

**BEFORE THE  
RAILROAD COMMISSION OF TEXAS**

**APPLICATION OF ATMOS ENERGY §  
CORP., MID-TEXAS DIVISION, FOR §  
APPROVAL OF ABANDONMENT §  
RELATED TO SERVICE AND FACILITIES; §  
ENBRIDGE LINE OP, PALO PINTO §  
COUNTY TO 9 RESIDENTIAL CUSTOMERS §**

**GAS UTILITIES DOCKET**

**NO. 10374**

**CLOSING BRIEF**

**TO THE HONORABLE CECILE HANNA, HEARINGS EXAMINER:**

COMES NOW, Michelle A. McFaddin, on behalf of Jon Salis (the "*Protestant*"), one of the nine (9) residential customers directly affected by the Application for Approval of Abandonment related to Service and Facilities (the "*Application*") filed by Atmos Energy Corporation - Mid-Texas Division ("*Atmos*") by letter dated July 29, 2014, and Make A Difference Water, a public interest group comprised of residents of the Lake Palo Pinto community, and files this Closing Brief respectfully showing the following:

**I.  
PROCEDURAL BACKGROUND**

By letter dated March 27, 2014, Atmos Energy notified nine of its rural customers in Palo Pinto County that it was proposing to convert their existing natural gas service to alternative energy sources that included LPG fuel, propane or electricity. In this letter, a copy of which was entered into evidence as Atmos Exhibit No. 2, Atmos indicated that it planned to seek approval from the Railroad Commission of Texas (the "*Commission*" or "*RRC*") to abandon natural gas service. No reason was provided for such abandonment. An election form was attached to each

letter and eight of the nine customers executed the election form consenting to abandonment.<sup>1</sup>

The Protestant refused to consent to abandonment of service and returned the election form to Pete Brown, an Atmos representative, with a series of questions and comments outlined on the back of the election form. This annotated election form was entered into evidence as Exhibit No. 8. The Protestant's comments included questions relating to why his natural gas service was being abandoned, 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. Atmos' representative, Pete Brown, acknowledged receiving the Protestant's election form.<sup>2</sup> Because he interpreted the Protestant's comments to mean that the Protestant was not agreeable to the conversion, Mr. Brown made no further effort to contact the Protestant or to address his questions about the planned conversion activities.<sup>3</sup> Atmos also failed to respond to the comments outlined on the back of his election form.<sup>4</sup>

By letter dated July 29, 2014, Atmos submitted an Application to abandon natural gas services being provided to nine residential customers located in Palo Pinto county served from a pipeline owned by Enbridge Gathering (North Texas), L.P. ("*Enbridge*"), a copy of which was entered into the record as Exhibit 13. As one of the nine, affected residential customers, the Protestant received a copy of the Application in early August, 2014. Atmos states in section III of the Application that "if abandonment is approved, Applicant will convert the non-consenting customer to propane or electricity at Applicant's sole expense, or provide the non-consenting customer with a cash payment equivalent to the cost to convert." In this same section, Atmos

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<sup>1</sup> Transcript, Testimony of Pete Brown, page 30, line 7.

<sup>2</sup> Transcript, Testimony of Pete Brown, page 30, lines 20-23.

<sup>3</sup> Transcript, Testimony of Pete Brown, page 30, lines 22-23; page 35, lines 10-19; page 36, lines 1-4.

<sup>4</sup> Transcript. Testimony of Jon Salis, page 87, lines 24-25; page 88, line 1.

also states that qualifying offers were made to each customer "along with an opportunity for them to ask any questions."

Atmos' rationale for abandoning natural gas service to these nine residential customers is set forth in section IV of the Application, as follows:

The Enbridge pipeline's primary purpose is to gather high BTU gas, rich in natural gas liquids, and deliver it to a downstream processing plant. The nature of the gas makes its use for residential service undesirable because the natural gas liquids tend to condense in colder weather potentially blocking the gas flow to the customers and interrupting service. In addition, the high BTU content of the gas can result in insufficient combustion of the gas by residential appliances creating the possibility of air quality issues within the residence.

