



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

GUD NO. 10379

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**APPLICATION FILED BY ATMOS ENERGY CORP., MID-TEX DIVISION (ATMOS)  
FOR ABANDONMENT OF SERVICE AND FACILITIES; TRISTATE ETX, LLC  
PINTO COUNTY TO 2 RESIDENTIAL CUSTOMERS**

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### APPEARANCES:

#### APPLICANT – ATMOS ENERGY CORP., MID-TEX DIVISION (ATMOS ENERGY):

##### **Atmos Pipeline Company Texas (Atmos Energy)**

Charles R Yarbrough, II  
Vice President, Rates and Regulatory Affairs  
Atmos Pipeline - Texas  
5420 LBJ Freeway, Suite 1557  
Dallas, TX 75240

Kodey Jolly  
Project Manager, Rates and Regulatory Affairs  
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Dallas, TX 75240

#### **Protestant**

Kenneth Miller  
d/b/a KDM Limited  
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Bakersfield, CA 93314

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320 FM 3059 Streetman, TX 75859

**PROCEDURAL HISTORY:**

Docket Established:	August 18, 2014
Final Hearing Date:	September 23, 2014
Heard By:	Gene Montes, Hearings Examiner Christina Poole, Technical Examiner
Record Closed:	March 17, 2015
PFD Circulation:	April 10, 2015

**STATEMENT OF THE CASE**

Atmos Energy Corporation, Mid-Tex Division (Atmos Energy or Applicant) is a gas utility that provides natural gas to residential customers in Texas. In this case, Atmos Energy has filed an *Application for Abandonment of Service and Facilities* seeking approval from the Railroad Commission of Texas (Commission) to abandon service and distribution facilities to two residential customers in Freestone County, Texas (Affected Customers). Atmos Energy argued that continued service to the Affected Customers is not economically viable for Atmos Energy. Annual operating costs total approximately \$600.00 to serve these two Affected Customers. These costs exceed the approximately aggregate annual revenue received from the two customers totaling \$495.88

On August 26, 2013, 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 the Affected Customers' conversion costs. One of the two Affected Customers, the Protestant, consented to this abandonment and agreed to let Atmos Energy pay for conversion to either electricity or propane. The remaining customer has not consented to any agreement with Atmos Energy and is not a party to this proceeding. As set forth more fully below, the Examiners recommend that the application of Atmos Energy to abandon service to the Affected Customers be granted.

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## PROPOSAL FOR DECISION

### I. Procedural History

On August 18, 2014, Atmos Energy Corp., Mid-Tex Division (Atmos Energy) filed its *Application for Abandonment of Service and Facilities* to two Affected Customers. On August 28, 2014, the Commission received a protest letter from Kenneth Miller. A Notice of Hearing was issued on September 5, 2014, and a hearing on the merits was held on September 23, 2014. Testifying on behalf of Atmos Energy were Pete Brown, consultant for Atmos Energy, Kodey Jolly, Project Manager, Rates and Regulatory Affairs at Atmos Energy, and Charles R Yarbrough, II, Vice President, Rates and Regulatory Affairs at Atmos Pipeline – Texas.

On September 23, 2014, the day of the hearing, one of the two Affected Customers, Kenneth Miller (Protestant), signed a consent which was admitted into evidence. On March 10, 2015, the Examiners requested a status update on Jeff Marsters, the second Affected Customer. Mr. Marsters was properly served notice of the application but did not file an objection or motion to intervene in this proceeding.

### 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. 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.

A Notice of Hearing was issued in this Docket on September 5, 2014, to all parties of record 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 customers which 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.<sup>1</sup>

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<sup>1</sup> 16 TEX. ADMIN. CODE § 7.465(b)(1) – (4).

Rule 7.465 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.<sup>2</sup>

Subsection (5) of Rule 7.465 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.<sup>3</sup>

#### **IV. Discussion of the Evidence**

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. The Affected Customers’ gas supply is provided by Tristate ETX, LLC (Tristate). The customers are served from farm taps on a Tristate pipeline from which Atmos Pipeline - Texas delivers gas to Mid-Tex.

