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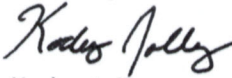
Cecile Hanna  
Hearings Examiner  
Railroad Commission of Texas  
1701 North Congress Ave.  
P.O. Box 12967  
Austin, TX 78711-2967

Re: **Gas Utilities Docket No. 10374** *Application of Atmos Energy Corp., Mid-Tex Division for Approval of Abandonment related to Service and Facilities; Enbridge Line OP, Palo Pinto to 9 Residential Customers*

Ms. Hanna,

Please find enclosed a copy of Atmos Energy's Reply Brief in the above referenced docket. If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Kodey Jolly

Cc:

Michelle A. McFaddin  
6701 Silvermine Drive, Ste. 201  
Austin, TX 78736

BEFORE THE RAILROAD COMMISSION OF TEXAS  
GAS SERVICES DIVISION

APPLICATION OF ATMOS ENERGY	§	GAS SERVICES DIVISION
CORP., MID-TEX DIVISION	§	DOCKET NO. 10374
FOR ABANDONMENT OF	§	
SERVICE AND FACILITIES	§	

**REPLY BRIEF OF ATMOS ENERGY CORP. MID-TEX DIVISION**

On behalf of its Mid-Tex Division, Atmos Energy Corporation (“Atmos Energy” or the “Company”) submits its Reply Brief and respectfully shows as follows:

**INTRODUCTION**

In Protestant’s Closing Brief, he concedes and agrees with the Company that natural gas service to his residence in Palo Pinto County, TX should be discontinued and his residence converted to an alternative energy. Therefore, the only issues remaining are how the conversion should be conducted and the party status of Make-A-Difference-Water.

Protestant raises three major issues in his Closing Brief related to the actual abandonment that drive his requests for relief:

1. The Company failed to respond to Protestant’s initial questions and concerns;
2. The Company failed to take into account Protestant’s future energy costs when evaluating what alternative energy sources are viable in the Palo Pinto area;
3. The Company failed to make its customers aware of the associated risks of the wet gas it was distributing.

Finally, many of the Protestants’ requests for relief are either outside the scope of this proceeding or outside the authority of the Railroad Commission of Texas to grant.

## REPLY TO PROTESTANT'S CLOSING BRIEF

### **I. Abandonment of Natural Gas Service**

#### **A. Protestant's Requests for Relief Nos. 2-6**

In his Closing Brief, Protestant asks the Commission to order the Company to pay for his attorney fees related to this proceeding, which amount to \$10,000. Protestant reasons that because Atmos Energy "stonewalled" him and did not respond to his concerns that he had no choice but to hire representation<sup>1</sup>. This is simply not true. Atmos Energy returned Protestant's somewhat confrontational voice message regarding this abandonment and it was Protestant who chose to not call back in response to Atmos Energy's efforts to communicate<sup>2</sup>. Protestant testified that he was experiencing health problems in April of 2014 and speculated that he had not returned the call because there were other things on his mind at the time<sup>3</sup>. However, the election form by which he declined to consent to abandonment and where he listed his questions and concerns was dated April 12, 2014<sup>4</sup>.

Protestant had the Company's phone number, knew who to call, and simply chose not to call back. In light of the confrontational voicemail, Protestant's failure to return the Company's phone call and the returned election form in which consent was refused, Atmos Energy surmised that Protestant was unwilling to convert, thus this abandonment proceeding was initiated<sup>5</sup>. Atmos Energy did not necessitate the need for an attorney in this proceeding, it was Protestant's right and his choice to employ an attorney. There is nothing in the abandonment rule which provides for an award of attorney's fees and there is certainly not an agreement between the Company and Protestant for the same, thus an award of attorney's fees should be denied.

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<sup>1</sup> Protestant's Closing Brief, pg 15.

<sup>2</sup> Hearing Transcript, pg 30, ln 15-20.

<sup>3</sup> Id, pg 106, ln 14-21.

<sup>4</sup> Id, Exhibit 8.

<sup>5</sup> Id, pg 35, ln 15-19.



