

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Andrew J. French, Chairperson
Dwight D. Keen
Annie Kuether

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 Authority to Operate as a Natural Gas) Docket No. 24-KGSG-825-ACQ
Public Utility in and Around the Area)
Heretofore Served by the City of Lebo,)
Kansas, a Municipally Owned Natural Gas)
Utility)

ORDER APPROVING ACQUISITION AND CERTIFICATE EXTENSION

This matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

I. BACKGROUND

1. On June 6, 2024, Kansas Gas Service, a division of ONE Gas, Inc. (“KGS”) requested an extension of its Certificate of Convenience and Authority (“Certificate”), pursuant to K.S.A. 66-131, to operate as a natural gas public utility in and around the area served by the City of Lebo, Kansas (“City” or “Lebo”).¹ KGS represented it had entered into an Asset Purchase Agreement (“APA”) with the City to purchase all of its properties and facilities used for the distribution of natural gas for \$1,000,000.00.² KGS stated its intention to utilize the Commission’s

¹ Application for Kansas Gas Service, a Division of ONE Gas, Inc. (“Application”) (Jun. 6, 2024).

² *Id.*, p. 1, Ex. A.

municipal gas distribution acquisition framework, as established in Docket No. 08-ATMG-182-ACQ (“Docket 08-182”).³

2. The Commission established the municipal acquisition framework in Docket 08-182 to address a specific request made by Atmos Energy (“Atmos”) of its proposed program to acquire Kansas municipal natural gas systems and for a Commission determination of the reasonableness of a standard Asset Purchase Agreement that Atmos intended to apply to its acquisitions of municipal natural gas systems.⁴ The Commission adopted the framework proposed by Atmos with modifications as requested by Commission Staff (“Staff”).⁵

3. The Commission agreed with Staff that the process submitted by Atmos in Docket 08-182 was a “good template” for any public utility and municipality considering the purchase/sale of a municipal system.⁶

4. On June 18, 2024, the Commission granted intervention in the instant matter to the Citizens’ Utility Ratepayer Board (“CURB”).⁷

5. On October 21, 2024, Staff submitted a Report and Recommendation (“R&R”) to the Commission for review, in which Staff determined KGS’ Application comported in all material aspects with the municipal acquisition framework and recommended the Commission grant KGS’ Application.⁸ More specifically, Staff recommended the Commission:

- a. Approve the APA for the sale of Lebo’s natural gas distribution facilities to KGS;

³ *Id.*, p. 2; *see* Order Approving Acquisition, Docket No. 08-ATMG-182-ACQ, pp. 4-6 (Dec. 18, 2007) (“08-182 Order”).

⁴ *See* Application of Atmos Energy, p. 1, Docket 08-182 (Aug. 22, 2007) (“08-182 Application”).

⁵ *See* 08-182 Order, pp. 6-7

⁶ *See id.*, p. 5.

⁷ Order Granting the Citizens’ Utility Ratepayer Board’s Petition to Intervene, Protective Order and Discovery Order (Jun. 18, 2024).

⁸ Notice of Filing of Staff’s R&R, p. 5 (Oct. 21, 2024) (“Staff’s R&R”).

- b. Grant KGS' Certificate request reflected in Exhibit 3 of the Application;
- c. Permit KGS to put into effect and charge the customers being acquired from Lebo the current statewide KGS rates and tariff on file with the Commission; and
- d. Allow KGS to record the purchase price of the system assets at its current distribution system average per customer embedded cost, for meters, services, and mains, for accounting and ratemaking purposes.⁹

6. On October 29, 2024, CURB filed its response to Staff's R&R, agreeing with KGS and Staff that the Docket 08-182 framework applied to this Application.¹⁰ CURB agreed with Staff that the Application should be granted, but that CURB's analysis of the Docket 08-182 framework "differs" from Staff,¹¹ as discussed more fully below. Briefly stated, CURB questioned whether the framework in Docket 08-182 allowed KGS to forgo a surcharge for planned upgrades to the City's system, which include upgrading the City's customers' meters, and an upgrade of the odorizer and regulation at the City's border station.¹²

7. On November 1, 2024, KGS replied and argued that the planned upgrades to the City's system were not "immediate improvements" needed before acquiring the City's system that would trigger the surcharge requirement contained in the Docket 08-182 framework.¹³ Instead, KGS argues they are future anticipated capital expenditures, so no surcharge is needed.¹⁴

⁹ *Id.*

¹⁰ CURB's Response to Staff's Report and Recommendation, p. 3 (Oct. 29, 2024) ("CURB's Response").

