

WAYNE CHRISTIAN, *CHAIRMAN*
CHRISTI CRADDICK, *COMMISSIONER*
RYAN SITTON, *COMMISSIONER*



DANA AVANT LEWIS, *DIRECTOR*

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

August 21, 2020

TO: All Parties of Record

RE: **GUD No. 10918**, *Formal Complaint of DCP Guadalupe Pipeline, LLC against Atmos Energy Corporation*

HEARINGS LETTER NO. 09

Order of Dismissal

Attached is the Order of Dismissal signed by the Hearings Director on August 21, 2020.

Sincerely,

DocuSigned by:
Dee Marlo Chico
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Dee Marlo Chico
Administrative Law Judge

cc: Service List

Service List

GUD No. 10918

Formal Complaint of DCP Guadalupe Pipeline, LLC against Atmos Energy Corporation

Administrative Law Judge: Dee Marlo Chico
Technical Examiners: James Currier and Rose Ruiz

**Atmos Energy Corporation
(Respondent)**

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Via Email

**DCP Guadalupe Pipeline, LLC
(Complainant)**

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cc: Kari French, RRC Austin – Director, Oversight & Safety Division
Mark Evarts, RRC Austin – Director, Marketing Oversight Section

16 TEX. ADMIN. CODE § 1.7 (Ex Parte Communications):

- (a) *Ex parte communications are prohibited in contested cases as provided in the APA and other applicable rules including the Texas Disciplinary Rules of Professional Conduct.*
- (b) *Each party shall provide all other parties with a copy of all documents submitted to an examiner.*
 - (1) *The attachment of a certificate of service stating that a document was served on a party creates a rebuttable presumption that the named party was provided a copy.*
 - (2) *Failure to provide a copy to all other parties may result in rejection and return of the document without consideration.*

**BEFORE THE RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

FORMAL COMPLAINT OF DCP	§	GAS UTILITIES DOCKET
GUADALUPE PIPELINE, LLC AGAINST	§	
ATMOS ENERGY CORPORATION	§	NO. 10918

ORDER OF DISMISSAL

The Hearings Director of the Railroad Commission of Texas (“Commission”) enters this Order pursuant to Rules §§ 1.23 (Complaint Proceedings) and 1.107 (Dismissal).¹

FINDING OF FACT

1. On November 12, 2019, DCP Guadalupe Pipeline (“DCP”) filed with the Commission a complaint against Atmos Pipeline – Texas (“APT”), a division of Atmos Energy Corporation (“Atmos”), for breach of contract of the Agreement for Construction, Ownership, and Operation of the Waha Header (“COO Agreement”).
2. DCP and APT are the current parties to the COO Agreement.
3. The Waha Header System is a set of natural gas pipeline facilities located in West Texas that perform a “hub” function by interconnecting multiple interstate and intrastate pipeline systems.
 - a. DCP is the majority owner (75%) of the Waha Header System.
 - b. APT is the minority owner (25%) of the Waha Header System and acts as operator of the Waha Header System under the terms of the COO Agreement and its associated Pipeline Facilities Lease Agreement.
4. Atmos filed its answer and a general denial on December 9, 2020.
5. At the February 14, 2020 pre-hearing conference, the date for the hearing on the merits to address the jurisdictional issue was set for July 6, 2020.
6. On February 14, 2020, DCP moved to dismiss the complaint for lack of subject matter jurisdiction.
7. On June 19, 2020, Atmos filed with the Commission a Motion to Cancel the Hearing or Alternatively, Change the Hearing Date, and Agreed Motion to Extend Deadlines.
8. On July 2, 2020, Administrative Law Judge (“ALJ”) Dee Marlo Chico granted Atmos’s Motion to Cancel the July 6, 2020 hearing and informed the parties that a ruling on the jurisdictional matter based on the parties’ pleadings, motions, and the respective responses and replies will be issued.
9. On August 21, 2020, ALJ Chico granted DCP’s motion, finding that the Commission lacked subject matter jurisdiction to consider the complaint, because the pleadings were inherently judicial and did not take on an administrative character.

¹ 16 Tex. Admin. Code §§ 1.23(f)(1) (“If the Commission finds, either on the face of the complaint or after motion of the respondent, that the Commission lacks jurisdiction or the complainant lacks standing, the Hearings Director or the Commissioners shall dismiss the complaint as to such allegation or complainant”), 1.107(5) (“The Commissioners or the Hearings Director may dismiss, with or without prejudice, any proceeding under such conditions and for such reasons as are found to be just and reasonable, including the following: lack of jurisdiction”).

- a. The complaint did not pertain to the Atmos's "services" or "rate" (i.e., the gas utility rate structure) but rather the private obligations between pipeline co-owners.
- b. The COO Agreement is not governed by the express terms of a rate.
- c. The allegations of discrimination, as put forward by Atmos, do not involve Atmos's gas utility obligations to its customers but rather the obligations are specific to Atmos's duties as a co-owner.

CONCLUSION OF LAW

1. The Commission does not have jurisdiction over DCP and the matters at issue in this proceeding under the Gas Utility Regulatory Act or Chapter 121 of the Texas Utilities Code. Tex. Util. Code chs. 101-105, 121.
2. Commission Rule § 1.23 (Complaint Proceedings) authorizes the Hearings Director to dismiss a complaint if the Commission finds, either on the face of the complaint or after motion of the respondent, that the Commission lacks jurisdiction or the complainant lacks standing. 16 Tex. Admin. Code § 1.23.
3. Commission Rule § 1.107 (Dismissal) authorizes the Hearings Director to dismiss, with or without prejudice, a proceeding for lack of jurisdiction. 16 Tex. Admin. Code § 1.107.
4. Dismissal of this docket is just and reasonable under Commission Rule § 1.107 (Dismissal) and consistent with the ALJ's ruling. 16 Tex. Admin. Code § 1.107.

IT IS THEREFORE ORDERED that the captioned docket is hereby **DISMISSED without prejudice**.

IT IS FURTHER ORDERED that all other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not granted or approved in this Order, are hereby **DENIED**.

IT IS FURTHER ORDERED that this Order will not be final and effective until 25 days after the date this Order is signed. If a timely motion for rehearing is filed by any party at interest, this Order shall not become final and effective until such motion is overruled, or if such motion is granted, this Order shall be subject to further action by the Commission. The time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 100 days from the date this Order is signed.

Signed on August 21, 2020.

DocuSigned by:

Dana Avant Lewis

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DANA AVANT LEWIS
DIRECTOR, HEARINGS DIVISION