

MINUTES OF THE CITY COUNCIL  
CITY OF AUSTIN, TEXAS  
Special Called Council Meeting

October 12, 1978  
7:00 P.M.

Council Chambers  
301 West Second Street

The meeting was called to order with Mayor McClellan presiding.

Roll Call:

Present: Mayor McClellan, Mayor Pro Tem Cooke, Councilmembers Goodman, Himmelblau, Mullen, Trevino, Snell

Absent: Councilmember Snell

Mayor McClellan opened the Special Called Meeting to consider an Ordinance establishing temporary one-way streets and temporary reversible one-way streets in the University of Texas area for October 14, 1978, and also final action on Southern Union Gas Company's Rate Increase Request.

ONE-WAY STREETS

Mayor McClellan introduced the following ordinance:

AN ORDINANCE AMENDING ORDINANCE NO. 780921-A; DESIGNATING THE DIRECTIONS IN WHICH TRAFFIC SHALL MOVE IN THE VICINITY OF MEMORIAL STADIUM ON SAN JACINTO BOULEVARD, RED RIVER STREET AND MANOR ROAD, ON OCTOBER 14, 1978, IN ACCORDANCE WITH SECTION 21-39 OF THE AUSTIN CITY CODE OF 1967; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND DECLARING AN EMERGENCY.

Councilmember Trevino moved that the Council waive the requirement for three readings, declare an emergency and finally pass the ordinance. The motion, seconded by Councilmember Mullen, carried by the following vote:

Ayes: Councilmembers Mullen, Trevino, Mayor McClellan, Mayor Pro Tem Cooke, Councilmembers Goodman, Himmelblau

Noes: None

Absent: Councilmember Snell

The Mayor announced that the ordinance had been finally passed.

## SOUTHERN UNION GAS RATE INCREASE REQUEST

MR. ROD NELSON, attorney representing ACORN, told the Council that under the terms of the Public Utility Act the Council had the right to not only set fair rates but also to assure fair service to utility customers. He pointed out that the current Ordinance has done little except to set rates and charges. Mr. Nelson felt that the current Ordinance has not addressed itself to service regulation and delivery. He stated that the issues of rates and customer service are related, and that he felt that the customers of Southern Union have not been given fair and reasonable service in exchange for their utility dollar. Mr. Nelson indicated that the Council needed to determine what kind of utility service is required for the citizens of Austin. He stated that the Council needed to assure that the policies adopted will provide this service, and then needed to consider the cost of the service. Mr. Nelson stated that it has always been the case that the rate of return comes first and the services lag far behind. He urged the Council to change this by taking into consideration the services provided by Southern Union for the rates being paid by its customers. Mr. Nelson urged the Council to adopt the utility service regulations proposed by ACORN. He pointed out that the proposal was modeled after the City of Austin's utility service regulations which became effective as of April 1st of this year. Mr. Nelson then read through some of the points included in ACORN'S proposal. Mr. Nelson urged the Council to appoint a committee composed of a member of ACORN, a representative from the City Attorney's Office, and a representative from Southern Union Gas Company, ~~that~~ who would report back to the Council within 60-90 days with a recommendation.

MS. WILLOW HARDEN, Chairperson for the Becker School area community of ACORN, told the Council that Southern Union advertising expenses should be used for manpower. She stated that the citizens of Austin deserved good service with fair rates. She thanked the Council for the time allotted to speak.

MS. ELIZABETH WASHINGTON, representing Caritas, told the Council that they wanted to see an extension of the time period. Councilmember Mullen also felt that Southern Union could extend their payment period to 20 days.

MR. PETE CASTILLO, speaking for ACORN, told the Council that Southern Union's payment period was unfair to persons who received welfare checks. Mr. Castillo stressed the need for a 27-29 day payment period.

MR. JOHN LASH, representing the French Place Neighborhood Organization, told the Council that there is a question as what a person's payment options are as relates to the policies of the company. He felt that this was one problem which the Council should address.

MS. CHARLOTTE HARRELL, representing the Central East Austin Association, told the Council that gas bills needed to be printed more clearly and in both English and Spanish. She also complained that Southern Union was not very good at explaining bills to its customers. Ms. Harrell thanked the Council for scheduling the night session.

MS. DOROTHY MALONE, Chairperson for Martin Luther King, Jr. to 11th Street Organization of ACORN, recommended that Southern Union defer payments for emergency reasons. She felt that this would greatly benefit the citizens of Austin.