The facilities to be abandoned were stated as being regulators, meters, farm tap odorizers, and short sections of service lines and piping that have been installed over a number of years to serve the directly affected customers.

Alarmed at the rationale provided for abandoning service since he was never informed by Atmos or its predecessors-in-interest that the gas he was receiving was unsuitable for residential use<sup>5</sup> and concerned about the increased lifecycle (future) costs that would be associated with having to convert from natural gas to propane or electricity, both of which are significantly more expensive, the Protestant filed a notice of protest with the Commission in a letter dated August 10, 2014, a copy of which was entered into the record as Exhibit No. 9. The Protestant noted in his protest that Atmos had failed to respond to the questions that he raised on the election form. Atmos did not bother to respond to this notice of protest or to otherwise communicate with him prior to the September 25, 2014 hearing.

On August 21, 2014, the Commission's Hearings Division issued Examiners' Letter No. 1 along with a notice of hearing on the pending Application in a gas utilities docket assigned the

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<sup>5</sup> Transcript, Testimony of Jon Salis, page 90, lines 4-7 and 14; page 91, lines 14-23.



number GUD 10374. On behalf of the Protestant, I filed a Notice of Appearance of Counsel with the Commission's Docket Services on September 22, 2014.

On the evening prior to the scheduled Commission hearing on September 25, 2014, I was asked to represent a newly-formed organization, Make A Difference Water, comprised of numerous residents of the Lake Palo Pinto community, in order to present their concerns about the environmental, nuisance, property devaluation, health and safety issues raised by the possible abandonment of the Enbridge OP pipeline, a portion of which underlies Lake Palo Pinto, as well as associated residential gas lines. Michael Lewis, a representative of Make A Difference Water, appeared at the September 25, 2014 hearing to testify on behalf of the organization. A Notice of Appearance of Counsel and Request to be designated as a Party for Make A Difference Water was filed with the Commission's Docket Services shortly after the hearing convened. Party status for Make A Difference Water was conditionally denied by the Hearings Examiner. At the conclusion of the hearing, the parties were directed to file closing briefs on or before October 24, 2014. Counsel for the protesting parties was specifically directed to brief whether Make A Difference Water possessed associational standing to participate in this contested case proceeding.

## **II. ASSOCIATIONAL STANDING: MAKE A DIFFERENCE WATER**

The law relating to associational standing is well-established in the State of Texas. The test adopted by the Texas Supreme Court for associational standing in *Texas Association of Business v. Texas Air Control Board, et al.*, 852 S.W.2d 440, 447 (Tex. 1993), a copy of which is attached as Attachment "A" to this Closing Brief, is as follows: 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."<sup>6</sup>

As argued in the Notice of Appearance of Counsel and Request to be designated as a Party filed by Make A Difference Water with the Commission's Docket Services on September 25, 2014, Make A Difference Water satisfies the legal test for associational standing in this proceeding because at least one of its members, Jon Salis, is an affected party with standing to participate in this contested case proceeding. He is one of the nine residents whose natural gas service will be terminated pursuant to the pending Application.

In the Petition to Join that was attached to the Notice, the organization states that it is a group of individuals living in and around Lake Palo Pinto concerned about the health, safety and welfare of the Lake Palo Pinto community and, in particular, with Atmos Energy's plans to remediation of any abandoned facilities located within the community. The purpose of the organization, to address health, safety and welfare of residents who live and work within close proximity to the Enbridge OP pipeline and associated residential distribution lines and related gas utility equipment to be abandoned, is clearly germane to the gas quality and air quality issues outlined in Atmos' Application as well as to the nuisance and related property devaluation that may occur if Atmos fails to properly abandon these natural gas facilities and equipment. Moreover, based on testimony adduced by both Atmos and the Protestant during the hearing, there may be members of this organization who are currently using unprocessed natural gas obtained from the Enbridge OP gathering pipeline that is not suitable for residential use and may in fact be posing a substantial and significant risk to their health and safety.

