

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

Recommendation to Open a General)
Investigation Updating the Certificates of)
Convenience and Necessity Issued to Kansas)
Gas Service, a Division of ONE Gas, Inc. and) Docket No. 25-GIMG-114-GIG
Black Hills/Kansas Gas Utility Company, LLC)
d/b/a Black Hills Energy in Cowley,)
Sedgwick, Sumner, Reno, and Rice Counties)
to Provide Retail Natural Gas Service)

**NOTICE OF FILING OF STAFF'S
REPORT AND RECOMMENDATION**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission,” respectively), and files the instant Report and Recommendation to address the dispute regarding a territory annexed by the City of Goddard in 2009.

Staff has reviewed comments submitted by both Kansas Gas Service, a division of ONE Gas, Inc. (KGS) and Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (BHE). Both KGS and BHE have available infrastructure to serve the Goddard Development. Serving the Goddard development by either utility is generally in the public interest. KGS is specifically certificated to serve the City of Goddard, while BHE’s certification specifically excludes the City of Goddard. KGS is currently serving the territory. Replacing KGS infrastructure with BHE infrastructure would result in wasteful duplication of facilities. Therefore, as further detailed herein, Staff recommends the Commission affirm that KGS is the sole certificate holder for the Goddard Development.

WHEREFORE, Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Carly R. Masenthin

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Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

REPORT AND RECOMMENDATIONS UTILITIES DIVISION

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Paul Owings, Chief Engineer
Jeff McClanahan, Director Utilities Division

DATE: February 21, 2025

SUBJECT: Docket No. 25-GIMG-114-GIG – Staff’s Recommended Resolution to the Disputed Service Area (A Tract of Land Annexed by the City of Goddard in 2009).

EXECUTIVE SUMMARY:

On October 22, 2024, the State Corporation Commission of the State of Kansas (Commission) issued an Order (Investigation Order) relating to natural gas service territories in Cowley, Sedgwick, Sumner, Reno, and Rice Counties.¹ The first item the Commission required the investigation to specifically address relates to the resolution of a service area dispute between Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (BHE) and Kansas Gas Service, a division of ONE Gas, Inc. (KGS). The disputed area is a territory annexed by the City of Goddard in 2009 (Goddard Development). The purpose of this Report and Recommendation (R&R) is to provide Commission Staff’s (Staff) recommended action relating to the Goddard territory dispute.

Staff has reviewed comments submitted by both KGS and BHE. Both KGS and BHE have available infrastructure to serve the Goddard Development. Serving the Goddard development by either utility is generally in the public interest. KGS is certificated to serve the City of Goddard specifically.² BHE’s certification excludes the City of Goddard specifically.³ KGS is already serving the territory. Replacing KGS infrastructure with BHE infrastructure would result in wasteful duplication of facilities. Therefore, Staff recommends the Commission affirm that KGS is the sole certificate holder for the Goddard Development.

BACKGROUNDS:

On March 21, 2024, BHE and KGS met with Staff to discuss a dispute over their respective service territories in and around the City of Goddard in Sedgwick County.⁴ It is Staff’s understanding that the

¹ Order Opening General Investigation and Setting Comment Deadline (Oct. 22, 2024).

² Certificate and Order for Docket No. 64,714-U (Feb. 1, 1961).

³ Certificate for Docket No. 16,177 (Nov. 15, 1935).

⁴ Staff’s Report and Recommendation, pg. 1 (Aug. 12, 2024).

dispute between BHE and KGS relates to a proposed residential housing development to be located on land annexed by Goddard in 2009 (Goddard Development).⁵

On August 12, 2024, Staff filed an R&R recommending the Commission open a General Investigation to update the Certificates of Convenience (COC) issued to KGS and Black Hills in Cowley, Sedgwick, Sumner, Reno, and Rice Counties.⁶ The issue stems from COCs issued to KGS and BHE (including their predecessors) dating back to the 1930s. The COCs at issue granted a utility the authority to serve a territory based on generic political boundaries (i.e. the name of a city or county, such as the “City of Goddard”) instead of more definitive, permanent reference points.⁷ Some of the COCs at issue granted authority to serve an area of a county, but exclude a city, such as Sedgwick County as disputed here.⁸

On October 22, 2024, the State Corporation Commission of the State of Kansas (Commission) issued an Order (Investigation Order) relating to natural gas service territories in Cowley, Sedgwick, Sumner, Reno, and Rice Counties. The first item the Commission required in the Investigation Order relates to the resolution of a service area dispute between BHE and KGS. The disputed area is the previously described Goddard Development.

The Investigation Order required KGS and Black Hills to provide reply comments relating to the disputed territory within 60 days from the date of the order. The Investigation Order also required Staff to provide a final R&R for the disputed area in Goddard within 30 days of receipt of said comments.

