



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

GUD NO. 10374

**APPLICATION OF ATMOS ENERGY CORP., MID-TEX DIVISION FOR APPROVAL
OF ABANDONMENT RELATED TO SERVICE AND FACILITIES; ENBRIDGE LINE
OP, PALO PINTO COUNTY TO NINE RESIDENTIAL CUSTOMERS**

APPEARANCES:

APPLICANT: ATMOS ENERGY CORP., MID-TEX DIVISION

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PROCEDURAL HISTORY:

Docket Established:	July 30, 2014
Final Hearing Date:	September 25, 2014
Heard By:	Cecile Hanna, Hearings Examiner Rose Ruiz, Technical Examiner

PFD Circulation:	March 6, 2015
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STATEMENT OF THE CASE

Atmos Energy Corporation, Mid-Tex Division (“Atmos Energy” or the “Applicant”) is a gas utility that provides natural gas to residential customers in Texas. In this case, Atmos Energy seeks approval from the Railroad Commission of Texas (the “Commission”) to abandon service and distribution facilities serving nine residential customers in Palo Pinto County, Texas (the “Affected Customers”). The gas feeding the Palo Pinto system is “wet gas,” which Atmos Energy argues is not conducive for residential use. Atmos Energy also argues that continued service to the Affected Customers is not economically viable for Atmos Energy, with annual operating costs totaling approximately \$15,590 to serve these nine Affected Customers far exceeding the approximately \$1,900 in aggregate annual revenue received from them.

On April 1, 2014, Atmos Energy mailed offers to the Affected Customers asking for consent to disconnect them from Atmos Energy’s natural gas system. In return, Atmos Energy offered to pay for the conversion of Affected Customers’ home and appliances to either electricity or propane, or in the alternative, to make a one-time cash payment equivalent to Affected Customers’ conversion costs. Eight of the nine Affected Customers consented to this abandonment and agreed to let Atmos Energy pay for conversion to either electricity or propane. The remaining customer, Jon Salis (“Protestant”) filed a protest with the Commission. Protestant agrees that natural gas service to his residence should be discontinued and his residence converted to an alternative energy, but objects to the terms of his proposed conversion. As set forth more fully below, the Examiners recommend that the application of Atmos Energy to abandon service to the Affected Customers be granted.

PROPOSAL FOR DECISION

I. Procedural History

On July 30, 2014, Atmos Energy filed its *Application for Abandonment of Service and Facilities* to nine Affected Customers. On August 15, 2014, the Commission received a protest letter from Protestant, Jon Salis, requesting a hearing. A Notice of Hearing was issued on August 21, 2014, and a hearing on the merits was held on September 25, 2014. Testifying on behalf of Atmos Energy were Pete Brown, consultant for Atmos Energy, Jesse Garcia, Operations Supervisor at Atmos Energy, and Mike Montgomery, Area Superintendent at Enbridge Gathering (North Texas) L.P. ("Enbridge"). Protestant, Jon Salis, testified in opposition to the requested abandonment.

On September 25, 2014, the day of the hearing, a motion was filed by Make A Difference Water ("MADW"), an organization comprised of Protestant and other residents of the Lake Palo Pinto community, requesting party status in this case. At the hearing, the Hearings Examiner made a preliminary ruling denying party status to MADW.¹ As instructed by the Hearings Examiner, the parties submitted closing briefs on or before October 24, 2014, and reply briefs on or before October 31, 2014.

II. Jurisdiction and Notice

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. 2014). 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.

A Notice of Hearing was issued in this Docket on August 21, 2014, and satisfied all of the statutory and Commission requirements of 16 TEX. ADMIN. CODE § 1.45 and TEX. GOV'T CODE ANN. § 2001.052. There are no contested issues of notice or jurisdiction in this proceeding.

III. Legal Standard

The proposed abandonment is governed by 16 TEX. ADMIN. CODE § 7.465(b) ("Rule"). 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 customer 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

¹ Hearing Transcript, GUD No. 10374, Sept. 25, 2014 ("Tr."), 25:14-26:4.

the Director of the Gas Services Division, and applicability of the rule for temporary termination of service due to a pipeline safety emergency.²

The Rule requires that the utility make a “qualifying offer,” which is defined as an offer to convert all of the residential or commercial customers’ 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 with any liquid alternative energy source. 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.³

Subsection (5) of the 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. The Commission shall consider the following conditions when making a determination regarding an application for abandonment or permanent discontinuance of service:

- (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

IV. Discussion of the Evidence

A. Atmos Energy’s Case

Atmos Energy Corp., Mid-Tex Division, is a gas utility that owns and operates natural gas distribution facilities within the State of Texas for the distribution of natural gas to end users for their own use and to one local distribution company for subsequent distribution to its end-use customers.⁵ The Affected Customers are served from taps on an Enbridge pipeline, from which Atmos Energy has a right to deliver natural gas to the Affected Customers.⁶ On or about April 1,

² Rule 7.465(b)(1)-(4).

³ 16 Tex. Admin. Code § 7.115(30).

⁴ Rule 7.465(b)(2)(5)(A)-(E).

⁵ Tr., Exhibit 13 (Application for Abandonment of Service and Facilities, GUD No. 10374, filed by Atmos Energy on July 30, 2014, the “Application for Abandonment”), p. 1.

