

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Atmos Energy)
Corporation for Authority to Cease Transacting) Docket No. 22-ATMG-039-CCS
the Business of a Natural Gas Public Utility in a)
Portion of Leavenworth County, Kansas.)

**PETITION TO INTERVENE AND PROTEST IN OPPOSITION
TO THE APPLICATION OF ATMOS ENERGY CORPORATION
FOR AUTHORITY TO CEASE SERVICE**

COME NOW Joe F. Jenkins II, Jill A. Jenkins, and Tri-County Rod and Gun Club, Inc¹ (“Petitioners”) and, pursuant to K.A.R. 82-1-225, submit this Petition to Intervene and Protest in Opposition to the Application of Atmos Energy Corporation (“Atmos”) for Authority to Cease Service filed with the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) on July 16, 2021 (“Application”). In support of this Petition to Intervene and Protest, Petitioners state as follows:

I. STATEMENT OF CASE AND PROTEST IN OPPOSITION

1. Petitioners are currently Atmos customers receiving natural gas service at locations within Atmos’ certificated service territory in Leavenworth County, Kansas. They have received such service from Atmos or its predecessor utility for more than forty (40) years.

2. By letters dated May 26, 2021, from Jennifer Altieri, Atmos’ VP Public Affairs, Petitioners were informed that a natural gas main running near 190th Street and Stillwell Road needed to be replaced, but that Atmos believed it was not economically feasible to do so. In lieu of replacing the main and continuing to provide natural gas service to Petitioners, Atmos advised it would pay \$7500 to convert each of Petitioners’ premises to an alternative energy source (propane). If Petitioners agreed to the conversion, Atmos stated it would seek authority to abandon the main and cease providing natural gas service to Petitioners.

¹ Tri-County Rod and Gun Club, Inc. is a 500-member not for profit corporation organized in 1975.

3. Petitioners note that the letters identify only the main which runs from near 190th Street and Stillwell as “need[ing] to be replaced.” The Application indicates that this main is approximately 2700 feet long and that 795 feet of the main consists of 2-inch polyethylene pipe that has been installed at various times since 2006 – the most recent installation occurring in July of 2020. (Application, ¶ 3.a.) The Application also describes approximately 6770 feet of service and yard lines serving Petitioners that are proposed to be abandoned. (Application, ¶ 3.b.-c.). Whether and to what extent the service and yard lines need to be replaced in order to provide safe, efficient and sufficient service is unaddressed in both the letters and the Application. Also missing from the letters and the Application is any explanation as to why the main requires replacement at this time. Moreover, neither the letters nor the Application indicate whether and to what extent alternatives to replacement of some or all of the main, service and yard lines were identified, considered, and analyzed by Atmos from the perspectives of cost and safety.

4. Notwithstanding the absence of any explanation as to why all of Petitioners’ service and yard lines would need to be replaced at this time, their cost was included in a \$320,000 replacement cost estimate contained in the Application. (Application, ¶ 4). The support for this estimate is not contained in the Application. How this estimate was obtained (e.g., was it a single source bid), its reasonableness, and the amounts attributable to the main and to the service and yard lines are matters of concern to Petitioners. Assumptions such as the size(s), density and cost per foot of the polyethylene pipe; labor costs; the quantity and cost of rock excavation; and company overhead costs attributed to each element of the replacement project bear directly on the merits of the abandonment request and should be the subject of disclosure and careful review. Whatever the actual cost may be for needed line replacement or repairs, the bulk of those costs would not be recovered from current customers in a single year. Rather, cost recovery would

extend over many years. And, of course, for evaluating the relative costs and benefits of abandonment for current customers, alternative conversion costs would also need to be considered.

5. Atmos justifies abandoning service to these customers and the territory described in paragraph 2 of the Application on the basis “[t]here is insufficient projected growth and natural gas load in the area nearby the proposed abandoned quarter sections to economically justify having Atmos Energy’s other customers pay for the replacement of the main and service lines used to serve the properties.” Petitioners respectfully submit that this characterization of anticipated growth in the area is wrong and would urge the Commission to require Atmos to provide comprehensive disclosure of any analysis or research it undertook to reach this conclusion.

