

**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 Business of a Natural Gas Public) Docket No. 22-ATMG-039-CCS
Utility in a Portion of Leavenworth County,)
Kansas.)

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 its Report and Recommendation regarding the Application of Atmos Energy Corporation (Atmos) for authority to cease transacting business as a natural gas public utility in a portion of Leavenworth County, Kansas.

Staff hereby files the attached Report and Recommendation (R&R) dated May 10, 2022 in response to Atmos, Joe F. Jenkins, II, Jill A. Jenkins (collectively referred to as the “Jenkins”), and Tri-County Road and Gun Club, Inc.’s (“Gun Club”) (the Jenkins and Gun Club collectively referred to as “Intervenors”) Joint Motion to Approve Settlement Agreement (Settlement Agreement). Atmos and the Intervenors requested that the Commission approve the Settlement Agreement, and upon approval by the Commission, all issues raised in the above named Docket’s Application and Protest will have been resolved and the case can be dismissed.

During settlement discussions, Atmos and Intervenors requested Staff submit an R&R expressing its support for the terms of the Settlement Agreement. Based upon its review of the Settlement Agreement, and after discussions with Atmos regarding the design and construction of replacement piping after the filing of the Settlement Agreement, Staff recommends approval of the Agreement with one exception. The Settlement Agreement calls for replacement of the entire

East-West section of main running east from the intersection of 190th Street and Stillwell Road.¹ Staff recommends the Commission disallow replacement of a portion of the East-West section of piping described in the Settlement Agreement. Staff supports the remainder of the Settlement Agreement and recommends the Commission approve the Settlement with the above exception and dismiss the Application and Protest. Staff also recommends the Commission find the current configuration of unprotected bare steel main and any portion of the service and yard lines allocated to Atmos as eligible for GSRS recovery. However, Staff does not believe any additional main or service lines to be added by Atmos to reconfigure the system be eligible for GSRS recovery.

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/ Jared R. Jevons

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¹ See Joint Motion to Approve Settlement Agreement, Exh. A, at 2.

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Dwight D. Keen, Chair
Susan K. Duffy, Commissioner
Andrew J. French, Commissioner

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

DATE: May 10, 2022

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

Executive Summary

On July 16, 2021, Atmos Energy Corporation (Atmos) filed an application to abandon 7,600 feet of vintage pipe.¹ The abandonment would cease service to three residential customers and one commercial customer.² The estimated cost to replace the lines is \$428,000.³ The affected customers were sent letters about the proposed abandonment and informed them of the option to convert to propane.⁴ Atmos offered to pay at least \$7,500 per customer or the cost for the conversion, whichever is greater. None of the customers accepted the conversion offer.⁵ On July 29, 2021, the Jenkins and the Gun Club (Intervenors) protested the Application and intervened in the Docket.⁶ Later, Atmos became aware of future development in the area and came to a Settlement Agreement with the Intervenors.⁷ The Settlement resolves all issues in this Docket.⁸ Both parties requested a report and recommendation from Staff in the settlement terms.⁹

The terms of Settlement include the following:

- Atmos agrees to replace the main that currently serves the Intervenors properties at no cost to the Intervenors.

¹ Application of Atmos Energy Corporation for Authority to Cease Service, p. 1, (July 16, 2021) (Application).

² *Id.*

³ Atmos' Application estimated the cost of replacement at \$320,000. *Id.* at 3. The \$428,000 cost estimate was obtained by Staff through email exchanges with Atmos. Those e-mail exchanges are on file with Staff.

⁴ *Id.* at 3-4.

⁵ *Id.* at 4.

⁶ Joe F. Jenkins II, Jill A. Jenkins, and Tri-County Rod and Gun Club, Inc.'s Petition to Intervene and Protest in Opposition to the Application, p. 1 (July 29, 2021) (Petition & Protest).

