RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

GUD NOS. 10163

APPLICATION FILED BY ATMOS ENERGY, WEST TEXAS DIVISION TO ABANDON SERVICE AND FACILITIES IN GLASSCOCK COUNTY

APPEARANCES:

APPLICANT – ATMOS ENERGY, ATMOS WEST TEXAS:

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PROCEDURAL HISTORY:

Docket Established:	April 12, 2012
Final Hearing Date:	
Heard By:	Gene Montes, Hearings Examiner Rose Ruiz, Technical Examiner
Record Closed:	May 9, 2013
PFD Circulation:	May 9, 2013

STATEMENT OF THE CASE

Atmos Energy Corp., West Texas Division ("Atmos West Texas") provides natural gas service to Harold Hoelscher, a single residential customer in Glasscock County. The gas supply for Mr. Hoelscher's property is provided by Targa Midstream Services, LLC ("Targa"). Targa transports the natural gas on its pipeline. At a farm tap located near Mr. Hoelscher's property the natural gas passes through a meter and farm tap odorizer owned by Atmos West Texas and is supplied to Mr. Hoelscher's property. Atmos West Texas does not own or operate the pipeline. Atmos West Texas operates the meter that measures the gas that flows to Mr. Hoelscher's property and the farm tap odorizer. In this proceeding, Atmos West Texas proposes to abandon the meter and farm tap odorizer.

Targa notified Atmos West Texas that the gas supplied by Targa may contain contaminants that make the gas supply unsuitable for residential gas consumption. In order to provide safe and reliable service Atmos West Texas must obtain an alternative source of gas or treat the gas that is being supplied to Mr. Hoelscher's property. The cost of treating the natural gas supply or obtaining an alternative source of gas range from \$69,000 to \$8.3 million. The current annual revenues from service provided to Mr. Hoelscher total approximately \$300. Setting aside the safety concerns, the annual cost of reading the meter, totaling approximately \$1,400, exceed the revenues generated to serve this property. Accordingly, as set forth below, the Examiners recommend that the application of Atmos West Texas to discontinue service be granted.

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PROPOSAL FOR DECISION

1. Procedural History

On April 12, 2012, Atmos Energy Corp., West Texas Division ("Atmos West Texas") filed its application for abandonment of service and facilities to Harold Hoelscher. Mr. Hoelscher's property is located at 1500 F.M. 3093, Garden City, Texas. The property receives services directly from a pipeline owned by Targa Midstream Services, LLC ("Targa"). Atmos West Texas does not own or operate the pipeline. The natural gas is supplied by Targa. Atmos West Texas operates the meter that measures the gas that flows to Mr. Hoelscher's property and the farm tap odorizer. Atmos West Texas proposes to abandon the meter and farm tap odorizer.

A Notice of Hearing was issued on May 1, 2012, and the hearing was held on May 15, 2012. Jeffrey Foley, Vice President of Rates and Regulatory Affairs for Atmos West Texas, and Trevor Thuett, Manager of Engineering Services for Atmos West Texas testified on behalf of the applicant. Harold Hoelscher testified in opposition to the requested abandonment.

2. Jurisdiction

The Commission has jurisdiction over the applicant, associated affiliates and over the matters at issue in this proceeding pursuant to Tex. Util. Code Ann. §§ 102.001, 103.003, 103.051, 104.001, 121.051, 121.052, and 121.151 (Vernon 2007 and Supp. 2012). The statutes and rules involved in this proceeding include, but are not limited to Tex. Util. Code Ann. §§ 104.101, 104.102, 104.103, 104.105, 104.106, 104.107, 104.110, 104.301, and 16 Tex. Admin. Code Chapter 7.