The second major issue raised in Protestant's brief was that while the Company was determining what alternatives to natural gas were available in the Palo Pinto area, it did not take into account alternative energy sources outside of propane or electricity, or Protestant's future energy costs into its decision. Protestant seems to be under the impression that one of the conditions for abandonment approval is a requirement that the Company perform a top to bottom analysis of the energy market, including every possible energy source, as well as each source's life cycle costs. That is simply not the case.

Rule 7.465(b)(5)(B) does not impose specific requirements on the utility with regard to the determination of the reasonable availability of alternative energy sources . It certainly does not require the utility to pay for an abandoned customer's future energy costs either. It is just one of the conditions the Commission is to consider when deciding if Atmos Energy met its burden of proof. In fact, the Company has met this burden by showing that electricity and propane, energy sources that have routinely been viewed by the Commission as alternative energy sources to natural gas, are available in the Palo Pinto area<sup>6</sup>.

On the other hand, Protestant has provided no data or information regarding the reasonableness of solar, wind, or geothermal energy, from a cost perspective, as being a viable alternative to natural gas. Protestant seems to favor solar energy as he has requested the Company pay for solar panels and equipment to be installed at his residence<sup>7</sup>. However, a conversion to solar energy in this instance is no more than a conversion to electricity. The solar power Protestant might generate in excess of his needs would just be a windfall he could sell back to the grid to offset his other energy costs. Meanwhile, the remaining Atmos Energy customers would be saddled with the upfront costs of Protestant's solar operation.

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<sup>6</sup> Id, pg 31, ln 19.

<sup>7</sup> Protestant's Closing Brief, pg 13.

Protestant's request for solar panels, name brand high efficiency appliances, and the possible construction of an access hatch in his roof are nothing more than an attempt to renovate and update his residence at the expense of Atmos Energy's ratepayers. This is not in the public interest and his requests should be denied.

#### **B. Protestant's Request for Relief Nos. 7-10**

The third major issue raised in Protestant's brief was that Atmos Energy has been selling non-residential quality gas to residential users and not informing them of the risks. However, Atmos Energy has talked to these customers about the quality of gas in the Palo Pinto area and it has been explained to them how this gas affects their service<sup>8</sup>. In fact, the Company had previously tried to abandon these customers (or their predecessors) before the current abandonment rule was put in place. It met significant opposition and the Commission eventually denied that request to abandon. Once the current abandonment rules were adopted and put in place, the Company began the process of eliminating wet gas service from its systems over time, and that process continues today.

Additionally, many people in Texas do find wet to be suitable for residential use even if the Company does not. Protestant's Closing Brief would lead one to believe that he was in imminent danger of carbon monoxide poisoning, or that the Company was defrauding him by selling high Btu gas. Again, this is not the case. Many people contract for the right to take and use unprocessed gas when negotiating oil and gas leases or easements from utilities or pipeline companies, and there are many people in Texas who are currently using unprocessed gas in their homes today. While there is a greater risk to these users when compared to a user of processed natural gas, neither user is in imminent danger of carbon monoxide poisoning or other health problems. Now would be a good time to point out that Atmos Energy has no record of any of its

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<sup>8</sup> Hearing Transcript, pg 48, ln 13-17.

customers on the Palo Pinto system complaining about air quality issues in the home or experiencing respiratory or any other health problems due to the use of natural gas<sup>9</sup>.

As a result of selling wet gas to residential customers, Protestant requests that Atmos Energy be required:

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 the Company 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 the Company has violated Chapter 121 of the Texas Utility Code, the Texas Natural Resources Code or Commission Order.

First, regarding the request for the Company to send written notice to all customers currently on a wet gas system, Atmos Energy believes a general communication regarding the risks of wet gas use would create more questions and confusion. Further, the Company would not be able to handle such a large number of conversions at one time. In the Company's experience, it is better to handle these abandonments on a case by case basis in a piecemeal fashion which we continue to do today. As we can see from the current proceeding, abandonments are involved and time consuming processes, and to expect Atmos Energy to be able to handle so many abandonments at once on a system wide basis would be unrealistic. In addition, because there are a great number of people across the state served with wet gas by

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<sup>9</sup> Id, pg 57, ln 16.



producers, gatherers, pipelines, and other local distribution companies, a decision to issue broad and ranging notice requirements should be made on a state wide basis if the Commission determines this to be a good policy decision. Because Protestant's request would create unnecessary confusion and an unmanageable situation, this request should be denied.

