

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

In the Matter of the Complaint Against )  
Atmos Energy by DH Pace Company ) Docket No. 16-ATMG-049-COM  
Located At: 1901 E. 119<sup>th</sup> Street, Olathe, )  
Kansas 66061. )

**NOTICE OF FILING STAFF'S REPORT AND RECOMMENDATION**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) has investigated the formal complaint filed by Managed Energy Systems (MES) on behalf of its client, DH Pace Company (DH Pace or Complainant), against Atmos Energy (Atmos). Staff states in its Report and Recommendation (R&R) as follows:

1. On July 22, 2015, MES filed with the Commission a formal complaint (Complaint) on behalf of DH Pace against Atmos.

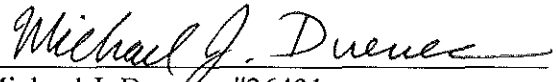
2. Subsequently, MES and Atmos filed various responses and replies addressing MES' allegations in this docket.

3. After conducting discovery and reviewing the various responses and replies, Staff hereby files the attached R&R, as well as Attachments 1 and 2. The R&R analyzes the allegations set forth in the above-captioned Complaint against Atmos, and as a result of its investigation, Staff recommends the Commission order the following:

- Atmos refund \$551.14 to the Complainant which reflects a more accurate estimate of charges for the period of October 18, 2013, through January 18, 2015;
- Atmos credit its PGA \$256.23 for the cost of gas lost because it failed to bill a customer for the period of October 1 through October 17, 2013;
- Atmos be issued a civil penalty of \$500 because of its failure to provide sufficient and efficient service to its customer regarding billing for gas consumption;
- The Commission deny MES's request for the Complainant to be reimbursed for legal or consulting fees expended in pursuing this Complaint.

WHEREFORE Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael J. Duenes", written over a horizontal line.

Michael J. Duenes, #26431  
Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, Kansas 66604  
(785) 271-3181 (Telephone)  
(785) 271-3124 (Facsimile)  
[m.duenes@kcc.ks.gov](mailto:m.duenes@kcc.ks.gov) (E-mail)

For Commission Staff

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chairman Jay Emler  
Commissioner Shari Feist Albrecht  
Commissioner Pat Apple

**FROM:** Leo Haynos, Chief of Energy Operations and Pipeline Safety  
Jeff McClanahan, Director of Utilities

**DATE:** March 17, 2016

**SUBJECT:** Docket Number: 16-ATMG-049-COM  
In the Matter of the Complaint Against Atmos Energy by DH Pace  
Company Located At: 1901 E. 119<sup>th</sup> Street, Olathe, Kansas 66061

**EXECUTIVE SUMMARY:**

On July 22, 2015, Managed Energy Systems (MES) filed a Complaint on behalf of its client, DH Pace Company (Complainant), alleging Atmos Energy (Atmos) willfully neglected the application of its tariffs in billing the Complainant for natural gas usage from October 2013 through December 2014. MES notes the Complainant paid Atmos \$68,449.05 for the gas consumed during this time period but believes the billed amount is in error. MES requests the Commission order Atmos to refund the above mentioned amount to the Complainant because the invoices generated by Atmos were fabricated. MES also requests the Commission order Atmos to pay any consulting or legal fees paid by DH Pace in its effort to determine the misrepresentation of usage estimates.

On August 25, 2015, Atmos responded to this Complaint stating the Complainant's account with Atmos had not been correctly initiated in the Atmos billing system, and therefore, the meter was not read for a 13 month period. After 13 months of not receiving a gas bill, the Complainant inquired to Atmos regarding its bill. At that time, Atmos realized its error, read the meter, and provided an estimated bill to the Complainant.

After conducting discovery and reviewing the various responses and replies filed in this Docket, Staff believes the Complainant is responsible for paying for the gas it consumed. The volume of gas is known from the meter serving the Complainant's facility. However, Staff does not believe Atmos properly allocated the amount of gas consumed to

each billing month because it did not account for the difference in winter verses summer heat load in its allocation method. Staff's investigation also revealed that Atmos failed to bill the Complainant for the gas consumed from October 18, 2013, to November 12, 2013. Atmos also failed to bill the previous customer at this address for the time period of October 1, 2013, through October 17, 2013.

