

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

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

In the Matter of the Application of Kansas)
Gas and Electric Company, Doing Business)
as Westar Energy for Authority to Cease)
Transacting the Business of an Electric) Docket No. 18-KG&E-430-CCS
Public Utility Specifically in Portions of)
Section 30, Township 29 South, Range 2)
East, Sedgwick County, Kansas.)

**ORDER GRANTING APPLICATION TO CEASE TRANSACTING
THE BUSINESS OF AN ELECTRIC PUBLIC UTILITY**

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and record, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On April 9, 2018, Kansas Gas & Electric Company d/b/a Westar Energy (Westar) filed an Application requesting to cease transacting the business of an electric public utility in territory situated within Sedgwick County, Kansas. Westar is an electric public utility as defined in K.S.A. 2017 Supp. 66-104. A public hearing was neither requested nor held on Westar's Application.

2. Westar requests the Commission issue an Order granting it authority to cease transacting the business of an electric public utility in the following described territory to wit:

SEDGWICK COUNTY, KANSAS

Customer to North of Twin Lakes Subdivision-
Beginning at a point on the South line of the Northeast Quarter (NE/4) of Section 30, Township 29 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, 103.5 feet East of the Southwest corner of the Northeast quarter, said point being

the intersection of the South line of said Northeast quarter and the Easterly right-of-way of K-15 Highway; thence Northerly along said Easterly right-of-way 379.39 feet; thence Easterly with an included angle of 90°, 314 feet; thence Southerly parallel to said Easterly right-of-way 452.97 feet more or less to a point on the South line of said Northeast Quarter thence West to beginning, LESS A TRACT DESCRIBED AS Beginning at a point on the South line of the Northeast Quarter of said Section 30, located a distance of 103.5 feet East of the Southwest corner of said Northeast quarter, said point being the intersection of the Easterly right-of-way of State Highway 15 and the South line of said Northeast Quarter; FIRST COURSE, thence North 13°46'54" West along said highway right-of-way, a distance of 379.39 feet; SECOND COURSE, thence North 76°13'06" East a distance of 118.68 feet; THIRD COURSE, thence South 00°19'45" West a distance of 178.36 feet; FOURTH COURSE, thence South 07°11'13" East a distance of 219.45 feet to the South line of said Northeast Quarter; FIFTH COURSE, thence South 89°15'48" West along said South line a distance of 51.32 feet to the point of beginning;

Customer to the West of Twin Lakes Subdivision-

A tract of land located in part of Government Lot 2, lying East of the Arkansas River and West of the Atchison, Topeka and Santa Fe Railroad right-of-way in the Northwest Quarter of Section 30, Township 29 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at the Southeast corner of the Northwest Quarter of Section 30, Township 29 South, Range 2 East of the 6th P.M.; thence South 86°48'10" West a distance of 138.18 feet to the West right-of-way of the Atchison, Topeka and Santa Fe Railroad; thence North 16°28'56" West along said West right-of-way a distance of 602.599 feet to the true point of beginning; thence South 81°39'59" West a distance of 1101.10 feet to the East bank of the Arkansas River; thence North 0°55'20" East along said East bank a distance of 805.95 feet; thence Easterly 865.32 feet to the said West railroad right-of-way; thence South 16°28'56" East along said West right-of-way a distance of 757.75 feet to the true point of beginning.

All of Twin Lakes Subdivision; All of Rockwood Heights Subdivision; All of North Rockwood Heights Subdivision; All of Second Addition Rockwood Heights Subdivision. All described is in Section 30, Township 29 South, Range 2 East, Sedgwick County, Kansas.

3. On April 30, 2018, the City of Mulvane, Kansas ("City" or "Mulvane") filed a Response supporting Westar's request to cease transacting the business of an electric public utility in the territory described in paragraph 2 above and acknowledging that Westar and the City have agreed Mulvane should be the provider of electric utility service in this area.

4. On July 27, 2018, the Commission Staff (Staff) submitted its Report and

Recommendation to the Commission, recommending Westar's Application be granted and its request to cease operating as an electric public utility in the territory described in paragraph 2 above be approved.