⁶ *Id.*

2014, Atmos Energy mailed offers to the nine Affected Customers in Palo Pinto County asking for consent to disconnect them from Atmos Energy's natural gas system.⁷ The offer letter contained language offering to pay for the conversion of the Affected Customers' home and appliances to either electricity or propane. As for conversion to propane, the offer provided for the installation and filling of one new LPG 250-gallon tank. Furthermore, the customer may elect, a cash payment equal to the estimated cost to convert each customer's residence "to LPG or electric service" in lieu of actual conversion.⁸ Specifically, the qualifying offer letter provided the following in return for consent to abandonment:

- (1) Conversion of the natural gas service to LPG fuel service, including a leak test and repair of any leaks, by a licensed LPG dealer or, alternatively, conversion to all electric power;
- (2) Installation of one new LPG tank (250-gallon);
- (3) Conversion of all existing natural gas appliances to propane, if convertible, and if not convertible, replacement of such appliances with new LPG appliances or, if needed, conversion to electric appliances;
- (4) The initial filling of the LPG tank;
- (5) In the alternative, a cash payment equal to the estimated cost to convert to LPG or electric service in lieu of actual conversion.⁹

The offer letter did not state a reason for the proposed abandonment. Atmos Energy intended this offer to be the required qualifying offer encompassed by 16 Tex. Admin. Code § 7.465.¹⁰ Atmos Energy estimates that the cost of conversion of each of the Affected Customers to propane is approximately \$6,000.¹¹ Atmos Energy estimates that the cost of conversion of each of the Affected Customers to electricity is approximately \$12,000 to \$15,000.¹² Atmos Energy submits that the most reasonable alternative energy source for the Affected Customers is propane.¹³ Propane in the affected area currently costs approximately \$25.87 per MMBtu.¹⁴ Electricity in the affected area currently costs approximately \$34.58 per MMBtu.¹⁵

⁷ Tr., 28:19-30:2; *see also* Exhibit 2 (Letter from Pete Brown, on behalf of Atmos Energy, to the Affected Customers, the "Qualifying Offer").

⁸ Tr., Exhibit 2 (Qualifying Offer).

⁹ *Id.*

¹⁰ *See* Tr., Exhibit 13 (Application for Abandonment), p. 3 and Ex. D; *see also* Tr., 29:19-22.

¹¹ This cost includes the propane tank, an initial filling of the tank, piping from the tank to the residence, and conversion of all appliances, or purchase of new appliances if it is deemed unfeasible to convert. *See* Tr., Exhibit 13 (Application for Abandonment), p. 3.

¹² This cost includes upgrades to the services, if needed, and replacement of gas burning appliances with comparable electric appliances. *See id.*

¹³ Tr., Exhibit 13 (Application for Abandonment), p. 3.

¹⁴ *Id.*

¹⁵ *Id.*

Eight of the nine Affected Customers consented to abandonment and agreed to let Atmos Energy pay for conversion.¹⁶ At that time, Protestant refused to consent to abandonment of service and returned the election form to Atmos Energy, with several questions and comments handwritten on the back of the election form.¹⁷ Protestant's comments included questions relating to why his natural gas service was being abandoned, presumed increase usage costs of propane or electricity, whether alternative energy sources such as wind, solar, and geothermal power had been considered for purposes of the conversion, and whether environmental remediation would be required as part of the abandonment activities.¹⁸

Pete Brown, consultant for Atmos Energy, attempted to reach Protestant by telephone twice before receiving Protestant's returned election form in the mail.¹⁹ Mr. Brown testified that, during the first phone call, he spoke to Protestant's wife and asked her "what they thought about the [offer]," and he was told to call back in the evening to speak to Protestant directly.²⁰ Mr. Brown testified that later that evening he received a voicemail from Protestant requesting that Mr. Brown call him back. The return call, however, was unanswered by Protestant.²¹ A few days later, Atmos Energy received Protestant's returned consent form in which Protestant declined consent to the abandonment. Mr. Brown did not contact Protestant again.²² Moreover, Protestant did not call Mr. Brown back to discuss the abandonment offer or the issues raised by Protestant on the back of his returned election form.²³ Protestant explained at the hearing that he expected Mr. Brown to respond to his handwritten comments in writing.²⁴

No further communications between Atmos Energy and Protestant took place prior to Atmos Energy filing its *Application for Abandonment of Service and Facilities* with the Commission on July 30, 2014. In its *Application for Abandonment of Service and Facilities*, Atmos Energy argues that abandonment under Rule 7.465(b) is proper because the type of gas currently being used by the Affected Customers is not suitable for residential use and also because the cost of continued service to the nine Affected Customers is not economically viable for Atmos Energy.²⁵ At the hearing, Atmos Energy offered evidence in support of both reasons for abandonment.

Atmos Energy presented evidence that the type of gas currently being delivered to the Affected Customers is not suitable for residential use. Specifically, Atmos Energy presented evidence that of the following: (1) the gas feeding the Palo Pinto system currently being used by the Affected Customers is "wet gas" that is susceptible to freezing in extreme cold conditions, as

¹⁶ Tr., 30:3-7; *see also* Exhibit 3 (Consent to Convert Election Forms).

¹⁷ *See* Tr., Exhibit 8 (Protestant Election Form, dated April 12, 2014).

¹⁸ *Id.*

¹⁹ Tr., 30:8-23.

²⁰ Tr., 30:11-15.

²¹ Tr., 30:15-20.

²² Tr., 30:20-23 ("A couple of days later I got his return, the election form declining the offer with some questions on the back, and I took that to mean that he was not agreeable to the conversion."); 35:16-19 ("... so when I tried to call him and he did not answer and then I got the response, I took that to be a firm no and sent the forms on up to Atmos."); *see also* 87:24-88:1, 89:5-8.

²³ Tr., 105:2-14.

²⁴ Tr., 105:24-25.

