

THE STATE CORPORATION COMMISSION
 OF THE STATE OF KANSAS

In the Matter of the Complaint Against)	
City of Garden City, Kansas)	
Respondent,)	Docket No. 17- <u>GDCE 370</u> _COM
)	
For an Order Declaring that Garden City is)	
Illegally Servicing Conestoga Energy Partners,)	
LLC, in Wheatland Electric Cooperative,)	
Inc.'s Certified Service Territory, and an order)	
to cease,)	
)	
By Wheatland Electric Cooperative, Inc.)	
Complainant.)	

**COMPLAINT OF WHEATLAND ELECTRIC COOPERATIVE, INC., AGAINST THE
 CITY OF GARDEN CITY, KANSAS**

COMES NOW, Wheatland Electric Cooperative, Inc. ("Wheatland" or "Complainant") and, pursuant to K.A.R. § 82-1-220, files this Complaint with the State Corporation Commission of the State of Kansas ("Commission") against the City of Garden City ("Garden City"). Wheatland alleges that Garden City is illegally serving a retail electric client in Wheatland's certified service territory. In support, Wheatland states as follows:

I. Respondent, Complainants and Jurisdiction

1. Respondent, City of Garden City, Kansas ("Garden City"), is a Kansas municipality operating as an electric supplier. Service may be made upon the city clerk of Garden City.

2. The Kansas Corporation Commission ("the Commission") has jurisdiction over this matter pursuant to K.S.A. 66-101, K.S.A. 66-104, K.S.A. 66-104f and K.S.A. 66-1,174.

3. Wheatland is a Kansas electric cooperative and its resident agent is Bruce Mueller and its registered office is located at 101 Main Street in Scott City, Kansas 67871.

II. Factual Allegations

4. On June 16, 2006, Garden City and Conestoga Energy Partners, LLC (“Conestoga”) entered into an Electric Service Agreement (“the Agreement”). (See Exhibit A)

5. Conestoga operates an ethanol plant located at 3002 E. Highway 50, Garden City, Finney County, Kansas.

6. The Agreement makes Garden City the exclusive seller of electric energy to the Conestoga ethanol plant.

7. The Agreement was not approved by the Commission.

8. The ethanol plant is located within the Wheatland’s single certified service territory assigned by the Commission pursuant to K.S.A. 66-1,170 et seq. (See Exhibits B & C)

9. Wheatland is charged with the exclusive right, obligation, and responsibility to serve members in the specific territory where Conestoga’s ethanol plant is located.

10. The Conestoga ethanol plant is within three (3) miles of the corporate city limits of Garden City.

11. When Garden City was a customer of Wheatland, it had an oral understanding with Wheatland that allowed it to serve the ethanol plant with electric power sold to Garden City by Wheatland.

12. In 2013, Garden City ceased being a member of Wheatland, after which Wheatland terminated any oral understanding it had with Garden City to serve its members in the single certified service territory where the Conestoga ethanol plant is located.

13. Wheatland served a demand letter to Garden City asking for it to cease serving the Conestoga ethanol plant and to work out a means to allow for uninterrupted Wheatland service of electric power to Conestoga. (See Exhibit D)

14. Garden City responded to the demand letter stating it will not cease providing service to the Conestoga ethanol plant. (See Exhibit E)

III. Legal Authority for the Commission to issue an order declaring that Wheatland has the exclusive right to serve the area of Conestoga ethanol plant and ordering Garden City to cease providing electric service to Conestoga in Wheatland's certified service territory.

15. The Commission has jurisdiction over Garden City's municipal electric utility pursuant to K.S.A. 66-104f(c), and pursuant to K.S.A. 66-1, 174. In pertinent part, K.S.A. 66-104f(c) states as follows:

Nothing in this act shall be construed to affect the single certified service territory of a municipally owned or operated utility or the authority of the Commission, as otherwise provided by law, over such utility with regard to service territory..., pursuant to K.S.A. 66-131... 66-1, 170 *et seq.*..., and amendments thereto.