On or about August 26, 2014, Atmos Energy mailed offers to the two Affected Customers in Freestone County, asking for consent to disconnect them from Atmos Energy’s natural gas system. The offer letter contained language offering to pay for the conversion of the Affected Customers’ homes 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. Specifically, the qualifying offer letter provided the following in return for consent to abandonment:

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<sup>2</sup> 16 TEX. ADMIN. CODE § 7.115 (30).

<sup>3</sup> Rule 7.465(b)(2)(5)(A)-(E).

- (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.

Atmos Energy intended this offer to be the required qualifying offer encompassed by 16 *TEX. ADMIN. CODE* § 7.465. Atmos Energy estimated that the cost of conversion to propane was \$6,000. Applicant also calculated that the cost of conversion to electricity was approximately \$12,000-\$15,000. Propane in the affected area currently costs approximately \$26.31 per MMBtu.<sup>4</sup> Electricity in the affected area currently costs approximately \$33.70 per MMBtu.<sup>5</sup>

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 continued use by residential customers and also because the cost of continued service to the two Affected Customers is not economically viable for Atmos Energy.

Evidence was presented regarding revenues generated from this connection and the cost to read the meter. The yearly cost for the meter reader was \$600.<sup>6</sup> During the twelve month period July 2013 to June 2014, the total revenue generated by Atmos Energy, excluding gas cost, was approximately \$495.88.<sup>7</sup> No additional evidence regarding the cost to maintain the meter or the farm tap odorizer was presented.

Evidence was also submitted by Atmos Energy regarding the gas quality for the two Affected Customers.<sup>8</sup> The analysis, provided by Atmos Energy, established the high BTU content of the natural gas, the presence of the heavier hydrocarbons, as well as the presences of hydrogen sulfide in the gas.<sup>9</sup> Atmos Energy explained that these conditions raised safety concerns.<sup>10</sup>

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<sup>4</sup> Atmos Ex. No. 4.

<sup>5</sup> *Id.*

<sup>6</sup> Atmos Ex. No. 5.

<sup>7</sup> Atmos Ex. No. 6.

<sup>8</sup> Atmos Ex. No. 7.

<sup>9</sup> Hearing Transcript, GUD No. 10379, Sept. 23, 2014 (Tr.), 9:3-21.

<sup>10</sup> Tr. 9:12-21.

Atmos Energy asserted that it has complied with all of the prerequisites of Section 7.465(b). Pursuant to the requirements of that Rule, Atmos Energy made a qualifying offer to the customer, as required by 16 *TEX. ADMIN. CODE* § 7.465. A customer refused the offer and Atmos Energy filed this proceeding. The only protestant to the abandonment has since consented to the abandonment.

#### V. Examiners' Recommendation

The Examiners find that Atmos Energy has established that the proposed abandonment is just and reasonable. Atmos Energy has satisfied the requirements of Section 7.465. Continued service is not economically viable. Even setting aside the gas supply issues, Atmos Energy established that the annual cost to read the meter, totaling \$600, outweighs the revenues, in the amount of \$495.88, generated. Continued service, therefore, is uneconomic. There is no evidence in the record that disputes the gas quality concerns.

The Examiners find that the evidence in the record established that the Affected Customers have 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 Atmos Energy properly maintained the facilities proposed for abandonment.

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

#### VI. Conclusion

The Examiners find that the evidence established that Atmos Energy's proposed discontinuance of service is reasonable and necessary and not contrary to the public interest. The evidence established that even without additional expenditure, continuing to provide natural gas service is not economically viable. The Examiners, therefore, recommend that the Commission grant the application of Atmos Energy to permanently discontinue natural gas service to the Affected Customers and that Atmos Energy be permitted to remove its facilities.