MR. ISSAC CRAIG, a member of ACORN, told the Council that they were concerned about the deferred payment plan for customers who's bills get to the point of disconnection. Mr. Craig stated that his organization feels that a person should be given one or two months to pay an overdue bill while paying his current bill.

MS. LAVERNE KIMBALL, representing the Southwood community of ACORN, presented Council with a 3,345 name petition which read as follows:

"The Texas Association of Community Organizations for Reform Now, State's leading citizens group, is working with citizens like ourselves to obtain fair utility rates, a more equitable property tax system and to defend all facets of citizens rights. We especially support Texas ACORN'S fight against Southern Union Gas Company's current \$10.9 million rate hike request, and urge the City Council to reject this unfair and unreasonable proposal."

MS. MANUELA SEGORA, a member of East Austin ACORN, asked the Council to take into consideration all of the requests presented in particular the deferred payment recommendation.

In response to a question from Councilmember Mullen, Mr. George Hess, representing Hess & Lim Consultants, indicated that the company was receiving a return of \$526,000 on late payment charges. He indicated that he did not know how much revenue would be lost if the payment date is moved back. Councilmember Goodman asked Mr. Hess if complaints from customers would be a basis for denying the rate increase request. Mr. Hess stated that this would be a legal question which he could not answer.

Responding to Councilmember Goodman's question, Mr. Don Butler, Utility Consultant to the City of Austin, stated that denial of the request might make it impossible for Southern Union to improve its service to customers. He stated that there have been cases in the past where the Public Utility Commission has cut back on a company's returned revenues until its services are improved. Councilmember Goodman asked if they could postpone the rate increase for 90 days while the company improves its services. Mr. Butler indicated that this would probably be ineffective as the company would probably appeal the case to the Railroad Commission. In response to another question from Councilmember Goodman, Mr. Butler indicated that the company has 10 days in which to notify the City of its acceptance or rejection of the Ordinance. He stated that after tonight, the company could place rates into effect under bond. Councilmember Goodman asked what would happen if the company is given no rate increase. Mr. Butler stated that the company could either accept this decision, which would be doubtful, or appeal it to the Railroad Commission. He pointed out that if the company received no rate increase, they would probably seek interim rate relief from the Commission. Councilmember Goodman asked what the company's reaction would be to the increase recommended by Mr.

Hess. Mr. Butler stated that, in this case, the company would not receive interim rate relief unless Section 3 of the Ordinance is left in, in which case they would request interim rate relief from the Commission.

Mayor McClellan asked Mr. Butler to review what the Council's specific charge was. Mr. Butler indicated that the City of Austin as well as ACORN would probably be parties in any appeal before the Railroad Commission. He also pointed out that, even though the prospect of granting no increase to the company would be appealing, the Council still had a responsibility to grant a fair rate increase to the company. Mr. Butler indicated that there were some cost of services matters which the Council might want to take into consideration. As to his recommendation, Mr. Butler stated that it is consistent with proper rate making principles for the Council to grant what it deems to be a fair rate increase. He stated that on the rate of return to equity, the Railroad Commission has been granting 13.5% to 14%. Mr. Butler indicated that the ordinance contained a 10¢ per MCF increase of which 4¢ would be attributed to doing away with the net gross. He stated that there would be no great difference in the company going to a 20 day penalty period.

In response to a question from Councilmember Mullen, Mr. Butler stated that the Council could change the penalty period any way it wished but that the Railroad Commission has changed it to 10 days at 5.03%. He stated that, beyond 15 days, the company would experience some slippage. In response to a question from Mayor Pro Tem Cooke, Mr. Butler stated that it would be proper to take the ACORN document into consideration even though it might not be part of the rate Ordinance. Mr. Butler told the Council that they did not have the right to adopt some service regulations. Mayor Pro Tem Cooke asked if the Council would be able to take action at a later date if it chose not to take action now. Mr. Butler indicated that the Council, as a regulatory body, had the right to take action on the matter at any time.

Mr. Butler stated that he did not think it would be an appropriate expenditure of funds to go through the whole allocation or cost of service. He stated that if the matter went before the Railroad Commission, it might be appropriate to get into this in order to develop proper evidence to get into the allocation factors relating to the University of Texas contract. He stated that they did not do an elasticity study because an increase of 10¢ per MCF would probably not have any elasticity in it. Mr. Butler stated that the biggest vice in advertising was that the company is able to use the ratepayers money to promote the company's interest without the ratepayer having an expense.

Councilmember Mullen asked what the average homeowner's bill would be. Mr. Butler indicated that a typical user would use about 8 MCF per month, and at a 10¢ per MCF increase, this would amount to an 80¢ increase for the typical user. He stated that if the net gross is retained and the 6¢ is put in this would amount to a 48¢ increase. Mr. Butler pointed out that the company is wanting a 41¢ increase in the small volume user.