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<sup>6</sup> In its holding on the proper test for associational standing, the Court cites to *Hunt v. Washington State Apple Adver. Commission*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977); see also *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871 (Tex. App.-Austin 2010).

Finally, and as noted in the Petitions to Join that were attached to the Notice, neither the claim asserted nor the relief requested requires the participation of the individual members of the organization. For the foregoing reasons, the Hearings Examiner should recognize that Make A Difference Water meets the legal standard for associational standing and should therefore be designated as a party to this contested case proceeding.

### **III. EVALUATION OF ALTERNATIVE ENERGY SOURCES**

Atmos has the burden of proof to show that its proposed abandonment activities are reasonable and necessary and not contrary to the public interest. The Commission is required to consider certain conditions when making a determination regarding an application for abandonment including (a) whether the potentially abandoned customers have any alternative, how many and at what cost, (b) whether the customer has made investments or capital expenditures in reliance on the continued availability of natural gas, where the use of alternative energy sources is not viable, (c) whether the utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect, and (d) any other considerations affecting the potentially abandoned customers.<sup>7</sup>

Atmos has failed to meet its burden to identify viable alternative energy sources for these nine residential customers and their respective costs. The record in this proceeding shows that the only alternative energy sources evaluated by Atmos were propane and electricity;<sup>8</sup> no evaluation was made relating to whether solar, wind or geothermal energy sources were available, viable or a cost-effective way of reducing the significant increase in future lifecycle

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<sup>7</sup> 16 Tex. Admin. Code §7.465(b)(5) (relating to Abandonment).

<sup>8</sup> Transcript, Testimony of Pete Brown, page 31, lines 16-19.



costs caused by converting to electricity.<sup>9</sup> Atmos did not perform a thorough analysis of the cost to convert each of the affected customers' residences from natural gas to propane or electricity.<sup>10</sup> Nor did Atmos perform any analysis on the future cost differential between continuing to use natural gas versus converting to propane or electricity.<sup>11</sup>

The Protestant performed his own analysis of the costs that would be incurred if he was forced to convert to propane or electricity; a copy of the spreadsheet that he prepared was entered into the record as Exhibit No. 11. His analysis demonstrates that his cost to use electricity rather than natural gas for his residential energy needs, based on current retail, residential rates, would more than triple from \$649 to \$2,178 per year.

Prior to the hearing and, in particular, during his evaluation of the qualifying offer tendered by Atmos by letter dated March 27, 2014, the Protestant believed that requiring him to convert to propane or electricity, thereby tripling his energy costs, was not economically reasonable or necessary.<sup>12</sup> However, in light of the information contained in the pending Application relating to the unsuitable quality of the natural gas and the testimony adduced during this hearing relating to the substantial and significant danger posed to residential customers who are currently using this unprocessed natural gas - excessive carbon monoxide emissions within their residences<sup>13</sup> - the Protestant no longer opposes Atmos' wish to abandon service.<sup>14</sup> In fact, he believes that termination of service and conversion need to occur as soon as possible before winter arrives.<sup>15</sup>

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<sup>9</sup> Transcript, Testimony of Pete Brown, page 36, lines 16-20.

<sup>10</sup> Transcript, Testimony of Pete Brown, page 38, lines 9-25; page 39, lines 1-11.

<sup>11</sup> Transcript, Testimony of Pete Brown, page 40, lines 1-6.

<sup>12</sup> Transcript, Testimony of Jon Sales, page 98, lines 21-23.

<sup>13</sup> Transcript, Testimony of Jesse Garcia, page 45, lines 3-14; page 51, lines 2-19.