⁷ Atmos & Intervenors' Joint Motion to Approve Settlement Agreement, Exh. A, p. 1-2 (Apr. 5, 2022) (Settlement Agreement).

⁸ *Id.* at 4.

⁹ *Id.*

- The Jenkins agree to pay Atmos \$22,500 in aid to construction for the replacement of the service and yard lines of their properties within 30 days after construction completion.
- Atmos plans to submit the remainder of the cost for recovery through the Gas System Reliability Surcharge (GSRS).
- The Jenkins grant Atmos a 20 foot permanent easement and 10 foot temporary construction easement for the main to be replaced.
- If the new main shall need to be extended in the future, Atmos must obtain an additional easement from the Jenkins.
- The Gun Club's service line shall be connected at no cost to the Gun Club.
- Both parties shall be responsible for their own attorney's fees.¹⁰

With the exception of the 805 feet of plastic pipe on the East-West section, the remainder of the pipe proposed to be replaced is unprotected bare steel.¹¹ As such, Staff agrees it is eligible for recovery pursuant to K.S.A. 66-2201 *et seq.* (GSRS statutes). Staff supports the remainder of the Settlement Agreement and recommends the Commission approve the Settlement with the exception of 471 feet of plastic pipe on the East-West section¹² and dismissal of the Application and Protest. Staff recommends the Commission find the current configuration of unprotected bare steel main and any portion of the service/yard lines allocated to Atmos as eligible for GSRS recovery. However, with respect to modifications to the existing system configuration, Staff does not believe any modifications to the existing system configuration that *add* main or service line footage should be GSRS eligible.

Background

The area to be replaced is located in Leavenworth County, KS, near Linwood, KS.¹³ The North-South main is approximately 4,900 feet long and the main from the intersection of 190th Street and Stillwell Road to the Gun Club (East-West section) is approximately 2,700 feet long.¹⁴ Most of the steel portion of the pipeline is above ground unprotected bare steel dating back to the 1950s or 1960s.¹⁵ Approximately 805 feet of the East-West section is plastic and was replaced in the last nine years.¹⁶ At the time of Application, Atmos argued this pipeline could not be used to provide sufficient and efficient service.¹⁷ Multiple segments of pipe were installed to repair leaks on the main.¹⁸ There were 14 active leaks on a section of pipe found at the time of the Application.¹⁹ At the time of the Application, Atmos estimated the cost to replace the line used to serve the four customers at \$320,000.²⁰ Atmos recently calculated a more accurate cost estimate of \$428,000.²¹ This cost increase likely comes from rock in the area and extending the main on the North-South section. Atmos believed this would be an unreasonable burden on other Kansas customers and sent a letter of the proposed abandonment to each customer that would be affected.²² This letter offered \$7,500

¹⁰ See generally Settlement Agreement.

¹¹ Application, at 2.

¹² See Application, Exh. A-1.

¹³ Application, at 1.

¹⁴ *Id.* at 2–3.

¹⁵ *Id.* at 2.

¹⁶ See Application, Exh. A-1. 471 feet of 2-inch MDPE plus 120 feet of 2-inch MDPE plus 214 feet of 2-inch HDPE = 805'.

¹⁷ Application, at 3.

¹⁸ *Id.* at 2.

¹⁹ Atmos' Response to Protest in Opposition to its Applications for Authority to Cease Service, p. 1 (Aug. 9, 2021) (Response to Petition).

²⁰ *Id.* at 3.

²¹ The \$428,000 estimate was provided to Staff via e-mail exchanges with Atmos on [April 8, 2022]. The e-mail exchanges are on file with Staff.