6. Certainly, Atmos’ view of potential economic development in the area differs markedly from the information conveyed to the Commission by the Chair of the Leavenworth County Board of County Commissioners (“Leavenworth Board”) in a July 1, 2021, letter. (Copy attached as **Exhibit A**). Sent on behalf of the Leavenworth Board, the letter explains that the area [proposed to be abandoned] is “located in the vicinity of a school being constructed by the Basehor-Linwood School District and is identified by the county as an area of high growth potential.” The letter also advises that “[t]he area is located near Interstate I-70, K-32 Highway, 24-40 Highway and approximately 15 minutes away from the Legends Development and Kansas Speedway.” The letter further notes that [r]educing the infrastructure serving the area significantly diminishes its prospects for growth.”²

7. Limited research by Petitioners has disclosed a planned housing development to be

² In its 2021 Annual Report regarding pipeline replacement that was submitted to the Commission in Docket No. 18-ATMG-316-CPL, Atmos claims that “it is working closely with the communities we serve to coordinate projects to minimize disruption, achieve efficiencies, and maximize customer and community benefits.” Annual Report, Exhibit A, p. 4). It also claims to be “excelling at proactively sharing information and pre-planning with community leaders . . .” *Id.* The Commission can judge the accuracy of this claim – at least as executed in Leavenworth County.

located east of 190th Street running along the south side of Stillwell Road -- immediately adjacent to the main proposed to be abandoned. Construction of the initial dwelling in that development has commenced. Whether the developer and landowner received notice of the proposed abandonment from Atmos or whether Atmos was aware of the planned development would be an appropriate matter for Commission inquiry. Presumably, Atmos would have included information about the development in the Application if it were aware of the project. Atmos should be required to explain what assumptions, if any, it made regarding any other housing construction that would reasonably be anticipated in the vicinity of the new Basehor-Linwood school. Finally, Petitioners would note the announcement on June 18, 2021, of construction of a \$250 million pet food manufacturing facility by Hills Pet Nutrition to be located in Tonganoxie, Kansas. The facility itself is not within Atmos' service territory, but it is located in southern Leavenworth County only 6 to 7 miles from the area proposed to be abandoned. Construction of this facility with attendant jobs, housing and related economic activity underscores the economic vibrancy and current growth activity in this area – contrary to Atmos' assertion.

8. The Application states the Commission has approved utility requests for abandonment of natural gas service and conversion to propane “in other similar cases.” Application, ¶ 8. Petitioners acknowledge that the Commission has, from time to time, approved requests for abandonment and conversion to another fuel source but take exception to the claim that those instances were “similar.” The Application cites four decisions in support of its “similar cases” claim. Application, fn. 1, p. 4. It should be readily apparent, however, that those cases differed fundamentally from this matter. As the Commission is aware, the services to be abandoned in the cited cases were located near Longton in Elk County, near Madison in Greenwood County, near McCune in Crawford County, and near Elk City in Montgomery County. None of those

services were provided in high growth areas in any way similar to southern Leavenworth County. They were, in fact, located in areas of stagnant or diminishing population and economic activity. That is a critical distinction which, for whatever reason, Atmos has been unable or unwilling to recognize. Moreover, the cases cited by Atmos also differ from this one in that all affected customers had consented to the abandonment prior to issuance of a Commission order approving Atmos' request. Unlike this case, those customers had likely recognized the dearth of any potential for economic or population growth in the subject areas.

9. As displayed on the attached map of Atmos' certificated service territory in southern Leavenworth and northern Johnson County, the area proposed to be abandoned is surrounded by territory certificated to Atmos. Granting the requested abandonment would create a bizarre doughnut hole or island-like feature in the Atmos territory. *See Exhibit B-1*³. After taking service from Atmos and its predecessor utility for decades, Petitioners would find themselves in an isolated setting where they would be deprived of the opportunity to receive service from Atmos or any other KCC-certificated natural gas public utility. The action would, of course, impose lasting and significant economic harm on long-term customers. As related by the Leavenworth County Board of County Commissioners, such action "is not consistent with Atmos' obligation to provide service to customers within its KCC-certified territory, nor consistent with the interests of the citizens of Leavenworth County."

10. Petitioners oppose Atmos' Application and request the Commission reject Atmos' request. Abandonment in this territory has not been supported by Atmos and Petitioners believe there is substantial evidence showing abandonment is not in the public interest. Accordingly, a full investigation of Atmos' request and the underlying basis for it is essential.

³ **Exhibit B-2** is the Commission's map of Kansas' certificated natural gas service territories from which Exhibit B-1 was prepared.

II. PETITION TO INTERVENE

11. As stated above, Petitioners are currently Atmos customers who have taken service from Atmos for over forty years and have now been given notice that Atmos intends to quit providing them service if the Commission approves their Application.