Based on a weather normalized estimate of the Complainant's usage rate, Staff has determined the Complainant overpaid Atmos for gas usage by \$1,019.68.<sup>1</sup> However, Atmos failed to bill the Complainant \$468.54<sup>2</sup> for its portion of the October 2013 gas usage. After combining the October 2013 bill with the appropriate allocation methodology for November 2013 through January 2015, Staff has determined the Complainant overpaid Atmos by \$551.14.

Staff recommends the Commission order Atmos to refund \$551.14 to the Complainant. Because Atmos failed to bill \$323.65 to the previous customer at this address, Staff recommends Atmos credit the PGA \$256.23 for the cost of gas<sup>3</sup> not billed to the previous customers.

Staff notes Atmos' failure to correctly bill its customers has resulted in this proceeding, as well as in unpaid costs being absorbed by the Atmos customer base. Failure to properly bill customers is a violation of Atmos' published tariff and results in Atmos not providing sufficient and efficient service. Therefore, Staff recommends Atmos be issued a civil penalty in the amount of \$500. We further note the Commission does not have jurisdiction to award damages regarding Atmos' failure to follow its published tariff. Therefore, Staff recommends the Commission deny MES's request for the Complainant to be reimbursed for legal or consulting fees expended in pursuing this Complaint.

### **BACKGROUND:**

In its response to this Complaint, Atmos states the previous customer at the Complainant's address was a transportation customer for Atmos. That is, the customer purchased gas from a third party supplier and shipped it on the Atmos system. For this type of customer, Atmos charges only for the transportation of gas to the customer meter. In order to confirm the customer's usage volumes are synchronized with gas nominations delivered to the pipeline, Atmos requires the customer to use an electronic flow measurement (EFM) system to report gas volumes. According to Atmos, the financial accounting related to gas volumes and billing for transportation is performed differently than the accounting and billing for Atmos commercial customers where Atmos purchases and delivers the gas for consumption.

The previous customer at the Complainant's address notified Atmos that it would no longer be transporting gas on the Atmos system effective October 1, 2013. Therefore, Atmos personnel went to the meter site on that date, zeroed the meter and switched it from an EFM reporting system to one that required manual meter readings. In this way,

---

<sup>1</sup> Response to Staff Data Request 1.

<sup>2</sup> Response to Staff Data Request 6.

<sup>3</sup> Response to Staff Data Request 6 combining line items for commodity costs, purchased gas adjustment, and weather normalization adjustment.

the meter was redesignated from a transportation customer account to a commercial customer account. It appears, however, the Atmos personnel making this modification to the metering equipment failed to notify or cause the Atmos billing system to reflect the newly assigned customer class to the meter. Atmos notes it started using a new billing software in 2013 which failed to recognize customers being migrated from the transportation class to the commercial class of customer.

On October 18, 2013, the Complainant applied to Atmos to be a commercial gas customer. Based on this request, Atmos service personnel conducted a “move in –read only” service call to read the new customer’s meter. This action occurred on November 12, 2013.<sup>4</sup>

Because the new commercial customer account was not recognized by the Atmos billing software, Atmos failed to bill the Complainant. After receiving natural gas service for 15 months and not receiving a bill, the Complainant contacted Atmos, and Atmos realized its error. Atmos then read the gas meter to determine the amount of gas consumed by the Complainant from November 12, 2013, through January 13, 2015.<sup>5</sup> Subsequently, Atmos calculated a gas bill for each of the unbilled months by simply taking the total days of service in the unbilled time period and dividing that value into the actual usage based upon the cumulative meter reading. Once the gas volume was allocated to the unbilled months, Atmos used the gas price and charges for the billing months to calculate an estimated bill for each month. This calculation resulted in Atmos billing the Complainant for \$68,449.05 which the Complainant paid. Atmos did not bill the Complainant for the gas consumed from October 18, 2013, to November 12, 2013, nor did it bill the previous customer at the Complainant’s address for gas consumed under the commercial customer classification from October 1, 2013, through October 17, 2013.

In March of 2015, the Complainant hired MES to perform an energy audit of its facilities, and MES filed this Complaint on behalf of its client in July of 2015. In addition to the disputed allocation method for the unbilled period, MES notes in the Complaint that Atmos estimated another gas bill in April of 2015. In its response to the Complaint, Atmos explains the April 2015 estimate as an error in the billing that was corrected in the next month’s billing cycle.

