

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of the Application of Evergy)
Kansas Metro, Inc. for Authority to Cease)
Transacting the Business of an Electric Public) Docket No. 20-EKME-352-CCS
Utility in the City of Gardner, Kansas, Under)
Annex Ordinance No. 2622 and Annex)
Ordinance No. 2631)

**ORDER GRANTING APPLICATION TO CEASE TRANSACTING THE BUSINESS OF
AN ELECTRIC PUBLIC UTILITY IN CERTAIN PORTIONS OF JOHNSON COUNTY,
KANSAS**

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, the Commission makes the following findings and conclusions:

BACKGROUND

1. On February 12, 2020, Evergy Kansas Metro Inc. d/b/a Evergy Kansas Metro (Evergy Kansas Metro) filed an Application to cease transacting the business of an electric public utility in territory situated within Johnson County, Kansas, annexed by the City of Gardner.¹ Evergy Kansas Metro is an electric public utility as defined in K.S.A. § 66-101a.

2. On April 23, 2020, in Docket No. 20-GDRE-432-COC, the City of Gardner provided notice of the annexation by filing an Application to provide electric service in the territory that is the subject of Evergy Kansas Metro's Application.

¹See Application to Cease (Feb. 12, 2020) (Application).

3. Everygy Kansas Metro requests the Commission issue an Order granting it authority to cease transacting the business of an electric public utility in the following described territory:

JOHNSON COUNTY

Ordinance No. 2622

All that part of the Northwest Quarter of Section 29, Township 14 South, Range 23 East, lying South and East of Interstate Highway 35, described as follows:

BEGINNING at the Southwest corner of the Northwest Quarter of Section 29, Township 14 South, Range 23 East; thence North 2 degrees 17 minutes 30 seconds West along the West line of the Northwest Quarter of said Section 29 a distance of 1363.78 feet to a point on the Southeasterly right of way line of Interstate Highway 35 as established in Volume 3475, Page 774; thence in a Northeasterly direction along said right of way line and along a curve to the right whose initial tangent bears North 49 degrees 41 minutes 33 seconds East, having a radius of 11,309.16 feet, through a central angle of 0 degrees 10 minutes 52 seconds, an arc distance of 35.76 feet to a point; thence North 56 degrees 31 minutes 20 seconds East along said right of way line a distance of 543.85 feet to a point; thence North 68 degrees 50 minutes 34 seconds East along said right of way line a distance of 440.47 feet to a point; thence North 87 degrees 46 minutes 28 seconds East along said right of way line a distance of 1460.43 feet to a point; thence South 87 degrees 20 minutes 26 seconds East along said right of way line a distance of 327.30 feet to a point; thence North 66 degrees 35 minutes 54 seconds East along said right of way line a distance of 14.46 feet to a point on the East line of the Northwest Quarter of said Section 29; thence South 2 degrees 05 minutes 58 seconds East along the East line of the Northwest Quarter of said Section 29 a distance of 1830.10 feet to the Southeast corner thereof; thence South 88 degrees 39 minutes 43 seconds West along the South line of the Northwest Quarter of said Section 29 a distance of 2704.50 feet to the POINT OF BEGINNING, containing 4,780,096 Square Feet or 109.7359 Acres, more or less.

Also, all that part of the Northeast Quarter of Section 29, Township 14 South, Range 23 East, lying South and East of Interstate Highway 35, described as follows:

BEGINNING at the Southwest corner of the Northeast Quarter of Section 29, Township 14 South, Range 23 East; thence North 2 degrees 05 minutes 58 seconds West along the West line of the Northeast Quarter of said Section 29 a distance of 1830.10 feet to a point on the Southeasterly right of way line of Interstate Highway 35 as established in Volume 3475, Page 762; thence North 66 degrees 35 minutes 54 seconds East along said right of way line a distance of 296.48 feet to a point; thence North 34 degrees 50 minutes 13 seconds East along said right of way line a distance of 225.00 feet to a point; thence North 11 degrees 50 minutes 40 seconds East along said right of way line a distance of 437.78 feet to a point; thence North