²⁵ Tr., Exhibit 13 (Application for Abandonment), pp. 2, 4.

well as condensation of hydrocarbons;²⁶ (2) condensation and freezing are likely to cause the Affected Customers' service to be impaired or completely unavailable;²⁷ (3) liquid in the gas line can cause irregular combustion, which can in turn damage Affected Customers' home appliances;²⁸ and (4) the gas currently being used may cause indoor air quality issues—such as elevated levels of carbon monoxide—in Affected Customers' homes.²⁹ Mike Montgomery, an area superintendent for Enbridge, testified that the unprocessed “wet gas” currently being used by the Affected Customers has elevated BTU levels, which can cause pipeline freezing and stoppage of gas flow.³⁰ Mr. Montgomery testified that the gas quality will not improve in the future and will instead likely deteriorate.³¹

Atmos Energy presented further evidence that the cost of continued service to the nine Affected Customers is not economically viable for Atmos Energy. Atmos Energy currently receives approximately \$1,900 in total annual non-gas revenue from the Affected Customers.³² In order to connect the Affected Customers to an alternative source of gas that is suitable for residential use, Atmos Energy would have to spend approximately \$8 million to construct pipelines connecting the Affected Customers to the nearest “pipeline quality gas” point, located approximately eight miles away.³³ Even if no capital outlay were required to serve the Affected Customers, Atmos Energy's annual operating costs to serve the nine Affected Customers is approximately \$15,590—more than eight times the combined annual revenue of \$1,900 that Atmos Energy receives from the Affected Customers.³⁴

Atmos Energy submitted evidence that alternative sources of energy exist and are available to the Affected Customers. Mr. Brown testified on behalf of Atmos Energy that both propane and electricity are available alternative sources of energy for the Affected Customers.³⁵ Hardwick Propane provides propane service to the Affected Customers' area, and Direct Energy provides electric service.³⁶ The cost of propane is \$25.87 per MMBtu, and the cost of electricity is \$34.57 per MMBtu.³⁷

Atmos Energy provided testimonial evidence that it is requesting this abandonment “strictly due to the content and the [non-residential] quality of the gas” currently being used by the Affected Customers, and not due to the condition or state of Atmos Energy's equipment and facilities.³⁸ No evidence was offered by any party that Atmos Energy's equipment and facilities with respect to this particular abandonment proceeding have been neglected.

²⁶ Tr., 45:3-14.

²⁷ *Id.*, see also Exhibit 5 (spreadsheet showing 129 service calls from the Affected Customers to Atmos Energy and associated annual operating costs).

²⁸ Tr., Exhibit 13 (Application for Abandonment), p. 2.

²⁹ *Id.*; see also Tr., 51:13-16.

³⁰ Tr., 78:6-22; see also Exhibit 7.

³¹ Tr., 78:23-79:4.

³² Tr., Exhibit 6 (total revenue of \$1,904.88 per year from the nine Affected Customers).

³³ Tr., 45:19-23.

³⁴ See Tr., Exhibit 5 (total Atmos Energy annual operating costs to serve the Affected Customers is \$15,590.00).

³⁵ Tr., 31:16-19, 74:14-75:7.

³⁶ *Id.*

³⁷ Tr., Exhibit 4.

³⁸ Tr., 73:5-12.

Regarding procedures for conversion, Mr. Brown testified that Atmos Energy would coordinate with the Affected Customers as to the timing for conversion and replacement of appliances at no cost to the customer.³⁹ The below-ground pipeline would remain in place, but Atmos Energy would remove all of the Affected Customers' above-ground equipment and each riser pipe would be capped off to prevent the possibility of further gas emissions.⁴⁰ Jesse Garcia, Operations Supervisor for Atmos Energy, further clarified that Atmos Energy service technicians would remove meters, the inlet riser, and the regulator "all the way down to the stop at the ground level" and install a plug to seal the end.⁴¹

B. Protestant's Case

Protestant testified that despite filing and maintaining his protest in this proceeding, he now no longer opposes Atmos Energy's wish to abandon service.⁴² Protestant testified that he filed a protest and initially rejected Atmos Energy's abandonment offer because Atmos Energy never stated a reason for its requested abandonment in the offer letter, and because no one from Atmos Energy responded to his written questions concerning the abandonment.⁴³ Despite consenting to this abandonment, Protestant offered evidence that he relied in part on natural gas availability when purchasing his property in 1997.⁴⁴ Protestant testified that Atmos Energy never notified him regarding the deteriorating quality of natural gas being delivered to his residence or the potential air quality issues that could result from it⁴⁵ and that it was "shocking to physically read that in [Atmos Energy's] application."⁴⁶

Protestant offered evidence that he currently pays approximately \$10.30 per MMBtu for natural gas with Atmos Energy, whereas propane would cost approximately \$25.87 per MMBtu and electricity would cost approximately \$34.58 per MMBtu.⁴⁷ Put in terms of Protestant's annual costs, natural gas costs Protestant approximately \$649 per year, with propane prospectively costing approximately \$1,630 per year and electricity prospectively costing approximately \$2,179 per year.⁴⁸

Protestant testified that, rather than Atmos Energy doing their typical conversion on his residence, he prefers to use a bonded general contractor and various subcontractors, including a master electrician and master plumber, due to the fact that Protestant designed his residence and it is not conventional.⁴⁹ Protestant wants Atmos Energy to pay for these services, as well as to cap the riser line on his property, remove the residential lines from his house and yard, and pay for qualified HVAC technicians to inspect the natural gas equipment in his home.⁵⁰ Protestant testified that he is angry that Atmos Energy never notified him that his natural gas was not

³⁹ Tr., 33:11-19.

⁴⁰ Tr., 34:6-35:3.

⁴¹ Tr., 46:11-20.

⁴² Tr., 99:20-100:6, 101:7-11.

