

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

Before Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Andrew J. French

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.)

ORDER APPROVING SETTLEMENT AGREEMENT

This matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and determination. Having reviewed the pleadings and record, the Commission finds and concludes:

1. On July 16, 2021, Atmos Energy Corporation (“Atmos Energy”) filed an application seeking an Order permitting it to discontinue service to three (3) residential customers and one (1) commercial customer located in southern Leavenworth County, to abandon pipeline segments used to serve those customers, and to pay costs for conversion of the customers’ utility service to propane (“Application”).¹ The potentially affected customers are Joe F. Jenkins, II (who has two residential service properties), Jill A. Jenkins (collectively, the “Jenkins”), and Tri-County Rod and Gun Club, Inc. (“Gun Club”) (collectively the Jenkins and the Gun Club referred to as “Intervenors”).²

2. The addresses and legal descriptions of the territory proposed to be abandoned by Atmos Energy are:

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

² *Id.*, Exhibit B.

- a. 18701 Hemphill Road, Unit A, Tonganoxie, Kansas 66086; West Half of Section 31, Township 11 South, Range 22 East, Leavenworth County, Kansas (Janet J. Jenkins Trust, Owner; Joe Jenkins, Customer) (“Joe Jenkins Unit A Property”).³
- b. 18701 Hemphill Road, Unit B, Tonganoxie, Kansas 66086; West Half of Section 31, Township 11 South, Range 22 East, Leavenworth County, Kansas (Janet J. Jenkins Trust, Owner; Joe Jenkins, Customer) (“Joe Jenkins Unit B Property”).⁴
- c. 18462 Stillwell Road, Tonganoxie, Kansas 66086; Southeast Quarter of Section 31, Township 11 South, Range 22 East, Leavenworth County, Kansas (Joe F. Jenkins II Trust, Owner; Jill Jenkins, Customer) (“Jill Jenkins Property”).⁵
- d. 18573 Stillwell Road, Linwood, Kansas 66052; West Half of the East Half of Section 6, Township 12 South, Range 22 East, Leavenworth County, Kansas (Tri-County Rod and Gun Club, Inc., Owner and Customer) (“Gun Club Property”).⁶

3. The lines for which Atmos Energy sought abandonment authority are:

- a. “The main to be abandoned begins on the Southeast corner of 190th Street and Stillwell Road and extends approximately 2,700 feet to the East. The main is made up of multiple vintage segments that were installed to repair leaks in the main. Those segments include: (i) 214 feet of 2-inch high-density polyethylene pipe (“HDPE”) that was installed July 21, 2020; (ii) 120 feet of 2-inch medium-density polyethylene pipe (“MDPE”) that was installed February 22, 2006; and (iii) 471 feet of 2-inch MDPE installed July 24, 2013. The remainder of the East-West main consists of unprotected 2-inch steel pipe. . . .”⁷

³ *Id.*, ¶ 2(a).

⁴ *Id.*, ¶ 2(b).

⁵ *Id.*, ¶ 2(c).

⁶ *Id.*, ¶ 2(d).

⁷ *Id.*, ¶ 3(a).

- b. “The main and service lines/yard lines serving the Joe Jenkins Unit A Property, the Joe Jenkins Unit B Property and the Jill Jenkins Property to be abandoned begin on the North side of Stillwell Road approximately 2,300 feet East of the intersection of 190th Street and Stillwell Road extend North about 4,900 feet. The pipe is approximately (i) 4,900 feet of 2-inch bare steel; (ii) 500 feet of 1-inch polyethylene (“PE”) service line feeding two meters with one steel yard line each used to serve the Joe Jenkins Unit A Property and the Joe Jenkins Unit B Property; and (iii) 900 feet of 1-inch steel service line feeding one meter with four PE yard lines, with one of the four PE yard lines used to serve the Jill Jenkins Property. The age or vintage of these lines is unknown in that they were not installed by Atmos Energy or its predecessors. The majority of the lines are above ground. . . .”⁸
- c. “The service line serving the Gun Club Property is 470 feet of 2-inch PE feeding the meter that serves the Gun Club Property and multiple fuel lines. The vintage of the line is unknown”⁹

In its Application, Atmos estimated the cost to replace the lines to be \$320,000.¹⁰

4. At the time the Application was filed, Atmos Energy stated: (a) there was insufficient projected growth and natural gas load in the area nearby the proposed abandoned area to economically justify the cost to replace the deteriorated main and service lines used to serve

⁸ *Id.*, ¶ 3(b).

