

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

Before Commissioners: Shari Feist Albrecht, Chairman  
Jay Scott Emler  
Dwight D. Keen

In the Matter of the Application of Kansas Gas Service, )  
a division of ONE Gas, Inc., for an Extension of its ) Docket No. 19-KGSG-005-COC  
Certificate of Convenience and Necessity to Provide )  
Services as a Natural Gas Public Utility in an Additional )  
Designated Area in Johnson County, Kansas. )

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

COMES NOW, the Staff of the Kansas Corporation Commission (Staff and Commission, respectively), and files its Report and Recommendation regarding Kansas Gas Service's, a Division of ONE Gas, Inc. (KGS), Application for an Extension of its Certificate and Authority to provide service in an additional designated area in Johnson County, Kansas. The Application of KGS was precipitated by a request from a customer in one of the tracts of land that is building a new home and desires gas service. The tracts of land described in the Application are as follows:

- Tract 1: West Half (W2) of the Southeast Quarter (SE4) of Section 36, Township 14 South, Range 24 East, approximately 80 acres; and
- Tract 2: Northwest Quarter (NW4) of the Northeast Quarter (NE4) of Section 1, Township 15 South, Range 24 East, approximately 40 acres.

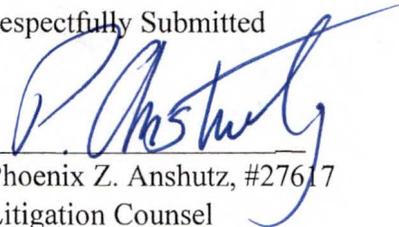
The territory in question is presently certificated by Atmos Energy; however, Atmos has no gas infrastructure within several miles of the proposed building site. Atmos has filed a Protest regarding KGS' Application, alleging the Application would result in a dually certified

territory. To date, the parties have been unable to reach a resolution regarding the Application; as such, Staff recommends the following:

- The Commission issue a customer-specific certificate to KGS to continue serving the customer requesting service;
- The Commission issue a Certificate of Convenience and Necessity to KGS for the East Half of Tract 1, namely, the East Half of the West Half of the Southeast Quarter of Section 36, Township 14 South, Range 24 East; and
- The Commission cease the Certificate of Convenience and Necessity for Atmos in the East Half of Tract 1, namely, the East Half of the West Half of the Southeast Quarter of Section 36, Township 14 South, Range 24 East.

WHEREFORE, Staff submits it's Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully Submitted



Phoenix Z. Anshutz, #27617  
Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, Kansas 66604  
Phone: (785) 271-3312  
Email: [p.anshutz@kcc.ks.gov](mailto:p.anshutz@kcc.ks.gov)

Attorney for Commission Staff

# STATE OF KANSAS



CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

PHONE: 785-271-3100  
FAX: 785-271-3354  
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.  
SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

## REPORT AND RECOMMENDATION UTILITIES DIVISION

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Dwight D. Keen

**FROM:** Leo Haynos, Chief Engineer  
Jeff McClanahan, Director of Utilities

**DATE:** October 1, 2018

**SUBJECT:** 19-KGSG-005-COC  
In the Matter of the Application of Kansas Gas Service, a Division of ONE Gas, Inc., for an Extension of its Certificate of Convenience and Necessity to Provide Service as a Natural Gas Public Utility in an Additional Designated Area in Johnson County, Kansas.

### EXECUTIVE SUMMARY

In the subject Docket, Kansas Gas Service, a Division of ONE Gas, Inc. (KGS) filed an Application for Certificate of Convenience and Necessity (COC) for two small tracts of land in Johnson County, Kansas. The Application was precipitated by a request from a customer in one of the tracts of land that is building a new home and desires gas service. The territory in question is presently certificated to Atmos Energy (Atmos); however Atmos has no gas infrastructure within several miles of the proposed building site. Atmos has filed a Protest regarding this Application which would dually certify Atmos and KGS in the requested territory. Rather than create a dual certification, Atmos requests the Commission, either through mediation or order, request that the two gas utilities exchange like-kind service territories to allow economical service to be provided to the new residential customer that is the subject matter of the Application.