Further, K.S.A. 66-1, 174, in pertinent part, states as follows:

A municipal retail electric supplier shall be subject to regulation by the Commission in matters relating to the right to serve in the territory within three miles of the corporate city boundary, except that the Commission shall have no jurisdiction concerning such retail electric supplier within its corporate limits.

16. Wheatland has the right to serve Conestoga under K.S.A. 66-1,174, 66-131, 66-1,172, and 66-1,173. Garden City is unlawfully serving a retail customer that is outside of its corporate city limits but within three (3) miles of its corporate city limits and resides within Wheatland's single certificated service territory. Wheatland is charged with the exclusive right, obligation, and responsibility to serve customers in that specific territory.

17. K.S.A. 66-1,175 requires Commission approval of agreements between retail electric suppliers in regard to the boundaries of service territory, and Wheatland and Garden City meet the definition of "retail electric suppliers" under K.S.A. 66-1,170. K.S.A. 66-136 requires Commission approval for transfer or assignment of a certificate or any contract referencing or affecting a certificate or a right there under. The Commission has not approved the oral

understanding between Wheatland and Garden City or the transfer of Wheatland's single certified service territory.

18. Under K.S.A. 66-1,172, the territories determined by the Commission are to be served by "only one retail electric supplier," and those certified territories "shall be provided retail electric service exclusively by such supplier." Further, pursuant to K.S.A. 66-1,173 "[e]very retail electric supplier shall have the exclusive right and responsibility to furnish retail electric service to all electric consuming facilities located within its certified territory..." Garden City is in violation of law by serving Conestoga without a Commission-approved certificate and doing so within Wheatland's exclusive certified territory.

19. Garden City's right to serve is granted by the Commission under K.S.A. 66-131, which states that no "public utility, including that portion of any municipally owned utility defined as a public utility by K.S.A. 66-104, and amendments thereto, governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the [Commission]...permitting said applicants to transact the business of a...public utility in this state." Garden City's certificate to transact business in the state of Kansas does not permit it to serve the area of the Conestoga ethanol plant.

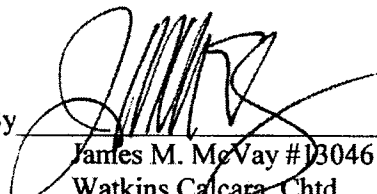
IV. PRAYER FOR RELIEF

The Complainant respectfully requests the Commission to investigate and enter an order:

(a) Finding that Garden City is illegally serving electricity to Conestoga, in Wheatland's certified service territory, and;

(b) Order Garden City to cease serving electricity to Conestoga and establishing Wheatland as the exclusive retail electric service provider in the area of the Conestoga ethanol plant.

By


James M. McVay #03046
Watkins Calcare, Chtd.
1321 Main – Suite 300
P.O. Drawer 1110
Great Bend, Kansas 67530
(620) 792-8231

ATTORNEYS FOR COMPLAINANT

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF BARTON)

James M. McVay, of lawful age, being duly sworn upon his oath, states:

That he is an attorney for the above named Complainant; that he has read the above and foregoing Complaint, and, upon information and belief, states that the matters therein appearing are true and correct.


James M. McVay

SUBSCRIBED AND SWORN to before me this 9th day of February, 2017.



My Appointment expires

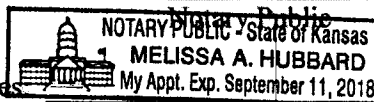


EXHIBIT A

ELECTRIC SERVICE AGREEMENT

This Electric Service Agreement (Agreement) made this 16 day of June, 2006, by and between the City of Garden City, Kansas (City) and Conestoga Energy Partners, LLC (Customer).