⁹ *Id.*, ¶ 3(c).

¹⁰ *Id.*, ¶ 4.

Intervenors; and (b) it would be financially unreasonable to burden other Kansas customers with the cost of replacing the lines.¹¹

5. On July 29, 2021, the Intervenors filed a Petition to Intervene and Protest in Opposition to Atmos Energy’s Application (“Intervention and Protest”) in which they requested that the Application be denied.¹² In their Intervention and Protest, Petitioners related that: (a) they had been utility customers of Atmos Energy or its predecessor for more than forty (40) years;¹³ (b) the Application did not address the reasons why and to what extent the lines needed to be replaced in order to provide safe, efficient, and sufficient service;¹⁴ (c) Atmos Energy’s characterization of anticipated growth in the area was incorrect as reflected in information conveyed to the Commission in a July 1, 2021, letter from the Chair of the Leavenworth County Board of County Commissioners;¹⁵ (d) Intervenors’ limited research had disclosed the commencement of construction of a housing development immediately adjacent to the main proposed to be abandoned and that other educational and manufacturing development in the area underscored the economic vibrancy and current growth activity in the area;¹⁶ and, (e) as stated in the Leavenworth County Commissioners’ letter, the requested action was “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.”¹⁷

¹¹ *Id.*, ¶ 8.

¹² Petition to Intervene and Protest in Opposition to the Application of Atmos Energy Corporation for Authority to Cease Service (“Intervention and Protest”), July 29, 2021.

¹³ Intervention and Protest, ¶ 1.

¹⁴ *Id.*, ¶ 3.

¹⁵ *Id.*, ¶ 6.

¹⁶ *Id.*, ¶ 7.

¹⁷ Intervention and Protest, Exhibit A.

6. On August 9, 2021, Atmos Energy filed a Response to Protest in Opposition to its Application for Authority to Cease Service (“Response”).¹⁸ In its Response, Atmos Energy provided information and photos from its most recent leak surveys conducted on the lines along with information regarding bids to replace the service and yard lines, as well as alternative bids to replace both the full 2,630 feet of the main running between 190th Street and Stillwell Road to the Gun Club and 2,130 feet of the main (excluding that portion of the main that had been placed in service in 2013).¹⁹ The Response also reiterated Atmos Energy’s view that there was not sufficient potential growth in the area to support the cost to replace lines.²⁰

7. The Parties subsequently engaged in discovery and continued research regarding development in the area which, among other matters, confirmed that: (a) a developer had platted a new subdivision in the area immediately adjacent to the Gun Club’s property; and (b) service to the subdivision would require replacement of the main that had been the subject of the Application.²¹

8. The Parties thereafter engaged in settlement discussions resulting in an agreement which they advised would resolve “all issues raised in the application and protest (“Agreement”).”²²

9. A Joint Motion to Approve Settlement Agreement (“Joint Motion”), including a copy of the Settlement Agreement itself, was filed on April 5, 2022.²³ (A copy of the Settlement Agreement is attached as Exhibit A). In the Joint Motion, the Parties stated they had discussed

¹⁸ Response of Atmos Energy Corporation to Protest in Opposition to its Application (“Response”), August 9, 2021.

¹⁹ *Id.*, ¶¶ 2-4, Exhibits D, E.

²⁰ *Id.*, ¶¶ 6-8, Exhibits F, G.

