

## A G E N D A



## Recommendation for Council Action

Austin City Council	Item ID	16050	Agenda Number	51.
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Meeting Date:	6/14/2012	Department:	Telecommunications and Reg Affairs
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## Subject

Conduct a public hearing and consider an ordinance regarding ATMOS Energy Corporation's proposal to increase customer gas rates.

## Amount and Source of Funding

## Fiscal Note

There is no unanticipated fiscal impact. A fiscal note is not required.

Purchasing Language:	
Prior Council Action:	Suspension of Atmos Energy Corporation's proposed rates on March 1, 2012 granted. April 26, 2012 --- Set Public Hearing for May 24, 2012.
For More Information:	Rondella M. Hawkins, Office of Telecommunications and Regulatory Affairs; (512) 974-2422.
Boards and Commission Action:	
MBE / WBE:	
Related Items:	

## Additional Backup Information

On January 31 of this year, Atmos Energy Corporation, Mid-Tex Division, filed for an increase in its system-wide annual rates by \$49.0 million, or 4.36% including gas costs or 11.94% excluding gas costs. Under the Gas Utilities Regulatory Act (Chapters 101 through 105 of the Texas Utilities Code), the City has original jurisdiction over gas utility rates set for customers within its city limits. Atmos Energy has approximately 6,300 customers in the City of Austin limits.

On March 1, 2012, the City Council adopted an ordinance suspending the effective date of the proposed increase to no later than June 4, 2012, as provided by state law. Austin is a member of the Atmos Texas Municipalities (ATM) which is a coalition of cities that are affected by the rate increase who jointly hired experts to properly review the filing. The City Charter requires Council to hold a public hearing prior to taking any action that affects rates of a franchise holder.

Staff recommends denial of Atmos' proposal to increase customer gas rates.

ATM's consultants found Atmos Mid-Tex' proposed increase in rates unreasonable, among other factors, for the following reasons. This is not an exhaustive list of all the issues but instead focuses on the larger issues in the case:

1. A customer charge that more than doubles the current, monthly customer charge from \$7.50 to \$18.00 for Residential customers and from \$16.75 to \$35.00 for Commercial Customers.
2. A return on equity that was too high; Atmos proposed a ROE of 10.90% and ATM's consultants believe a more reasonable ROE is 9.50%.
3. A proposed Rate Review Mechanism (RRM) for future rate cases that is too formulaic and that minimizes the City's ability to review for reasonableness, Atmos proposed changes in future rates.
4. Atmos' failure to return to ratepayers or at a minimum, share with ratepayers, the benefits of a tax refund Atmos received. It is very likely that the previously overstated tax expenses have been recovered through the ratemaking process and therefore, ratepayers are entitled to participate in the tax refund.
5. Atmos' proposed cost of service includes incentive compensation for its upper management. Atmos has not established that incentive compensation is tied to improvements in service but instead incentive compensation employees received is linked to the company's financial performance. Ratepayers should not have to pay for a benefit gained only by shareholders.
6. Atmos has recorded a consolidated Net Operating Loss tax asset on its balance sheet, based upon the cumulative impact of filing consolidated tax returns that, in several recent years, have reflected net operating losses (rather than taxable income). This has the effect of reducing Atmos' federal income taxes. However, the Company is proposing to reconstruct its past taxable income as if it had separately filed a "utility" and "non-utility" tax return in each year, and fails to recognize the true value of the federal income taxes it will pay, which has the effect of inflating its cost of service.
7. There are numerous adjustments ATM's consultants made to Atmos rate base for a variety of reasons (treatment of accumulated depreciation amounts; treatment of accumulated deferred income taxes (ADIT); treatment of Atmos' cash-working capital; treatment of Atmos' rate base for the FAS106 liability (i.e., other post-employment benefits or postretirement benefits other than pensions) recorded by both Mid-Tex and Atmos Energy's shared services units; treatment of ratepayer provided capital related to income tax savings associated with employee 401k savings-plan benefits; treatment of Atmos' sale of assets of its utility operations in Iowa, Illinois, and Missouri;

ATM has attempted to negotiate with Atmos, but Atmos has been unwilling to adjust its proposed rates sufficiently in light of the adjustments recommended by ATM's consulting experts. ATM's Special Counsel and its consultants recommend the city deny the rate request and will continue settlement efforts to attempt to resolve Atmos' application to increase rates through negotiations. In the interim, once the City denies Atmos' request, Atmos will submit an appeal to the Railroad Commission of Texas and will do so within 30 days from the date of the City's action. ATM will continue its participation in the proceedings at the Railroad Commission of Texas.