On December 23, 2024, BHE and KGS provided reply comments in response to the Investigation Order (BHE and KGS Comments, respectively).⁹ Both utilities have demonstrated that they have necessary infrastructure within proximity of the contested area to serve the area and both utilities contend that they are the rightful certificate holder for the Goddard Development.

In the early 20th century, public utilities made generic requests for COCs. The Commission issued COCs to KGS and BHE on several dockets, which relate to this dispute, with non-specific territory areas. The relevant dockets are described below.

On November 27, 1935, within Docket No. 16,167, the Commission granted BHE’s predecessor (henceforth referred to as BHE) a COC to provide natural gas service outside certain city limits, within Sedgwick and other counties. The Certificate issued on November 27, 1935 excluded all cities unless specifically provided, see the following paragraph from the order:

“PROVIDED that said applicant corporation shall not be authorized to transact such business other than the wholesale sale of gas in any incorporated cities in said counties, except in the following cities and vicinities thereof: Lyons, Nickerson, Sterling, and

⁵ *Id.*, pg. 2.

⁶ *Id.*

⁷ *Id.*, pg. 1.

⁸ *Id.*, pgs. 1-2 (noting KGS was authorized to serve the “City of Goddard,” while BHE was authorized to serve Sedgwick County but excluded the City of Goddard).

⁹ Reply Comments of Black Hills/Kansas Gas Utility Company, LLC D/B/A Black Hills Energy (Dec. 23, 2024) (BHE Comments); Reply Comments of Kansas Gas Service on Territory Annexed in 2009 By Goddard, Kansas (Dec. 23, 2024) (KGS Comments).

Wichita (industrial, commercial and domestic) and industrial gas only in the city of Hutchison, Kansas, and the vicinity thereof.”¹⁰

On February 1, 1961, within Docket No. 64,714-U, KGS requested the Commission certificate them for numerous territories. The City of Goddard was within one of the territories KGS requested for certification. The Commission issued a COC to KGS “...to serve in the City of Goddard” and some of the other requested territories.

On October 28, 1964, in Docket No. 75,015-U KGS requested additional certificated area near the City of Goddard. The Commission noted KGS was previously granted a certificate to serve in the City of Goddard within the certificate order for Docket No. 75,015-U. The Commission granted KGS additional certificated territory in Docket No. 75,015-U.

On November 12, 1987, the Commission issued a decision regarding a similar circumstance in the Order for Consolidated Docket Nos. 153,240-U, 154,990-U, and 155,339-U (Consolidated Docket Order). This order is mentioned within the KGS and BHE Comments. Within the Consolidated Docket Order, Kansas Public Service Company (KPS) requested a COC to serve three areas including: 1) territory within the city limits of the City of Lawrence, Kansas; 2) territory in an industrial park east of Lawrence, Kansas; 3) territory adjacent to the Lawrence city limits extending west of Lawrence.¹¹

The Commission considered the three service areas separately. The Commission granted KPS a certificate for the territory within the City of Lawrence. The Commission denied KPS’s application to serve territory east of Lawrence. The Commission granted KPS a certificate for the territory adjacent to the Lawrence city limits extending west of Lawrence. The Commission indicated the following relating to area 2, the territory in an industrial park east of Lawrence:

“The Commission rejects the theory that annexation by cities automatically creates and extends authority for public utilities where they have not previously been certificated by the Commission. The Commission has sole authority to issue certificates pursuant to K.S.A 66-131 and it rejects the theory automatic dual certification occurs as a result of annexation. Henceforth, all certificates for public utilities to operate within the city limits of a city shall be based on a metes and bounds description of the area rather than allowing such rights to follow expansion of the city limits.”¹²

Relying on the above statement, BHE concludes that since the Goddard Development is being constructed entirely in an area formally certificated to BHE, Section 21 of 274S02W, and the area was annexed by the City of Goddard, BHE holds the sole right to serve the Goddard Development and any other customers

¹⁰ Certificate, Docket No. 16,167 (Nov. 27, 1935).

¹¹ Certificate and Order, Docket No. 153,240-U; Docket No. 154,990-U; Docket No. 155,339-U (Consolidated Docket), pg. 9 ¶8 (Nov. 12, 1987)

¹² The context of this quote appears to be based on a recommendation made by Staff. The preceding two paragraphs are as follows: “Mr. Dawdy testified his recommendation for dual certification provides for adequate future expansion of KPS systems to new customers in the industrial park, but leaves other existing natural gas certificates in place. (Vol. II, p. 55). Finally, Mr. Dawdy testified that dual certification would occur automatically as a result of his recommendation to certify the City of Lawrence because the certificate would automatically extend into the annexed area. (R. Vol. II, p. 106).” The Commission rejected Staff’s recommendations in this circumstance based on the paragraph cited herein.

within this Section.¹³ BHE argues that any changes in political boundary to Goddard since 1964, corresponding with the second certification acquired by KGS, were not approved by a Commission Order; and therefore, KGS does not have a certificate for the area.