### **ANALYSIS:**

During the course of its investigation, Staff has found no evidence that would question the gas meter’s accuracy. Therefore, Staff concludes the Complainant consumed the volume of natural gas recorded by the meter from November 12, 2013 until it was next read on January 13, 2015. Furthermore, Staff concludes the Complainant also consumed a portion of the 1095 hundred cubic feet (ccf) of gas recorded on the meter for the time period of October 1, 2013, to November 12, 2013. The Complainant’s portion of this amount corresponds to the period of October 18, 2013 (the date the Complainant notified Atmos to activate the meter in its name) and November 12, 2013 (the date of the first recorded Atmos reading).

---

<sup>4</sup> Exhibit D, Atmos Answer to DH Pace Complaint, August 25, 2015.

<sup>5</sup> Paragraph 5, Atmos Energy’s Reply to DH Pace’s Response, September 28, 2015.

Although Staff concludes the Complainant consumed the amount of gas recorded on the meter, we agree with MES that the allocation method used by Atmos to divide the gas volume into equal monthly increments is not the best approach toward estimating gas usage because it does not reflect the effects of weather on the Complainant's heating load. This error is translated to the billing invoice and further compounded by the fluctuations in gas prices incurred by an Atmos commercial customer throughout the year. In order to obtain a more accurate estimation of gas allocations, Staff requested Atmos to provide an estimation of gas volumes based on the number of heating degree days (HDD) that occurred in each month of usage during the unbilled time period. The HDD values used by Atmos were included in their most recent rate case. These calculations are included as Attachment 1 to this Report and Recommendation. Using this method and comparing the impact on the cost of gas used to estimate the Complainant's bill, Atmos' calculation indicates the estimate based on HDD lowers the billed amount of gas by \$1,019.68.

In this Complaint, MES alleges Atmos did not follow the terms of its tariff when estimating the volume of gas consumed by the Complainant. Atmos responded by stating the volume of gas consumed was not estimated because the meter was accurate. Staff's evaluation of this case would agree with Atmos that the amount of gas consumed is a known matter. However, we note the allocation of monthly gas used necessarily is an estimate. Using the HDD approach outlined above, Staff believes a more precise estimate is achieved.

As noted earlier in this Report, Atmos failed to bill the Complainant for gas consumed from October 18, 2013, to November 12, 2013. Allocating the volume of gas on a daily basis and applying the appropriate billing determinants to this 26-day period, Atmos calculated the Complainant should have been billed an additional \$468.54 for gas consumed.<sup>6</sup> Atmos also failed to bill the previous customer for the 17 days in which that customer received gas service under a commercial customer account. Atmos' calculation of the billed amount for the previous customer is \$323.65.<sup>7</sup> At this time, the total amount of \$792.19 has not been collected by Atmos from the accounts at this address. The cost of gas associated with this amount are, therefore, recorded as lost and unaccounted for (L&U) gas costs and absorbed by the Atmos purchased gas adjustment (PGA). In order to rectify this oversight, Staff believes it is appropriate for Atmos to charge the Complainant for its share of the October 18 through November 12, 2013 bill. For that portion not collected by Atmos from the previous customer, Staff recommends Atmos refund the costs associated with gas purchases to its customers by crediting those costs to the PGA.

Staff notes the Complainant is correct in stating Atmos did not follow its tariff provisions related to billing frequency<sup>8</sup> which requires a meter to be read at least once every 36 days. In its response, Atmos states this error was the result of poor or nonexistent communications between the Atmos staff performing on-site routine customer services and the Atmos billing department. Staff contends the failure of Atmos to comply with the terms of its tariff has inconvenienced the Complainant and necessitated the use of

---

<sup>6</sup> Response to Staff Data Request 6.

<sup>7</sup> *Id.*

<sup>8</sup> Schedule I, Section 4, Paragraph C –Meter Reading Periods.

estimates to calculate a reasonable charge for the amount of gas consumed. In addition, Atmos ratepayers will absorb any costs Atmos did not collect from the previous customer at this address as well as the costs associated with Staff's investigation into this Docket. To date, Staff's costs related to this Docket have been \$2,600. The facts in this case indicate Atmos' meter reading error was unintentional. However, Staff contends the failure of Atmos to establish the necessary communications protocols within its corporation to ensure proper billing of its customers is a violation of K.S.A. 66-1,202. This statute requires Atmos to provide reasonably sufficient and efficient service to its customer. Further, the intra-company communication error resulted in Atmos' failure to follow its Commission-approved tariff in billing the Complainant.