²² Application, at 4.

to switch to an alternate energy source.²³ Each customer rejected the offer.²⁴ The Intervenor protested the Application and intervened in the docket.²⁵ Their protest included a letter from the Leavenworth Board of County Commissioners expressing concern over the proposed abandonment due to future development in the area.²⁶ Since the time of the Application, plans for a seven home subdivision in the area were developed.²⁷ The subdivision could potentially be served from the East-West section of the line proposed for abandonment.²⁸ The Settlement Agreement acknowledges Atmos will need the East-West section of the line to meet potential growth.²⁹

In past dockets similar to this one, the Commission generally grants the application to cease service.³⁰ Previous cease applications from Atmos did not have intervenors protesting cease of service.³¹ Additionally, this is the first time a County Commission has been against an Atmos Cease Application.

Analysis

The terms of Settlement include the following:

- Atmos agrees to replace the main that currently serves the Intervenor properties at no cost to the Intervenor.
- The facilities to be replaced are: (1) the main running east from the intersection of 190th Street and Stillwell Road; (2) the main that runs from Stillwell Road north that serves the Jenkins' properties; (3) the service lines that run from the main to the meters on Jenkins' properties; and (4) the yard lines that run from the meters to the buildings on the Jenkins' properties.
- The Jenkins agree to pay Atmos \$22,500 in aid to construction for the replacement of the service and yard lines of their properties within 30 days after construction completion. The Jenkins will not be charged any additional costs.
- Atmos plans to submit the remainder of the cost for recovery through the Gas System Reliability Surcharge.
- The Jenkins grant Atmos a 20 foot permanent easement and 10 foot temporary construction easement.
- If the new main shall need to be extended in the future, Atmos must obtain an additional easement from the Jenkins.
- The Gun Club's service line shall be connected at no cost to the Gun Club.
- Both parties shall be responsible for their own attorney's fees.³²

There are three sections of plastic pipe along the East-West section of approximately 805 feet that have been replaced since 2006.³³ Staff spoke with Atmos about this section of pipe and both Staff and Atmos agree that 471 feet of plastic furthest to the West should not be replaced.³⁴ However, Staff believes it is

²³ Application, Exh. C.

²⁴ Application, at 4.

²⁵ See Petition & Protest, at 1.

²⁶ Petition & Protest, Exh. A.

²⁷ See generally Settlement Agreement, at 1–2.

²⁸ The new subdivision is located in the area immediately adjacent to the Gun Club's property. *Id.*

²⁹ *Id.*

³⁰ See Dockets 13-ATMG-681-CCS, 15-ATMG-570-CCS, 16-ATMG-473-CCS, 18-ATMG-488-CCS, 21-ATMG-301-CCS.

³¹ See Dockets 13-ATMG-681-CCS, 15-ATMG-570-CCS, 16-ATMG-473-CCS, 18-ATMG-488-CCS, 21-ATMG-301-CCS.

³² See generally Settlement Agreement.

³³ See Application, Exh. A-1.

³⁴ The new \$428,000 cost estimate included keeping the 471 foot plastic piece on the East-West section.

most economical to replace the other plastic pieces along the East-West section rather than tie them into the new steel pieces.

Staff also believes the existing 6,795 feet of steel sections is obsolete and meets requirements of GSRS recovery.³⁵ Any additional main pipe added to reconfigure the existing piping system to serve Intervenor should not be eligible for GSRS recovery as it is an *addition* to the current Atmos system and not pipe replacement.

A second potential subdivision located to the north of the Jenkins' properties was brought to the attention of Staff in informal discussions with Leavenworth County Commissioners on October 13, 2021.³⁶ Notably, the Leavenworth County Commission had also expressed concern with the proposed abandonment in a letter attached to the Intervenor's Protest.³⁷ The location of the northern subdivision is zoned for rural residential development³⁸ on 5 acre lots. Should the northern subdivision materialize, Atmos would have an obligation to serve it and Atmos would most likely need to extend the North-South section of main transiting the Jenkins' property. Atmos estimated the cost of this extension to the north to serve the northern subdivision to be an additional \$120,000.³⁹ However, at this time there is no indication that an extension is necessary. Any extension of main from pipe from the Jenkins' properties to the potential northern subdivision would also not be eligible for GSRS recovery as it is an *addition* to the current Atmos system and not pipe replacement.