WHEREAS, City has electric power and energy (electric energy) available for sale to Customer at Customer's ethanol plant located at 3002 E. Highway 50, Garden City, Finney County, Kansas; and

WHEREAS, Customer desires to purchase electric energy from City, for use at its ethanol plant; and

WHEREAS, City has the authority to enter into this Agreement pursuant to Section 90-310 of the Code of Ordinances of the City of Garden City, Kansas (Code).

NOW THEREFORE, the parties agree as follows:

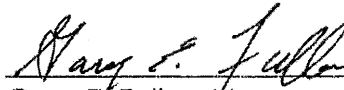
1. City agrees to sell and deliver to Customer, and Customer agrees to purchase and receive from City, electric energy for Customer's ethanol plant, up to 5,000 kilowatts, under the terms and conditions of Section 90-310 of the Code as it currently exists or as it may be amended in the future. The electric energy hereunder shall not be resold by Customer.
2. Under the terms of Section 90-310, the initial *contract* power shall be 5,000 kilowatts (kW). The initial *normal load* shall be 5,000 kW and the initial *standby load* shall be 0 kW. By mutual agreement, the *normal load* and *standby load* may be adjusted after the commencement of the ethanol plant operation.
3. Loads in excess of 100 horsepower motors must have reduced voltage starters reducing line in rush to two-thirds (2/3) or less of the locked rotor current of that motor.
4. In recognition of the economic benefits of Customer's ethanol plant to the City's Electric Utility, City agrees to construct a 34,500 volt to 12,470 volt substation on the premises of Customer's ethanol plant to provide electric energy, contributing a nominal 5,000 kilovolt-amp substation transformer and up to \$350,000 toward the construction of the substation. City shall provide metering for Customer's needs at the 12,470 volt side of the substation. Customer shall attach its equipment to, and be

responsible for, all facilities from the 12,470 volt metering structure of the substation.

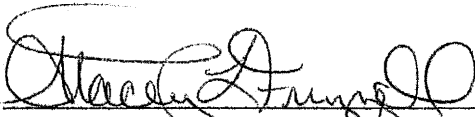
5. Duly authorized representatives of City shall have the right of ingress and egress to the substation at all times.
6. City shall use reasonable diligence to provide a constant and uninterrupted supply of electric energy, but if such supply should fail or be interrupted, or become defective through an act of God, governmental authority, actions of the elements, public enemy, accident, strikes, labor trouble, required maintenance work, inability to secure rights of way, or other permits needed, or for other cause beyond the reasonable control of City, City shall not be liable under provisions of this Agreement. The protection of Customer's equipment shall be the sole responsibility of Customer. If Customer desires protection against interruptions, phase failure, phase reversal, voltage variations, or other temporary irregularities or failure of part or all of the electric service provided by City, it shall at its own expense, provide and maintain protective equipment.
7. The Agreement shall become effective on the date electric service is made available hereunder by City to Customer, and shall remain in effect for a period of five (5) years from and after the effective date. Thereafter, this Agreement shall annually renew for terms of one (1) year, unless terminated by either party by giving written notice of not less than 180 days to the other party.
8. This Agreement shall be binding upon and insure to the benefit of the successors, legal representatives and assigns of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year written above.

CITY OF GARDEN CITY, KANSAS



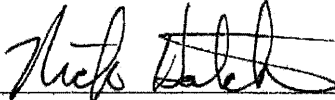
Gary E. Fuller, Mayor



Attest: Stacey L. Frizzell, City Clerk

CUSTOMER

CONESTOGA ENERGY PARTNERS, LLC



Nick Hatcher



Attest: Rock Orniston
Dusty Turner

EXHIBIT B

THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

Before Commissioners: G. T. Van Bebber, Chairman
 William G. Gray
 R. C. Loux

In the Matter of the Application of The Lane-)	DOCKET NO.
Scott Electric Cooperative, Inc., Pioneer)	
Electric Cooperative, Inc., The Victory Electric)	111,654-U
Cooperative Association, Inc., and Wheatland)	
Electric Cooperative, Inc. for a Certificate of)	
Convenience and Authority to transact the)	
business of Electric Public Utilities in the State)	
of Kansas. Finney County. In compliance with)	
K.S.A., 1976 Supp. 66-1, 170 et. seq.)	