For any natural gas public utility that fails or neglects to obey any lawful requirement or order made by the Commission, K.S.A. 66-138 requires a civil penalty between \$100 and \$5,000 per offense to be assessed against the utility. In this case, Staff is recommending the Commission find Atmos did not provide reasonably sufficient and efficient service as required by K.S.A. 66-1,202 and issue a civil penalty to Atmos for \$500. Attachment 2 to this recommendation provides Staff's rationale in determining the penalty amount. Staff recommends the above described scenario be considered a single violation of K.S.A. 66-1,202. The consequences of Atmos' failure to establish the proper intra-company communications protocols led to its failure to follow its billing standards in its tariff for 13 months, the inconvenience of the customer, and Staff expending \$2600 investigating this case. Because the procedural oversight on the part of Atmos is considered unintentional, Staff considered this circumstance to only be one violation of the statutory requirement and does not recommend the Commission issue penalties to Atmos for the improper application of its tariff provisions.

### **RECOMMENDATION:**

In summary, Staff recommends the following:

- Atmos refund \$551.14 to the Complainant which reflects a more accurate estimate of charges for the period of October 18, 2013, through January 18, 2015.
- Atmos credit its PGA \$256.23 for the cost of gas lost because it failed to bill a customer for the period of October 1 through October 17, 2013.
- Atmos be issued a civil penalty of \$500 because of its failure to provide sufficient and efficient service to its customer regarding billing for gas consumption.
- The Commission deny MES's request for the Complainant to be reimbursed for legal or consulting fees expended in pursuing this Complaint.

Data Request No. 1

DH Pace, Modified Proration to DD Usage

AS BILLED									AS ADJUSTED FOR DEGREE DAYS				
Meter Read Dates	Billing Days	Calc Days X 199.1382	Calculated Readings	Prorated Usage	PGA Rates	PGA	Hedge 0.06135	Degree Days	Degree Days	Percent Per DD	Calc Usage w/DD	PGA	Hedge 0.06135
11/12/2013			1095										
11/22/2013	10	1,991	3086	1991	0.45298	\$901.88		631 *	210	0.030983	2,635	\$1,193.38	
12/23/2013	34	6,771	9857	6771	0.48528	\$3,285.83		1011	1011	0.149159	12,683	\$6,154.95	
1/27/2014	32	6,372	16229	6372	0.53034	\$3,379.33		1079	1079	0.159192	13,536	\$7,178.88	
2/25/2014	29	5,775	22004	5775	0.55284	\$3,192.65		845	845	0.124668	10,601	\$5,860.53	
3/26/2014	29	5,775	27779	5775	0.74233	\$4,286.96		625	625	0.09221	7,841	\$5,820.47	
4/25/2014	30	5,974	33753	5974	0.69452	\$4,149.06	\$254.54	314	314	0.046326	3,939	\$2,735.87	\$241.67
5/27/2014	32	6,372	40125	6372	0.57312	\$3,651.92	\$224.05	93	93	0.013721	1,167	\$668.67	\$71.58
6/25/2014	29	5,775	45900	5775	0.51242	\$2,959.23	\$181.55	8	8	0.00118	100	\$51.43	\$6.16
7/25/2014	30	5,974	51874	5974	0.50925	\$3,042.26	\$186.64	1	1	0.000148	13	\$6.39	\$0.77
8/26/2014	32	6,372	58246	6372	0.50652	\$3,227.55	\$198.01	0	0	0	-	\$0.00	\$0.00
9/25/2014	30	5,974	64220	5974	0.53637	\$3,204.27	\$196.58	46	46	0.006787	577	\$309.53	\$35.40
10/24/2014	29	5,775	69995	5775	0.53637	\$3,097.54	\$190.03	278	278	0.041015	3,488	\$1,870.64	\$213.96
11/21/2014	28	5,576	75571	5576	0.51327	\$2,861.99		631	631	0.093095	7,916	\$4,063.09	
12/26/2014	35	6,970	82541	6970	0.52353	\$3,649.00		1011	1011	0.149159	12,683	\$6,640.08	
1/13/2015	18	3,584	86127	3586	0.51033	\$1,830.04		1079 *	626	0.092358	7,853	\$4,007.80	
Total Days	427												
Totals			Total	85032		\$46,719.51	\$1,431.41		6778	1	85,032	\$46,561.70	\$569.54
			Days	427			\$48,150.92						\$47,131.24
			Per Day	199.1382								Difference	\$1,019.68