Regarding the requests for the show cause hearing and regulatory hearing on the rates and rules surrounding the distribution of unprocessed natural gas to residential customers, Protestant has presented no evidence to support its assertion that Atmos Energy has improperly charged customers served with unprocessed gas an excessive rate. The Company can only assume that Protestant believes that gas rates are charged based on its heating value. That is not the case. Atmos Energy sells gas on an Mcf or Ccf basis and differences in heating value are not a factor in calculating a customer's bill.

Finally, regarding the enforcement proceeding, Atmos Energy has not violated any provision of Chapter 121 of the Texas Utility Code, the Texas Natural Resources Code, or any Commission Order. Further, Protestant has not pointed to a single section of either Code or any Commission Order which he believes the Company has violated. Because neither party has cited a particular statute or Order that needs to be enforced, Protestant's request for an enforcement hearing should be denied.

## **II. Party Status of Make-A-Difference-Water**

Protestant claims in his Closing Brief that all requirements for associational standing are met in order for Make-A-Difference-Water ("MADW") to be granted party status. Protestant lays out three requirements in his Closing Brief, however, MADW only meets only meets one of those requirements. While MADW does have one single member that does have standing in his own right to participate in this proceeding, he is the only member of MADW who is a customer

of Atmos Energy, and he is also participating in this action in an individual capacity as the Protestant. The rest of the members who signed the "petitions to join" MADW are not customers of Atmos Energy, are not affected by this proceeding, and would not have standing to participate individually.

With regard to the interests the association is seeking to protect being germane to the purpose of the association, this is clearly not the case. As pointed out in the Company's Initial Brief, MADW stated its purpose for seeking party status was that it was concerned about the water and sediment quality of Lake Palo Pinto and the effect the water has on the health, safety, and value of the properties in the area<sup>10</sup>. Once it became clear that the water in Lake Palo Pinto would be unaffected by this abandonment, MADW suddenly became more generally concerned about the "health, safety, and welfare of the Lake Palo Pinto community..."<sup>11</sup> In light of the fact that MADW appears to have been organized days before the hearing, it becomes clear the only purpose for this loosely termed "organization" was to intervene in and delay and confuse this proceeding.

Lastly, any relief requested in this proceeding would require the participation of the individual members. The only issue to be decided in this action is whether or not the utility has the permission to abandon a customer's natural gas service and convert it to an alternative energy source. The only person who can contest abandonment of natural gas service is the customer. 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.

MADW has not met its burden of proof to be granted party status in this action thus its motion should be denied.

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<sup>10</sup> See Notice of Appearance of Counsel and Request to be Designated as a Party to Contested Case Proceeding, pg 1.

<sup>11</sup> Protestant's Closing Brief, pg 5.



## **CONCLUSION**

Protestant has conceded that the natural gas service at his residence is unsuitable for residential use, thus the only issue to be decided is how to conduct the conversion. Protestant seems to be under the impression that his natural gas service is guaranteed and he can demand damages as a result of the abandonment. He is asking the Company to upgrade his appliances and services, and to pay for improvements to his home which is unreasonable and unnecessary<sup>12</sup>. The basis for these requests is that his future energy costs will go up and that is somehow the Company's responsibility. Once again, that is not the case. Atmos Energy is willing to pay for the reasonable conversion costs and to replace appliances with that of like quality just as it has in every conversion it has ever been a part of, and it requests permission from the Commission to do just that. Atmos Energy has met its burden of proof for abandonment in this action and its request should be granted.

**[ Signature Page Follows ]**

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<sup>12</sup> See Protestant's Closing Brief, pg 13-14, asking for a possible access hatch to be built in his roof, high efficiency appliances, and solar panels and equipment.

RESPECTFULLY SUBMITTED,

ATMOS ENERGY CORP., MID-TEX DIVISION,  
A division of Atmos Energy Corporation

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