⁴³ Tr., 87:10-88:1, 88:21-89:4.

⁴⁴ Tr., 94:5-95:1, 95:16-22; *see also* Exhibit 10 (Agreement to Sell Real Estate, dated Feb. 4, 1997).

⁴⁵ Tr., 89:9-17, 90:14-91:23.

⁴⁶ Tr., 91:19-23.

⁴⁷ Tr., Exhibit 11.

⁴⁸ *Id.*

⁴⁹ Tr., 101:18-102:16.

⁵⁰ Tr., 102:12-103:22.

suitable for residential use and that this all could have been avoided with “a little more communication and more understanding of how a customer actually feels” when given an abandonment offer that does not give customers much latitude.⁵¹

V. MADW’s Motion to be Designated as a Party

On September 25, 2014, the same day as the hearing, MADW⁵² filed a motion to be designated as a party to the proceeding. At the hearing, the Hearings Examiner preliminarily denied party status to MADW but requested further briefing from the parties on MADW’s motion.⁵³

In its motion, MADW states that MADW is a “public interest/environmental organization established to represent those residents of the Lake Palo Pinto community who are concerned about the water and sediment quality of Lake Palo Pinto and its effects on their health, safety, the value of their properties and the environment.”⁵⁴ MADW argues that it should be granted standing in this abandonment proceeding because one of its members, Protestant, is “an affected party with standing to participate in this contested case proceeding”⁵⁵ and because MADW’s organizational purpose is germane to “the gas quality and air quality issues outlined in [Atmos Energy’s] Application, as well as, to the nuisance and related property devaluation that may occur if [Atmos Energy] fails to properly abandon these natural gas facilities and equipment.”⁵⁶

At the hearing, MADW maintained the following three reasons why it may have an interest in this proceeding and should be granted party status: (1) this abandonment may cause pollution, specifically to the water and water front of Lake Palo Pinto;⁵⁷ (2) Atmos Energy may abandon its facilities and equipment and leave them in place, creating an “eye sore” in the community;⁵⁸ and (3) Atmos Energy may have failed to properly maintain its facilities proposed for abandonment.⁵⁹

In opposition, Atmos Energy argues that MADW lacks both the standing and capacity to participate.⁶⁰ MADW is not a customer of Atmos Energy and is not one of the nine Affected Customers. Further, Atmos Energy argues that no party in this proceeding has offered any evidence to support that Atmos Energy has ever left any above-ground equipment to deteriorate and create “eye sores” in the community, or that MADW’s members will be adversely affected

⁵¹ Tr., 103:25-104:7.

⁵² Make A Difference Water.

⁵³ Tr., 113:9-16.

⁵⁴ Notice of Appearance of Counsel and Request to be Designated as a Party to Contested Case Proceeding, filed Sept. 25, 2014 (the “MADW Motion”).

⁵⁵ Closing Brief by Michelle A. McFaddin, counsel for Protestant and MADW, filed Oct. 24, 2014 (the “Protestant Closing Br.”), p. 5.

⁵⁶ *Id.*

⁵⁷ Tr., 8:2-12.

⁵⁸ Tr., 8:12-17.

⁵⁹ Tr., 19:20-24.

⁶⁰ Closing Brief by Atmos Energy, filed Oct. 24, 2014 (the “Applicant Closing Br.”), pp. 7-11 (citing *Texas Indus. Traffic League v. Railroad Commission of Texas*, 628 S.W.2d 187 (1982) and the requirements to establish representational standing described therein).

by any decision that the Commission may make in this docket.⁶¹ Further, Atmos Energy asserts that no part of the abandonment request will affect the water or sediment quality of Lake Palo Pinto.⁶² Lastly, Atmos Energy argues that MADW lacks capacity to participate in this abandonment proceeding because MADW is not a registered/licensed entity with the Texas Secretary of State and, therefore, is not a qualified entity to invoke the Commission's subject matter jurisdiction.⁶³

After carefully reconsidering the arguments of both parties related to MADW's motion for party status, the Examiners believe that the ruling at the evidentiary hearing denying MADW's motion is correct. As a threshold matter, the issue of MADW's party status is rendered largely academic since Protestant, a member of MADW, now consents to this abandonment. Also, MADW filed its motion for party status well after the deadline for doing so under 16 TEX. ADMIN. CODE § 1.64.⁶⁴ This rule requires any person or association, such as MADW, to file its request to be designated as a party no later than five days prior to the hearing date and also to demonstrate its justiciable or administratively cognizable interest.

Under Texas law, an association has standing to sue on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.⁶⁵ MADW argues that it meets this standard because (a) one of its members, Protestant, is an affected party with standing to participate in this contested case proceeding; (b) the purpose of MADW is to address the health, safety and welfare of residents who live and work within close proximity to the Enbridge OP pipeline and associated residential distribution lines, and thus, the gas and air quality issues related to the abandoned gas utility equipment is germane to the organization's purpose, as well as, water pollution into Lake Palo Pinto and the nuisance and related property devaluation caused by the abandonment; and (c) neither the claim asserted nor the relief requested requires the participation of MADW's individual members.⁶⁶

In opposition, Atmos Energy argues that MADW only meets the first of the three *Texas Air Control Board* requirements. That is that one of MADW's members, Protestant, otherwise has standing to sue in his own right. Yet, Protestant is the only member of MADW who is a customer of Atmos Energy and he is already participating in this action in an individual capacity as a protestant.⁶⁷ It is Atmos Energy's position that MADW fails to meet the second *Texas Air Control Board* requirement of germane interests because MADW's organizational interests, as

⁶¹ *Id.*, p. 9.

⁶² *Id.*

⁶³ *Id.*, pp. 10-11.