\*Prorated degree days

Billing Days			
11/12/13 - 11/12/14	365	Total Usage Calc	
11/13/14 - 11/30/14	18	End Rd	86127
Dec-14	31	Beg Rd	1095
1/115 - 1/13/15	13	Dif - Usage	85032
Total Billing Days	427		

ATTACHMENT 1  
Response to Staff Data Request 1



ATTACHMENT 2

**Public Utility Penalty Calculator**

**Penalty Categories**

	<u>Base penalty</u>	<u>Yes/No</u>	<u>Calculated Base Penalty</u>	<u>Explanation (if applicable)</u>
Failure to comply with statutory requirement.				Every natural gas public utility governed by this act shall be required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such natural gas public utility, to establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations.
	\$500.00	yes	\$500.00	
Failure to comply with Commission Order.	\$500.00		\$0.00	
Failure to comply with Commission approved tariff.	\$500.00		\$0.00	
			\$500.00	Total Base Penalty

**Aggravating Circumstances**

<u>Description</u>	<u>Multiplier</u>	<u>Yes/No</u>	<u>Calculated Multiplier</u>	<u>Explanation (if applicable)</u>
<i>Select ONLY the most serious of the three circumstances below</i>				
Violation caused property damage >\$10,000	5		1	
Violation contributed to injury	10		1	
Violation contributed to fatality	20		1	
Violation resulted in damage to a high pressure gas or HV liquid pipeline			1	
Violation occurred in class 4 location	3		1	
Occurred in area with potential to affect a facility where customers have limited mobility (difficult to evacuate)	4		1	
Violation caused mass service outage (>100 customers)	3		1	
Repeat violation within past 5 years	2		1	
Economic benefit gained from the violation	3		1	
No measures taken to prevent recurrence	2		1	
Operator uncooperative in resolution of the violation	5		1	
Gross negligence/willful or wanton conduct	10		1	
			1	1 Aggravating Multiplier
			\$500.00	Aggravated Penalty
Number of Violation Occurrences	1		\$500.00	TOTAL AGGRAVATED PENALTY

**Mitigating Circumstances**

<u>Operator Resources (Dist.)</u>	<u>Multiplier</u>	<u>Yes/No</u>	<u>Calculated Multiplier</u>	<u>Explanation (if applicable)</u>
customers < 250	0.25		1	
250 < customers < 1000	0.5		1	
1000 < customers < 10,000	0.75		1	
customers > 10,000	1		1	
Other Reasons*	1		1	

1 Mitigating Multiplier

\$500.00 Final Recommended Penalty Amount

\*Explain reason and input multiplier

CERTIFICATE OF SERVICE

16-ATMG-049-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing Staff's Report and Recommendation was served via electronic service this 22nd day of March, 2016, to the following:

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 S HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
Fax: 785-242-1279  
jflaherty@andersonbyrd.com

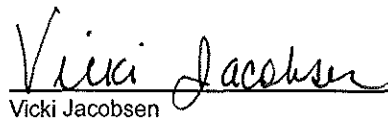
JAMES PRICE, ATTORNEY  
ATMOS ENERGY  
5430 LBJ FREEWAY, THREE LINCOLN CENTRE  
PO BOX 650205  
DALLAS, TX 75265-0205  
james.price@atmosenergy.com

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

CHRIS MANN, EXECUTIVE VICE PRESIDENT /CIO  
DH PACE DOOR COMPANY, INC.  
1901 E 119TH ST  
OLATHE, KS 66061  
chris.mann@dhpac.com

MICHAEL DUENES, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
m.duenes@kcc.ks.gov

LEAH MULLIN  
MANAGED ENERGY SYSTEMS  
6600 COLLEGE BLVD, STE. 125  
OVERLAND PARK, KS 66211  
leah@energymes.com

  
Vicki Jacobsen