83 degrees 24 minutes 39 seconds East along said right of way line a distance of 188.84 feet to a point; thence North 87 degrees 58 minutes 01 seconds East along said right of way line a distance of 1050.00 feet to a point; thence North 73 degrees 02 minutes 08 seconds East along said right of way line a distance 155.24 feet to a point on the South right of way line of 175th Street as established in Volume 4458, Page 126; thence North 87 degrees 58 minutes 01 seconds East along the South right of way line of 175th Street a distance of 744.69 feet to a point on the West right of way line of Clare Road; thence South 18 degrees 44 minutes 58 seconds East along the West right of way line of Clare road a distance of 135.66 feet to a point; thence South 1 degree 50 minutes 26 seconds East along the West right of way line of Clare Road a distance of 2500.70 feet to a point on the South line of the Northeast Quarter of said Section 29; thence South 88 degrees 39 minutes 43 seconds West along the South line of the Northeast Quarter of said Section 29 a distance of 2677.73 feet to the POINT OF BEGINNING, containing 6,656,573 Square Feet or 152.9139 Acres, more or less. Such lands being more specifically described on Exhibit A attached hereto.

Also, That portion of the adjacent right of way immediately North of such lands which are not owned and maintained by the Kansas Department of Transportation, with the Eastern terminus of such right of way being the Clare Road right of way and extending to the West from such Eastern terminus 294.7 feet, such right of way being identified as 175th Street.

Also, That portion of the adjacent right of way immediately East of such lands, such right of way being 40 feet in width, such right of way being identified as Clare Road.

Ordinance No. 2631

All that part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 55 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 652.13 feet to the point of beginning; thence South 1 degree 43 minutes 05 seconds East, a distance of 142.44 feet; thence South 54 degrees 07 minutes 26 seconds West, a distance of 247.56 feet; thence South 17 degrees 40 minutes 26 seconds West, a distance of 899.98 feet; thence South 25 degrees 28 minutes 37 seconds West, a distance of 300.35 feet to a point on the West line of the Northwest Quarter of said Section 22; thence South 2 degrees 10 minutes 37 seconds East, along the West line of the Northwest Quarter of said Section 22, a distance of 1271.06 feet to the Southwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 13 seconds East, along the South line of the Northwest Quarter of said Section 22, a distance of 1329.32 feet to the Southeast corner of the West half of the Northwest Quarter of said Section 22; thence North 2 degrees 22 minutes 27 seconds West, along the East line of the West Half of the Northwest Quarter of said Section 22, a

distance of 2668.43 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 88 degrees 16 minutes 55 seconds West, along the North line of the Northwest Quarter of said Section 22, a distance of 668.00 feet to the point of beginning, containing 71.15 acres, more or less. The entire width of the adjacent right of way immediately North of the above described real property, such right of way being 50 to 90 feet in width, such right of way being identified as 167th street.

4. On May 22, 2020, the Commission Staff (Staff) submitted its Report and Recommendation to the Commission, attached hereto and made a part hereof by reference, recommending Evergy Kansas Metro's Application be granted and its request to cease operating as an electric public utility in the territory described in paragraph 3 above be approved.

LEGAL STANDARD AND DISCUSSION

5. K.S.A. § 66-131(a) provides in part that:

No person or entity ... defined as a public utility by K.S.A. 66-104, and amendments thereto, governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state ...

6. Pursuant to K.S.A. § 66-1,170 et seq., the Retail Electric Suppliers Act (RESA) requires the State of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory. K.S.A. § 66-1,176(a)(1) states that all rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate 180 days from the date of annexation, unless such electric supplier is then holding a valid franchise for service in the area granted by the annexing city.