²¹ Joint Motion to Approve Settlement Agreement (“Joint Motion”), Exhibit A, “Settlement Agreement,” April 5, 2022, ¶ 3.

²² *Id.*, ¶ 4.

²³ Joint Motion, April 5, 2022.

each of the terms of the Agreement with Commission Staff (“Staff”) and Staff had indicated it could support the [Settlement] Agreement.²⁴ The Joint Motion requested a Commission Order approving the Settlement Agreement and dismissing the Application and Protest.

10. Substantive terms of the Settlement Agreement provide:

- Atmos Energy agrees to replace the mains that currently serve the Intervenors’ properties, including the main that runs east from the Intersection of 190th Street and Stillwell Road and the main that runs from Stillwell Road north to serve the Jenkins’ properties, at no cost to the Intervenors.²⁵
- The Jenkins agree to pay Atmos Energy a Contribution in Aid of Construction (“CIAC”) in the amount of \$22,500 to be applied to the cost of replacing the service and yard lines that serve their three (3) properties within 30 days after construction completion. They will be charged no additional costs for the replacement of the subject mains or the service and yard lines.²⁶
- Payment of the CIAC will ensure that Atmos Energy will continue to provide natural gas service to the Jenkins’ properties in accordance with K.S.A. 66-1,202.²⁷
- Atmos Energy plans to submit the remainder of the cost for recovery through the Gas System Reliability Surcharge (GSRS).²⁸

²⁴ *Id.*, ¶ 4.

²⁵ *Id.*, ¶ 4.a.

²⁶ *Id.*, ¶ 4.b.

²⁷ *Id.*

²⁸ *Id.*, ¶ 4.a.

- The Jenkins will grant Atmos Energy a twenty (20) foot permanent right-of-way easement and a ten (10) foot temporary construction easement for the main to be replaced at no additional cost to Atmos Energy.²⁹
- If a new main would need to be extended across the Jenkins' property in the future, Atmos Energy will be required to obtain an additional easement from the Jenkins.³⁰
- The Gun Club's service line will be connected at no cost to the new main.³¹
- Both parties will be responsible for their own attorney's fees.³²

11. On May 11, 2022, Staff submitted a Report and Recommendation ("Staff R&R") stating that, with the exception of the furthest west 471 feet of plastic pipe that is part of the East-West section of the main, the balance of the plastic pipe and the existing 6,795 of steel pipe sections should be replaced. The Staff R&R advises that Atmos Energy agrees the 471 feet of plastic pipe does not need to be replaced.³³ Atmos Energy's current cost estimate for replacing the pipe sections (including the 471 feet of MDE) is \$428,000.³⁴ Additionally, Staff indicated that the remaining plastic pipe and all of the unprotected steel that Atmos Energy owns would be eligible for GSRS recovery.³⁵

12. However, Staff noted that any modifications to the existing system configuration that add main or service line footage should not be considered GSRS eligible.³⁶ Staff reasoned

²⁹ *Id.*, ¶ 4.c.

³⁰ *Id.*

³¹ *Id.*, ¶ 4.d.

³² *Id.*, ¶ 4.g.

³³ Staff R & R, May 20, 2022, p. 2.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

that an addition to the current system configuration is not pipe replacement, and therefore, would not be GSRS recovery eligible.³⁷

13. The Staff R&R noted the Leavenworth County Board of Commissioners' opposition to the proposed abandonment and related that a second potential subdivision was brought to Staff's attention in informal discussions conducted with the Leavenworth County Commissioners in October of 2021.³⁸

14. Staff explained the \$22,500 CIAC for replacement of the yard and service lines was a negotiated settlement between Atmos Energy and the Jenkins that reasonably resolved the replacement costs for those lines.³⁹

15. With disallowance of the replacement of the 471 feet of plastic pipe on the East-West section of the main, Staff indicated it supports the remainder of the Settlement Agreement and recommends that the Settlement be approved and that the Application and Protest be dismissed.⁴⁰

FINDINGS AND CONCLUSIONS

16. The Commission finds the Settlement Agreement, with the disallowance of the replacement of the 471 feet of plastic pipe as recommended by Staff, constitutes a reasonable resolution of the dispute between Atmos Energy and Intervenors.