Staff has met with Atmos and KGS in an attempt to reach a settlement in this matter. After several attempts, Staff concludes a settlement in this matter may not be possible. Because of KGS's unwillingness to exchange portions of service territory in this case and Atmos' inability to economically serve the prospective customer, Staff recommends the east half of Tract 1 as described below be certificated to KGS and the Atmos Certificate in east half of Tract 1 should be ceased. Regarding Tract 2 as described below, Staff recommends KGS receive a customer-specific Certificate to serve the one existing KGS customer in that tract.

Staff believes this solution will provide for the immediate service needs of the one existing and one new customer. The solution also will allow Atmos additional time to evaluate the expansion of its infrastructure to serve customers in the area.

### **BACKGROUND:**

The territory in question is located in southern Johnson County, Kansas, along the boundary between the certified territories of KGS and Atmos. As shown in Staff Exhibit 1, the two tracts of property in the Application are described as follows:

Tract 1: West Half (W2) of the Southeast Quarter (SE4) of Section 36, Township 14 South, Range 24 East, approximately 80 acres; and

Tract 2: The Northwest Quarter (NW4) of the Northeast Quarter (NE4) of Section 1, Township 15 South, Range 24 East, approximately 40 acres.

On July 6, 2018, KGS filed the above captioned Application requesting a natural gas Certificate for the above described tracts in Johnson County. In addition to the property of the customer in Tract 1 that is requesting service, KGS requested a certificate for the west half of Tract 1, which contains one single family residence. To Staff's knowledge, the existing residence in Tract 1 is not requesting natural gas service at this time. As shown in Staff Exhibit 1, KGS is also requesting a Certificate for the 40 acres designated by Staff as Tract 2. Although this property is located in Atmos certificated territory, KGS has been serving one residential customer in the center of this tract since 1970.<sup>1</sup> The natural gas main providing service to this customer ends approximately 600 feet east of the KGS/Atmos territory boundary, and the customer's meter is located at this point. Approximately 1000 feet of customer owned piping crosses the utilities' territory boundary and provides service to the customer in Tract 2.

In discussions with Atmos, Staff has learned the nearest source of gas supply from the Atmos system is at least 2.5 to 3 miles west of the customer requesting service. The housing density in the Atmos territory in the immediate area appears to consist of residential homes with relatively large acreages associated with each home. The Atmos certificated territory south and west of the prospective customer is undeveloped land. On the other hand, the KGS certificated territory to the east of the prospective customer is on the outskirts of the town of Stillwell and has been developed with single family housing subdivisions. Directly south of Tract 2 is a 40-acre tract with approximately 32 single family residential homes which are served by KGS. This tract originally was certificated to an Atmos predecessor company, Union Gas System (Union Gas) in Docket 69,286-U in October of 1962; however, in 1978, Union Gas petitioned the Commission to cancel its Certificate to serve the 40-acre tract because service from Union Gas would require building over seven miles of gas main. Exhibit 2 provides a copy of Union Gas' cover letter that accompanied its 1978 Application to Cease.

Exhibit 1 also shows a portion of the natural gas certificated territory in this portion of southern Johnson County that was granted to Union Gas in October of 1962. Exhibit 3 provides a copy of the Union Gas Application and the Certificate granted by the Commission. The original Certificate permitted Union Gas "to transact the business of a gas public utility in the territory

---

<sup>1</sup> Response to Staff Data Request 1.

described”.<sup>2</sup> Although Union Gas requested special rate treatment to extend facilities in the requested area,<sup>3</sup> the Commission did not address this request. Other than the request for special rate treatment, Union Gas provided no plan in the Docket demonstrating how (or when) the applicant planned to provide service throughout the territory requested.

In its Protest, Atmos points out that in the past, there have been many territory border modifications that have occurred in which the utilities agreed to exchange territory and such changes have been approved by the Commission. Staff points out that in the dockets cited by Atmos, the parties reached agreement without the Commission determining the fairness of the territory swap or mandating which territories were to be exchanged. In eastern Johnson County, Staff estimates KGS and Atmos have at least 50 miles of common boundary between the certificated territories of the two utilities.

### **ANALYSIS:**

Although it is a rare occurrence, the Commission has the authority to issue dual natural gas certificates, if it finds the issuance of dual certificate to be in the interest of promoting the public convenience and necessity in providing natural gas service. In the recent past, dual certificates for natural gas service have been issued by the Commission in rural southwest Kansas to provide natural gas service to irrigation wells. The Commission has also issued customer-specific dual certificates allowing utilities to serve single customer locations within the territory of other utilities when the originally certified utility had no infrastructure available to serve the customer.

