

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

**ATMOS ENERGY'S RESPONSE TO
STAFF'S REPORT AND RECOMMENDATION**

Atmos Energy Corporation ("Atmos Energy") provides the following response to the Report and Recommendation that the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively) filed in the above-captioned docket on March 22, 2016.

1. Atmos Energy does not oppose the following recommendations being made by Staff in this case:

a. Atmos Energy refund \$551.14 to DH Pace Company (DH Pace), which reflects a more accurate estimate of charges for the period of October 18, 2013, through January 18, 2015.

b. Atmos Energy 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.

c. The Commission deny DH Pace and Managed Energy Systems' ("MES") request for DH Pace Company to be reimbursed for legal or consulting fees expended in pursuing this complaint.

2. Atmos Energy does oppose Staff's recommendation that the Commission find the gas utility failed to provide reasonably sufficient and efficient service to its customer regarding billing for gas consumption.

3. Staff contends that Atmos Energy violated K.S.A. 66-1,202 for failing to bill DH Pace

for its usage for the period of October 18, 2013, through January 18, 2015. Atmos Energy disagrees.

K.S.A. 66-1,202 states in pertinent part:

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 utility...

K.S.A. 66-1,202 (emphasis added).

4. When it comes to billing issues, the Kansas Court of Appeals has interpreted the language in the above-mentioned statute to impose a standard of *ordinary* care on the public utility as opposed to the *highest standard* of care when it comes to matters such as safety issues. *DeGraeve v. Southwestern Bell Telephone Company*, 9 Kan. App. 2d 753, 755, 687 P.2d 1380 (1984)(emphasis added).

5. Atmos Energy certainly strives to provide excellent service to its customers. However, it is not reasonable to assume that in the ordinary course of business, any company handling over 130,000 customer accounts and issuing over 1.5 million bills a year will not experience some billing errors, including the one that occurred in this case. Atmos Energy is still providing reasonably efficient and sufficient service to its customers and is not violating the provisions in K.S.A. 66-1,202, even if on rare occasions it experiences a billing error on a customer's account. For Staff to suggest that a public utility's billing record must be perfect and any billing error automatically means the public utility is not providing efficient and sufficient service to its customers is contrary to the standard set forth in the Kansas Public Utility Act. There is certainly nothing in Staff's report indicating the billing error that occurred in this case is common, or that Atmos Energy's customers have experienced an extraordinary number of billing errors and complaints. Lack of such evidence suggests the billing error that occurred involving the DH Pace account was an isolated error occurring

in the ordinary course of business, which when brought to the public utility's attention, was acted upon and corrected.

WHEREFORE, Atmos Energy agrees with that portion of Staff's Report and Recommendation that recommends, (1) Atmos Energy refund DH Pace \$551.15; (2) Atmos Energy credit the PGA \$256.23; and (3) MES be denied recovery of its consulting and attorneys' fees. Atmos Energy opposes that portion of Staff's Report and Recommendation that suggests Atmos Energy's billing error in this case was a violation of K.S.A. 66-1,202 for the reasons set forth herein.



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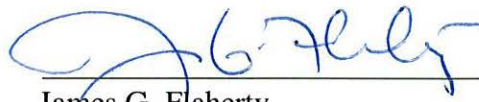
Attorneys for Atmos Energy

VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states:

That he is the attorney for Atmos Energy, named in the foregoing Response to Staff's Report and Recommendation, and is duly authorized to make this affidavit; that he has read the foregoing Response, and knows the contents thereof; and that the facts set forth therein are true and correct.


James G. Flaherty

SUBSCRIBED AND SWORN to before me this 5th day of April, 2016.






Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent by electronic mail and also mailed, postage prepaid, this 5th day of April, 2016, addressed to: Chris Mann, Executive Vice President/CIO, DH Pace Door Company, Inc., 1901 E. 119th Street, Olathe, Kansas 66061, chris.mann@dhpac.com, Michael J. Duenes, Litigation Counsel, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas 66604-4027, m.duenes@kcc.ks.gov, and Leah Battista, Managed Energy Systems, 6600 College Blvd., Ste. 125, Overland Park, Kansas 66211, leah@energymes.com.


James G. Flaherty