⁶⁴ See Rule 1.64(a) ("Except for transportation cases, any person or agency who has a justiciable or administratively cognizable interest and who is not an applicant, petitioner, complainant, respondent, or protestant and who desires to be designated as a party in any contested case before the commission may file a petition for leave to intervene *no later than five days prior to the hearing date.*") (emphasis added).

⁶⁵ *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993) (adopting the legal standard for associated standing in *Hunt v. Washington State Apple Adver. Com'n*, 432 U.S. 333, 343 (1977)).

⁶⁶ Protestant Closing Br., pp. 4-6.

⁶⁷ Reply Brief of Atmos Energy Corp. Mid-Tex Division, filed Oct. 31, 2014 (the "Applicant Closing Reply Br."), pp. 6-7.

stated in the MADW Motion,⁶⁸ are not germane to this proceeding. This is because nothing being requested by Atmos Energy for abandonment would affect the “water or sediment quality” of Lake Palo Pinto.⁶⁹ Nor will the abandonment adversely impact gas or air quality issues. Lastly, Atmos Energy argues that MADW fails to meet the third *Texas Air Control Board* requirement of individual participation because any relief requested in this proceeding would require the participation of MADW’s individual members because the only people who can contest abandonment of natural gas service under the Rule are gas utility customers.⁷⁰

The Examiners agree that MADW has failed to meet the second and third requirements of for associated standing. There has been no showing by MADW or any other party that abandonment of services to the nine Affected Customers will adversely affect MADW or the Lake Palo Pinto community or environment. Also, there is no dispute that MADW is not a customer of Atmos Energy and is not a directly affected customer in this proceeding regardless of whether it is a registered entity. Since MADW is not a customer of Atmos Energy, MADW’s members would have to participate in this action individually just as Protestant is participating individually. Finally, MADW filed its motion for intervention on the day of hearing instead of five days in advance of the hearing pursuant to the requirements of 16 TEX. ADMIN. CODE § 1.64.

Accordingly, the Examiners’ ruling **denying** MADW’s motion for party status stands.

VI. Positions of the Parties

The Rule instructs that the Commission *shall* consider the following conditions when making a determination for this application: (A) whether continued service is no longer economically viable for Atmos Energy; (B) whether the Affected Customers have any alternatives, how many, and at what cost; (C) whether the Affected Customers have 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 Atmos Energy has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and (E) any other considerations affecting the Affected Customers.⁷¹

A. Atmos Energy’s Position

Atmos Energy seeks approval from the Commission to abandon natural gas service and distribution facilities to nine Affected Customers in Palo Pinto County, Texas, primarily for two reasons. First, the character of the gas supply in that area is not suitable for residential use due to higher-than-normal Btu levels and its susceptibility to freeze in extreme cold conditions, damage to appliances, and the potential to cause air quality issues in the home.⁷² Secondly, Atmos

⁶⁸ MADW Motion, p. 1 (stating that MADW was established “to represent those residents of the Lake Palo Pinto community who are concerned about the water and sediment quality of Lake Palo Pinto and its effects on their health, safety, the value of their properties and the environment”).

⁶⁹ Applicant Closing Br., p. 9.

⁷⁰ Applicant Closing Reply Br., p. 7.

⁷¹ See Rule 7.465(b)(2)(5)(A)(E) (emphasis added).

⁷² Applicant Closing Br., pp. 1-3.

Energy requests approval of its application because continued natural gas service to the Affected Customers is no longer economically viable as there are disproportionately high annual operating expenses of \$15,590 incurred to service the Affected Customers in relation to the roughly \$1,900 in annual revenue it receives from them.⁷³

Atmos Energy maintains that its equipment and facilities are in good condition, in accordance with industry standards, and that this abandonment proceeding has nothing to do with the condition or state of Atmos Energy's equipment and facilities.⁷⁴ Both propane and electricity are readily-available alternative energy sources for the Affected Customers at a cost of \$25.87 per MMBtu and \$34.57 per MMBtu, respectively.⁷⁵

Atmos Energy has made a qualifying offer to each Affected Customer, offering to perform a conversion to each customer's choice of propane or electricity, at Atmos Energy's sole cost, or else pay each customer the cash equivalent of the estimated cost of either of those conversions.⁷⁶ Atmos Energy maintains that it has complied with the requirements of the Rule and met its burden of proof by demonstrating that this abandonment is reasonable and necessary, and not contrary to the public interest. Therefore, it should be allowed to abandon service to the Affected Customers per the terms of its qualifying offer letter.⁷⁷ Atmos Energy opposes the Commission imposing additional requirements or conditions not found in the Rule.

B. Protestant's Position

Protestant consents to this abandonment.⁷⁸ Protestant agrees that alternative energy sources are available and he does not dispute that (1) the quality of the natural gas currently in use is not residential quality; or (2) it is not economically viable for Atmos Energy to continue providing gas service to the Affected Customers. Protestant argues that the consumer costs of using propane and electricity are high, and that solar power is a more cost-effective source of alternative energy that Atmos Energy should offer in addition to propane and electricity.⁷⁹ Protestant requests that the Commission require Atmos Energy to do the following in connection with the abandonment process:

- remove all Atmos Energy facilities and equipment from Protestant's property;
- develop detailed cost estimates for converting Protestant's residence from natural gas to solar power and electric power for the purpose of determining the appropriate cash payment to Protestant;
- make a cash payment to Protestant based on the above detailed cost estimate;
- reimburse Protestant's legal fees in the amount of \$10,000 incurred by Protestant during this proceeding;
- provide written notice to all customers who use unprocessed gas and inform them of the risks of such use;

⁷³ *Id.*, p. 4.