CERTIFICATE AND ORDER

NOW on this 27th day of May, 1977, there comes on for consideration and determination by the State Corporation Commission, the application of The Lane-Scott Electric Cooperative, Inc., Pioneer Electric Cooperative, Inc., The Victory Electric Cooperative Association, Inc. and Wheatland Electric Cooperative, Inc. for a Certificate of Convenience and Authority in Finney County, Kansas, pursuant to K.S.A. 1976 Supp. 66-1, 170 et. seq. and after giving due consideration to the applications and being fully advised in the premises, the Commission finds and concludes that:

1. The Lane-Scott Electric Cooperative, Inc., Pioneer Electric Cooperative, Inc., The Victory Electric Cooperative Association, Inc. and Wheatland Electric Cooperative, Inc. (Applicants) are public utilities under the provisions of K.S.A. 1976 Supp. 66-104.

2. The applications in the instant docket were filed with this Commission on the 25th day of May, 1977. A public hearing was not held on the instant application.

3. Applicants have served Finney County under previous certificates issued by this Commission and continue to be the only retail electric suppliers providing electric service within Finney county.

4. Pursuant to K.S.A. 1976 Supp. 66-1, 170 et seq., requiring the creation and certification of exclusive electric service territories, Applicants request certificates to transact the business of an electric public utility in the territory described as follows:

THE LANE-SCOTT ELECTRIC COOPERATIVE, INC.

Finney County

Twp. 21S, Range 27W, Sections 1 to 36 inc.
 Twp. 21S, Range 28W, Sections 1 to 36 inc.
 Twp. 21S, Range 29W, Sections 1 to 36 inc.
 Twp. 21S, Range 30W, Sections 1 to 36 inc.
 Twp. 21S, Range 31W, Sections 1, 2, 3, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36
 Twp. 22S, Range 27W, Sections 1 to 30 incl and the N½ of Sections 31, 32, 33 and 34 and all of Sections 35 and 36.
 Twp. 22S, Range 28W, Sections 1 to 33 inc. and the north ½ of Sections 34, 35 and 36.
 Twp. 22S, Range 29W, Sections 1 to 36 inc.
 Twp. 22S, Range 30W, Sections 1 to 36 inc.
 Twp. 22S, Range 31W, Sections 1, 12, 13, 24, 25 and 36.
 Twp. 23S, Range 28W, Sections 4 to 9 inc., Sections 16 to 21 inc., Sections 28 to 33 inc.
 Twp. 23S, Range 29W, Sections 1 to 36 inc.
 Twp. 23S, Range 30W, Sections 1 to 36 inc.

PIONEER ELECTRIC COOPERATIVE, INC.

Finney County

T25 - R34
 All of Sections 25, 26, 27, 28, 29, 32, 33, 34, 35 & 36.

 T25 - R33
 All of Section 13, then Sections 24 through 36 inclusive.

 T25 - R32
 W/2 Sections 18, 19, 30 and 31.

 T26 - R34
 All of Sections one through 36 inclusive.

 T26 - R33
 All of Township 26, R33 except the E/2 of Sections 1, 12, 13, 24, 25 and the NE/4 Section 36.

THE VICTORY ELECTRIC COOPERATIVE ASSOCIATION, INC.

