

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Complaint Against Atmos)
Energy by Floyd Cattle Co., Inc./Martie Floyd) Docket No. 16-ATMG-454-COM

ORDER ADOPTING LEGAL MEMORANDUM

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined Litigation Staff's Memorandum submitted in this matter and being duly advised in the premises, the Commission finds and concludes as follows:

1. On April 11, 2016, Martie Floyd (Complainant) filed a Formal Complaint (Complaint) against Atmos Energy (Atmos) with the Commission. The Complainant asserted that Atmos requires electronic metering for all transportation customers, which is not possible in rural areas of Kansas where phone lines are not easily accessible.¹ The Complaint is attached hereto as Attachment A.
2. On July 29, 2016, Litigation Staff for the Commission prepared a Memorandum analyzing the Complaint for compliance with Commission regulations.² Litigation Staff notes that the Complainant does not specifically cite to any violation of law, rule, or order in support of its contentions, and, therefore, is not in compliance with K.A.R. 82-1-220(b)(1).³ However, Litigation Staff recommends the Commission waive K.A.R. 82-1-220(b)(1) for good cause.⁴ Litigation Staff's Legal Memorandum is attached hereto as Attachment B.

¹Formal Complaint, page 3. (April 11, 2016).

²Legal Staff's Memorandum (July. 26, 2016) (Legal Memorandum).

³Legal Memorandum, 3.

⁴Legal Memorandum, 3.

3. Upon review of Litigation Staff's Legal Memorandum, the Commission is satisfied that jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.* Specifically, the Commission is authorized to investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁵

4. Furthermore, the Commission agrees with Litigation Staff's analysis and recommendations and finds that Litigation Staff's Memorandum dated July 26, 2016, should be adopted and incorporated by reference. Specifically, the Commission finds the Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220, and establishes a *prima facie* case for Commission action.

5. The Commission concludes that Commission Staff should conduct an investigation into the claims alleged in the Complaint and therefore orders such an investigation.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) K.A.R. 82-1-220(b)(1) is waived for good cause.

(B) The Formal Complaint shall be served upon Atmos for an Answer.

(C) Staff is directed to investigate this matter and submit a Report and Recommendation to the Commission.

(D) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein.⁶

(E) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

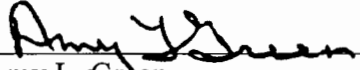
BY THE COMMISSION IT IS SO ORDERED.

⁵*Id.* at 2-3.

⁶K.S.A. 66-118b; K.S.A. 77-529(a)(1).

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: AUG 04 2016



Amy L. Green
Secretary to the Commission

JF

Order Mailed Date

AUG 05 2016

ATTACHMENT “A”

KANSAS CORPORATION COMMISSION
OFFICE OF PUBLIC AFFAIRS & CONSUMER PROTECTION

Formal Complaint
February 2015

FORMAL COMPLAINT

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

IN THE MATTER OF THE COMPLAINT AGAINST

ATMOS ENERGY
(Respondent, name of utility company)

by

FLOYD CATTLE CO., INC Martie Floyd
(Complainant, your name)

For Commission
use only

DOCKET NO.
16-ATMG-454-COM

Please provide complainant (your) contact information:

Full Name(s): FLOYD CATTLE CO., INC Martie Floyd

Address: 619D N. Road G Johnson, KS 67855

Daytime Phone: 620-492-1948

E-mail Address (optional): _____

FORMAL COMPLAINT

FLOYD CATTLE CO., INC Martie Floyd
(Your name)

states that the above-named respondent is a public utility providing service in Kansas and is subject to the jurisdiction of the State Corporation Commission.

The facts and circumstances surrounding the complaint are set out in detail below:
(Be specific and as brief as possible. If necessary, attach additional sheets.)

Please see attached letter.

(Continued on the other side)

Formal Complaint *continued*

Complainant requests that the respondent utility be required to provide an answer to the complaint and requests the following action be ordered by the Commission. *(State action or result desired.)*

Please see attached letter.

and for such further order or orders as the Commission may deem necessary.

VERIFICATION: I do solemnly, sincerely, and truly declare and affirm that the statements made in this complaint form are true and accurate to the best of my knowledge, and I do this under the pains and penalties of perjury.

Lloyd Cattle Co. by.