¹¹ *Id.*, p. 2.

¹² Staff's R&R, pp. 3-4; CURB's Response, pp. 5-6.

¹³ Kansas Gas Service's Reply to CURB's Response to Staff's Report and Recommendation, pp. 2-5 (Nov. 1, 2024) ("KGS's Reply").

¹⁴ *Id.*

II. JURISDICTION

8. The Commission holds “full power, authority and jurisdiction” to regulate KGS as a natural gas public utility doing business in Kansas and “is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction”.¹⁵

9. The Commission is empowered to require all natural gas public utilities to establish and maintain just and reasonable rates when the same are reasonably necessary to maintain reasonably sufficient and efficient service from said natural gas public utilities.¹⁶

10. The Commission has authority to determine that “public convenience” will be promoted when issuing (or extending) a Certificate to a public utility.¹⁷

III. ANALYSIS AND FINDINGS

11. This section will first analyze KGS’ Application¹⁸ through the applicable municipal acquisition framework, and then will discuss CURB’s response, KGS’s reply, and the cost of future enhancements to Lebo’s system.

Docket 08-182 Framework

12. The framework adopted by the Commission in Docket 08-182 incorporates both a purchase process for acquiring municipal natural gas systems, and the regulatory terms and conditions of the approval process.¹⁹

¹⁵ K.S.A. 66-1,201.

¹⁶ See K.S.A. 66-1,202.

¹⁷ See K.S.A. 66-131(a).

¹⁸ KGS included four Exhibits to support its Application: Exhibit 1 contains the APA; Exhibit 2 contains election results representing that the citizens of Lebo approved the sale of the distribution system to KGS by a margin of 122 to 88; Exhibit 3 contains a metes and bounds legal description and map of the territory in which KGS seeks the extension of the Certificate; and Exhibit 4 contains a comparison of the City of Lebo’s rates and KGS’ proposed rates. KGS later filed Exhibit 5, on September 10, 2024, which is a copy of the acquisition notice provided to the City’s customers.

¹⁹ See Staff’s R&R, p. 2; see also 08-182 Order, p. 7; Corrected Staff Memorandum, Attachment I, p. 3 (Nov. 21, 2007) (“08-182 R&R”).

13. The acquisition purchase process approved in Docket 08-182²⁰ is listed below, with the Commission’s findings as it pertains to KGS’ Application incorporated therein.

- a. The Public Utility and the Municipality agree on a purchase price and any necessary surcharge to make improvements to the system. The Commission finds that KGS and the City agreed to a purchase price of the City’s municipal natural gas system of \$1,000,000.²¹ No “immediate major improvements to the acquired assets will be necessary and no surcharge is being requested as part of the Application.”²²
- b. The Public Utility and the Municipality organize an election as required by K.S.A. 15-809, as well as any local ordinances. The Commission finds that the citizens of Lebo approved the sale of their system to KGS by a 122 to 88 margin.²³
- c. The Public Utility will file the application for acquisition with the Commission. The Commission finds that KGS filed its acquisition Application on June 6, 2024.
- d. The Public Utility will mail notice to each customer and allow 30 days for customers to submit comments to the KCC. This notice will contain a comparison of the municipality’s rates and Public Utility’s rates and will include any applicable surcharge. The Commission finds that on June 27, 2024, KGS mailed a letter to the customers of Lebo’s natural gas system informing them of the proposed acquisition.²⁴ This letter requested customers submit comments to the Commission by July 30, 2024, allowing thirty days of notice.²⁵ The notice contained a

²⁰ To avoid potential confusion, and to emphasize the applicability of this framework to other municipal natural gas system acquisitions, the usage of “Atmos” throughout the procedure described and adopted in Docket 08-128 will be replaced herein with “Public Utility.”

²¹ See Staff’s R&R, p. 2.