Finney County

Twp. 22S, Range 27W, South one-half of Sections 31, 32, 33 and 34.
 Twp. 22S, Range 28W, South one-half of Sections 34, 35 and 36.
 Twp. 23S, Range 27W, All of Sections one (1) through thirty-six (36) inclusive.
 Twp. 23S, Range 28W, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36.
 Twp. 25S, Range 31W, South ½ of Sections 19, 20, 21, 22, 23 and 24, and all of Sections 25 through 36 inclusive.
 Twp. 25S, Range 32W, South East ¼ of Section 19; South ½ of Sections 20, 21, 22, 23, and 24; all of Sections 25, 26, 27, 28 and 29; and East ½ of Sections 30 and 31; and all of Sections 32 through 36 inclusive.
 Twp. 26S, Range 31W, All of Sections 1 through 36, inclusive.
 Twp. 26S, Range 32W, All of Sections 1 through 36, inclusive.
 Twp. 26S, Range 33W, East ½ of Sections 1, 12, 13, 24 and 25; and North East ¼ of Section 36.

WHEATLAND ELECTRIC COOPERATIVE ASSOCIATION, INC.

Finney County

T21S, R31W, Sections 4 to 10 inclusive; Sections 15 to 22 inclusive; Sections 27 to 34 inclusive.
 T21S, R32W, Sections 1 to 36 inclusive.
 T21S, R33W, Sections 1 to 36 inclusive.
 T21S, R34W, Sections 1 to 36 inclusive.

T22S, R31W, Sections 2 to 11 inclusive; Sections 14 to 23 inclusive; Sections 26 to 35 inclusive.

T22S, R32W, Sections 1 to 36 inclusive.

T22S, R33W, Sections 1 to 36 inclusive.

T22S, R34W, Sections 1 to 36 inclusive.

T23S, R31W, Sections 1 to 36 inclusive.

T23S, R32W, Sections 1 to 36 inclusive.

T23S, R33W, Sections 1 to 36 inclusive.

T23S, R34W, Sections 1 to 36 inclusive.

T24S, R31W, Sections 1 to 36 inclusive.

T24S, R32W, Sections 1 to 36 inclusive; excluding the portions of Sections lying within the corporate limits of the City of Garden City.

T24S, R33W, Sections 1 to 36 inclusive; excluding the portions of Sections lying within the corporate limits of the City of Garden City.

T24S, R34W, Sections 1 to 36 inclusive.

T25S, R31W, Sections 1 to 18 inclusive; NE $\frac{1}{4}$ 19 to 24 inclusive.

T25S, R32W, Sections 1 to 17 inclusive; E $\frac{1}{2}$ Section 18; NE $\frac{1}{4}$ Section 19; NE $\frac{1}{4}$ Sections 20 to 24 inclusive.

T25S, R33W, Sections 1 to 12 inclusive; Sections 14 to 23 inclusive.

T25S, R34W, Sections 1 to 24 inclusive; Sections 30 and 31.

5. Public convenience will be promoted by permitting Applicants to transact the business of Electric public utilities in the territories described in Finding No. 4 herein, and the applications should be granted and a Certificate issued in accordance with the provisions of K.S.A. 1976 Supp. 66-1, 170 et. seq.

6. All previous certificates issued to Applicants by the Commission in Finney County, unless specifically excluded herein, should be superseded and cancelled by the granting of the instant application.

IT IS, THEREFORE, BY THE COMMISSION CONSIDERED AND CERTIFIED:

That the applications in the instant docket be, and they hereby are, granted and The Lane-Scott Electric Cooperative, Inc., Pioneer Electric Cooperative, Inc., The Victory Electric Cooperative Association, Inc. and Wheatland Electric Cooperative, Inc. be, and they hereby are, permitted to transact the business of electric public utilities in the territories described in Finding No. 4 herein.

IT IS, THEREFORE, BY THE COMMISSION ORDERED:

That all previous Certificates issued to Applicants by this Commission be, and they hereby are, superseded and cancelled by the granting of the instant application.

The Commission retains jurisdiction of the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

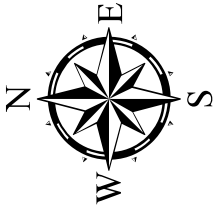
BY THE COMMISSION IT IS SO CERTIFIED AND ORDERED.