12. K.A.R. 82-1-225 provides that a petition for intervention shall be granted if three conditions are met: (1) the petition is submitted in writing and provided to parties at least three days before hearing; (2) the petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervener under any provision of law; and (3) the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

13. It is clear the Petitioners' legal rights and interests will be substantially affected by the outcome of this docket, as they will be bound by Commission Orders in this proceeding and may be adversely affected thereby. There are no landowners or other customers who are a party to this docket at this time, and therefore, the representation of Petitioners' interests in this proceeding by other existing parties is inadequate.

14. The orderly and prompt conduct of these proceedings will not be impaired by allowing Petitioners' intervention. This docket has only just been filed by Atmos. Petitioners agree to accept the record as it stands and are prepared to actively participate in the timely disposition of this proceeding. No prejudice will be suffered by Atmos or any other party if intervention is granted.

15. Petitioners agree to accept electronic service of all pleadings, orders, and other documents in this proceeding as required by K.A.R. 82-1-216(a)(6) at the email addresses indicated for signatory counsel below. In addition, the following individuals should be added to

the service list:

Joe F. Jenkins II
18701 Hemphill Rd
Tonganoxie, KS 66086
jjfarmsks@aol.com

Stephen M. Letcher, President
Tri-County Rod and Gun Club, Inc.
18573 Stillwell Road
Linwood, KS 66052
s.letch@hotmail.com

Tony Zell
Tri-County Rod and Gun Club, Inc.
18573 Stillwell Road
Linwood, KS 66052
T2thez75@gmail.com.

WHEREFORE, Petitioners request the right to participate in all aspects of this case without limitation so that they may receive notice of all pleadings and orders, conduct discovery, present and cross-examine witnesses, be heard on the arguments, and in all other respects fully participate in this proceeding.

Respectfully submitted,

/s/ Glenda Cafer

Glenda Cafer (#13342)
Morris Laing Evans Brock & Kennedy
800 SW Jackson, Ste 1310
Topeka, Kansas 66612
Phone: (785) 430-2003
gcafer@morrislaing.com

Michael Lennen (#08505)
Morris Laing Evans Brock & Kennedy
800 SW Jackson, Ste 1310
Topeka, Kansas 66612
Phone: (785) 430-2003
mlennen@morrislaing.com

ATTORNEYS FOR PETITIONERS



COUNTY OF LEAVENWORTH
BOARD OF COUNTY COMMISSIONERS

300 Walnut, Suite 225
Leavenworth, Kansas 66048-2815
(913) 684-0417
Facsimile (913) 684-0410
email: bocc@leavenworthcounty.org

July 1, 2021

Atmos Energy
Ms. Jennifer Altieri
VP Public Affairs
1555 Blake Street, Suite 400
Denver, CO 80202

Kansas Corporation Commission
Public Affairs Division
1500 SW Arrowhead Rd.
Topeka, KS 66604

Subject: Proposed cessation of natural gas service in Leavenworth County, Kansas

Dear Ms. Altieri, Members of the Corporation Commission,

I write to you as the Chair of the board of county commissioners of Leavenworth County, Kansas, to express the concern of the board over the proposed cessation of natural gas service to an area of Leavenworth county currently served by Atmos Energy ("Atmos"). Certain property owners in the county received a letter from Atmos Energy, dated May 26, 2021, which outlined the proposal by Atmos to abandon the natural gas pipeline located in the vicinity of 190th Street and Stillwell Road and convert their service to propane.

The board asks that Atmos reconsider this proposal. The area currently served by the line is, today, largely rural in character with large lot residences and significant open ground. The area is, however, located in the vicinity of a school being constructed by the Basehor-Linwood School District and is identified by the county as an area of high growth potential. The area is located near Interstate I-70, K-32 Highway, 24-40 Highway and approximately 15 minutes away from the Legends Development and Kansas Speedway. Reducing the infrastructure serving the area significantly diminishes its prospects for growth. While propane burns just as natural gas does, service by individual propane tanks is not amenable to more intensive development, and certainly not any commercial development.

Apart from the issue of the immediate loss of natural gas service to the area is the board's concern that the proposed abandonment will call into question the reliability of Atmos as a

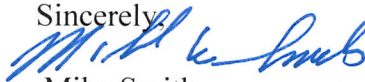
Exhibit A

provider of essential utility service. That question, of course, is not conducive to future development in the service area of Atmos. Further, the board believes that the proposed abandonment is not consistent with Atmos' obligation to provide service to customers within its KCC-certified territory, nor consistent with the interests of the citizens of Leavenworth County.

In the letter of May 26, 2021, Atmos states the justification for the proposed abandonment of its natural gas line as being that the line needs replacement and that it is not "economically feasible" to do so. The board believes that this position is short-sighted in nature and harms Leavenworth County through diminished prospects of natural gas service and the growth and development that would depend on that service.