²² See *id.*

²³ See *id.*, p. 5. KSA 15-809 requires a majority vote by qualified electors of the city before the sale of a municipal gas system.

²⁴ See Affidavit of Mailing (Sep. 10, 2024).

²⁵ See *id.*, p. 2.

comparison of KGS and Lebo's rates.²⁶ There was no applicable surcharge requested.²⁷ No responses were received from the customers.

- e. The Public Utility will assume upstream transportation capacity contracts, and assume any existing supply contracts, which will be consolidated with the Public Utility's existing contracts at the first available opportunity. The Commission finds that KGS will consolidate existing transportation capacity and supply contracts with its existing contracts at the first available opportunity.²⁸
- f. The Commission would authorize the Public Utility to charge the current Public Utility rates and other applicable charges listed in its current tariffs. The Commission finds that KGS is seeking to use its statewide approved rates that currently are on file with the Commission and intends to render efficient and sufficient service to the present customers of the City of Lebo.²⁹

14. The regulatory terms and conditions of the Docket 08-182 municipal acquisition framework are as follows:³⁰

- a. The Public Utility will be allowed for accounting and ratemaking to record the purchase price of the system assets as the Public Utility's current distribution system average per customer imbedded cost for meters, services, and mains on an original cost basis.
- b. The actual price paid will not exceed the average embedded cost.

²⁶ See *id.*, pp. 4-5.

²⁷ See Staff's R&R, p. 2.

²⁸ See Application, p. 3; Staff's R&R, p. 5.

²⁹ See Application, p. 3.

³⁰ See 08-182 Order, pp. 4-5; 08-182 R&R, Attachment I, p. 3.

- c. The Public Utility shall make improvements to the system as may be necessary at its own expense until the purchase price and amount invested in improvements equals the current distribution system average cost per customer imbedded cost.
- d. Any improvements to the system that require investing more than the average embedded cost per customer for the Public Utility will be recovered through a surcharge on the municipality customers that is agreed by the municipality prior to the system purchase by the Public Utility.
- e. The amount recovered under a surcharge will be recorded as customer-provided capital for rate making purposes.
- f. Except for compliance with the terms of this docket, no separate accounting will be required from the Public Utility when it files to extend its certificate for a municipal acquisition.
- g. Application for extension of Certificate will include a schedule showing the estimated costs of any necessary improvements, the calculation of any applicable surcharges, and the expected term of the surcharge.
- h. The use of the Public Utility's standard asset purchase shall have a presumption of reasonableness.
- i. Application for extension of Certificate will include a schedule showing the comparison of the Public Utility's rates and the municipality's rates.
- j. Application for extension of Certificate will include certified results from the election.
- k. The Public Utility will be required to file an executed copy of its asset purchase agreement as part of its application.

1. Any differences from the standard asset purchase agreement attached to the application as an exhibit will be identified and explained in the filing for an extension to the Public Utility's Certificate.

15. The Commission finds that these regulatory terms and conditions apply to KGS in this proceeding. The factors listed in paragraph 14(e)-(g) are not applicable as no surcharge has been requested. The factors listed in paragraph 14(h)-(k) are satisfied as shown and exhibited in KGS' Application and attached exhibits. Paragraph 14(l) is not applicable. Therefore, the following analysis will focus on the factors described in paragraph 14(a)-(d).

16. With respect to subsection 14(a) and (b) above, KGS' purchase price of \$1,000,000 equates to approximately \$3,311 per customer, which exceeds KGS' average embedded cost per customer of \$3,022.³¹ The amount of the purchase price in this instance exceeds the average embedded cost per customer, which appears to conflict with subsection (b) above. However, it has been the practice of the Commission to allow the purchasing company to record the acquisition at the Company's average embedded cost per customer for accounting and ratemaking purposes in "small acquisitions", such is the case here.³² KGS stated it intends to only include the average embedded cost per customer in its rate base.³³ KGS' average embedded cost per customer is \$3,022, which is the amount KGS plans to include in its rate base for each of the 302 Lebo customers, totaling \$912,530.³⁴ The Commission finds KGS' plan to include only the average embedded cost per customer in its rate base to be reasonable, and consistent with the acquisition framework. The calculated rate base \$912,530 is less than the actual purchase price of \$1,000,000, so subparagraph 14(b) is also satisfied.