<sup>14</sup> Transcript, Testimony of Jon Salis, page 99, lines 20--25; page 100, line 1.

<sup>15</sup> *Id.*



Pursuant to the Commission's abandonment requirements set forth at 16 Tex. Admin. Code §7.465(b)(5)(B), Atmos should be required to perform a more thorough assessment of the cost of converting to alternative energy sources including an evaluation of the use of solar powered systems to defray future energy costs by generating energy that can be introduced back onto the electrical grid. Based on the fact that Atmos has been selling him unprocessed natural gas since 1997 that both it and Enbridge knew was unsuitable for residential use and could endanger both him and his family by producing carbon monoxide within their residence,<sup>16</sup> he does not trust Atmos to perform any conversion activities on his property or to otherwise act in a manner that is protective of his and his family's health, safety and welfare. Atmos should not only be required to make a cash payment to him to cover the costs of conversion, as they offered to do in the pending Application, he should have the right to select and/or approve the general contractor who will be overseeing all on-site, residential conversion activities.

#### IV. PUBLIC HEALTH AND SAFETY CONSIDERATIONS RELATING TO ATMOS' NATURAL GAS QUALITY

##### A. Interruption of Service

As noted above, one of the two reasons presented in Atmos' pending Application for abandoning natural gas service to these nine residential customers is that the nature of the gas makes its use for residential service undesirable because the natural gas liquids tend to condense in colder weather, blocking the gas flow to the customers and interrupting service. Atmos considers natural gas to have a high BTU content if the BTU content exceeds a value of 1100; a copy of its publicly-available natural gas specification is attached hereto as Attachment "B" and can be obtained at [http://apt.atmosenergy.com/trans\\_services/gas\\_quality.html](http://apt.atmosenergy.com/trans_services/gas_quality.html). The quality of the

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<sup>16</sup> Transcript, Testimony of Jesse Garcia (Atmos), page 49, lines 8-24; Testimony of Mike Montgomery (Enbridge), page 79, lines 20-25; page 80, lines 1-4; 13-20.

natural gas that has been sold to the Protestant since 1997 does not meet this published standard, a fact that was acknowledged by Atmos in the record in this proceeding<sup>17</sup> and that is evidenced by a monthly analysis performed on a March 26, 2014 sample that was entered into evidence as Exhibit No. 7. The dry BTU level for Enbridge Energy's 10396 Hamilton Comp. Station is specified as being 1224.58 for natural gas that was comprised of 78.29% methane, 10.86% ethane and 4.64% propane.

Jesse Garcia, an operations supervisor employed by Atmos, testified that the natural gas at issue from the Enbridge OP pipeline is subject to freezing, causing liquid in the customer lines and "[t]hose issues can cause problems with customers' appliances and also...cuts the service off to the customers for safety reasons."<sup>18</sup> A review of Atmos Exhibit No. 5 confirms that fact that 129 service calls were made by the nine residents affected by the pending Application over a one-year period. One customer, Joe Nix, made 32 service calls in a single year. When asked whether any of the nine service calls made by the Protestant relating to loss of service during this period could have been caused by the deteriorating quality of the natural gas being marketed by Atmos, Mr. Garcia responded by saying "yes".<sup>19</sup>

Pursuant to 16 Tex. Admin. Code §7.45 (relating to Quality of Service), certain minimum services standards apply in unincorporated areas; these standards are also appended to Atmos' gas tariff, RRC Tariff No. 26834. Every gas utility is required to make all reasonable efforts to prevent interruption of service.<sup>20</sup> Continuing to sell unprocessed natural gas from gathering lines to residential users that contains high levels of natural gas liquids that freeze up in cooler temperatures, thereby blocking gas flow and interrupting service, fails to comport with this

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<sup>17</sup> Transcript, Testimony of Jesse Garcia (Atmos), page 45, lines 12-14; page 49, lines 8-12 and 19-24; Testimony of Mike Montgomery (Enbridge), page 79, lines 20-25; page 80, lines 1-4.