⁷⁴ *Id.*, p. 6; *see also* Tr., 73:9-12.

⁷⁵ Applicant Closing Br., p. 5; *see also* Tr., 74:14-17 and Exhibit 4.

⁷⁶ Applicant Closing Br., p. 1; *see also* Tr., Exhibit 2 (Qualifying Offer).

⁷⁷ *See* Tr., Exhibit 2 (Qualifying Offer).

⁷⁸ Protestant Closing Br., p. 7; *see also* Tr., 99:20-100:6, 101:7-11.

⁷⁹ *See* Protestant Closing Br., p. 13.

- participate in a Commission show-cause proceeding regarding the amendment of its tariff to include language that would prohibit Atmos Energy from selling unprocessed gas to residential customers;
- participate in a regulatory proceeding regarding the fairness and reasonableness of rates for unprocessed gas, as well as, additional gas quality issues; and
- participate in an enforcement proceeding to determine whether Atmos Energy has violated Chapter 121 of the Texas Utility Code, the Texas Natural Resources Code, or a Commission Order.⁸⁰

VII. Examiners' Recommendation

Atmos Energy's *Application for Abandonment of Service and Facilities* seeks to permanently discontinue gas distribution service to nine customers in Palo Pinto County, Texas, pursuant to 16 TEX. ADMIN. CODE § 7.465(b). Specific information is required to be set forth in an application to abandon under the Rule. No objections have been raised as to the completeness or deficiencies of Atmos Energy's application under the Rule. Upon consideration, the Examiners find that Atmos Energy's application to abandon is complete and satisfies the requirements set forth in the Rule. Further, no party contests that Atmos Energy's abandonment offer to the nine Affected Customers is a "qualifying offer" as that term is defined in 16 TEX. ADMIN. CODE § 7.115(30). Upon review, the Examiners further find that Atmos Energy's abandonment offer to the nine Affected Customers is a "qualifying offer" for purposes of this proceeding.

As previously stated, Atmos Energy bears the burden to show that this abandonment is reasonable and necessary and is not contrary to the public interest.⁸¹ The Examiners find that Atmos Energy has met its burden of proof and otherwise satisfied the requirements of Rule 7.465(b). Of the nine total Affected Customers, only Protestant has not consented to Atmos Energy's offer to convert to either propane or electricity. Despite maintaining his protest throughout this proceeding, Protestant no longer opposes Atmos Energy's application to abandon service, and Protestant has expressed a desire for expeditious termination of gas service and conversion to alternative energy.⁸² The uncontroverted evidence shows that: (1) the gas currently being supplied to the Affected Customers is not suitable for residential use; and (2) continued service is not economically viable for Atmos Energy.

The Commission previously has approved proposed abandonments where continued gas service was not economically viable for a gas utility. In GUD No. 10050 and GUD No. 10163, the Commission approved a gas utility's request to abandon service because continued gas service by a gas utility to customers was no longer economically viable for the gas utility.⁸³

⁸⁰ *Id.*, pp. 12-16.

⁸¹ See Rule 7.465(b)(2)(5).

⁸² See Tr., 99:20-100:1 ("Q: After considering the testimony about the deteriorating quality of the natural gas you have been using for the past 13 years, are you still of the opinion that it is unreasonable to convert? [Protestant]: No, I think I need to be off it as quickly as I can."); see also Tr., 101:7-14.

⁸³ *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; *Application Filed by Atmos Energy, West Texas Division to Abandon Service and Facilities in Glasscock County, Texas*, GUD No. 10163.

While Protestant maintains that the continued availability of natural gas was a factor in his decision to purchase his property,⁸⁴ he also is unequivocal that he no longer opposes Atmos Energy's wish to abandon service.⁸⁵ Protestant provided no evidence that alternative energy sources were unavailable when he purchased his property. Protestant does not dispute that alternative energy sources are now available for the Affected Customers other than natural gas, though he argues that the increased customer costs of propane and electricity make those alternatives unreasonable.⁸⁶

Protestant offered evidence that his annual retail cost to use natural gas is \$649, whereas propane would be \$1,629 and electricity would be \$2,178.⁸⁷ Protestant offered no evidence, however, that these propane and electricity amounts are higher or substantially different than other similarly-situated Texas residents who use propane or electricity. While it may be true, as Protestant argues, that lower retail-cost energy sources other than propane or electricity may exist and be available to the Affected Customers, the Rule does not impose on Atmos Energy the requirement of offering these types of alternative energy sources to the Affected Customers, given the availability of both propane and electricity in the Palo Pinto area.

Protestant offered no evidence regarding the annual retail cost and/or conversion to solar, wind, or geothermal energy sources in the Palo Pinto area. As already stated, the Examiners find that Atmos Energy satisfied its obligations under the Rule by offering to convert the Affected Customers to either propane or electricity. Of course, nothing in the Rule or in Atmos Energy's qualifying offer letter obligates Protestant or any other Affected Customer to convert to propane or electricity. Each of the Affected Customers, including Protestant, has the choice to forego the conversion options offered by Atmos Energy and accept a cash payment equal to the estimated cost to convert to propane or electric service.⁸⁸ Atmos Energy estimates the propane conversion cost to be approximately \$6,000 and the electricity conversion cost to be approximately \$12,000 to \$15,000.⁸⁹ Protestant, therefore, has the option to accept a cash payment in lieu of conversion by Atmos Energy and convert his home to any energy source he chooses.