KGS contends that the above Commission statement regarding annexation is intended to inform Public Utilities any requests for certification should be based on definable boundaries going forward. KGS also argues the plain language of prior certificates explicitly authorize them to serve the City of Goddard and restrict BHE from serving the city.

ANALYSIS:

The Certificates issued to BHE and KGS relating to the disputed area were based on political boundaries instead of permanent reference points. KGS's certificate specifically included the City of Goddard. BHE's certificate specifically excluded the City of Goddard. KGS argues they are the sole certificate holder due to plain language of their certificates. BHE contends they are the sole certificate holder based on the principle that municipal annexations have no impact on certificated areas; and therefore, the political boundaries at the time of certification are the permanent reference points.

The Commission has sole authority to issue certificates pursuant to K.S.A 66-131. The fundamental question of K.S.A. 66-131 is *What promotes the public convenience and necessity?* In *Kansas Gas & Electric Co. v. Public Service Commission*, 122 Kan. 462, 251 P. 1097 (1927), the Supreme Court of Kansas stated that:

“In determining whether (a) certificate of convenience should be granted, the public convenience ought to be the Commission's primary concern, the interest of public utility companies already servicing the territory secondary, and the desires and solicitations of the Applicant a relatively minor consideration.”

The court also stated that the Commission should determine whether the proposed service is required by public convenience and necessity or whether the service would be wasteful and useless burden to the community of the public.¹⁴

While it is currently the practice of the Commission to issue certificates based on permanent reference points, legacy certificates still exist based on non-permanent reference points. The existence of legacy certificates with non-permanent reference points will lead to disputes, as is the case in this docket. The Commission must ascertain how best to resolve disputes of this nature. In this case, Staff believes it is prudent to consider the evidence presented relating to the disputed area and whether one utility or the other better preserves the public convenience.

BHE argues that the political boundaries at the time of the certification should be used as permanent boundaries for the certificate. See the following taken from BHE's Comments:

“Regardless of political boundary changes to the City of Goddard since 1964, no Commission Order had been issued to allow KGS to provide natural gas service to this

¹³ BHE Comments, pg. 2 ¶4 (Dec. 23, 2024).

¹⁴ *Kansas Gas & Electric Co.*, 251 P. 1099.

Section and, therefore, to this Development. Considering these factors, Black Hills respectfully requests that the Commission require KGS to abandon its service of the Development and permit service to the Development by Black Hills. In exchange, Black Hills will compensate KGS for the infrastructure installed to service the Development.”¹⁵

The certificates in question did not include language establishing permanent boundaries based on the political boundaries at that time. Based on the language in the certificates, it appears the Commission intended to allow KGS to serve the whole City of Goddard and exclude BHE from serving Goddard. At the time of issuing the certificate to KGS in 1964 it was common knowledge that political boundaries could change. Therefore, the Commission allowed a certificated area to be subject to changing political boundaries.

Using BHE’s logic as a general principle on all cases would be difficult and could create unforeseen consequences. Determining the location of political boundaries as they existed decades ago would require significant research and may not even be possible in certain circumstances. Public Utilities have invested in the development of infrastructure in areas with the understanding that they are certificated for the entire political boundary. This could result in wasteful duplication of facilities which is not in the public interest.

Staff also notes that BHE is only now bringing this dispute to the Commission for consideration. The Goddard Development was annexed more than 15-years ago. The original certificates were issued over 60-years ago.

CONCLUSIONS AND RECOMMENDATIONS:

Both KGS and BHE have available infrastructure to serve the Goddard Development. Serving the Goddard development by either utility is generally in the public interest. KGS is certificated to serve the City of Goddard specifically. BHE’s certification excludes the City of Goddard specifically. KGS is already serving the territory. Replacing KGS infrastructure with BHE infrastructure would result in wasteful duplication of facilities. Therefore, Staff recommends the Commission affirm that KGS is the sole certificate holder for the Goddard Development.

The secondary purpose of this docket is to update the COCs issued to KGS and Black Hills in Cowley, Sedgwick, Sumner, Reno, and Rice counties. Staff acknowledges at some point the City of Goddard may expand into areas where BHE already has facilities. As ordered by the Commission, the investigation will next focus on developing clear metes and bounds descriptions for the certificate seams between BHE and KGS to prevent future disputes of this nature and potentially stranded BHE facilities.

¹⁵ BHE Comments, pg. 2 ¶ 4.

CERTIFICATE OF SERVICE

25-GIMG-114-GIG

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing was served via electronic service this 21st day of February, 2025, to the following:

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