Intuitively, dual certificates lead to economic waste when duplicate distribution systems are built into an area where only one system would be sufficient to provide service. Because natural gas systems are buried, the close proximity of multiple underground buried gas lines also increases the risk to public safety from excavation activity and leak response. In Staff's view, as the customer density increases, the safety risk and the possibility of duplicate facilities also increases. For the above reasons, the Commission has not issued dual certificates in relatively urban areas since parts of Wichita and Sedgwick County were dually certificated in the 1930s.

For the above stated reasons, Staff recommends the Commission continue with the policy that only one utility be allowed to provide service in a given territory unless specific conditions indicate special considerations for dual certification. Although the area in question is still very rural in nature, the development of Johnson County would indicate the area will more than likely be developed at some point in the future. In this Docket, Staff recommends KGS be granted a Certificate to serve the east half of Tract 1. In keeping with the policy that only one utility serve a given territory, Staff also recommends the Commission modify Atmos' Certificate to remove the east half of Tract 1 from its certificated area.

Although the Commission previously has granted Atmos predecessor companies permission to provide retail natural gas service to Tracts 1 and 2, neither Atmos nor its predecessors have taken advantage of this grant from the Commission. Clearly, Union Gas' statement from 40 years ago that gas service to the area would be inordinately expensive and economically unfeasible still holds true today from Atmos' perspective. Staff contends a COC is granted by the Commission to enhance the public convenience and necessity of providing natural gas service. In doing so,

---

<sup>2</sup> Docket 69,286-U, Certificate.

<sup>3</sup> Docket 69,286-U Amended Application for a Certificate, October 8, 1962.

the Commission provides an opportunity to the grantee to expand its business without concern for competition and with the understanding the utility will meet the Commission's goal of providing for the convenience and necessity of gas service. In granting a COC, the Commission does not guarantee the utility the exclusive right to provide service even when it is unable to or does not wish to provide such service. In other words, Staff views a COC in the context of a license granted to the utility rather than a property right, and modification of that license (with or without the concurrence of the affected utility) does not constitute a taking of real property. In any event, forfeiture of Atmos' Certificate in this case would not constitute a "property takings" because without infrastructure or plans for investment, there is simply no property to take.

Regarding the existing KGS customer located in Tract 2, Staff recommends the Commission grant KGS a customer-specific Certificate to continue serving the existing gas customer in this location. Although the service territories of KGS and Atmos would be dually certificated for this one customer, Staff believes such a Certificate is appropriate in this case. It is Staff's understanding that KGS has served this customer since 1970. Although the meter for this customer is located in KGS's territory, the customer has elected to install customer-owned piping to connect its house to the KGS meter. In this case, Staff assumes the customer-owned piping is located on property owned by the customer as is required by the KGS tariff. Although Staff does not view it as appropriate for a customer to construct infrastructure into another utility's territory to acquire service, Staff notes the customer obviously was not attempting to avoid taking service from Atmos because Atmos has no infrastructure in the area. Although such service is irregular, Staff notes the customer has used this arrangement for the last 48 years. Rather than assign the Tract 2 service territory to KGS, Staff recommends KGS be allowed to continue serving its single customer. A customer-specific dual Certificate in this case will allow Atmos the opportunity to develop infrastructure into the area to serve future development needs.

### **RECOMMENDATION:**

Staff recommends the following:

- The Commission issue a customer-specific certificate to KGS to continue serving the customer at 9225 West 191<sup>st</sup> Street Overland Park, Kansas.
- The Commission issue a Certificate of Convenience and Necessity to KGS for the east half of Tract 1 shown in Exhibit 1. Namely, the East Half of the West Half of the Southeast Quarter of Section 36, Township 14 South, Range 24 East.
- The Commission cease the Certificate of Convenience and Necessity for Atmos in the east half of Tract 1 shown in Exhibit 1. Namely, the East Half of the West Half of the Southeast Quarter of Section 36, Township 14 South, Range 24 East.

The Commission action date is January 1, 2019.