<sup>18</sup> Transcript, Testimony of Jesse Garcia, page 45, lines 3-1; page 55, lines 7-19.

<sup>19</sup> Transcript, Testimony of Jesse Garcia, page 47, line 25; page 48, lines 1-3.

<sup>20</sup> 16 Tex. Admin. Code §7.45(1)(a)(i).



quality of service standard. Any number of reasonable measures could have been taken by Atmos (or Enbridge) to prevent gas quality-related service interruptions including fuel blending or other pre-distribution processing, gas quality monitoring and/or temporary discontinuance of service or permanent termination of service.

B. Indoor Air Quality Issues

The second and more compelling rationale for abandoning natural gas service to these residential users is that high BTU gas may not be sufficiently combusted by residential gas appliances, creating the possibility of air quality issues within the residence. When Mr. Garcia was asked to explain the sorts of problems that incomplete combustion of this high BTU natural gas could cause within a residence, he responded that the "most common would be carbon monoxide."<sup>21</sup> When asked whether excessive levels of carbon monoxide, a colorless and odorless gas, could be lethal to human beings, he admitted that excessive levels of carbon monoxide can kill human beings and presents significant health and safety implications.<sup>22</sup> Notwithstanding the significant public health threat posed to these residential users, Mr. Garcia admitted that Atmos has not made any systematic effort to notify these users of this risk through letters or other forms of correspondence;<sup>23</sup> nor to his knowledge has Atmos made any attempt to notify the Protestant at any time that the use of this unprocessed, high BTU natural gas could lead to air quality problems, including excessive indoor carbon monoxide emissions, in his own home.<sup>24</sup> When asked whether Atmos has a policy on when abandonment and conversion should be performed with respect to a residential user who is burning natural gas of unsuitable quality and/or experiencing indoor air quality issues, Mr. Garcia responded that to his knowledge, not only does

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<sup>21</sup> Transcript, Testimony of Jesse Garcia, page 51, lines 2-16; page 55, lines 19-25; page 56, lines 1-4.

<sup>22</sup> Transcript, Testimony of Jesse Garcia, page 51, lines 17-19; page 53, lines 16-19.

<sup>23</sup> Transcript, Testimony of Jesse Garcia, page 50, lines 9-14, 19-25; page 51, line 1; page 52, lines 11-22; page 54, lines 4-10.

<sup>24</sup> Transcript, Testimony of Jesse Garcia, page 51, lines 20-24.



Atmos not have a set policy on this,<sup>25</sup> Atmos has not developed any standards or procedures to address this issue.<sup>26</sup>

An Enbridge employee, Mike Montgomery, an area superintendent with 23 years of experience in the natural gas industry, also testified in this proceeding. When asked whether he believed that it was appropriate to market and distribute unprocessed natural gas that is not suitable for residential use to residential customers, he admitted that it is not appropriate.<sup>27</sup>

Apparently concerned about the testimony relating to the BTU content of the Enbridge OP natural gas, Technical Examiner Ruiz asked Mr. Garcia to discuss the BTU content. Mr. Garcia indicated that he did not know the exact BTU content but went on to state that "it's a gathering system and it's what we consider in the field rich gas because it hasn't been processed, so, we know it's high BTU because there is condensate..."<sup>28</sup> Technical Examiner Ruiz followed up on this line of questioning by asking whether the BTU content is provided on customers' bills. Mr. Garcia responded by stating, "No...[T]he customer bill is measured at a flat standard across the system. It does not vary for each individual customer..."<sup>29</sup>

In short, there is no way that a residential user of this unprocessed, high BTU natural gas would know that burning it could result in equipment malfunctions and service interruptions, much less in emissions of carbon monoxide in their residences since Atmos has not made any effort to notify them of the unsuitable quality of its natural gas and its potential to generate carbon monoxide within their homes and no information is presented on their bills (or for that matter on the Atmos website) relating to the BTU content of the natural gas that they are receiving. It should be noted that these customers have been paying retail gas rates established

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<sup>25</sup> Transcript, Testimony of Jesse Garcia, page 60, lines 15-22.

