

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

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

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

**ORDER ADOPTING STAFF'S MEMORANDUM
AND OPENING COMPLAINT INVESTIGATION**

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 as follows:

I. BACKGROUND

1. On July 22, 2015, DH Pace Company (Complainant) filed a formal complaint against Atmos Energy (Atmos) with the Commission.¹
2. On July 28, 2015, Litigation Staff for the Commission prepared a Memorandum analyzing the formal complaint for compliance with Commission regulations.
3. Litigation Staff reviewed the formal complaint's underlying facts and allegations, and while making no recommendation regarding the validity or truthfulness of the formal Complainant's claims, states that the Complainant has satisfied the procedural requirements of the Commission's rules of practice and procedure and has established a *prima facie* case for action by the Commission.
4. Litigation Staff recommends the Commission find the formal complaint satisfies the procedural requirements of the Commission's rules of practice and procedure and establishes a *prima facie* case for action by the Commission. Legal Staff further recommends

¹ Complaint Against Atmos Energy by DH Pace Company (July 22, 2015) (Formal Complaint).

the Commission open a complaint proceeding for consideration of the formal complaint, formally serve this complaint on Atmos for response, and direct Commission Staff to investigate the allegations raised in the formal complaint.

II. FINDINGS AND CONCLUSIONS

5. The Commission is satisfied that jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*² Specifically, the Commission may investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.³

6. Litigation Staff's Memorandum dated July 28, 2015, attached hereto as Attachment "A" is hereby adopted and incorporated by reference.

7. The Commission finds the Complainant has satisfied the procedural requirements for the filing of formal complaints as detailed in K.A.R. 82-1-220 and has established a *prima facie* case to support a Commission investigation.

8. The Commission finds that the formal complaint shall be served on Atmos, and Atmos shall be offered an opportunity to respond to the formal complaint pursuant to K.A.R. 82-1-220(c).

9. The Commission finds that Commission Staff shall be directed to investigate the formal complaint.

² Specifically, the Commission is granted broad authority to review formal complaints. See K.S.A. 66-101e ("Upon a complaint in writing made against any electric public utility governed by this act that any of the rates or rules and regulations of such electric public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulations, practice or act whatsoever affecting or relating to any service performed or to be performed by such electric public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such electric public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed with or without notice, to make such investigation as it deems necessary."); see also K.S.A. 66-1,205(a).

³ See K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

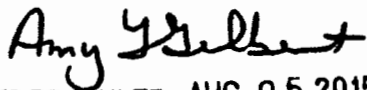
IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- (A) The formal complaint shall be served on Atmos Energy, and Atmos Energy shall have an opportunity to respond to the formal complaint pursuant to K.A.R. 82-1-220(c).
- (B) Commission Staff shall investigate the formal complaint.
- (C) The parties have fifteen (15) days, plus three (3) days if served by mail, from the date this order was served in which to petition for reconsideration.⁴
- (D) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: AUG 04 2015


ORDER MAILED AUG 05 2015
Amy L. Gilbert
Secretary to the Commission

MJD

⁴ K.S.A. 66-118b; K.S.A. 2014 Supp. 77-529(a)(1).

ATTACHMENT “A”

**MEMORANDUM
LEGAL DIVISION**

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Michael Duenes, Litigation Counsel

DATE: July 28, 2015

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

EXECUTIVE SUMMARY:

On July 22, 2015, DH Pace Company (Complainant) filed a formal complaint against Atmos Energy (Atmos).¹ The complaint satisfies the procedural requirements of the Kansas Corporation Commission's (Commission's) rules of practice and procedure and establishes a *prima facie* case for action by the Commission. Legal Staff recommends the Commission open a complaint proceeding for consideration of the formal complaint.

BACKGROUND & ANALYSIS:

The Complainant's formal complaint against Atmos alleges that Atmos willfully violated its own tariff provisions in calculating, invoicing and collecting on Complainant's utility bills. Upon the filing of a formal complaint, the Commission must determine "whether or not the allegations, if true, would establish a prime [sic] facie case for action by the commission and whether or not the formal complaint conforms to [the Commission's] regulations."²

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 a continuance of acts or omissions;
- (2) set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and

¹ Complaint Against Atmos Energy by DH Pace Company (July 22, 2015) (Formal Complaint).

² K.A.R. 82-1-220(c)

(3) state the relief sought by the complainant.

A review of the formal complaint shows that these procedural requirements have been met. The Complainant alleges that Atmos' tariffs establish an obligation to use an appropriate methodology in estimating customer energy consumption where estimates are required, and that Atmos failed to do so.³ The Complainant further alleges that Atmos' tariffs require Atmos to properly read customer meters, calculate customer bills and notate estimates and amounts due on invoices, and that Atmos likewise failed to do so.⁴ The formal complaint concisely and plainly sets forth the facts giving rise to the alleged violations,⁵ and clearly states the relief sought.⁶

K.S.A. 66-101e grants the Commission authority to conduct an investigation into a complaint alleging that a practice or act affecting or relating to public utility service is in any respect unreasonable, unfair, unjust, unreasonably inadequate or unduly insufficient.

The complaint alleges, on the whole, that Atmos has collected rates in violation of its own tariffs, which is unjust and unreasonable. If the allegations in the complaint are taken as true, then the Complainant has successfully established a *prima facie* case for Commission action.

No recommendation regarding the validity or truthfulness of the formal complaint's allegations is made in this memorandum. This memorandum's sole recommendation is that the Commission should find that the formal complaint meets the procedural requirements of K.A.R. 82-1-220, the Complainant established a *prima facie* case for Commission action, the complaint should be formally served upon Atmos for response, and Commission Staff (Staff) should be ordered to investigate the allegations raised by the Formal Complaint.

RECOMMENDATION:

Legal Staff recommends the Commission find the formal complaint satisfies the procedural requirements of the Commission's rules of practice and procedure and establishes a *prima facie* case for action by the Commission. Legal Staff further recommends the Commission open a complaint proceeding for consideration of the formal complaint, formally serve this complaint upon Atmos for response, and direct Staff to investigate the allegations raised by the formal complaint.

³ See Formal Complaint, pgs. 2-3.

⁴ See Formal Complaint, pgs. 3-4.

⁵ see Formal Complaint, pgs. 1-4,

⁶ See Formal Complaint, p. 6.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
JAMES PRICE, ATTORNEY ATMOS ENERGY 5430 LBJ FREEWAY, THREE LINCOLN CENTRE PO BOX 650205 DALLAS, TX 75265-0205		
BRAD MILLS ATMOS ENERGY CORPORATION 25090 W 110TH TERR OLATHE, KS 66061		
CHRIS MANN, EXECUTIVE VICE PRESIDENT /CIO DH PACE DOOR COMPANY, INC. 1901 E 119TH ST OLATHE, KS 66061		
MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
LEAH MULLIN MANAGED ENERGY SYSTEMS 6600 COLLEGE BLVD, STE. 125 OVERLAND PARK, KS 66211		

ORDER MAILED AUG 05 2015

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.