3. Legal Standard

The proposed abandonment is governed by 16 *Tex. Admin. Code* § 7.465(b). That provision requires that a gas utility obtain written Commission approval prior to the abandonment or permanent discontinuance of service to any residential or commercial customers that involves the removal or abandonment of facilities. The rule sets out certain standards regarding the application, procedural requirements related to filing the application, authority of the Director of the Gas Services Division, and applicability of the rule for temporary termination of service due to a pipeline safety emergency.[1]

The rule requires that the utility make a "qualifying offer" which is defined as an offer to convert all of the residential or commercial customer's gas burning facilities to the lowest cost available alternative energy source, including, at a minimum, a single tank of normal size for the customer's premises filled once with any liquid alternative energy sources. At the customer's election, the qualifying offer shall be the cash equivalent of the cost of conversion to the lowest cost available alternative energy source.[2]

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[1] 16 *Tex. Admin. Code* § 7.465(b)(1) – (4).

[2] 16 *Tex. Admin. Code* § 7.115.

Subsection (5) of that rule sets out the burden of proof and applicable standards. The gas utility shall have the burden to show that the proposed abandonment or permanent discontinuance of service is reasonable and necessary and is not contrary to the public interest. In making its determination on the application the Commission shall consider the following factors:

(A) whether continued service is no longer economically viable for the gas utility;
(B) whether the potentially abandoned customers have any alternatives, how many and at what cost;
(C) whether any customer has made investments or capital expenditures in reliance on continued availability of natural gas, where use of an alternative energy source is not viable;
(D) whether the utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and
(E) any other considerations affecting the potentially abandoned customers.

4. Discussion of the Evidence

In 1957, Fred and Ella Hoelscher ("Hoelschers"), the parents of Harold Hoelscher, granted an easement to Permian Basin Pipeline Company ("Permian"). The easement is located on property owned by the Hoelschers in Glasscock and Reagan Counties. In exchange for the easement, Permian agreed to construct a tap to the pipeline operated by Permian for the purpose of supplying gas to Hoelschers. The easement provided that all connections required where to be furnished by the Hoelschers with the exception of the meter. Permian was to provide the meter.[3] The successor in interest to Permian was Northern Natural Gas Company ("Northern"). Targa acquired certain pipelines and the associated easements from Northern in 2007.[4]

The precise date that the tap was constructed and the meter installed is not clear from the record in the case. It was established, however, that by 1960, a meter was on the property and the meter, and all facilities used to provide service to the single end-use residential customer were located in Glasscock County. It may be presumed that the farm tap odorizer was also installed sometime after 1960. Targa and its predecessors did not operate those facilities. Initially those facilities were operated by Energas the predecessor in interest to Atmos West Texas.[5] Testimony was presented that confirmed that those facilities have been properly maintained and managed during its operation.[6] Additionally, Mr. Hoelscher testified that he has

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[3] The relevant easement provision is set forth as follows: That grantee, upon written application by the grantor, will make, or cause to be made, a tap in any gas pipe line constructed by grantee upon the above described premises for the purpose of supplying gas to grantor, for domestic purposes only and not for re-sale, and for use upon the above described premises only. All connections required, shall be furnished and paid for by Grantor with the exception of the meter, which is to be furnished and owned by the Grantee. Said tap will be provided by grantee from a convenient point on its main line or some lateral as the grantee may determine, and gas to be taken under this provision shall be measured and furnished to the grantor, at the rates and upon the terms as may be established by grantee, or by any vendee of grantee, from time to time.

[4] Tr. p. 102, lns. 15 – ln. 25 & HH Exhibit No. 8, p. 3.

[5] Tr. p. 42, lns. 5 – 7 and Tr. p. 58, ln. 25 – p. 59, ln. 5.

[6] Tr. p. 20, ln. 24 – p. 21, ln. 4.

not made any investments or capital expenditures in reliance on the continued availability of natural gas service.[7]

The historical facts that lead to the arrangement among the parties may be summarized as follows. Atmos West Texas, and its predecessors, acquired the gas supplied to the Hoelschers from Targa, and its predecessors.[8] Atmos West Texas, or its predecessor, provided gas service to the property from 1960 through March of 2012 using the installed facilities. Targa, or its predecessor, provided the gas supply. The Hoelschers, and later, Harold Hoelscher paid the applicable rates for the gas service to Atmos West Texas.