17. In accordance with Staff's recommendation, the Commission also finds that replacement of the balance of the plastic and steel pipe owned by Atmos Energy would be eligible for GSRS recovery.

³⁷ *Id.*, p. 3.

³⁸ *Id.*, pp. 3-4.

³⁹ *Id.*, p. 5.

⁴⁰ *Id.*

18. The Commission concludes that approval of the Settlement Agreement and continuation of natural gas service to Intervenor in accordance with the provisions of K.S.A.66-1,202 is consistent with the public interest, with Atmos Energy's obligation to serve within its certificated territory, and with anticipated growth and economic development in southern Leavenworth County, Kansas.⁴¹

THEREFORE, THE COMMISSION ORDERS:

A. The Settlement Agreement, with the disallowance of the replacement of 471 feet of plastic pipe located on the west section of the East-West main running from 190th Street along Stillwell Road, is approved.

B. The plastic and steel pipe to be replaced in accordance with the Settlement Agreement, as modified by Staff's recommendation regarding additions to system configuration, is eligible for GSRS recover.

C. The Application and Protest are hereby dismissed.

D. Any party may file and serve a petition for reconsideration pursuant to requirements and time limits established by K.S.A. 77-529(a)(1).

⁴¹ With respect to anticipated economic development in the area, including associated business and residential construction, the Commission administratively notices the widely disseminated announcement by Panasonic on July 13, 2022, of a \$4 billion electric vehicle battery plant to be constructed near Desoto, Kansas. The plant lies in close proximity to the area that is the subject of this Application. It is expected to create several thousand jobs and underscores the need to ensure the adequacy of utility services for the plant and prospective employees -- many of whom can reasonably be expected to reside in southern Leavenworth County.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 08/04/2022



Lynn M. Retz
Executive Director

DGC

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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the Business of a Natural Gas Public Utility in a)	Docket No. 22-ATMG-039-CCS
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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between and among Atmos Energy Corporation ("Atmos Energy"), Joe F. Jenkins, II, Jill A. Jenkins (collectively referred to as the "Jenkins") and Tri-County Road and Gun Club, Inc. ("Gun Club") (collectively the Jenkins and the Gun Club referred to as "Intervenors"). This Agreement is being submitted to the Kansas Corporation Commission ("Commission") pursuant to K.A.R. 82-1-230a.

1. On July 16, 2021, Atmos Energy filed an application seeking an Order permitting it to cease transacting business as a natural gas public utility to the Intervenors and to pay Intervenors for the reasonable cost to convert their utility service to propane. At the time the application was filed, Atmos believed there was insufficient projected growth and natural gas load in the area nearby the proposed abandoned quarter sections to economically justify the cost to replace the deteriorated main and service lines that were used to serve Intervenors. An aerial map showing the location of the pipeline segments Atmos Energy was proposing to abandon and the location of the Intervenors' properties was attached as Exhibit A to the application.

2. On July 29, 2021, the Intervenors filed a protest to Atmos Energy's application and requested that Atmos Energy's petition be denied and that Atmos Energy be ordered to maintain service to Intervenors.

3. Subsequent to the filing of the application and protest, a developer has platted a new

subdivision in the area immediately adjacent to the Gun Club's property. This will require Atmos Energy to replace the main running east from the intersection of 190th Street and Stillwell Road that it sought to abandon under the application. In addition, the Jenkins have agreed to pay a contribution in aid to construction ("CIAC") in the amount of \$22,500.00 to replace the service and yard lines that serve their residences at the time the main serving their properties is replaced.