<sup>26</sup> Transcript, Testimony of Jesse Garcia, page 61, lines 1-8.

<sup>27</sup> Transcript, Testimony of Mike Montgomery, page 80, lines 13-20.

<sup>28</sup> Transcript, Testimony of Jesse Garcia, page 68, lines 21-25; page 69, lines 1-4.

<sup>29</sup> Transcript, Testimony of Jesse Garcia, page 69, lines 5-12.

under an RRC gas tariff for residential users in unincorporated areas. A review of Atmos' gas tariffs shows that these rural customers have been paying more for this unprocessed natural gas than Atmos' other customers are paying for fully processed and refined natural gas that presumably meets its gas quality specifications.

Unfortunately, the Commission's quality of service rules do not address the marketing and distribution of unprocessed natural gas that is unsuitable for residential use because it contains high levels of natural gas liquids, as reflected by its high BTU content. Nor is there any prohibition in the Commission's rules or in Atmos' gas tariffs on marketing and distributing unprocessed natural gas obtained from gathering lines to residential customers in unincorporated areas. Section 121.304 of the Utility Code, however, does provide the Commission with the legal authority to assess an administrative penalty against a gas utility that violates the Code, fails to perform a duty imposed by the Code, or fails to comply with an order of the Commission if the violation poses a threat to the public safety.

WHEREFORE, PREMISES CONSIDERED, on behalf of Jon Salis and Make A Difference Water, I respectfully request that you accept this Closing Brief and grant John Salis and Make A Difference Water the following relief:

- (1) grant party status in this proceeding to Make A Difference Water based on the fact that this organization has demonstrated that it possesses associational standing because: (a) at least one member of the organization, Jon Salis, has standing as an affected party to contest the pending Application; (b) the environmental, health and safety issues raised in this proceeding are germane to the purposes for which this organization was formed; and (3) participation in this contested case proceeding does not require the participation of individual members of Make A Difference Water;
- (2) require Atmos to disconnect and remove all of its gas facilities and equipment (i.e., the meters, the inlet riser, the regulator down to ground level, and the outlet loop) at its sole expense in a manner that is protective of human, health, safety and the environment as soon as possible and in no event later than fifteen (15) days after issuance of a Commission order in this docket. In addition, and at a minimum, Atmos should be



required at its expense to remove the Protestant's service line from its meter to the residence since the service line may contain harmful materials since it has been used to transport unprocessed natural gas that contains significant amounts of natural gas liquids. Atmos or its contractor shall restore all yard and utility easement areas that have been trenched, dug or otherwise disturbed during removal activities to their original condition; all excavations should be backfilled and compacted to restore the surface topography of the affected area(s).