Van Bebber, Chmn.; Gray, Com.; Loux, Com.

STEVEN D. CARTER, SECRETARY

SEAL

GDD:sw



January 2017

City of Garden City - City Limits UPDATE

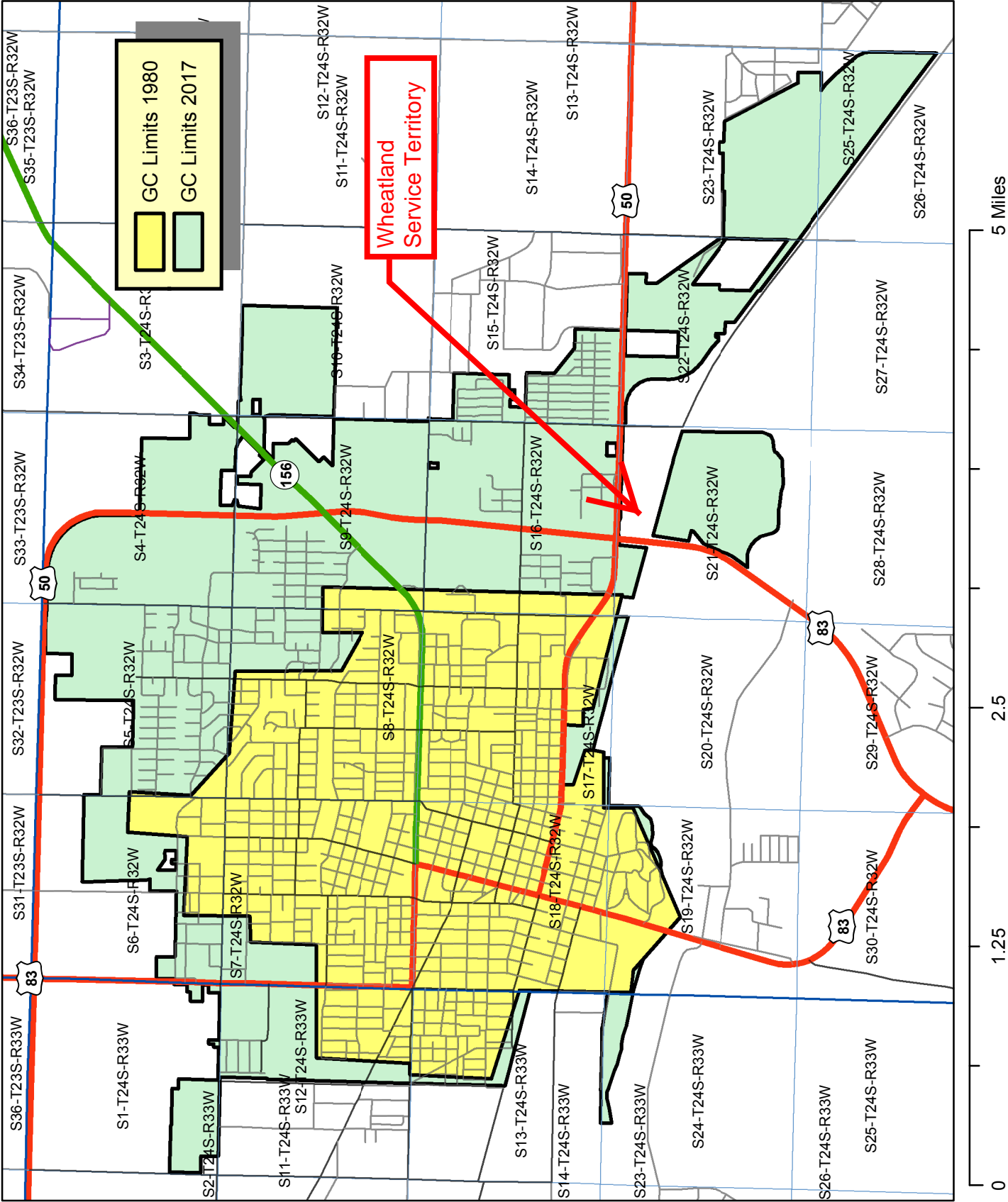


EXHIBIT D
LAW OFFICES OF
WATKINS CALCARA, CHTD.