³¹ See Staff R&R, p. 3.

³² See Staff R&R, p. 5.

³³ See Application, pp. 1-2.

³⁴ See *id.*, p. 3.

Cost Allocation of Future Improvements

17. KGS anticipates making two enhancements to Lebo's system during the first year following the acquisition. The first is to upgrade the City's meters with Automated Meter Reading, which will cost approximately \$316 per meter, for a total of approximately \$95,432.³⁵ KGS plans to include the costs of this project in its next general rate case.³⁶ The second is to upgrade the odorizer and regulation at the town border station, which is anticipated to cost between \$100,000 and \$125,000.³⁷ KGS plans to recover this investment through its Gas System Reliability Surcharge ("GSRS").³⁸

18. CURB argues that KGS' proposal circumvents the Commission's directive in paragraphs 14(c)-(d) above that the purchasing utility "shall make improvements to the system as may be necessary at its own expense until the purchase price and amount invested in improvements equals the current distribution system average cost per customer imbedded cost" — otherwise the cost shall be recovered in a surcharge placed on the acquired system's customers.³⁹

19. Staff assessed the reasonableness of socializing the costs of the system improvements versus implementing a separate surcharge for the Lebo customers. KGS' Commission-approved tariff regarding extensions of distribution mains allows KGS to designate a project as economic or "ordinary," and thus appropriate to be socialized into the rate base, if 10 years of projected revenue generated by the project would cover the expected costs of the investment.⁴⁰ Staff acknowledged that KGS is not extending any distribution mains in this case,

³⁵ See Staff's R&R, p. 3.

³⁶ See *id.*

³⁷ See *id.*, p. 4.

³⁸ See *id.*

³⁹ CURB's Reply, pp. 4-7.

⁴⁰ See KGS General Terms and Conditions for Gas Service, Section 8, Extension Policy 8.01.03. KGS Tariffs are on file with the Commission and can also be found at: <https://www.kansasgasservice.com/rate-information/tariffs>. See also Staff's R&R, p. 4.

but given KGS is acquiring additional distribution facilities and new customers in the process, Staff considered Section 8 of KGS' Tariff an appropriate analysis of this issue.⁴¹ Staff estimated that KGS' acquisition with the recorded purchase price and price of system improvements would total \$1,132,962.⁴²

20. KGS provided a forecast of the expected revenue contribution from the acquired Lebo customers over the next ten years, and estimated KGS would generate \$1,396,319 of revenue over the next decade from these customers.⁴³ This exceeds the recorded purchase price and price of system improvements by \$263,357.⁴⁴ Because the expected revenue exceeds the expected cost of the acquisition and system improvements, Staff does not recommend a separate surcharge to Lebo customers for the cost of those improvements.⁴⁵ The Commission agrees in this instance.

21. KGS argues that its proposal to address Lebo's meters and its town border station does not equate to "*immediate* improvements" that are necessary prior to acquiring the municipal system, rather they are "future anticipated capital expenditures."⁴⁶ Thus, the proposed cost-recovery methods comport with the 08-182 Docket.

22. CURB's concerns are succinctly articulated this way: "[T]he intent of the process outlined in the 08-182 Docket is to place a limit on the amount of costs that (existing) utility customers will bear in the acquisition of a municipal utility."⁴⁷ CURB focuses on the phrase "*any* improvements" contained in subparagraph 14(d) above, noting that the plain language requires any

⁴¹ See Staff's R&R, FN 6.

⁴² See *id.*, p. 4.

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ KGS Response, pp. 2-3 (emphasis added).