Monte Lloyd

Complainant's (your) signature

4-8-16

Date signed

FILING INSTRUCTIONS

This form may be filed in person at the Kansas Corporation Commission's Office or by mail. All formal complaints, whether filed by mail or delivered in person, must be directed to:

Acting Executive Secretary
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

For more information about the formal complaint process please refer to the instructions provided with this form or visit the KCC website: <http://kcc.ks.gov/>, Consumer Assistance, Filing a Complaint. You may also contact our Consumer Assistance staff toll-free at 1-800-662-0027 or by e-mail at public.affairs@kcc.ks.gov.

Kansas Corporation Commission
Consumer Protection Division

April 8, 2016

Floyd Cattle Co.
6190 North Rd. G
Johnson, Ks 67855

To Whom It May Concern:

I am writing to you to file a formal complaint against Atmos. Atmos is the natural gas utility in Stanton County where our farm is located.

We are wishing to transport gas for irrigation purposes. Atmos Gas will allow us to do that, but they require electronic metering for all transport customers. This is logistically impossible in rural areas because there are no phone lines that are easily accessible which electronic meters require. Other Kansas utilities such as Midwest Energy, and BlackHills Energy which are located in western Kansas do not require electronic metering or other prohibitive forms of communication to read their meters. Atmos already has gas meters at the locations of our irrigation wells.

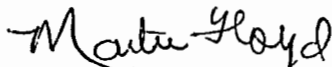
One of the main reasons that we are wishing to transport gas across Atmos lines is because we can lock in the price of natural gas we will be using so that we can know the cost of one of the greatest inputs that is required for growing irrigated crops. Currently we have no idea what our monthly gas bill will be from Atmos until we receive the bill. If we can transport gas from other sources we can protect the price and at the same time Atmos will still receive their profit for transporting across their lines and for billing.

It seems unfair that Atmos can impose rules that make it impossible in rural areas for farmers or other businesses to possibly take advantage of cost savings if they occur. We are asking that you force Atmos to either use the current gas meters or to use some other type of meter that is not cost prohibitive for their consumers. Why do they impose a rule that other gas utilities do not?

Again we ask that the Commission look at this issue and consider what is really fair. We would be willing to look at other solutions if they are not cost prohibitive. A farm is like any other business, we need to look at our costs and if we can save money we need to. Atmos is not allowing us to do that.

Thank you for your attention to this matter.

Sincerely yours,



Martie Floyd
Floyd Cattle Co.
620-492-6610

P.S. For this complaint Addresses and Meter #'s are:

NW 1-27-42 11N742328
SW 6-27-41 G0001117
NW 15-27-41 11N742329
NW 7-27-41 12T959727

ATTACHMENT “B”

MEMORANDUM

To: Chairman Jay Scott Emler
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

From: Jake Fisher, Litigation Counsel

Date: July 29, 2016

Re: 16-ATMG-454-COM
In the Matter of the Complaint Against Atmos Energy by Floyd Cattle Co.,
Inc./Martie Floyd

EXECUTIVE SUMMARY

Floyd Cattle Co., Inc./Martie Floyd (Complainant) filed a Formal Complaint¹ wherein Complainant alleged Atmos Energy (Atmos) requires electronic metering for all transportation customers, which is not possible in rural areas of Kansas where phone lines are not easily accessible. Litigation Staff recommends the Commission accept the Formal Complaint, serve the Formal Complaint on Atmos for an Answer, and direct Commission Staff to investigate the matter.

BACKGROUND

On April 11, 2016, Complainant filed a Formal Complaint against Atmos. In the Formal Complaint, Complainant states his desire for Atmos to transport gas for irrigation purposes. Complainant states Atmos requires electronic metering for all transportation customers, while other utilities providing gas in western Kansas do not. Complainant explains there are no telephone lines that are easily accessible, which is required for an electronic meter.² Complainant further states that Atmos currently has gas meters at the location of his irrigation wells.³ Complainant requests that Atmos either use the current gas meters or another type of meter that is not cost prohibitive for customers.⁴

¹Complaint Against Atmos Energy by Martie Floyd (April 11, 2016) (Formal Complaint).

²Formal Complaint at 3.

³Id. at 3.

⁴Id. at 3.

ANALYSIS

Upon the filing of a formal complaint, the Commission must determine, “whether or not the allegations, if true, would establish a [prima] facie case for action by the commission and whether or not the formal complaint conforms to the commission’s regulations.”⁵ If the Commission determines these conditions are satisfied, the Complaint is served on the subject utility for an Answer.⁶

K.A.R. 82-1-220(b) requires formal complaints to satisfy three procedural requirements:

- (1) Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by the continuance of acts or omissions;
- (2) set forth concisely in plain language the facts claimed by the complainant to constitute the violation; and
- (3) state the relief sought by the complainant.