MARK D. CALCARA
MARK A. RONDEAU
RICHARD L. FRIEDEMANN
ALLEN G. GLENDENNING*
JAMES M. MCVAY
ROBIN R. FABRICIUS**
CHRISTOPHER J. SHEPARD
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*Licensed in Kansas and Colorado
**Licensed in Kansas and Missouri

Of Counsel
L. EARL WATKINS, JR.

WICHITA OFFICE
Phone 316-239-6200

March 30, 2015

Randall Grisell
124 Grant Avenue
Garden City, Kansas 67846

Re: Conestoga Ethanol Plant
Our File No. 994.11177

Dear Randy:

I am in receipt of your e-mail of March 26, 2015, explaining the situation regarding the Conestoga Ethanol Plant. If it is true that Wheatland acquiesced to the City serving the Conestoga Plant, it certainly is no longer the case. First, obviously the facts on the ground are significantly different now than they were in 2007. At that time Wheatland had an agreement with the City and Sunflower. Also, the senior management of Wheatland has changed. We recently determined that the Conestoga Ethanol Plant is still within Wheatland's certified service territory. Therefore, Wheatland has a right and obligation to serve this load.

Therefore, Wheatland puts the city on notice that it no longer will agree, if it ever formally did, that the City would be allowed to serve the Conestoga Ethanol Plant. Further, we would like to discuss how to start backing the city out of the service or Conestoga and begin service by Wheatland. After you discuss this with your client, please contact me so that we can begin this process.

If you have any questions, do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

WATKINS CALCARA, CHTD.

James M. McVay

JMM/cmc



DOERING & GRISELL, P.A.

ATTORNEYS AT LAW

124 GRANT AVENUE

GARDEN CITY, KANSAS 67846

TEL: (620) 275-8084

FAX: (620) 275-5076

Michael C. Doering
Randall D. Grisell
Jacob M. Cunningham

miked@gcnet.com
randyg@gcnet.com
jacobc@gcnet.com

April 9, 2015

James M. McVay
WATKINS CALCARA, CHTD.
P. O. Drawer 1110
Great Bend, Kansas 67530-1110

Re: City of Garden City, Kansas/
Wheatland Electric Cooperative, Inc.

Dear Jim:

This letter is in response to your correspondence of March 30, 2015, concerning electric power service to the Conestoga Ethanol Plant (Conestoga) in Garden City, Kansas. The City of Garden City, Kansas (City), provides electric power to Conestoga. The decision of the City to be the electric power provider to Conestoga arose out of discussions between Wheatland Electric Cooperative, Inc. (WEC), and the City, wherein WEC indicated to the City that WEC did not wish to put in the necessary infrastructure to provide electric power to Conestoga, and that the City should do so. As a result of the discussions between the parties, the City constructed a substation to enable it to provide electric power to Conestoga. Pursuant to an agreement between Conestoga and the City, a copy of which I previously forwarded to you, the City has been providing service since September 2007.

You have indicated that WEC would now like to begin providing electric power to Conestoga and that the City and WEC need to work out a plan to allow for the transitioning of service from the City to WEC. I can appreciate that the contractual relationship between WEC and the City has changed, and that the management of WEC has also changed. However, the City intends to continue to provide electric power to Conestoga, and it will not take any steps toward transition of the service to WEC.

If you have any questions, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Randall D. Grisell', written in a cursive style.

Randall D. Grisell

RDG:pbb
pc: Matthew C. Allen, City Manager
Michael J. Muirhead, Director, Public Utilities
W:\RDG\CITY\WHEATLAND.ELEC\McVay.ltr(Conestoga).docx

APR 13 2015