⁴⁷ CURB's Response, p. 6 ("Essentially, it eliminates the cost of acquiring a municipal natural gas utility that will be borne by core customers.").

improvement to the acquired system to be paid through a surcharge on the acquired systems' customers.⁴⁸

23. However, as noted by KGS, this interpretation leads to absurd results.⁴⁹ As KGS argues, the Commission and Staff in Docket 08-182 never “endorsed the idea that any improvement made to a municipality’s system after its acquisition should count to a surcharge.”⁵⁰

24. The Commission has routinely approved municipal natural gas acquisitions without a surcharge. In these dockets, the approval order noted “immediate improvements ... are not necessary and (the acquiring utility) is not requesting a surcharge.”⁵¹ However, when an acquiring utility identifies “immediate major improvements” needed to the municipal system, a surcharge should then be proposed to cover the cost.⁵²

25. KGS is requesting clarification on this point to assist with predictability.⁵³ Staff’s reasoning for this factor in the 08-182 Docket serves an important purpose: Incentivizing the acquisition of smaller municipal distribution systems, while protecting the utilities’ existing customers from shouldering the cost of immediate needed repairs to a potentially “poor quality system” that the utility voluntarily chose to acquire.⁵⁴

26. In the instant matter, KGS identified two improvements it planned to undertake to the City’s system in the first year following the acquisition, and KGS expressly answered in the

⁴⁸ *Id.*

⁴⁹ KGS Reply, p. 6.

⁵⁰ *Id.*

⁵¹ *See e.g.*, Docket No. 09-ATMG-458-ACQ (Atmos Energy acquisition of the City of Hamilton); Docket No. 09-BHCG-967-ACQ (Black Hills acquisition of Neosho Rapids); 10-BHCG-057-ACQ (Black Hills acquisition of Windom); 12-BHCG-678-ACQ (Black Hills acquisition of Milford); 13-BHCG-133-ACQ (Black Hills acquisition of the City of Viloa); 13-BHCG-366-ACQ (Black Hills acquisition of the City of Longford).

⁵² *See e.g.*, Docket No. 21-BHCG-417-ACQ, Order Approving Application for a Certificate of Convenience and Authority to Serve the City of Ford, Kansas, p. 1 (Aug. 12, 2021).

⁵³ KGS Reply, p. 3.

⁵⁴ *See* 08-182 R&R, Attachment I, p. 4.

negative when asked if immediate improvements are necessary.⁵⁵ The framing of the future costs by the acquiring utility does not end the inquiry, but here, the Commission finds that these costs are anticipated future improvements, not “immediate major improvements” as described in the 08-182 Docket.⁵⁶

27. Upon review of the record, the Commission agrees with Staff that KGS’ Application comports in all material aspects with the framework approved by the Commission in Docket 08-182 and concludes that KGS’ Application should be approved. Specifically:

- a. The Asset Purchase Agreement between KGS and Lebo for the sale of Lebo’s natural gas distribution facilities to KGS is approved;
- b. KGS’ Certificate request as reflected in Exhibit 3 of the Application is granted;
- c. KGS is permitted to put into effect and charge the customers being acquired from Lebo the current statewide KGS rates and tariff on file with the Commission; and
- d. KGS is allowed to record the purchase price of the system assets at its current distribution system average per customer embedded cost, for meters, services, and mains, for accounting and ratemaking purposes.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. KGS’ Application to acquire the municipal gas system of the City of Lebo and extend its Certificate of Convenience and Authority is approved.

⁵⁵ See Staff’s R&R, pp. 2, 3-4.

⁵⁶ Staff and CURB have also noted the importance of the public interest in these acquisitions: “Because of the resources and expertise available to (larger natural gas suppliers), acquisitions of this nature are expected to improve safety and longevity of gas service to those systems purchased.” 08-182 R&R, Attachment I, p. 5. It is also worth noting that this acquisition will decrease rates for Lebo customers by approximately 7 percent. See Application, Ex. 4; see also Staff’s R&R, p. 1.

B. 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).⁵⁷

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 11/19/2024 _____



Lynn M. Retz
Executive Director

ARB

⁵⁷ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

24-KGSG-825-ACQ

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 11/19/2024.

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
joseph.astrab@ks.gov

AARON BAILEY, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
aaron.bailey@ks.gov

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

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
todd.love@ks.gov

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
carly.masenthin@ks.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
david.nickel@ks.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
shonda.rabb@ks.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
della.smith@ks.gov

ROBERT E. VINCENT, MANAGING ATTORNEY
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.
7421W. 129TH STREET
OVERLAND PARK, KS 66213
robert.vincent@onegas.com

CERTIFICATE OF SERVICE

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