The Formal Complaint plainly describes the facts and circumstances giving rise to the complaint by the requirement by Atmos of electronic natural gas meters in rural areas where the required phone lines are not easily accessible.⁷ The Formal Complaint also states the relief sought.⁸ Complainant seeks an order from the Commission requiring Atmos to use the current natural gas meters or another type of meter that is not cost prohibitive for customers.⁹

The Formal Complaint does not expressly cite the provision(s) of law or the regulations or orders of the Commission that have been or are being violated by the acts or omissions of the utility. Therefore, the Formal Complaint does not comply with the procedural requirement of K.A.R. 82-1-220(b)(1). However, the Commission should waive this requirement.

The Commission has been given full power, authority and jurisdiction to supervise and control the natural gas public utilities doing business in Kansas.¹⁰ The Commission is also charged with ensuring utilities provide efficient and sufficient service at just and reasonable rates and establish just and reasonable rules and regulations.¹¹ Moreover, the Commission is granted authority over each natural gas public utility’s equipment, manner of conduct, and management to protect public safety; and shall inquire into any neglect or violations of the laws of this state by any natural gas public utility.¹²

In this instance, the Formal Complaint clearly implicates numerous provisions of law. These include but are not limited to K.S.A. 66-1,201, K.S.A. 66-1,202, and K.S.A. 66-1,208. While the Formal Complaint does not specifically identify the applicable laws,

⁵K.A.R. 82-1-220(c).

⁶Id.

⁷Formal Complaint, 3.

⁸Id. at 3.

⁹Id. at 3.

¹⁰K.S.A. 66-1,201.

¹¹K.S.A. 66-1,202.

¹²K.S.A. 66-1,208.

Litigation Staff believes that based on the totality of the complaint, the Formal Complaint provides sufficient detail to notify Atmos and the Commission that the Complainant is asking the Commission to exercise its authority and make determinations with regard to Atmos' service obligations under Kansas law, as well as determine the utility's compliance with Commission regulations.

The detailed requirements of K.A.R. 82-1-220 are more restrictive than those required by the Kansas Public Utilities Act and Kansas courts.¹³ Further, the public interest is not served by dismissing the complaints of customers not represented by legal counsel for deficiencies related to stringent procedural requirements.¹⁴ Therefore, because the Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220, Litigation Staff recommends the Commission waive the requirements of K.A.R. 82-1-220(b)(1) for good cause.

RECOMMENDATION

Litigation Staff recommends the Commission find:

- The Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220;
- K.A.R. 82-1-220(b)(1) should be waived for good cause;
- The Formal Complaint establishes a *prima facie* case for Commission action;
- The Formal Complaint should be served upon Atmos for an Answer; and
- Staff should be directed to investigate this matter and submit a Report and Recommendation to the Commission.

¹³See, K.S.A. 66-101e (the specific language of the statute allows for a complaint based solely on an unreasonable practice, K.A.R. 82-1-220(b) places the additional burden of alleging a specific violation of law, tariff or order which is not required by statute and may place an undue burden on complainants not represented by legal counsel); *See also, Boydston v. Bd. of Regents for State of Kan.*, 242 Kan. 94, 99, 744 P.2d 806, 811 (1987) (as long as the opponent is apprised of the facts that entitle the plaintiff to relief, it is not necessary to spell out a legal theory of relief in the pleadings).

¹⁴K.S.A. 66-155 obligates "the attorney of the corporation commission" to prosecute suits on behalf of parties complaining of unjust discriminations by a public utility or other violations of the Public Utility Act. Litigation Staff believes full representation of the Complainant in this case would be an unnecessary use of Commission resources and is evidence of further good cause for the Commission to waive the requirements of K.A.R. 82-1-220(b)(1) and K.A.R. 82-1-220(b)(3).

CERTIFICATE OF SERVICE

16-ATMG-454-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

first class mail/hand delivered on AUG 04 2016.

JAMES PRICE, ATTORNEY
ATMOS ENERGY
5430 LBJ FREEWAY, THREE LINCOLN CENTRE
PO BOX 650205
DALLAS, TX 75265-0205
james.price@atmosenergy.com

BRAD MILLS
ATMOS ENERGY CORPORATION
25090 W 110TH TERR
OLATHE, KS 66061
brad.mills@atmosenergy.com

MARTIE FLOYD
FLOYD CATTLE CO., INC.
6190 N ROAD G
JOHNSON, KS 67855

JAKE FISHER, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
j.fisher@kcc.ks.gov

/S/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date

AUG 05 2016