UNION GAS SYSTEM, INC.  
INDEPENDENCE, KANSAS

WILLIAM H. REEDER  
VICE PRESIDENT AND GENERAL COUNSEL

September 20, 1978

Mr. Ward Salisbury  
Kansas Corporation Commission  
State Office Building  
Topeka, Kansas 66606

Dear Mr. Salisbury:

I am mailing to you six executed copies of a Joint Application of Union Gas System, Inc. ("Union Gas") and The Gas Service Company, Inc. ("Gas Service").

The Joint Application requests an order from the Commission permitting Union Gas to decertify a certain described area in Johnson County, Kansas and to permit certification of such area by Gas Service.

Approximately two months ago Mr. Gordon Miller, a single family housing developer in Johnson County, Kansas, requested natural gas service, for a 22-single family housing development, from Union Gas in the area Union Gas is seeking authority for decertification. For Union Gas to be able to provide natural gas service to this area would require the construction of 7.25 miles of pipe ranging in size from 2-inch to 4-inch at a cost of about \$229,920, exclusive of the cost of piping the development which has been estimated to be approximately \$12,500. Since the construction of the 7.25 miles is in a sparsely populated area of Johnson County, Kansas there is little likelihood additional customers would be added to the distribution line prior to reaching Mr. Miller's single family housing project, hence, natural gas service to Mr. Miller's project would be inordinately expensive and economically unfeasible.

Union Gas approached Gas Service because Gas Service was providing natural gas service to Mr. Miller's development located contiguous to the area Union Gas is seeking decertification to determine whether or not Gas Service would be willing to provide natural gas service to Mr. Miller's single family housing project should Union Gas decertify the area and certification would be approved by the Kansas Corporation Commission, to the Gas Service. Accordingly the filing of this Joint Application by Union Gas and Gas Service.

**EXHIBIT 3: (page 1)**

BEFORE THE STATE CORPORATION COMMISSION OF  
THE STATE OF KANSAS

In the Matter of the Application of )  
Union Gas System, Inc. for a Certificate )  
of Convenience and Authority to Transp ) DOCKET NO. 69-286-  
act the business of a public utility in )  
the State of Kansas. Johnson County. )

AMENDED APPLICATION FOR CERTIFICATE

Comes now the UNION GAS SYSTEM, INC., and respectfully requests permission to file this, its supplemental application, amending and superseding the metes and bounds description attached to its original application heretofore filed on June 19, 1962.

AMENDED DESCRIPTION OF AREAS IN WHICH APPLICANT REQUESTS  
A CERTIFICATE OF CONVENIENCE AND AUTHORITY

Beginning at a point 2640 feet east of the southwest corner of Section 18, Township 15 South, Range 24 East; thence east 5 1/4 miles; thence north 11 miles; thence west 4 1/4 miles; thence south 4 1/2 miles; thence west 1 mile; thence south 3 1/2 miles to the point of beginning, all in Johnson County, Kansas.

Beginning at the southwest corner of Section 18, Township 15 South, Range 22 East; thence east 3 1/2 miles; thence north 3 1/2 miles; thence west 3 1/2 miles; thence south 3 1/2 miles to the point of beginning.

Beginning at the center of Section 14, Township 14 South, Range 22 East; thence east 1 1/2 miles; thence north 3/4 mile; thence west 1 1/2 miles; thence south 3/4 mile to the point of beginning.

That the construction of the main line and distribution system required to serve the above described area as amended will require an investment by applicant substantially in excess of the investment applicant would ordinarily make under its tariffs and rules and regulations with respect to its service area and that in order to serve the above described area as amended

**EXHIBIT 3: (page 2)**

applicant should be permitted to charge customers in said area a rate in excess of the rate now prevailing in other portions of applicant's service area.

Wherefore, applicant requests that this, its supplemental and superseding application for a Certificate of Convenience and Authority, be accepted for filing and that the Commission grant the applicant the right to transact the business of a natural gas utility in said area and that the applicant be authorized and permitted to file with the Commission a schedule of rates which will permit the applicant to earn a fair and adequate return upon the investment required to provide natural gas service in said area.

UNION GAS SYSTEM, INC.

By Jeff A. Robertson  
Jeff A. Robertson, Its Attorney

STATE OF KANSAS, SHAWNEE COUNTY, SS:

Jeff A. Robertson, of lawful age, being first duly sworn deposes and says that he is Attorney of the within named applicant, that he has read the above and foregoing amended application and the statements therein contained are true.