- (3) If, during removal of the service line, Atmos or its subcontractor determine that there have been leaks from the service line to the surrounding soil, then Atmos should be required to inform the Protestant of the presence of possible soil contamination, to identify the location(s) of all potentially contaminated soil and at its sole expense to perform soil testing using appropriate and approved U.S. Environmental Protection Agency methodologies to determine whether the soil has been contaminated with natural gas liquids, volatile and semi-volatile organic constituents, heavy metals, and/or naturally occurring radioactive materials. Any confirmed contamination present at levels exceeding background levels should be removed and disposed of at an appropriate and licensed solid waste management facility in order to restore the property to its original, uncontaminated condition.
- (4) require Atmos to develop a detailed cost estimate for the costs associated with converting the Protestant's residence from natural gas to electric power for purposes of determining the appropriate cash payment as soon as possible and in no event later than fifteen (15) days after the issuance of a Commission order in this docket. This detailed cost estimate should be prepared by a properly licensed and bonded general contractor selected and/or approved by the Protestant and should include, at a minimum, the following:
  - (a) the installation of a solar power system manufactured by Aztec Renewable Energy Inc., including above-ground supports, UL-certified photovoltaic panels, A Class Panels, and inverter(s), that will function to put power back onto the electrical grid via net metering in order to offset the increased lifecycle burden of using electricity rather than natural gas;
  - (b) the cost of purchasing and installing electric appliances of the following quality and efficiency: (i) Hot Water Heater - AO Smith Voltex Hybrid Electric Heat Pump 50-Gallon water Heater, Model SHPT or its equivalent; and (ii) Heat Pump - a Bryant Evolution Variable Speed Heat Pump System with all required Fancoil, Evolution Thermostatic Control, and Emergency Strip Supplemental Heat required for a complete compatible heating/cooling system with a minimum 18 Seer, 12.5 EER, 11 HSPF. Model 288BNV or the equivalent.



- (c) any necessary upgrades needed to the electric service line, electrical panel and electrical wiring, the cold/hot water plumbing line, plumbing connections, and line replacement within the Residence needed in order to install the new electric appliances. Because the unprocessed, high BTU natural gas that has been marketed and distributed to the Protestant by Atmos since 1997 may have been corrosive and, in addition, may have contained hazardous constituents that include, but are not limited to, volatile and semi-volatile organic compounds, heavy metals and naturally occurring radioactive materials, the cost estimate shall address the cost of removing these interior gas lines from the residence for proper disposal as well as the cost of restoring the interior of the residence to its condition prior to the commencement of conversion activities;
- (d) in the event that the HVAC subcontractor makes a determination at pre-bid walkthrough that he/she cannot gain egress or ingress to the east attic to remove and replace the old gas furnace, Atmos shall prepare a cost estimate on the cost of installing a roof-based access hatch for purposes of determining the amount of the cash payment. The size shall be based on the minimum opening needed by HVAC Contractor to safely ingress and egress this area of the attic. Increasing the size of the kitchen ceiling existing access is not an acceptable option; and
- (e) all subcontractor estimates for conversion work should be prepared under a single contract with the general contractor and the general contractor should be required to maintain and surrender a Certificate of Insurance naming the Protestant and Wife as primary additional insureds. The following insurance requirements should be mandated:

Insurance Coverage	Statutory Limits
<b>Workers Compensation (WC) Statutory Limits and Employers Liability:</b>	
Each Accident	\$ 500,000
Disease - Policy Limit	\$ 500,000
Disease - Each Employee	\$ 500,000
<b>Commercial General Liability (CGL):</b>	
General Aggregate including Products & Completed Operations	\$ 2,000,000

Each Occurrence	\$ 1,000,000
<b>Automobile Liability</b> Per person/per accident Combined Single Limit	\$ 500,000
<b>Professional Liability</b>	\$1,000,000*
<b>Alcohol/Liquor Liability</b>	\$1,000,000*