Atmos' tariff gives customers 100 feet of free yard line replacement.⁴⁰ Section 7D(4) states:

“Yard Line” Replacement to Customer’s House Financial Responsibilities:

Company agrees to replace the Yard Line to the Customer’s House up to 100’ minimum or one foot per Mcf of customer’s annual consumption, whichever is greater, at no charge to the residential customer. Any excess footage or replaced “Yard Line” will be charged to the residential customer at the normal service line footage cost. Company further agrees to allow the residential customer to finance this excess footage cost up to a two year period, interest free.

The Jenkins' yard line piping downstream of the meters is subject to this tariff provision. The Atmos service lines currently serving the three Jenkins' properties yard lines totals approximately 1,400 feet.⁴¹ Each of the Jenkins' properties requires more than 100 feet of yard line.⁴² As a result, per Atmos tariff provisions, Atmos would be responsible for up to 300 feet of the Jenkins' yard lines (100 feet times 3 customers)

³⁵ K.S.A. 66-2201 through 66-2204.

³⁶ Several potential developments have been discussed in this Docket's filings. *See* Petition & Protest, at 4 (discussing residential construction near the Basehor-Linwood school); Petition & Protest, Exh. A (discussing a school being built in the vicinity of Jenkins' properties); Response to Petition, at 3–4 (describing Atmos' investigation into developments in the area not revealing any proposed developments). It is unclear to Staff whether the second potential subdivision to the north is the same residential development referenced by the Intervenor and Atmos in the Petition & Protest and Response to Petition, respectively. Nonetheless, Atmos is aware of the second potential subdivision to the north, as evidenced by the cost estimate provided to Staff to extend the main transiting the Jenkins' property to the north. *See* discussion *infra* fn. 39.

³⁷ *See* Petition & Protest, Exh. A, p. 1–2 (stating that “reducing the infrastructure significantly diminishes the prospect for growth” and “the proposed abandonment is not consistent with Atmos' obligation to provide service.”).

³⁸ *See* Staff Exh. 1, Leavenworth County Planning and Zoning Comprehensive Plan, p. 21.

³⁹ The information was provided to Staff via e-mail exchanges with Atmos on April 8, 2022. The e-mail exchanges are on file with Staff.

⁴⁰ Atmos Tariff Section 7D(4).

⁴¹ *See* Application, at 3.

⁴² *Id.*

downstream of the meter and the cost of replacing the remaining piping downstream of the meter will be the responsibility of the customer. Although the Settlement Agreement represents a negotiated settlement between Atmos and Intervenors and not necessarily Atmos tariff provisions, Staff believes the Settlement Agreement reasonably resolves the service and yard line pipe replacement costs. Therefore, Staff has no objections to the aid in construction to be paid by the Jenkins' included in the Settlement Agreement.