Mayor Pro Tem Cooke asked how going to 10¢ per MCF would relate to possible collectables. Mr. Hess indicated that the company has no experience with the new rates. He stated that the 4¢ would collect about the amount.

Mr. Nelson, in referring to the late service charge, stated that in talking about the late service issues at all with the proposed Ordinance, would be an issue which would escape if passed. He stated that they were talking about a rate year sample experience based on 1977, in which there was a 15 day payment period and a 10% late charge. Mr. Nelson stated that this was the revenue figure which the company was trying to regenerate out of the 4¢ add on per unit of gas. He stated that this locks in and hides away from accountability, the charges that should be charged for actual late payments. He felt that the Council should remain aware that the current provision is for a 5% late fee right now, with a strong possibility that a reasonable rate fee would not generate the same kind of revenues that they're trying to lock into the rate base. Mr. Nelson stated that it also loses all accountability for the people who pay late after a certain period of time, bearing the brunt. He urged the Council to not lock this issue away. Mr. Nelson urged the Council to take some action with respect to the service issues and the apparent lack of effective utility service currently provided by Southern Union Gas Company. In response to a question from Councilmember Mullen, Mr. Nelson indicated that he felt the consultant had made reasonable judgement with the information provided him.

#### Motion

Councilmember Mullen moved to close the public hearing; adopt the recommendations presented by Hess & Lim; and move the payment period from 10 days to 20 days before payment has to be made. The motion was seconded by Mayor Pro Tem Cooke.

Councilmember Mullen made the following statement:

"I think that this Council has been chosen by the people to make decisions like this which at times, even any kind of increase is not fun but, as you said sir, our consultant has said that a 2% increase is reasonable, and I think we'd be irresponsible to send to the Railroad Commission our charge and say no increase. So I make that motion."

Mayor Pro Tem Cooke made the following statement:

"Mayor, I'll second that motion and I'd like to also ask Mr. Mullen to accept a friendly amendment to the motion, and that would be that this Council instruct the staff and also our retained legal counsel in this area, to study the proposals that have been put on the table by ACORN as far as new regulations for consideration, and come back to us with some proposals as soon as possible. I will direct to Mr. Reed as to when that possibility might be, but basically taking this and studying it, I have no way of addressing how long you will need to do that."

Deputy City Manager Homer Reed indicated that he had only seen the regulations tonight, but that they are based primarily on the City of Austin's own regulations with a number of specific additions that relate more directly to the gas company. He did not think that an extended period of time would be required and that 3 to 4 weeks should be adequate. Mayor Pro Tem Cooke suggested November 2nd. Mr. Reed indicated that this would be fine, but that if he wanted to schedule it for a Council meeting the 9th would probably be better. Mayor Pro Tem Cooke then recommended the next night Council meeting on November 16th. Councilmember Mullen accepted the friendly amendment to his motion.

Councilmember Mullen asked Mr. Butler for recommendations on the gross net difference if the Council moved the payment period from 15 days to 20 days. Mr. Butler stated that if the Council went from 15 to 20 days, there would probably be less slippage if the late charge was kept at 10%. In response to a comment that the payment period be raised to 25 days, Mr. Butler indicated that this would probably be unfair to the company because it would be receiving net payments at about the time they were preparing to mail out new bills. Mayor McClellan felt that 20 days would not help very much if the late charge went up to 10%, and indicated that the period might as well remain at 10 days and 5%. Mr. Butler pointed out that there would probably be more slippage from the amount collected if the Council both extended the time and reduced the percentage paid.

#### Substitute Motion - Failed

Councilmember Goodman made a substitute motion that the Council deny a rate increase for Southern Union, that the company be given 60 days to implement an improved customer relations department and improve their service standards, and to report back to the Council at which time the Council will reconsider the request. The motion, seconded by Councilmember Trevino, showed the following vote:

Ayes: Councilmembers Trevino, Goodman

Noes: Mayor McClellan, Mayor Pro Tem Cooke, Councilmembers Himmelblau, Mullen

Absent: Councilmember Snell

Mayor Pro Tem Cooke stated that in the 17 months he had been on the Council, he could not recall a single complaint against Southern Union Gas Company. He would have to vote No on the substitute motion.

Mayor McClellan felt that the City had hired a consultant with great credibility and that the Council had a responsibility to meet in granting the rate increase request.