In December of 2011, Targa informed Atmos West Texas that Targa intended to use the pipelines for gathering purposes. At that time, Targa expressed concern that there was the potential for unsafe components to be included in the gas stream, including hydrogen sulfide (H_2S).[9] In February of 2012 Atmos West Texas informed Harold Hoelscher of its concerns and sought Mr. Hoelscher's consent to abandon service. Atmos West Texas made an offer that included the following:

(1) Conversion of the natural gas service to LPG fuel service, including a leak test and repair of any leaks prior to installation. The conversion would be performed by a licensed LPG dealer.

(2) Purchase and installation of one new LPG tank (250-gallon tank).

(3) Conversion of all existing natural gas appliances to propane, if convertible. If not convertible, replacement of the appliance with new LPG appliances.

(4) An initial one-time filling of the LPG tank.

(5) In the alternative, Mr. Hoelscher was offered a cash payment equal to the estimated cost to convert the residence to LPG service, the cost of (1) – (4) above, in lieu of actual conversion.[10]

Atmos West Texas intended this offer to be the required qualifying offer encompassed by 16 *Tex. Admin. Code* § 7.465. Atmos West Texas estimated that the cost of conversion was $3,000.[11] Atmos West Texas also calculated that the cost of conversion to electricity was $15,000.[12]

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[7] Tr. p. 20, lns. 17 – 23.

[8] Tr. p. 39, ln. 20 – p. 40, ln. 6

[9] Tr. p. 57, lns. 18 – 25.

[10] Atmos Ex. 1

[11] Tr. p. 19, lns. 20 – 22.

[12] Tr. p. 19, lns. 23 – 25.

In response to the safety concerns, Atmos West Texas discontinued the use of gas supplied by Targa and initiated compressed natural gas service to Harold Hoelscher in March, 2012.[13] In April of 2012, Atmos West Texas initiated this proceeding. Atmos West Texas seeks to abandon service to the Hoelscher property. While this case is pending, Atmos West Texas continues to serve the Mr. Hoelsher's property with compressed natural gas.

Evidence was presented regarding revenues generated from this connection and the cost to read the meter. The monthly cost for the meter reader is $118.[14] Based on this evidence, the total annual cost to read the meter is $1,416. During the twelve month period ended March 2011, the total revenue generated by Atmos West Texas, excluding gas cost, was approximately $305.[15] There was no evidence regarding the cost to maintain the meter or the farm tap odorizer.

Evidence was also presented regarding the procedures of Atmos West Texas once a supplier asserts that the quality of gas is not residential quality gas. In general gas provided by Atmos West Texas to its residential customers has been processed[16] or is acquired from a supplier that is subject to a contract that sets out the required quality standards.[17] In this case, the gas is not processed at a processing facility. After Atmos West Texas was informed by Targa that the gas supply was not residential quality Atmos West Texas did not undertake an independent analysis of the gas.[18] The company witnesses asserted that once a supplier asserts that its gas supply does not meet residential quality standards, Atmos West Texas does not perform an independent analysis of the gas quality. Atmos West Texas relies on the assertion of the supplier.[19]

Atmos West Texas estimated that it would cost $8.3 million to extend pipelines to the nearest distribution facility owned by Atmos West Texas to serve Mr. Hoelscher with processed natural gas suitable for residential consumption.[20] Atmos West Texas could also seek to connect alternative service to a non-Atmos Energy facility, but the company would have to negotiate and obtain permission from the pipeline to do so. The nearest potential alternative source is twelve miles from Mr. Hoelscher's property.[21] Atmos West Texas estimated that the cost to install pipe was approximately $50 per foot. The result is that the cost of pipe to the nearest potential alternative was over three million dollars. An additional alternative is to treat the gas to ensure hazardous contaminants are removed. The estimated expense to install those facilities is $69,100, with an annual maintenance expense of $8,050.