The Examiners recommend that Protestant's request for attorney fees associated with this proceeding be denied. While Protestant certainly was within his rights to protest Atmos Energy's application and provide evidence at the hearing, as well as subsequently change his mind about consenting to the abandonment, there was no evidence or regulatory authority offered by any party that Protestant was entitled to attorney's fees or that there was any element of bad faith. On the contrary, after hearing evidence at the hearing that his natural gas was unsuitable for residential use, Protestant changed his mind and now supports abandonment.⁹⁰ Further, the undisputed record shows that Atmos Energy attempted to contact Protestant by telephone twice to discuss the qualifying offer letter before Protestant requested this hearing.⁹¹

⁸⁴ Tr., 94:14-95:22.

⁸⁵ Tr., 99:20-100:6; 101:7-11.

⁸⁶ Tr., 98:1-23; *see also* Exhibit 11.

⁸⁷ *See* Tr., Exhibit 11; *see also* Tr., 98:1-16.

⁸⁸ *See* Tr., Exhibit 2 (Qualifying Offer), p. 2.

⁸⁹ Tr., Exhibit 13 (Application for Abandonment), p. 3.

⁹⁰ *See* Tr., 98:20-100:6, 101:7-11.

⁹¹ Tr., 30:8-20.

Protestant requests several types of relief from the Commission relating to the logistics of his abandonment from gas services, all at Atmos Energy's expense. These include the removal of all Atmos Energy facilities and equipment from Protestant's property. To determine the appropriate cash payment, Protestant requests that Atmos Energy develop a detailed cost estimate for converting Protestant's residence from natural gas to electric power.⁹² Both the Rule and Atmos Energy's qualifying offer letter are silent on specific logistics for the conversions of directly affected customers. At the hearing, Atmos Energy representatives testified that Atmos Energy would "coordinate" with the Affected Customers on the timing of the physical conversion or the cash payment.⁹³ An Atmos Energy representative further testified that Atmos Energy would remove all of the Affected Customers' above-ground equipment and each riser pipe would be capped off to prevent the possibility of further gas emissions.⁹⁴

While Atmos Energy has provided no further details on its cost-estimate process or equipment removal process or intentions, the Examiners are reluctant to expand the scope of Rule 7.465(b) by imposing specific additional obligations not found in the Rule on Atmos Energy relating to how it will specifically "coordinate" with Affected Customers in the abandonment/conversion process. Based upon the testimony in the record, the Examiners anticipate that Atmos Energy will work with all the Affected Customers, including Protestant, professionally and in good faith to complete this abandonment process, taking into account special considerations and reasonable requests expressed to Atmos Energy by the Affected Customers.⁹⁵

Protestant also requests in Closing Brief that Atmos Energy be required to do the following: (1) provide written notice to all customers who use unprocessed gas and inform them of the risks of such use; (2) participate in a show-cause proceeding regarding the amendment of its tariff to include language that would prohibit Atmos Energy from selling unprocessed gas to residential customers; (3) participate in a regulatory proceeding regarding the fairness and reasonableness of rates for unprocessed gas, as well as, additional gas quality issues; and (4) participate in an enforcement proceeding to determine whether Atmos Energy has violated Chapter 121 of the Texas Utility Code, the Texas Natural Resources Code, or Commission Order.⁹⁶ Protestant cites no particular statute or Commission Order that it believes Atmos Energy may have violated and has provided no evidence in support of any violation of any statute or Commission Order by Atmos Energy. The Examiners find these requests for relief to be outside the scope of this proceeding and not required by applicable statutes and rules.

IX. Conclusion

The Examiners find that the evidence established that the *Application for Abandonment of Service and Facilities* filed by Applicant, Atmos Energy, for the proposed abandonment of service to the nine Affected Customers, including Protestant, is reasonable and necessary and not

⁹² See Protestant Closing Br., pp. 12-15.

⁹³ Tr., 33:11-19.

⁹⁴ Tr., 34:6-35:3.

⁹⁵ *Id.*

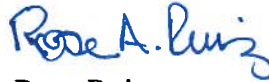
⁹⁶ Protestant Closing Br., pp. 15-16.

contrary to the public interest. The Examiners, therefore, recommend that the Commission grant the *Application for Abandonment of Service and Facilities* of Atmos Energy to permanently discontinue natural gas service to the Affected Customers and that Atmos Energy be permitted to remove its equipment and facilities pursuant to Rule 7.465(b).

Respectfully submitted,



Cecile Hanna
Hearings Examiner
Hearings Division



Rose Ruiz
Technical Examiner
Hearings Division

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

APPLICATION OF ATMOS ENERGY §	
CORP., MID-TEX DIVISION FOR §	
APPROVAL OF ABANDONMENT §	GAS UTILITIES DOCKET
RELATED TO SERVICES AND §	NO. 10374
FACILITIES; ENBRIDGE LINE OP, §	
PALO PINTO COUNTY TO NINE §	
RESIDENTIAL CUSTOMERS. §	

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 2008 & Supp. 2014). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. On July 30, 2014, Atmos Energy Corporation, Mid-Tex Division ("Atmos Energy" or "Applicant") filed with the Railroad Commission of Texas ("Commission") an *Application for Abandonment of Service and Facilities* to abandon service and distribution facilities serving nine residential customers in Palo Pinto County, Texas (the "Affected Customers") under 16 TEX. ADMIN. CODE §7.465(b) (2014).
2. The names and service addresses of these nine customers are found in the *Application for Abandonment of Service and Facilities*, filed July 30, 2014. (Atmos Exhibit 13)
3. Atmos Energy is a gas utility and is subject to the jurisdiction of the Commission.
4. Atmos Energy is a gas utility that owns and operates natural gas distribution facilities within the State of Texas for the distribution of natural gas to end users for their own use and to one local distribution company for subsequent distribution to its end-use customers.
5. The Affected Customers are served from taps on the Enbridge pipeline, from which Atmos Energy has a right to deliver natural gas to the Affected Customers.
6. The natural gas currently delivered by Atmos Energy and in use by the Affected Customers is no longer suitable for residential use.