Councilwoman Himmelblau said that in 3½ years she had had only several complaints. She felt that the City's consultants were very reputable and that she had to go with their recommendations.

In response to Councilman Mullen's question, Don Butler stated that if the Council took no action then Southern Union could post bond and start charging the new rates. If the Council had passed Councilman Goodman's motion, then Southern Union would not have been able to post bond and begin the new rates because no final would have been taken. However, Southern Union could have appealed to the Railroad Commission to ask for interim rate relief. Mr. Butler felt that under present Railroad Commission policy that interim rate relief would not be granted.

#### Motion Restated

Councilman Mullen's motion was restated as follows: That the Council approve Mr. Hess' recommendations, that the time period for a consumer to pay the bill from 10 days to 20 days and that the staff report back by November 16th on additional regulations as proposed by ACORN.

No percentage of penalty for late payment was included in the motion.

Mr. Hess stated that he thought that eliminating the net gross on the payment would be of the most benefit to consumers who were poor or on fixed incomes who had difficulty making utility payments. However, after listening to testimony the concern seemed to be with the length of time before payment was due, as well as ensuring that they did not have to pick up for people who never paid. In the test year, only \$204,000 was written off as uncollectible.

In response to Mayor McClellan's question, Mr. Hess stated that gas cut-off was not related to the late payment penalty.

MR. LACZKO reviewed the history of the late pay penalty or discount for gas in Austin and stated that it probably dated from the 1920's. In 1949, at the time Southern Union bought the Austin system, the penalty was 10 days and 1/9th of the bill. In 1974 a rate case was filed and settled in 1976 in which the time was changed to 15 days at the Company's request and the penalty reduced to 1/10th of the bill. In the most recent case, the Railroad Commission arbitrarily reduced the percentage to 5.3% and ten days. Mr. Laczko stated that he objected strongly to the reduction to 10 days. He pointed out that many utilities in the United States have no penalty for late payment and that Southern Union had properties in its system which had no penalties. He had recommended that the late penalty be removed for Austin, and it was not included in the rate case.

Councilmember Goodman felt that the way to deal with the late penalty would be to abolish it, and put whatever revenues are lost into the overall rate base. Mayor Pro Tem Cooke pointed out that this was Mr. Hess' recommendation. He stated that if they deleted the 20 day portion of the motion, the Council would be down to accepting the recommendation of Mr. Hess. In response to a question from Councilmember Mullen, Mr. Butler indicated that elimination of the late charge would increase the average bill from 42¢ per month to 80¢ per month.

Mr. Nelson pointed out that with respect to the alternatives discussed, any decision made by the Council would be arbitrary because information was not available. He felt that there were some reasonable alternatives that might take the responsibility of allocating the actual costs incurred as a result of payment after a reasonable payment period to those who should bear the cost, instead of spreading the entire cost across the system. Mr. Nelson stated that ACORN'S interest was not there to have its rate subsidized per se, but to have a reasonable. He said that this would require a reasonable period in which to pay a bill and that it should take into account the day-to-day realities of people on fixed incomes. He stated that after that there is expense incurred as a result of people paying late and that it was not unreasonable to impose some cost. Mr. Nelson stated that whatever the extended period is, it seemed reasonable to extend the period and a 5% late charge, and in the future have data generated by the company to reflect what actual costs are incurred as a result of late payments. Mr. Nelson stated that the Council still had to take one of the alternatives, neither of which had enough information to support a decision. He stated that it may benefit ACORN members to eliminate the late charge and have a flat rate. He felt that what has been advocated and what would be reasonable for the Council would still be to select an alternative with an extended late payment date and a 5% late charge, whether the period be 20 days or 25-27 days. Mr. Nelson stated that the City has made the determination that a reasonable percentage to allocate for late payment after 27-29 day period is 5%.

Mayor Pro Tem Cooke pointed out that if the Council accepted the proposal, that the whole issue of late payment would be gone. Ms. Washington suggested asking the people what they thought about eliminating the late charge and increasing their gas bills by 50%. Ms. Washington indicated that the period would have to be extended to at least 27-29 days to be of help to the ratepayer. Mr. Hess pointed out that, given the number of late charges being paid by Ms. Washington, it would probably be more helpful to her to eliminate the late charge altogether. Councilmember Mullen pointed out that elimination of the late charge will save money for those who pay late and increase the rates for those who pay their bills on time.

In response to a question as to what the percentage of increase will be if the late charge is eliminated, Mr. Hess stated that the overall increase would be 2.03%. He stated that if he added \$525,000 to this it would be 3.5%. However, he stated that this was not really in addition to everyone. It is an addition to some people and a reduction to other people.