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[13] Tr. p. 19, ln. 11 – p. 20, ln. 2.

[14] Tr. p. 17, ln. 24 – p. 18, ln. 1.

[15] Tr. p. 17, lns. 4 – 6.

[16] Tr. p. 55, ln. 25 – p. 56, ln. 2.

[17] Tr. p. 81, lns. 23 -25.

[18] Tr. p. 36, lns. 3 – 17.

[19] Tr. p. 62, lns. 22 – 24; p. 66, lns. 15 – 25; and, p. 79, lns. 15 – 22.

[20] Tr. p.18, lns. 11 – 18.

[21] Tr. p.98, ln. 4 – p. 99. ln. 4.

5. Position of the Parties

Applicant - Atmos West Texas

Atmos West Texas argued that it was reasonable to rely on the assertion of Targa that the natural gas contained potentially hazardous contaminants. Based upon that assertion the applicant determined that the gas did not meet the company's gas quality standards for residential use. Atmos West Texas examined alternative sources of gas supply. All alternatives considered are not economically viable. The costs to implement those alternatives range from $69,100 to $8.3 million. Whereas the annual revenues generated from this single end-use customer total approximately $300. Conversion to propane, however, will cost approximately $3,000. Atmos West Texas argued that the evidence established that the customer has not made any investments or capital expenditures in reliance on the continued availability of natural gas. Finally, the utility asserted that it properly maintained the facilities proposed for abandonment.

Atmos West Texas asserted that it has complied with all of the prerequisites of Section 7.465. Pursuant to the requirements of that rule, Atmos West Texas made a qualifying offer to the customer, as required by 16 *Tex. Admin. Code* § 7.465. The customer refused the offer and Atmos West Texas filed this proceeding.

Respondent Harold Hoelscher

Mr. Hoelscher argued that because Atmos West Texas took the position that Targa may no longer supply natural gas service because Targa's gas supply does not meet residential quality standards, Atmos West Texas must present evidence regarding the quality of gas. In briefing, Mr. Hoelscher cited to a FERC case wherein FERC concluded that the applicant should have provided technical, engineering, or scientific analysis to show why the delivery system must transport processed gas instead of unprocessed gas. Although that was not an abandonment case, Mr. Hoelscher suggested that the same evidentiary requirement applies in this case. He observed that no evidence was presented regarding the level of potentially unsafe contaminants such as H_2S, nitrogen or other natural gas liquids. He also observed that no evidence was presented as to the composition of processed and unprocessed gas on the Targa pipeline. He asserted that untreated gas is not, by definition, unsafe and that several farm taps exist in the state that provide unprocessed natural gas to end use residential customers.

Mr. Hoelscher contended that the only way to meet this burden was to provide an analysis of the natural gas supply and establish, through the analysis, that the gas supply does not meet residential quality standards. The respondent asserted that it was simply insufficient to rely on assertions of Targa that the unprocessed gas posed a risk to consumers. Further, Mr. Hoelscher attempted to undermine the credibility of the applicant's position by noting that Atmos West Texas did not undertake to establish alternative service for 125 days after it was notified of the potentially unsafe condition. Finally, Mr. Hoelscher challenged the assertion that the Targa line was a gathering line as the Commission files classify the line as a transmission line.

The respondent also appeared to argue that the actions of Atmos West Texas interfere with the easement agreement or that the actions of the utility are somehow a violation of the easement agreement. Counsel for Mr. Hoelscher also appear to contend that Atmos West Texas is obligated by the easement agreement to provide all necessary steps to ensure that the natural gas supplied is residential quality and that it cannot abandon service even if the gas quality issues are confirmed. Counsel for Mr. Hoelscher contended that at the heart of this proceeding is the utility's request to have the Commission act on its behalf to abandon a farm tap which is provided for by an easement.