7. Atmos Energy would be required to spend approximately \$8 million to connect the Affected Customers to an alternative gas source better suited for residential use.
8. Atmos Energy currently receives approximately \$1,900 in total annual non-gas revenue from the nine Affected Customers.
9. Atmos Energy's annual operating cost to serve the nine Affected Customers is approximately \$15,590.
10. Gas distribution service by Atmos Energy to the Affected Customers is not economically viable for Atmos Energy.
11. On or about April 1, 2014, Atmos Energy made a qualifying offer to the nine Affected Customers ("Qualifying Offer") that included the following terms:
 - a. conversion of the natural gas service to LPG fuel service, including a leak test and repair of any leaks, by a licensed LPG dealer or, alternatively, conversion to all electric power;
 - b. installation of one new 250-gallon LPG tank;
 - c. conversion of all existing natural gas appliances to propane, if convertible, and if not convertible, replacement of such appliances with new LPG appliances or, if needed, conversion to electric appliances;
 - d. the initial filling of the LPG tank; and
 - e. in the alternative to the above listed terms, a cash payment equal to the estimated cost to convert to LPG or electric service in lieu of actual conversion.
12. Atmos Energy intended the Qualifying Offer to be the required qualifying offer encompassed by 16 TEX. ADMIN. CODE §7.465 (2014) and 16 TEX. ADMIN. CODE §7.115(30) (2014).
13. The Qualifying Offer did not state a reason for the proposed abandonment.
14. Atmos Energy estimated that the cost of conversion to LPG/propane is approximately \$6,000.
15. Atmos Energy estimated that the cost of conversion to electricity is approximately \$12,000 to \$15,000.
16. Eight of the nine Affected Customers consented to abandonment and agreed to let Atmos Energy pay for conversion of their residences to either propane or electricity per the terms of the Qualifying Offer.

17. On August 15, 2014, Jon Salis (“Protestant”) did not consent to the proposed abandonment and requested a hearing on the merits in this matter.
18. A Notice of Hearing was issued in this docket on August 21, 2014.
19. A hearing on the merits was convened on September 25, 2014, to take testimony, evidence, and legal argument on all issues of law and fact that were raised in or relevant to Atmos Energy’s application, for the purpose of developing a record that the Commission will use in deciding this matter.
20. Subsequent to filing his protest, Protestant changed his mind and now consents to this abandonment.
21. No party has raised objections to the completeness of Atmos Energy’s application under 16 TEX. ADMIN. CODE § 7.465(b), or requested dismissal of the *Application for Abandonment of Service and Facilities* as a result of any deficiency.
22. There is no evidence that Atmos Energy neglected or failed to properly maintain its equipment and facilities pertaining to this proceeding.
23. A minimum of two alternative energy sources are available to the Affected Customers, which are propane and electricity.
24. Both propane and electricity are reasonable alternatives to natural gas service.
25. The cost for propane is approximately \$25.87 per MMBtu.
26. The cost for electricity is approximately \$34.58 per MMBtu.
27. Neither Protestant, nor any other Affected Customer made an investment or capital expenditure in reliance on continued availability of natural gas, where use of an alternative energy source was not available.
28. It is reasonable, necessary, and in the public interest to allow Atmos Energy to discontinue gas service to the Affected Customers.

CONCLUSIONS OF LAW

1. Atmos Energy is a gas utility as defined in TEX. UTIL. CODE ANN. §§ 101.003(7), 121.001 (Vernon 2007 & Supp. 2014) and is subject to the Commission’s jurisdiction under TEX. UTIL. CODE ANN. §§ 104.001, 121.051 (Vernon 2007 & Supp. 2014).
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) (2014).

3. Atmos Energy's *Application for Abandonment of Service and Facilities* contained the information required for such applications in 16 TEX. ADMIN. CODE §7.465(b)(1) (2014), is complete and contains all of the necessary information required for review of the application by the Commission.
4. A Notice of Hearing was issued in this docket on August 21, 2014, and satisfied the requirements of 16 TEX. ADMIN. CODE § 1.45 (2012) and TEX. GOV'T. CODE ANN. § 2001.052 (Vernon 2008 and Supp. 2014).
5. Atmos Energy 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).
6. The findings of fact enumerated herein establish that gas distribution service provided by Atmos Energy to the Affected Customers is no longer economically viable for Atmos Energy and Atmos Energy's nine Affected Customers under 16 TEX. ADMIN. CODE §7.465(b)(5)(A) (2014).
7. The findings of fact enumerated herein establish that Atmos Energy made a "qualifying offer," as that term is defined in 16 TEX. ADMIN. CODE §7.115(30) (2014), to the Affected Customers.
8. The findings of fact enumerated herein establish that the Affected Customers have economically viable alternatives to gas distribution service from Atmos Energy under 16 TEX. ADMIN. CODE §7.465(b)(5)(B) (2014).
9. The findings of fact enumerated herein establish that Atmos Energy's proposed abandonment of gas distribution service to the Affected Customers is reasonable, necessary, and not contrary to the public interest under 16 TEX. ADMIN. CODE §7.465(b)(5) (2014).

IT IS THEREFORE ORDERED that *Application for Abandonment of Service and Facilities* to permanently discontinue service to nine Affected Customers in Palo Pinto County, Texas, 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 _____ day of April, 2015.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN CHRISTI CRADDICK

COMMISSIONER DAVID PORTER

COMMISSIONER RYAN SITTON

ATTEST:

SECRETARY