#### Motion Withdrawn

Councilmember Mullen then withdrew his original motion.



Motion

Mayor McClellan brought up the following ordinance for its first reading:

AN ORDINANCE REVISING THE RATE SCHEDULES CONTAINED IN THE ORDER OF THE RAILROAD COMMISSION OF TEXAS IN GAS UTILITIES DOCKET NO. 827 FOR NATURAL GAS SOLD BY SOUTHERN UNION GAS COMPANY WITHIN THE CITY OF AUSTIN; DECLARING THIS ORDINANCE TO BE A FINAL DETERMINATION OF RATES; REQUIRING ACCEPTANCE OF THE RATES PRESCRIBED HEREIN BY SOUTHERN UNION GAS COMPANY; AND PROVIDING AN EFFECTIVE DATE.

The ordinance was read the first time, and Councilmember Mullen moved that the ordinance be passed to its second reading. The motion was seconded by Mayor Pro Tem Cooke. (This is the recommendation of Hess and Lim, inclusive of eliminating payment periods and adding the 4¢ back in.)

Friendly Amendment

Mayor Pro Tem Cooke made a friendly amendment that the staff come back to Council by November 16th and give a report as to how the Council could consider implementing some of the recommendations placed before the Council. Councilmember Mullen accepted the friendly amendment.

Councilmember Goodman asked Mr. Laczko how many turn-offs the company had. Mr. Laczko estimated between 3-4 hundred turn offs per month. Councilmember Himmelblau asked Mr. Laczko if the company would agree to not turning off any gas service after 12:00 P.M. on a Thursday. Mr. Laczko indicated that this would not go along with the recommendations from Mr. Hess. He also pointed out that there would be a lot more things that would be easy for the gas company to do if the company had a larger deposit. However, the Council has refused in the past to increase the deposit which the company can charge to its customers. Councilmember Goodman asked what the company's policy was as relates to bill payment extensions. Mr. Laczko stated that persons are asked to pay bills or make arrangements to pay them. He stated that each situation is different and that it depended on the circumstances involving payment of the bill. Councilmember Goodman asked what the pay-out criteria was. Mr. Laczko indicated that if a person has failed to pay his gas bill previously and also had his service terminated previously for non-payment, then the company is very reluctant to extend a cut-off because the person probably wouldn't meet the obligations of the cut-off. Mr. Laczko stated that if a person has not had his service terminated previously and can still make a payment within a reasonable amount of time, then extension will be granted. He stated that these kinds of extensions are made daily. In response to a question from Councilmember Goodman, Mr. Laczko indicated that if a person is consistently late with a payment then that transaction becomes part of the customer's accounting record but not part of his credit record.

Call For The Question - Failed

Councilmember Mullen called for the question:

Ayes: Mayor Pro Tem Cooke, Councilmembers Himmelblau, Mullen  
Noes: Mayor McClellan, Goodman, Trevino  
Absent: Councilmember Snell

Mr. Laczko stated that he would instruct the people who make extension decisions, that late charges not be part of a credit decision. He also stated that if the late charge is eliminated it will never show up on any record at all in the future any way. Councilmember Goodman felt that whether a person was late with payment or not, as long as that person was paying the bill they should receive some kind of consideration.

Roll Call On Motion

Roll Call on Councilmember Mullen's motion, Mayor Pro Tem Cooke's second, to close the public hearing and pass the ordinance, carried by the following vote:

Ayes: Mayor McClellan, Mayor Pro Tem Cooke, Councilmembers Himmelblau, Mullen

Noes: Councilmembers Goodman, Trevino

Absent: Councilmember Snell

The Mayor announced that that the ordinance had been passed through its first reading only.

In regard to the U.T. situation, City Attorney Jerry Harris recommended that the Council leave the temporary rate ordinance for the U.T. contract in effect at this time, and depending on whether or not a determination is made to go into the matter deeper, they will report to Council prior to the time the suspension period is up, as to whether to keep it suspended until later on. Mr. Butler indicated that this was passed on 1st reading only, and that there needed to be second and third readings on the matter.

The Council decided to hold a meeting for second reading of the Ordinance on Friday, October 13th at 5:00 P.M. in the Municipal Building conference room, and a meeting for third reading of the Ordinance on Monday, October 16th at 5:00 P.M., also in the Municipal Building conference room.

ADJOURNMENT

The Council then adjourned at 9:55 P.M.

APPROVED

Carole Keeton McClellan  
Mayor

ATTEST:

Grae Monroe  
City Clerk