The board asks that Atmos reconsider its proposal to cease service to the area served by the natural gas line. Should Atmos not do so, the board asks that the Corporation Commission deny the application at this time, should that application be made, and that the commission carefully consider the ramifications of the proposed action by Atmos.

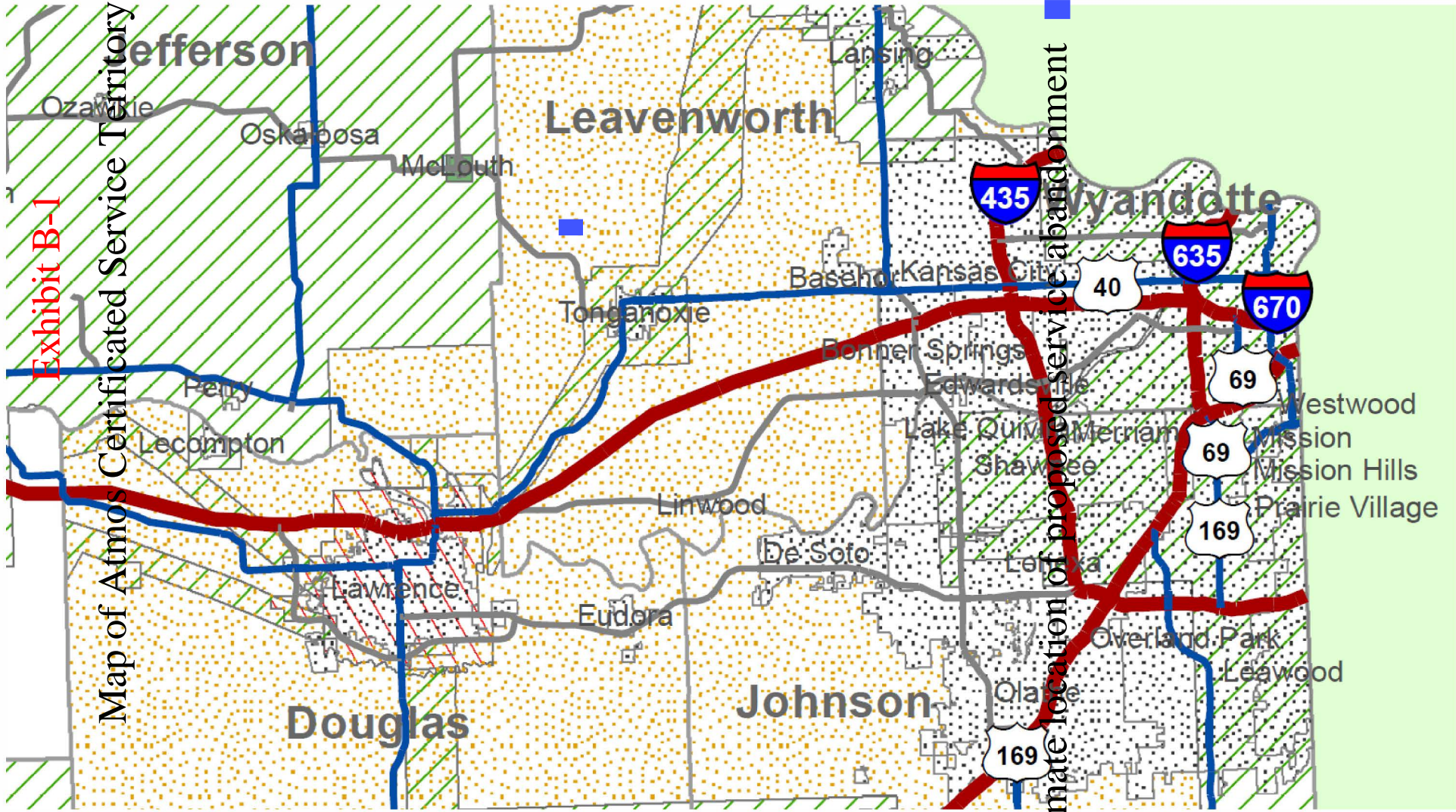
Sincerely,



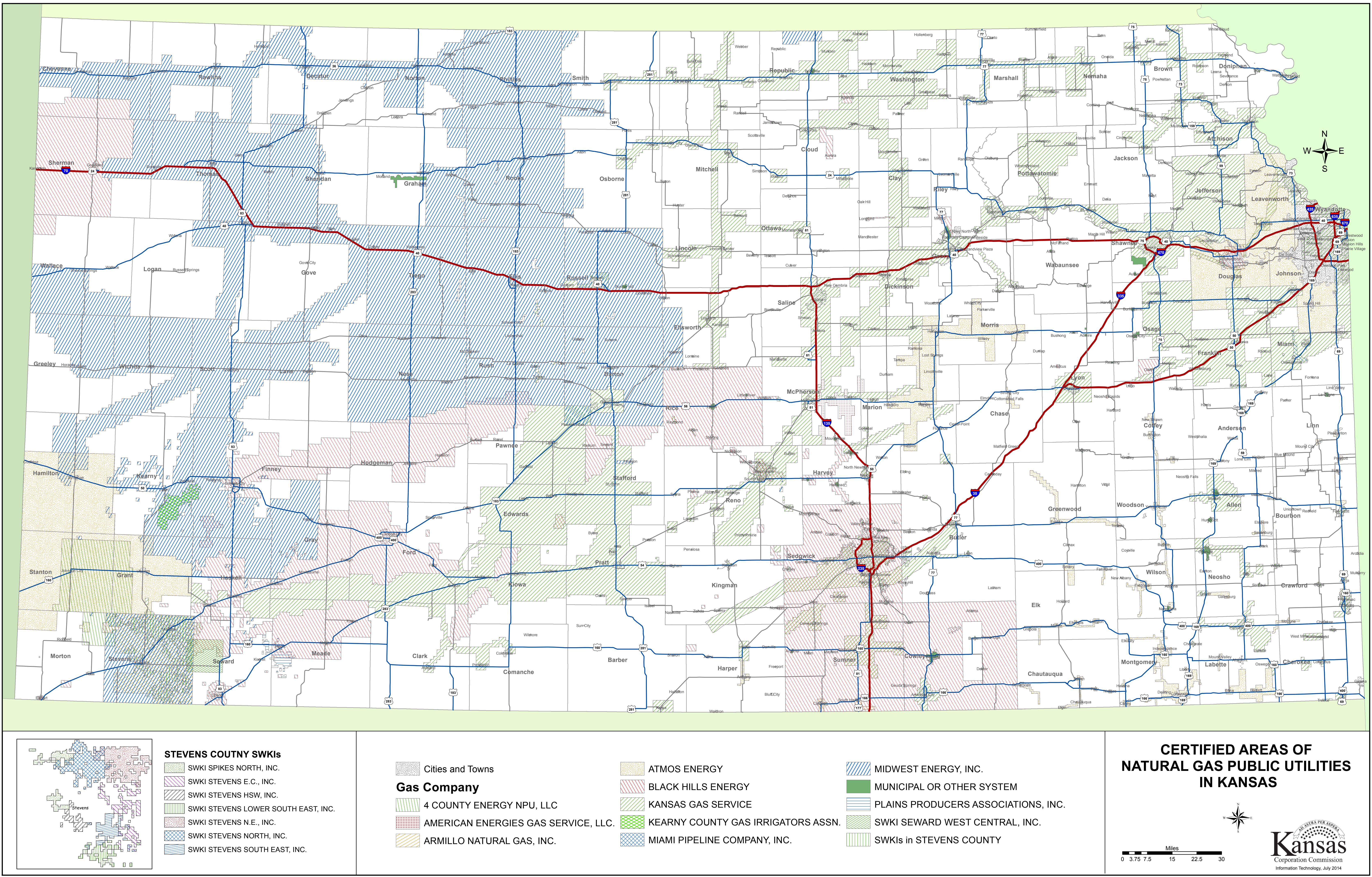
Mike Smith
Chair County Commission

Exhibit B-1

Map of Atmos Certificated Service Territory in Subject A



Approximate location of proposed service abandonment



STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

VERIFICATION

I, Glenda Cafer, verify under penalty of perjury that I have caused the foregoing pleading to be prepared; that I have read and reviewed the same; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

*/s/ Glenda Cafer*_____

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing pleading was electronically served this 29th day of July, 2021 to:

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

COLE BAILEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.bailey@kcc.ks.gov

JOE F. JENKINS II
18701 HEMPHILL RD
TONGANOXIE, KS 66086
jjfarmsks@aol.com

STEPHEN M. LETCHER, PRESIDENT
TRI-COUNTY ROD AND GUN CLUB, INC.
18573 STILLWELL ROAD
LINWOOD, KS 66052
s.letch@hotmail.com

TONY ZELL
TRI-COUNTY ROD AND GUN CLUB, INC.
18573 STILLWELL ROAD
LINWOOD, KS 66052
t2thez75@gmail.com

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

/s/ Glenda Cafer
Glenda Cafer