Respectfully submitted,



Gene Montes, Hearings Examiner



Christina Poole, Technical Examiner



**BEFORE THE  
RAILROAD COMMISSION OF TEXAS**

**APPLICATION OF ATMOS ENERGY §  
CORP., MID-TEX DIVISION FOR §  
APPROVAL OF ABANDONMENT §  
RELATED TO SERVICE AND §  
FACILITIES; TRISTATE ETX, LLC P/L § GAS UTILITIES DOCKET NO. 10379  
(FORMER LINE MAA), FREESTONE §  
COUNTY TEXAS TO 2 RESIDENTIAL §  
SERVICES §**

**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 August 18, 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 two residential customers in the unincorporated area of Freestone County, Texas (Affected Customers) under 16 TEX. ADMIN. CODE § 7.465(b) (2014).
2. Atmos Energy is a gas utility and is subject to the jurisdiction of the Commission.
3. 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.
4. The Affected Customers are served from taps on the Tristate pipeline, from which Atmos Energy has a right to deliver natural gas to the Affected Customers.
5. Atmos Energy currently receives approximately \$495.88 in total annual non-gas revenue from the two Affected Customers.
6. Atmos Energy's annual operating cost to serve the two Affected Customers is approximately \$600.
7. Gas distribution service by Atmos Energy to the Affected Customers is not economically viable for Atmos Energy.

8. On or about August 26, 2013, Atmos Energy made a qualifying offer to the two Affected Customers (Qualifying Offer) that included the following:
  - 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;
  - e. in the alternative, a cash payment equal to the estimated cost to convert to LPG or electric service in lieu of actual conversion.
9. 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).
10. The Qualifying Offer did not state a reason for the proposed abandonment.
11. Atmos Energy estimated that the cost of conversion to LPG/propane is approximately \$6,000.
12. Atmos Energy estimated that the cost of conversion to electricity is approximately \$12,000 to \$15,000.
13. On August 26, 2014, Kenneth Miller (Protestant) did not consent to the proposed abandonment and filed a protest.
14. The other customer, Jeff Marsters, did not respond to the application and did not file a protest to the application.
15. A Notice of Hearing was issued in this docket on September 5, 2014.
16. Before the hearing, Kenneth Miller, one of the two Affected Customers, consented to abandonment and agreed to Atmos Energy's proposal to pay for conversion to either propane or electricity per the terms of the Qualifying Offer.
17. A hearing on the merits was convened on September 23, 2014, to take testimony, evidence, and legal argument on all issues of law and fact.
18. Subsequent to filing his protest, Protestant reversed his prior objection and has now consented to this abandonment.

19. 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.
20. There is no evidence that Atmos Energy neglected or failed to properly maintain its equipment and facilities pertaining to this proceeding.
21. A minimum of two alternative energy sources are available to the Affected Customers, propane and electricity.
22. Both propane and electricity are reasonable alternatives to natural gas service.
23. The cost for propane is approximately \$26.31 per MMBtu.
24. The cost for electricity is approximately \$33.70 per MMBtu.
25. There is no evidence that any 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.
26. 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 September 5, 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). 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). 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 two Affected Customers under 16 TEX. ADMIN. CODE § 7.465(b)(5)(A) (2014).
5. On September 23, 2014, the day of the hearing, Kenneth Miller signed a consent form which was admitted into evidence. The other affected customer, Jeff Marsters, was properly served notice of the application, but did not file an objection or motion to intervene in this proceeding.
6. 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.
7. 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).
8. 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 the two Affected Customers in Freestone County, Texas, and provide the conversion or alternative cash payment set out in the Qualifying Offer to those customers, 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 May, 2015.

**RAILROAD COMMISSION OF TEXAS**

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**CHAIRMAN CHRISTI CRADDICK**

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**COMMISSIONER DAVID PORTER**

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**COMMISSIONER RYAN SITTON**

**ATTEST:**

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**SECRETARY**