Texas Farm Bureau

The Texas Farm Bureau filed a letter in this proceeding ("Farm Bureau *Amicus*"). The Texas Farm Bureau explained that the Farm Bureau *Amicus* was filed because the requested action allegedly unfairly changed the agreement between two parties. The Texas Farm Bureau expressed concern that the case could set a precedent for the elimination of numerous gas taps that pipeline companies no longer wish to serve. The Farm Bureau noted that farm gas taps are an important part of the consideration for pipeline easements on rural ranch land. The Texas Farm Bureau argued that the application should be rejected as it was based on an unsubstantiated safety claim.

Applicant Response to Issues Related to the Easement

In response to issues related to its burden, Atmos West Texas asserted that it was reasonable to rely on the assertions of the gas supplier. This is consistent with the company's practice. Therefore, Atmos West Texas has meet its burden of proof. In response to issues related to the easement, Atmos West Texas noted that it was not a party to the easement agreement. It was neither an original party, nor a successor in interest, to the easement agreement. Atmos West Texas argued that it has not entered into any agreement with Targa to stand in its place with respect to the easement obligations. The rules of service, not the easement between the end-use customer and a third party, govern the applicant's operations. Atmos West Texas noted that any responsibility or obligation to provide natural gas service, if one exits rests with Targa. Atmos West Texas concluded that should the application for abandonment be granted, all rights and remedies that may flow from the easement remain undisturbed.

6. **Examiners' Recommendation**

The Examiners find that Atmos West Texas has established that the proposed abandonment is just and reasonable. Atmos West Texas has satisfied the requirements of Section 7.465. Continued service is not economically viable. Even setting aside the gas supply issues, Atmos West Texas established that the annual cost to read the meter, totaling $1,416, outweighs the revenues, in the amount of $305, generated. Continued service, therefore, is uneconomic. Atmos West Texas has established that it was reasonable to rely on the gas supplier's assertion that the natural gas being supplied was not suitable for residential consumption. Furthermore, there is no evidence in the record that disputes the gas quality concerns at issue raised by Targa.

The Examiners find that the evidence in the record established that the customer has not made any investments or capital expenditures in reliance on the continued availability of natural gas. Further, the evidence in the record is uncontroverted that the Applicant properly maintained the facilities proposed for abandonment.

As pointed out by Atmos West Texas, the Commission has previously approved proposed abandonments due to safety concerns. In GUD No. 10050, the Commission approved a distribution company's request to abandon service because the gas supply service to its customers was changed from "lean" natural gas that was suitable for domestic consumption to a "richer" natural gas that was not suitable for domestic consumption.[22] In that case, the customers ultimately consented to the proposed abandonment and that application was approved administratively. Safety concerns related to pipeline integrity have also provided the underlying basis for abandonment in prior Commission proceedings.[23]

Finally, the Examiners find that arguments related to the easement are outside the jurisdiction of the Commission and unpersuasive. The Texas Utilities Code, related regulations and the requirements that flow from those regulations, govern this proceeding. The Examiners find that the any ruling by this Commission based upon the statutory and regulatory requirements within the Commission's jurisdiction does not impact the rights and duties of the parties to the easement agreement. All rights and remedies that may flow from the easement remain undisturbed and may be pursued by the parties to that easement agreement in courts that have jurisdiction over those issues.

The specific information required to be submitted in an application to abandon pursuant to Section 7.465(b)(1) was provided by Atmos West Texas. Upon review, the Examiners find that Atoms West Texas' petition to abandon is complete and satisfies the requirements set forth in Section 7.465(b)(1).

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[22] *Application of CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex to Abandon Natural Gas Service to Customers in Nueces, San Patricio, Refugio, Victoria, Jackson, and Bee Counties, Texas*, GUD No. 10050.