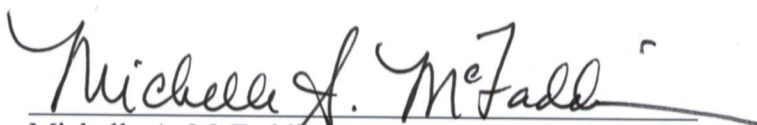
- (5) require Atmos to make a cash payment to the Protestant based on the detailed cost estimate prepared in accordance with Request for Relief No. 4, above, to cover the costs associated with converting his residence from natural gas to electric power as soon as possible and in no event later than thirty (30) days after issuance of a Railroad Commission order in this docket.
- (6) contrary to the assertions in its pending Application that all nine residential customers were provided with the opportunity to ask questions after receipt of the initial qualifying offer, the record shows that Atmos failed to make a good faith effort to address the questions and issues outlined on the copy of the election form returned by the Protestant, failed to respond in any manner to the Protestant's notice of protest, and failed to communicate with the Protestant regarding the unsuitability of the natural gas being furnished to his residence and the resulting air quality implications including excessive emissions of carbon monoxide before, at the time of, or after submission of the pending Application. Because the Protestant was stonewalled at every point by Atmos, he had no choice but to hire an attorney in order to participate in a meaningful way at the hearing convened on September 25, 2014 and thereafter in this contested case proceeding. Atmos should be required to reimburse the legal fees incurred to participate in this contested case proceeding in an amount of \$10,000.
- (7) require Atmos to provide written notice within fifteen (15) days of issuance of a Railroad Commission order in this docket to each and every customer, whether residential, industrial or municipal, who is currently using unprocessed natural gas obtained from gathering lines that may be unsuitable for residential use to advise them of the following: (a) the possibility that the use of such natural gas could cause routine and continuing equipment malfunctions and service interruptions as well as carbon monoxide emissions that could endanger their health, safety and welfare; (b) the need to ensure that operational carbon monoxide monitors are in place at their facilities at all times; and (c) that they have an opportunity to request that Atmos terminate natural gas service and convert their facilities to alternative energy sources that are safe, economical and reliable at its sole expense within a time-certain period;



- (8) initiate a show cause proceeding pursuant to §121.153, TEX. UTILITY CODE ANN. (Vernon Supp. 2014) and 16 Tex. Admin. Code §§1.47 and 7.45(1) (A) (relating to Service Interruptions) of the Commission's rules to require Atmos to show why RRC Tariff No. 26834 (relating to Residential Sales in Unincorporated Areas) and the January 1, 2013 Service Rules and Regulations attached thereto should not be amended to include gas quality and merchantability standards that prohibit Atmos from distributing unprocessed natural gas that has been collected from gathering lines and that is unsuitable for residential use to residential customers in unincorporated areas since the use of such natural gas may cause service interruptions, particularly during winter months, thereby posing a significant risk to public health and safety;
- (9) initiate a regulatory proceeding pursuant to §121.152, TEX. UTILITY CODE ANN. (Vernon Supp. 2014) for the following public interest and policy reasons: (a) to determine whether gas utilities operating within the State of Texas have established fair and reasonable rates and rules for the distribution of unprocessed natural gas that has been collected in gathering lines and that is unsuitable for residential usage; (b) to determine whether the Commission has established fair and equitable rules to supervise gas utilities and their natural gas transportation and distribution activities since these entities have, at least in the case of Atmos, knowingly and intentionally sold unprocessed natural gas that is unsuitable for residential use to rural, residential customers for many years at retail gas rates that exceed the rates charged to customers receiving fully-processed natural gas; (c) to evaluate whether the Commission's quality of service rules, set forth at 16 TAC §7.45, should be revised to contain gas quality and merchantability criteria applicable to all gas utilities operating within the State of Texas; and (d) to evaluate whether the Commission should undertake rulemaking activities to specifically prohibit the sale and distribution of unprocessed natural gas collected from gathering lines that may be unsuitable for residential use to residential customers;
- (10) initiate an administrative or civil enforcement proceeding pursuant to §121.304, TEX. UTILITY CODE (Vernon Supp. 2014) to determine whether Atmos and/or Enbridge have violated Chapter 121 of the Texas Utility Code, provisions of the Texas Natural Resources Code and/or the Commission's regulations by selling at retail residential rates (unincorporated areas) unprocessed natural gas from gathering lines that is unsuitable for residential use, thereby posing a threat to public safety; and
- (11) grant such other and further relief to which they may be entitled.



Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Closing Brief has been filed via Hand Delivery with the Railroad Commission of Texas' Docket Services and sent via electronic mail and/or First Class United States Mail, postage prepaid, to all parties in this proceeding on the 24th day of October, 2014.



Michelle A. McFaddin  
Attorney at Law

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