II. LEGAL STANDARDS AND DISCUSSION

5. Pursuant to K.S.A. 2017 Supp. 66-131, the Commission has jurisdiction to grant a Certificate to any public utility seeking to transact business in the State of Kansas. 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 also provides that retail electric suppliers may enter into agreements to amend boundaries between their facilities. The agreements are subject to Commission approval, and if so approved, the Commission shall issue a certificate accordingly.¹

6. According to Staff, the City Mulvane has annexed the subdivisions of Twin Lakes, Rockwood Heights, North Rockwood Heights and the Second Addition Rockwood Heights, and these areas are presently located within the City and being provided with municipal electric service. Additionally, Westar has asked to release two customers located adjacent to the City's boundaries within the three mile limit surrounding Mulvane. The two customers were given notice by Westar informing them of the transfer of their service and have confirmed to Staff their agreement to receive electric utility service from Mulvane. The City has additionally filed an Application for a Certificate of Convenience to serve the two customers outside the City limits in Docket No. 18-MUVE-514-COC. By virtue of K.S.A. 66-131 and K.S.A. 66-1,174, the City has authority to supply electricity within the corporate limits of the City of Mulvane as well as within

¹ K.S.A. 66-1,175.

a three mile area adjacent to the City. Staff states that it has reviewed the Application of Westar and the Response of Mulvane and determines that the legal descriptions and maps provided with these filings are accurate and not in conflict with the Commission's Certificate records. Staff recommends the Commission grant Westar's Application and find that the public convenience will be promoted by this transaction. Upon approval, the updated territory description will be reflected in the Commission's certified territory map.²

III. FINDING AND CONCLUSION

7. The Commission adopts Staff's analysis and recommendation of July 27, 2018, as stated in its Report and Recommendation, which is attached hereto and made a part hereof by reference, and finds that Westar's Application should be granted, and that the public convenience will be promoted by issuing an Order authorizing Westar to cease transacting the business of an electric public utility in the territory described in paragraph 2 above.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Application of the Kansas Gas and Electric Company d/b/a Westar Energy is hereby granted and Westar is authorized to cease transacting the business of an electric public utility in the territory described in paragraph 2 above.

B. Pursuant to K.S.A. 66-131 and K.S.A. 66-1,174, the City of Mulvane has authority to provide municipal electric service in the territory described in paragraph 2 above.

C. 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).³

D. 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.

² Report and Recommendation at 3 (July 27, 2018).

³ K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 08/07/2018

A handwritten signature in cursive script, reading "Lynn M. Retz", written in dark ink.

Lynn M. Retz
Secretary to the Commission

wah

STATE OF KANSAS



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

DATE: July 27, 2018

SUBJECT: 18-KG&E-430-CCS
In the Matter of the Application of Kansas Gas and Electric Company, doing Business as Westar Energy for Authority to Cease Transacting the Business of an Electric Public Utility specifically in portions of Section 30, Township 29 South, Range 2 East, Sedgwick County, Kansas.

18-MUVE-514-COC
In the Matter of the Application of the City of Mulvane, Kansas for a Certificate of Convenience and Authority to Transact the Business of an Electric Public Utility in the State of Kansas.

EXECUTIVE SUMMARY:

Kansas Gas and Electric Company, doing business as Westar Energy (Westar), is seeking the approval of the Commission to cease operating as an electric utility in the Twin Lakes, Rockwood Heights, North Rockwood Heights, and Second Addition Rockwood Heights Subdivisions that have been annexed by the City of Mulvane (Mulvane or City). Westar furthermore seeks to cease as a Public Utility for two customers immediately adjacent to the Twin Lakes Subdivision. The City is requesting a Certificate of Convenience for the two customers adjacent to the Twin Lakes Subdivision. Mulvane and Westar have notified all

customers of the pending change in service. No customers have expressed a concern regarding the proposed change.

Staff recommends that the Commission grant these Applications and acknowledge Mulvane will be responsible for providing retail electric service for the two customers being released by Westar.