[23] *Application Filed by Atmos Energy Corporation, Mid-Tex Division to Abandon Service and Facilities: Line O-16 System, Hunt, and Delta Counties, Texas*, GUD No. 9925. (Utility sought approval to abandon service as the facilities serving customers required replacement.) *Application Filed by West Texas Gas, Inc. to Abandon and Permanently Discontinue Service to Rural Domestic and Commercial Customers in Brown, Coleman, and McCulloch Counties*, Texas, GUD No. 9733. (Utility sought approval to abandon service to 81 rural customers due to corrosion, leaks and other safety concerns.)

7. Conclusion

The Examiners find that the evidence established that Atmos West Texas' proposed discontinuance of service to Harold Hoelscher is reasonable and necessary and not contrary to the public interest. In order to provide safe and reliable service Atmos West Texas would have to provide an extension to either its own facilities, at a cost of $8.3 million or to an alternative supplier at an expense of $3 million. The evidence established that even without additional expenditure the provision of natural gas service is not economically viable. The Examiners therefore recommend that the Commission grant the application of Atmos West Texas to permanently discontinue natural gas service to Harold Hoelscher and that the applicant be permitted to remove its facilities: Meter and farm tap odorizer.

Respectfully submitted,

Gene Montes
Hearings Examiner
Hearings Division

Rose Ruiz
Technical Examiner
Hearings Division

BEFORE THE
RAILROAD COMMISSION OF TEXAS

APPLICATION FILED BY ATMOS ENERGY, WEST TEXAS DIVISION TO ABANDON SERVICE AND FACILITIES IN GLASSCOCK COUNTY.	§ § § § §	**GAS UTILITIES DOCKET NO. 10163**

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551, et seq. (Vernon 1994 & Supp. 2012). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. On September 17, 2012, Atmos Energy, West Texas Division ("Atmos West Texas") filed an application to discontinue service to Harold Hoelscher.

2. Atmos West Texas is a gas utility and is subject to the jurisdiction of the Railroad Commission of Texas ("Commission").

3. On April 19, 2013, Harold Hoelscher intervened in this matter. Mr. Hoelscher was present and participated in the final hearing of this matter.

4. A final hearing was convened on May 15, 2012, to take testimony, evidence, and legal argument on all issues of law and fact that were raised in or relevant to the application, for the purpose of developing a record that the Commission will use in deciding this matter.

5. Atmos West Texas' application to discontinue service contained the information required for such applications in 16 TEX. ADMIN. CODE §7.465(b)(1) (2012), is complete and contains all necessary information required for review of the application by the Commission and its staff.

6. Atmos West Texas owns and operates a meter and farm tap odorizer at the property owned by Mr. Hoelscher.

7. The monthly cost for the meter reader to read the meter located at property owned by Harold Hoelscher is $118. On an annual basis the total annual cost to read the meter is $1,416.

8. The total annual revenues, excluding gas costs, for the service provided Harold Hoelscher is $305.

9. The gas supply for service at the property owned by Harold Hoelscher is supplied by Targa Midstream Services, LLC ("Targa").

10. Targa informed Atmos West Texas that the gas supply may not be suitable for residential gas consumption as there is the potential for unsafe components to be included in the gas stream, including hydrogen sulfide ("H_2S").

11. Atmos West Texas estimated that it would cost $8.3 million to extend pipelines to the nearest distribution facility owned by Atmos West Texas to serve Mr. Hoelscher with natural gas suitable for residential consumption.

12. Atmos West Texas may seek to connect alternative service to a non-Atmos Energy facility, but the nearest potential alternative source is twelve miles from Mr. Hoelscher's property. The cost to connect to that potential sources is in excess of $3 million dollars.

13. To install facilities at Mr. Hoelscher's property to ensure that no hazardous contaminants are part of the gas supply provided to his resident would cost approximately $69,100. The maintenance of those facilities would be in excess of $8,050 per year.