4. Atmos Energy and the Intervenors have reached this Agreement that settles all issues raised in the application and protest. The terms of the Agreement are as follows:

a. Atmos Energy agrees to replace the main that currently serves the Intervenors' properties as identified in the application and protest at no cost to Intervenors. The facilities that will be replaced by Atmos Energy are as follows: (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. Atmos Energy plans to submit the cost (less the amount contributed by the Jenkins under paragraph 4.b. of this Agreement) relating to the replacement of the main running east from the intersection of 190th Street and Stillwell Road and the main, service lines and yard lines that currently are located on and serve the Jenkins' properties for recovery through its Gas System Reliability Surcharge ("GSRS") mechanism.

b. The Jenkins agree to pay Atmos Energy a CIAC in the amount of \$22,500.00 to be applied to the cost to replace the service and yard lines that serve the three Jenkins' properties identified in the application and protest. The Jenkins will not be charged any additional costs for the replacement of the main or the service and yard lines that serve the three Jenkins' properties identified in the application, protest and this Agreement. The

Petitioners shall pay Atmos Energy the CIAC within thirty (30) days after Atmos Energy has completed the replacement of the main, service and yard lines that serve the Jenkins' properties. Such payment by the Jenkins shall ensure that Atmos Energy will continue to provide natural gas service to the Jenkins properties as required by K.S.A. 66-1,202.

c. Pursuant to Schedule I, Section 6, Part A, Sheet 46 of 110, the Jenkins grant Atmos Energy at no cost to Atmos Energy a 20 foot permanent right of way or easement and an additional 10 foot temporary construction easement across the Jenkins's properties as necessary for the construction, operation and maintenance by Atmos Energy of Atmos Energy's new main, service lines, yard lines and other facilities necessary or incidental to the supplying of natural gas to the Jenkins' properties. Atmos Energy agrees to restore the property when the construction of the lines is completed and to pay for damages, if any, to the property caused by the construction of the lines. Atmos Energy shall be allowed to use the new main being constructed pursuant to this Agreement to serve other customers in addition to the Jenkins or the Gun Club. In the future, if Atmos Energy needs to extend the new main constructed pursuant to this Agreement on the Jenkins' property to serve customers located north of the Jenkins' property, then Atmos Energy will be required to obtain an additional easement from the Jenkins, or Jenkins' successors-in-interest, either through negotiations or eminent domain procedures.

d. The Gun Club's service line shall be connected to the new main at no cost to the Gun Club.

e. This Agreement is subject to being recommended for approval by the Staff and approved by the Commission. The Staff has indicated to Atmos Energy and the Intervenors that it is in support of the Agreement and that upon the filing of the Agreement by Atmos

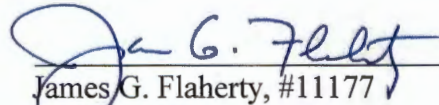
Energy and the Intervenors with the Commission that Staff will submit a report and recommendation to the Commission recommending that the Commission approve the Agreement and dismiss the application and protest. This Agreement represents a negotiated settlement that fully resolves all of the issues in this docket among Atmos Energy and the Intervenors. Atmos Energy and the Intervenors represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, Atmos Energy and the Intervenors shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and (c) in this proceeding should the Commission decide not to approve this Agreement in this instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, Atmos Energy and the Intervenors shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues provided that the Commission approval of this Agreement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

f. The provisions of this Agreement have resulted from negotiations among Atmos Energy and the Intervenors and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, the Agreement shall be voidable and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Agreement shall be considered privileged and not admissible in evidence or made part of the record in any proceeding. If the Agreement is voided by any party based upon this provision of the Agreement, then either

party shall have the right to request that this matter be docketed for hearing before the Commission and the issues raised in the application and protest be determined by the Commission on their merits.

g. Atmos Energy and Intervenors agree that each shall be responsible for paying their own attorneys' fees in this matter.

IN WITNESS WHEREFORE, Atmos Energy and Intervenors have executed and approved this Settlement Agreement, effective as of the 5th day of April, 2022, by having their counsel subscribe their signatures below.



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CERTIFICATE OF SERVICE

22-ATMG-039-CCS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
08/04/2022
electronic service on _____.

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