BACKGROUND:

Mulvane operates a municipal electric utility for residents of the City. Several years ago, the City annexed the four above-referenced subdivisions. At the time of annexation, the City and Westar did not negotiate a franchise agreement and Westar continued to serve customers in the area. Over time, Mulvane built electric facilities into the area and also began to serve customers interspersed with Westar customers. In order to reduce customer confusion and prevent potential safety issues that could arise from dual utility systems, Westar and the City entered into negotiations to allow the City to serve all customers in the area. On December 4, 2017, Westar and the City formally agreed that the City will serve the electric needs of the Subdivisions. In the minutes from its April 2, 2018, council meeting, the Mulvane City Council addressed some history on the Twin Lakes Subdivision. Staff has included these minutes as Exhibit A to this Report and Recommendation.

On April 30, 2018, Westar filed an Application to Cease in Docket 18-KG&E-430-CCS. On May 25, 2018, the City filed Docket 18-MUVE-514-COC for a Certificate of Convenience to provide electric service for two customers adjacent to the Twin Lakes Subdivision. Exhibit B describes the two Westar properties for which the City seeks a Certificate.

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 Staff considers the Agreement between Westar and the City (see Attachment C) as Mulvane's notice that the City's electric utility has been selected as the electric service provider for the residents in the above-described subdivisions.

The statutory standard of review in this matter is whether the public convenience will be promoted by the transaction of the proposed project and by permitting the applicants to transact the business of a common carrier or public utility.³

ANALYSIS:

Staff has reviewed the Applications and has confirmed the legal descriptions included in the Application, marked as Exhibit B, are accurate. Staff also confirmed the legal description is not

¹ K.S.A. 66-131

² K.S.A. 66-1,176(a)

³ K.S.A. 66-131.

in conflict with the Commission's Certificate records. For the two Westar customers not in the city limits of Mulvane, Staff has reviewed the notice Westar provided the customers. Staff has also confirmed the two customers agree to receive electric utility service from Mulvane.

Staff recommends that the Commission find that public convenience will be promoted by the granting of this Application.

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 October 8, 2018.

Exhibit A
Minutes to Council Meeting of the City of Mulvane
April 2, 2018

NEW BUSINESS

1. Acquiring Electrical Service Territory (Twin Lakes Area):

In the early 1980s, a residential development called the Twin Lakes Addition (the “Twin Lakes”) was built outside of the City of Mulvane, Kansas (the “City”) north of K-15 Highway and west of Rock Road. Twin Lakes was served by Westar (Westar’s electrical territory) for its overhead electrical service. After many years, Twin Lakes residents requested to be annexed into the City. The City’s Electrical Department at some point began installing underground electrical equipment to serve Twin Lakes. Throughout the years to the present day, eighteen (18) Twin Lakes customers have requested and received electrical service from the City. There are 19 customers still served by Westar in Twin Lakes.

In 2010, Westar began negotiations with the City concerning electric territory regarding Twin Lakes. Both parties agree because of safety issues concerning electrical workers and customer confusion, the area only needs one electrical provider. Financial territory costs per meter by Westar to the City to acquire the area, has hampered the transfer of electrical territory in the past. In 2017, Westar withdrew its request for costs to the City of Mulvane pertaining to “cost per meter for electrical territory” for Twin Lakes. The electrical cost the City will incur will be transferring the electrical services from overhead poles to the City underground electrical system. The transfer will include two customers outside of the City limits on the south side of K- 15 Highway.

There will also be cost associated with legal and engineering fees for providing legal descriptions. This agreement to transfer electrical territory concerning Twin Lakes will be decided by the City Council, Westar, and ultimately will require application to the Kansas Corporation Commission. It is city staff’s recommendation to proceed with acquiring the electrical territory for the Twin Lakes. Funds for this expenditure will be dispersed from the Electric Department: 511-10-406 legal, 511-10-408 engineering and 511-10-548 line expense.

MOTION by Cardwell, second by Fleming to proceed with acquiring the electrical territory for the Twin Lakes Addition and have the Mayor to sign the Westar letter agreement.

MOTION approved unanimously.

Exhibit B
Mulvane, Kansas
18-KG&E-430-CCS 18-MUVE-514-COC
Kansas Gas and Electric to the City of Mulvane, Kansas

SEDGWICK COUNTY

Customer to North of Twin Lakes Subdivision-

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Customer to the West of Twin Lakes Subdivision-

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CERTIFICATE OF SERVICE

18-KG&E-430-CCS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 08/08/2018.

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/S/ DeeAnn Shupe

DeeAnn Shupe