7. Staff indicated in its Report and Recommendation that the legal description included in Evergy Kansas Metro's Application was accurately depicted on the map that was attached. Staff also confirmed the legal description was not in conflict with the Commission's Certificate records. Furthermore, Staff noted that by virtue of K.S.A. 66-1,176(a), Gardner is

allowed to annex land into its municipality and select its own retail electric service provider. For these reasons, Staff recommended approval.

FINDINGS AND CONCLUSIONS

8. The Commission finds Staff's findings and recommendation to be reasonable, and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED AND CERTIFIED THAT:

A. The Application filed by Evergy Kansas Metro on February 12, 2020, is hereby granted and Evergy Kansas Metro is authorized to cease transacting the business of an electric public utility in the territory described in paragraph 3 above.


B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. § 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 05/28/2020



Lynn M. Retz
Executive Director

MRN

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chair Susan K. Duffy
Commissioner Shari Feist Albrecht
Commissioner Dwight D. Keen

FROM: Jason Kerr, Electric Utility Engineering Technician
Leo Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: May 22, 2020

SUBJECT: 20-EKME-352-CCS
In the Matter of the Application of Evergy Kansas Metro, Inc. for Authority to Cease Transacting the Business of an Electric Public Utility in the City of Gardner, Kansas, under Annex Ordinance No. 2622 and Annex Ordinance No. 2631.

20-GDRE-432-COC
In the Matter of the Application of the City of Gardner, Kansas for a Certificate of Convenience and Authority to transact the business of an Electric Public Utility in the State of Kansas.

EXECUTIVE SUMMARY

In Docket 20-EKME-352-CCS, Evergy Kansas Metro, Inc. (Evergy) is seeking the approval of the Commission to cease as an Electric Utility in two parcels of land that has been annexed by the City of Gardner (Gardner). In Docket 20-GDRE-432-COC, Gardner is giving notice to the Commission of the annexation of these two parcels.

Staff recommends that the Commission grant this Application and acknowledge Gardner will be responsible for providing retail electric service for customers within the recently annexed territory.

BACKGROUND:

On February 12, 2020, Evergy filed Docket 20-EKME-352-CCS to cease transacting business in to two tracts of land that were recently annexed by the City of Gardner.

On September 3, 2019, Gardner annexed approximately 261 acres more or less in Ordinance 2622. In Ordinance 2631, Gardner annexed approximately 71 acres more or less on November 4, 2019. On April 23, 2020, Gardner filed Docket 20-GDRE-432-COC, where the City is giving notice of the annexations.

The Commission has jurisdiction to grant a Certificate to any public utility seeking to transact business in the State of Kansas.¹ K.S.A. 66-1,170 et seq. the Retail Electric Suppliers Act (RESA) requires the State of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory. Notwithstanding the mandated single electric provider service territories, RESA allows any city annexing territory to select a retail electric service provider. Under these circumstances, the Commission is required to certify the annexed territory to the electric supplier selected by the City.²

ANALYSIS:

Gardner has selected their own municipal utility to serve the above-described territory. By virtue of its Application for a Cease of Service, Evergy is agreeing to cede the described territories to Gardner.

Detailed maps can be found on each Application. The legal descriptions marked Exhibit A is attached to this Report and Recommendation.

Staff has reviewed the Application and determined that the legal descriptions and maps provided with the Application are accurate. Staff has also confirmed that the legal descriptions are not in conflict with the Commission's Certificate records.

RECOMMENDATION:

Staff recommends that the Commission grant this Application. Upon approval, the updated territory descriptions will be reflected in the Commission's certified territory map.

The Commission action date is August 10, 2020.

¹ K.S.A. 66-131

² K.S.A. 66-1,176(a)

Exhibit A
Legal Description Ordinance 2622, Ordinance 2631
Gardner, Kansas
20-EKME-352-CCS and 20-GDRE-432-COC
Every Kansas Metro, Inc. to the City of Gardner, Kansas

JOHNSON COUNTY

Ordinance No. 2622

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CERTIFICATE OF SERVICE

20-EKME-352-CCS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 05/28/2020.

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/S/ DeeAnn Shupe
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