14. There is no evidence that Atmos West Texas failed to properly maintain the pipeline or otherwise neglected the facilities.

15. It is not economically viable for Atmos West Texas to continue to provide service at Mr. Hoelscher's property through the meter or the farm tap odorizer as the expenses to operate that facility exceed the revenues collected and the costs associated with providing Mr. Hoelscher's property with natural gas that meets residential quality standards range from $69,000 to $8.3 million.

16. A reasonable alternative to natural gas service is to convert the current service to LPG fuel service.

17. On February 21, 2012, Atmos West Texas made a qualifying offer to Mr. Hoelscher that included the following:

    a. Conversion of the natural gas service to LPG fuel service, including a leak test and repair of any leaks prior to installation. The conversion would be performed by a licensed LPG dealer.
    b. Purchase and installation of one new LPG tank (250-gallon tank).
    c. Conversion of all existing natural gas appliances to propane, if convertible. If not convertible, replacement of the appliance with new LPG appliances.
    d. An initial one-time filling of the LPG tank.

e. In the alternative, Mr. Hoelscher was offered a cash payment equal to the estimated cost to convert the residence to LPG service, the cost of (a) – (d) above, in lieu of actual conversion.

18. Atmos West Texas estimated that the cost of conversion to LPG was $3,000.

19. There was no evidence that Mr. Hoelscher had made an investment or capital expenditure in reliance on continued availability of natural gas, where use of an alternative energy source was not available.

20. It is reasonable, necessary, and in the public interest to allow Atmos West Texas to discontinue gas service to Harold Hoelscher because an alternative sources of energy is available to this customer. That alternative is LPG gas service at a cost of $3,000. The cost of continued natural gas service exceed the current revenues and the cost of establishing an alternative natural gas supply, or installation of facilities to ensure that the natural gas supply is suitable for residential gas consumption, range from $69,000 to $8.3 million.

CONCLUSIONS OF LAW

1. Atmos West Texas is a gas utility as defined in TEX. UTIL. CODE ANN. §§ 101.003(7), 121.001 (Vernon 1998 & Supp. 2012) and is subject to the Commission's jurisdiction under TEX. UTIL. CODE ANN. §§ 104.001, 121.051 (Vernon 1998 & Supp. 2012).

2. A gas utility shall obtain written Commission approval prior to the abandonment or permanent discontinuance of service to any residential or commercial customer that involves the removal or abandonment of facilities other than a meter pursuant to 16 TEX. ADMIN. CODE §7.465(b) (2012).

3. Atmos West Texas has the burden to prove that its proposal to abandon gas service to residential and commercial customers is reasonable and necessary and not contrary to the public interest under 16 TEX. ADMIN. CODE §7.465(b)(5) (2012).

4. The findings of fact enumerated herein establish that gas distribution service provided by Atmos West Texas to Harold Hoelscher is no longer economically viable for Atmos West Texas and the applicant's sole customer under 16 TEX. ADMIN. CODE §7.465(b)(5)(A) (2012).

5. The findings of fact enumerated herein establish that the Mr. Hoelscher has an economically viable alternative to gas distribution service under 16 TEX. ADMIN. CODE §7.465(b)(5)(B) (2012).

6. The findings of fact enumerated herein establish that Atmos West Texas' proposed abandonment of gas distribution service to Mr. Hoelscher is reasonable, necessary, and not contrary to the public interest under 16 TEX. ADMIN. CODE §7.465(b)(5) (2012).

IT IS THEREFORE ORDERED that Atmos West Texas' application to permanently discontinue service to Harold Hoelscher is hereby **GRANTED**.

This Order will not be final and appealable until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

Each exception to the Examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

SIGNED this 9th day of July, 2013.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN BARRY T. SMITHERMAN

COMMISSIONER DAVID PORTER

COMMISSIONER CHRISTI CRADDICK

ATTEST:

SECRETARY