to regulate the activities of KPP which were being complained of by Southern Pioneer, and that the KCC did not have the ability to grant the relief being sought by Southern Pioneer.

6. KPP's Motion to Dismiss asserts that the KCC lacks jurisdiction over the Complaint because: (a) Southern Pioneer failed to allege violations of any statute, regulation or order of the KCC, (b) the complained of activity is a business decision of KPP on a matter over which no statute specifically discusses the ability of the KCC to regulate, and (c) because the Complaint seeks to revise a settlement agreement.¹

7. On October 4, 2017, an Order was entered amending the Procedural Schedule in this matter to allow additional time to brief the jurisdictional questions raised by KPP's Motion to Dismiss.

8. On October 19, 2017, KMEA filed a Petition to Intervene in the above referenced matter, claiming that the jurisdictional questions raised in KPP's Motion to Dismiss are "of great import and interest to KMEA."²

9. Prior to being granted intervention in this matter, KMEA filed its Response on Intervention and Brief Regarding Jurisdiction on October 24, 2017 (the "KMEA Brief"), in which it expands upon the jurisdictional arguments made by KPP. The KMEA Brief sets forth

¹ See Docket No. 17-KPPE-092-COM, *Motion to Dismiss of Kansas Power Pool*, pp. 4–12.

² Docket No. 17-KPPE-092-COM, *Petition to Intervene of Kansas Municipal Energy Agency*, ¶ 7.

the argument that so long as an MEA is exercising powers granted to it by K.S.A. 12-895(a), the KCC should have no jurisdiction to hear complaints about the activities of such MEA.

10. On November 3, 2017, KCC Staff filed its Brief in Response to Kansas Power Pool's Motion to Dismiss (the "Staff Brief"). The Staff Brief correctly concludes that, based on the plain language of K.S.A. 12-8,111(b), the KCC has jurisdiction over MEAs in the same manner it has jurisdiction over other electric public utilities and, therefore, may exercise the authority to supervise, control, and regulate the activities and contracts of such agencies.³

II. ANALYSIS AND ARGUMENT

11. The KCC is granted jurisdiction over MEAs in the same manner as over other public utilities, with the only exception being for the certificate of public convenience addressed in K.S.A. 12-8,111(a). K.S.A. 12-8,111(b). A plain language reading of this statute leads to the conclusion that all statutes allowing for exercise of the KCC authority and control over public utilities apply with equal force to MEAs. This certainly includes, among others, K.S.A. 66-101, which gives the KCC "full power, authority and jurisdiction to supervise and control electric public utilities," and K.S.A. 66-101b, which requires that electric public utilities furnish reasonably efficient services, establish just and reasonable rates, and make just and reasonable rules and regulations.

12. In its Motion to Dismiss, KPP asserts that business decisions of an MEA are matters over which KCC has no ability to regulate so long as such decisions are approved by its members and are within the scope of authority granted pursuant to K.S.A. 12-895(a).⁴ The KMEA Brief extends KPP's argument by asserting that, because K.S.A. 12-895 itself does not

³ Docket No. 17-KPPE-092-COM, *Staff's Brief in Response to Kansas Power Pool's Motion to Dismiss*, ¶¶ 15–18.

⁴ *Motion to Dismiss of Kansas Power Pool*, pp. 7–9.

state that the KCC has jurisdiction over actions taken pursuant to such statute, the legislature must have intended to limit the KCC's jurisdictional reach such that an MEA can function free of KCC oversight in exercising powers granted by K.S.A. 12-895(a).⁵ Such arguments, especially that of KMEA, ignore a fundamental rule of statutory interpretation which provides that a statute that speaks directly on an issue controls over a statute which speaks generally, or in this case not at all, on a matter. *In re Mental Health Ass'n of Heartland*, 289 Kan. 1209, 1215, 221 P.3d 580, 585–86 (2009); *City of Olathe v. Stott*, 253 Kan. 687, 693, 861 P.2d 1287, 1292 (1993). K.S.A. 12-8,111(b) directly addresses the jurisdictional issue and gives the KCC the power to regulate MEAs in the same manner it may regulate other electric public utilities, whereas K.S.A. 12-895(a) simply does not address jurisdictional issues. Therefore, K.S.A. 12-8,111(b) clearly controls and is not limited by any lack of a discussion of KCC jurisdiction in K.S.A. 12-895(a).

13. In addition to the above, statutes are to be construed in such a manner so as to not render them useless or meaningless. *Hawley v. Kansas Dept. of Agriculture*, 281 Kan. 603, 631, 132 P.3d 870 (2006). As recognized in the Staff Brief, KPP's argument that the KCC lacks jurisdiction to regulate business decisions of an MEA would render meaningless the language found in K.S.A. 12-8,111(b).⁶ This is because KPP is asking for the statutes related to MEAs to be interpreted so as to exempt such agencies from KCC jurisdiction so long as their actions are within the scope K.S.A. 12-895(a) and are approved by and benefit the members thereof, something which cannot be done by other electric public utilities. The argument set forth by KMEA takes things a step further by seeking to automatically exempt MEAs from KCC jurisdiction, regulation, and control for any actions falling within the scope of K.S.A. 12-895(a),

⁵ Docket No. 17-KPPE-092-COM, *Kansas Municipal Energy Agency Response on Intervention and Brief Regarding Jurisdiction*, ¶¶ 6–8.

⁶ *Staff's Brief in Response to Kansas Power Pool's Motion to Dismiss*, ¶ 19.

without regard to the effect of such actions on its members. If KMEA was correct, the KCC would no longer have full power, authority and jurisdiction to supervise and control MEAs in the same manner it may supervise and control other electric public utilities. In fact, the KCC would have little to no authority over MEAs, leaving no regulatory oversight of how MEAs serve municipalities such as Pratt. This would undoubtedly create an unpredictable system of relying on ad hoc district court rulings to govern the conduct of MEAs while other cities that receive electricity from a public utility that is not an MEA would still be able to look to the KCC to govern the conduct of their provider. All of this would be an improper interpretation of the unequivocal grant of jurisdiction to the KCC over MEAs found in K.S.A. 12-8,111(b).

III. CONCLUSION

14. The arguments by KPP and MEA are an attempt to create an unequal playing field where MEAs are able to act with impunity in situations where all other electric public utilities would face regulation and control by the KCC. The argument made in the KMEA Brief would, when taken to the extreme yet logical conclusion, even allow an MEA to charge unreasonable rates and provide inefficient service yet avoid KCC regulation thereof simply because it contracted in some manner with its customers for the sale of such electricity pursuant to K.S.A. 12-895(a)(5). The legislature clearly did not intend such an outcome when it explicitly provided that MEAs were to be subject to the jurisdiction of the KCC in the same manner as other public utilities.

WHEREFORE, Pratt respectfully requests that the KCC accept and consider this brief regarding jurisdictional issues related to municipal energy agencies, and for such other relief as may be just and reasonable.

Respectfully Submitted,

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