Jeff A. Robertson  
Jeff A. Robertson

Subscribed and Sworn to before me this 14th day of August, 1962.

Notary Public

My Commission expires August 1, 1963

EXHIBIT 3: (page 3)

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Richard C. Byrd, Chairman; Alvin T.  
Crauerholz and Harry C. Miles.

In the matter of the application of Union Gas System, Inc. for a Certificate of Convenience and Authority to transact the business of a public utility in the State of Kansas, Johnson County. } Docket No. 69,286-U

C E R T I F I C A T E

NOW on this 10th day of October, 1962, there comes on for consideration and determination by the State Corporation Commission, the amended application of Union Gas System, Inc. for a Certificate of Convenience and Authority in a portion of Johnson County, and after giving due consideration to the amended application and being fully advised in the premises, the Commission finds:

1. That Union Gas System, Inc. (Applicant) is a public utility under the provisions of G. S. 1959, Supp., 66-104.
2. That the application in the instant docket was filed on June 20, 1962, was set for hearing for July 20, 1962, and was reset for October 16, 1962.
3. That an amended application for a Certificate was filed on October 8, 1962.
4. That the amended application, amending and superseding the metes and bounds description attached to the original application, requests a Certificate to transact the business of a gas public utility in the following described territory:

JOHNSON COUNTY

Beginning at a point 2640 feet east of the southwest corner of Section 18, T15S, R24E; thence east 5 1/4 miles; thence north 11 miles; thence west 4 1/4 miles; thence south 4 1/2 miles; thence west 1 mile; thence south 6 1/2 miles to the point of beginning, all in Johnson County, Kansas.

Beginning at the southwest corner of Section 18, T15S, R23E; thence east 3 1/2 miles; thence north 3 1/2 miles; thence west 2 1/2 miles; thence south 3 1/2 miles to the point of beginning.

Beginning at the center of Section 14, T14S, R22E; thence east 1 1/2 miles; thence north 3/4 mile; thence west 1 1/2 miles; thence south 3/4 mile to the point of beginning.

EXHIBIT 3: (page 4)

5. That public convenience will be promoted by permitting Applicant to transact the business of a gas public utility in the territory described in Finding No. 4 herein.

IT IS, THEREFORE, BY THE COMMISSION CONSIDERED AND CERTIFIED:

That the amended application in the instant docket be, and it hereby is, granted and Union Gas System, Inc. be, and it hereby is, permitted to transact the business of a gas public utility in the territory described in Finding No. 4 herein.

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

BY THE COMMISSION IT IS SO CERTIFIED.

Byrd, Chm.; Grauerholz, Com.; Wiese, Com.

RAYMOND B. HARVEY, SECRETARY

SEAL

## CERTIFICATE OF SERVICE

19-KGSG-005-COC

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served via electronic service this 22nd day of October, 2018, to the following:

JENNIFER G. RIES, VICE PRESIDENT, RATES AND  
REGULATORY AFFAIRS-COLORADO/KANSAS  
ATMOS ENERGY CORPORATION  
1555 BLAKE ST STE 400  
DENVER, CO 80202  
jennifer.ries@atmosenergy.com

PHOENIX ANSHUTZ, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
p.anshutz@kcc.ks.gov

BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
b.fedotin@kcc.ks.gov

JANET BUCHANAN, DIRECTOR- REGULATORY AFFAIRS  
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.  
7421 W 129TH ST  
OVERLAND PARK, KS 66213-2713  
Fax: 913-319-8622  
janet.buchanan@onegas.com

JUDY JENKINS HITCHYE, MANAGING ATTORNEY  
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.  
7421 W 129TH ST  
OVERLAND PARK, KS 66213-2713  
Fax: 913-319-8622  
judy.jenkins@onegas.com

LYN LEET, MANAGER, CUSTOMER DEVELOPEMENT  
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.  
7421 W 129TH ST  
OVERLAND PARK, KS 66213-2713  
Fax: 913-319-8622  
lyn.leet@onegas.com

C. MICHAEL LENNEN, ATTORNEY  
MORRIS LAING EVANS BROCK & KENNEDY CHTD  
800 SW JACKSON STE 1310  
TOPEKA, KS 66612-1216  
Fax: 785-232-9983  
mlennen@morrislaing.com

  
Vicki Jacobsen