

ORDINANCE NO. 20051117-010

AN ORDINANCE DENYING AN INTERIM RATE INCREASE PROPOSED BY ATMOS ENERGY CORPORATION, MID-TEX DIVISION (FORMERLY TXU GAS COMPANY), 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 September 17, 2005, 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 is November 19, 2005.
- (B) The City has exclusive original jurisdiction under Sections 102 and 103 of the Texas Utilities Code to evaluate the Company's GRIP 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) In the fall of 2004, ATMOS Mid-Tex filed a similar interim rate increase request with all cities in its service area, seeking \$6.7 million statewide. This proposed increase came only months after ATMOS was awarded an \$11.5 million traditional rate increase enacted statewide in May, 2004. Staff concluded the GRIP increase was unreasonable, and recommended that Council indefinitely suspend the proposed effective date of the increase. The Council adopted an ordinance indefinitely suspending the proposed increase on February 10, 2005, which ATMOS appealed to the Texas Railroad Commission.
- (D) The City has exclusive original jurisdiction under Sections 102 and 103 of the Texas Utilities Code to evaluate the Company's GRIP 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.

(E) 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) sought to intervene in the ATMOS appeal, but was rebuffed by the Texas Railroad Commission. While that order is on appeal, the Committee and its consultants have developed a significant body of evidence showing the Company's current proposal is also unjustified, unreasonable and not in compliance with the GRIP statute (Texas Utilities Code § 104.301, including:

- (1) An \$11.5 million annual system-wide general rate increase TXU Gas received prior to its merger with ATMOS renders the proposed GRIP increase duplicative and unnecessary;
- (2) A 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 indicates significant resources are available to fund these accommodations without the proposed interim GRIP increase;
- (3) Growth in numbers of customers are not factored into the proposed increase, thereby underreporting the revenues it will receive from the proposed GRIP rate increase;
- (4) An 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.

(F) Texas Utilities Code § 103.022 provides that costs incurred by the City in ratemaking activities be reimbursed by the regulated utility.

(G) 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.

(H) The Council finds that the Company's GRIP increase request is unjustified, unreasonable and in violation of the GRIP statute.

PART 2. 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.

PART 3. The Council orders ATMOS Energy Corporation, Mid-Texas Division to refund any amount already collected under the adjustment, and to promptly reimburse the City's reasonable costs associated with any activity stemming from the proposed GRIP rate adjustment.

PART 4. This ordinance takes effect on November 28, 2005.

PASSED AND APPROVED

_____, November 17, 2005

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§ *Danmy Thomas for Will Wynn*
Will Wynn
Mayor

APPROVED:

David Allan Smith
David Allan Smith
City Attorney

ATTEST:

Shirley A. Brown
Shirley A. Brown
City Clerk