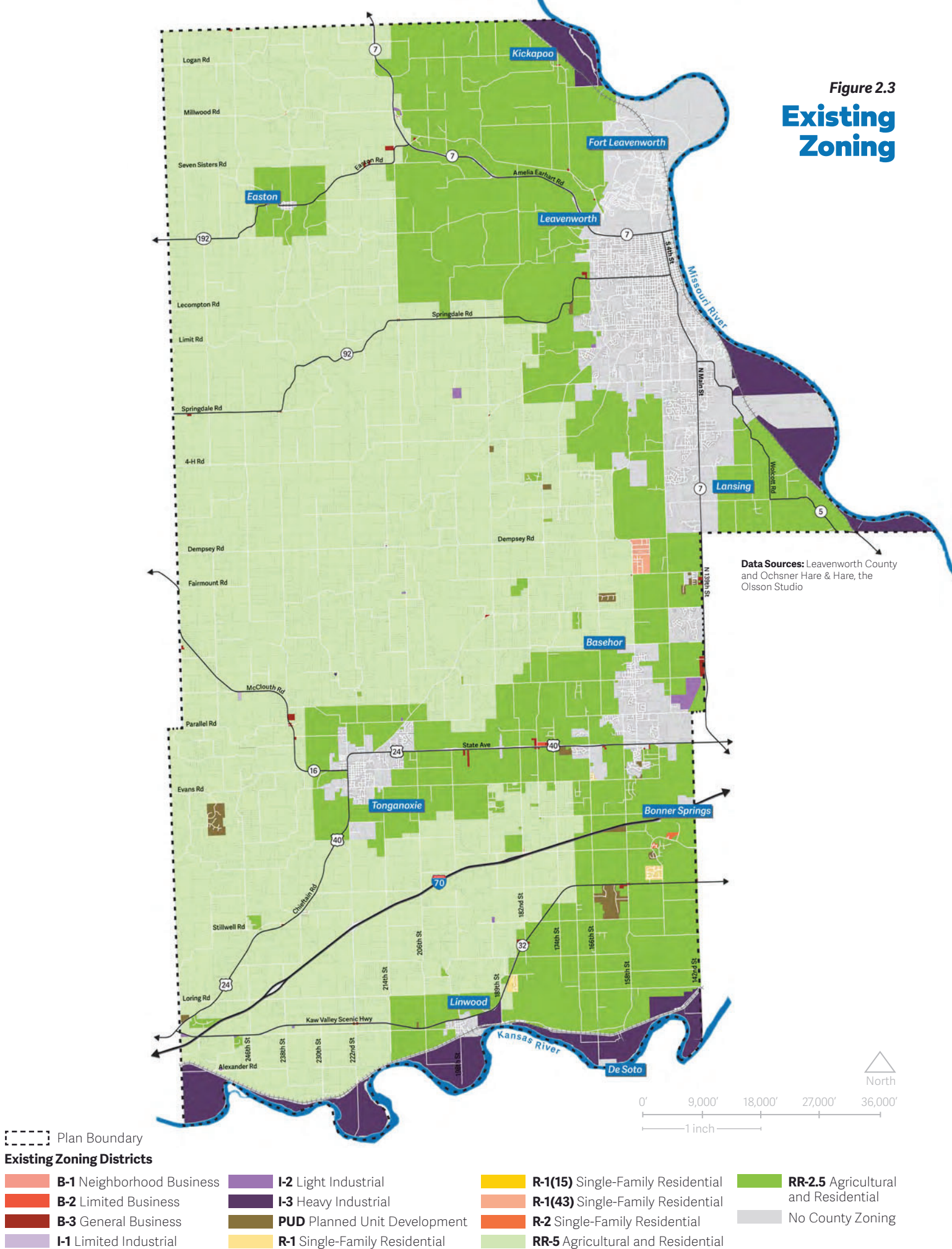
Recommendation

Staff recommends to disallow replacement of the 471 feet of plastic pipe that is on the East-West section of piping scheduled for replacement. Staff considers the remaining plastic pipe and all of the unprotected steel that Atmos owns as eligible for GSRS recovery. Staff supports the remainder of the Settlement Agreement and recommends the Commission approve the Settlement while noting the above exception and dismiss the Application and Protest. Staff recommends the Commission find the current configuration of unprotected bare steel main and any portion of the service/yard lines allocated to Atmos as eligible for GSRS recovery. However, Staff does not believe any additional main or service lines beyond the current footage to be added by Atmos to reconfigure the system should be eligible for GSRS recovery.

Staff Exhibit 1

Leavenworth County Planning and Zoning Comprehensive Plan page 21

Figure 2.3
Existing Zoning



Data Sources: Leavenworth County and Ochsner Hare & Hare, the Olsson Studio

CERTIFICATE OF SERVICE

22-ATMG-039-CCS

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 sent by electronic mail this 11th day of May, 2022, to the following:

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/s/ Sally Conn

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