

ORDINANCE NO. 20050818-011

AN ORDINANCE DENYING A GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) RATE INCREASE PROPOSED BY ATMOS ENERGY CORPORATION, MID-TEX DIVISION (FORMERLY TXU GAS COMPANY); AUTHORIZE CITY PARTICIPATION IN STATE-WIDE COALITION OPPOSING INCREASE BEFORE TEXAS RAILROAD COMMISSION; AND ORDERING THE CITY'S REASONABLE EXPENSES BE REIMBURSED.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS:

- (A) On or about December 17, 2004, ATMOS Energy Corporation, Mid-Tex Division ("ATMOS" or "the Company"), formerly known as TXU Gas Company ("TXU Gas"), filed with the City and the Texas Railroad Commission ("the Commission") a request to assess a gas reliability infrastructure program interim rate increase ("GRIP increase"), as authorized by Texas Utilities Code §104.301, against all gas distribution customers served by ATMOS Mid-Tex. The effective date of the proposed increase was February 15, 2005.
- (B) The City has exclusive original jurisdiction under Sections 102 and 103 of the Texas Utilities Code to evaluate the Company's request with respect to distribution facilities inside the city and (1) approve the increase as requested; (2) indefinitely suspend the effective date of the proposed rate increase; or (3) deny the request in its entirety.
- (C) On February 10, 2005, Council adopted Ordinance Number 050210-2, indefinitely suspending the effective date of the proposed GRIP increase.
- (D) Since that date, the City has cooperated with a coalition of other cities who are also opposed to the Company's filing. The ATMOS Cities Steering Committee (of which the City is a member) also attempted to intervene in an existing ATMOS GRIP filing before the Texas Railroad Commission. The Commission denied the intervention request. Although that order is on appeal, the Committee and its consultants have developed a significant body of evidence showing the Company's proposal is unjustified, unreasonable and not in compliance with the GRIP statute (Texas Utilities Code § 104.301, including:

- (1) Approval of an \$11.5 million annual system-wide general rate increase by TXU Gas prior to its merger with ATMOS renders the proposed increase duplicative and unnecessary;
 - (2) A reported twenty percent profit increase for the Company's fiscal year ending September 30, 2004 (as reported by ATMOS), and has publicly stated that it will receive substantial profit in 2005 over that approved by the Commission in GUD No. 9400;
 - (3) GRIP request fails to account for growth in numbers of customers, thereby undercounting the revenues it will receive from the proposed GRIP rate increase;
 - (4) Estimated savings of more than \$40 million or more annually due to its merger with TXU Gas;
 - (5) Additional windfall from rates based on costs no longer incurred due to merger, which together with the Company's GRIP request will result in further over-earning by the Company above that approved by the Commission in GUD No. 9400;
 - (6) Actual decrease in per-customer investment in infrastructure during calendar year 2003; and
 - (7) ATMOS' increase in profits along with cost savings from the merger will likely exceed any reasonable increase in invested capital, making the GRIP assessment unnecessary and unreasonable while adversely impacting approximately 4,800 city ratepayers.
- (E) Texas Utilities Code §103.022 provides that costs incurred by the City in ratemaking activities be reimbursed by the regulated utility.
- (F) The meeting during which approval of this Ordinance is considered is open to the public as required by law, and public notice of the time, place and purpose of the meeting was given as required.

PART 2. The Council finds that the Company's GRIP increase request is unjustified, unreasonable and in violation of the GRIP statute. Therefore, the Council **DENIES** the gas reliability infrastructure program (GRIP) rate adjustment sought by ATMOS Energy Corporation, Mid-Tex Division under Section 104.301 of the Texas Utilities Code. ATMOS Energy is ordered to refund any amount already collected under the adjustment.

PART 3. The Council authorizes further cooperation by the City with the ATMOS City Steering Committee, specifically in hiring and directing legal counsel and consultants, negotiating with the Company, ascertaining recommendations to the City regarding

reasonable rates, and if it becomes necessary, direct any litigation associated with the enforcement and appeal of this ordinance to the Commission.

PART 4. The City is authorized to intervene in any appeal of an action filed at the Commission, and to participate in any such appeal as a member of the Coalition.

PART 5. The Council finds the rate case expenses incurred by the Coalition in reviewing the Company's GRIP request and representing the Coalition in this proceeding are reasonable. ATMOS Mid-Tex shall promptly reimburse the City's reasonable costs associated with any activity stemming from the proposed GRIP rate adjustment.

PART 6. This ordinance takes effect on August 29, 2005.

PASSED AND APPROVED

August 18, 2005

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk