



**Franchise Agreement
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 2
AGENDA DATE: Thu 02/10/2005
PAGE: 1 of 2**

SUBJECT: Approve an ordinance suspending Atmos Energy Corporation, Mid-Tex Division, formerly TXU Gas Company, proposed Gas Reliability Infrastructure Program customer surcharge and approve a resolution authorizing the City Manager to join the Allied Coalition of Cities in review of filing.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Financial and **DIRECTOR'S**
DEPARTMENT: Administrative Services - **AUTHORIZATION:** Vickie Schubert
Telecommunications and
Regulatory Affairs

FOR MORE INFORMATION CONTACT: Rondella Hawkins, Manager, 974-2422

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

Atmos Energy Corporation, Mid-Tex Division, formerly TXU Gas Company, made a Gas Reliability Infrastructure Program (GRIP) filing in all cities it serves and at the Railroad Commission of Texas (RRC). This filing is made according to legislation passed by the Texas Legislature in 2003 and codified in the Texas Utilities Code Chapter 104. Section 104.301 allows a gas utility to recover additional invested capital through a new customer surcharge without a full rate case. GRIP rates must be based on reasonable increases in invested capital. The filing notifies cities and the RRC of Atmos' intent to increase rates by \$8.5 million statewide, on top of the \$11.5 million state-wide rate increase enacted in May, 2004. Atmos claims that net investment in infrastructure (system expansion, pipe repairs, relocating existing facilities) throughout the former TXU service areas increased \$43.5 million in 2003, a 60% increase from the previous year.

The City has original jurisdiction to approve or deny a gas utility's GRIP assessment against City customers. Based on company-provided information, Council approval of the assessment will increase the average monthly bill for approximately 4,800 customers, beginning February 15, 2005 and remain in effect until Atmos has recovered the costs in full. The average increase is: Residential - \$0.31; Commercial - \$0.84; Industrial - \$26.85. Denying or suspending the request will result in an appeal by Atmos to the RRC. Staff recommends that the Council approve an ordinance indefinitely suspending the requested assessment. Staff questions the reasonableness of such a large assessment, as annual cost savings resulting from the merger will offset a large percentage of the investment, and suspending the assessment will provide staff an opportunity to properly review the Atmos filing. Staff also recommends that the City join the Allied Coalition of Cities, a group of other Texas cities served by Atmos who are challenging the assessment before the Texas Railroad Commission. The Coalition will retain consultants to assess and outside counsel to oppose the statewide filing. The City may participate in the coalition at no cost to it, as the Alliance will seek reimbursement from Atmos for all necessary expenses.



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RESOLUTION NO. 050210-

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

The Council approves a resolution authorizing the City Manager to join the Allied Coalition of Cities in a review of the GRIP customer surcharge filed with the City.

ADOPTED: February 10, 2005

ATTEST: _____

Shirley A. Brown
City Clerk



MEMORANDUM

TO: Mayor and Council Members

FROM: Rondella M. Hawkins, Manager
Telecommunications & Regulatory Affairs

DATE: February 2, 2005

SUBJECT: 2/10/05 Agenda Items – Atmos Energy (TXU)

City staff recommends (1) the City Council approve an ordinance suspending the GRIP customer surcharge proposed by Atmos Energy Corporation and authorize the City Manager to join the Allied Coalition of Cities in a review of filing. City staff also recommends (2) the City Council approve a resolution authorizing the City Manager to participate with Allied Coalition of Cities and to intervene in the Atmos Gas Cost Prudence Review.

(1) GRIP (Gas Reliability Infrastructure Program)

Atmos Energy Corporation, Mid-Tex Division, formerly TXU Gas Company filed a GRIP filing with all its cities and at the Railroad Commission of Texas ("RRC"). This annual filing was made pursuant to the GRIP legislation that was passed by the Legislature in 2003. The City of Austin has original jurisdiction over a utility's attempt to implement GRIP surcharges for in-city customers. Based on company provided information, here is a breakdown of the increase to classes of customers statewide: Residential - \$.31; Commercial - \$.84; Industrial - \$26.85.

The GRIP filings notified cities and the RRC of Atmos' plans to implement two separate surcharges (distribution and pipeline) over and above the rates approved by the RRC for the company in May 2004. If the GRIP increases planned by Atmos are implemented, the company will recover \$8.5 million in annual revenues from this surcharge alone, in addition to the \$11.5 million revenue increase allowed by the RRC in the statewide gas rate case of May 2004.

In its filings, Atmos claims that net investment in infrastructure throughout the former TXU service areas increased in 2003 by a total of \$43.5 million. The investment was in such items as system expansion, relocation, and repairs of pipes. If calculated in compliance with the GRIP statute, this claimed increase would be in addition to the \$70 million in investment included in the statewide gas case. Atmos is therefore claiming that plant investment increased by over sixty percent (60%) during 2003.

Atmos has publicly stated that it expects to experience annual cost savings of at least \$40 million over the former TXU costs. The question then becomes why Atmos should need to request an additional \$8.5 million in revenues for invested capital. GRIP rates are based on reasonable increases in invested

capital.

Atmos has requested that all cities either allow the proposed GRIP increases to take effect on February 15, 2005, as proposed, or to deny the request as soon as possible. However, denying Atmos' proposal is likely to have the ultimate effect of approving it. Denial would allow Atmos to appeal the City's action to the RRC, which enacted a GRIP procedural rule in December. Discussions during that rulemaking indicated that the RRC is likely to push these filings through to approval with little, if any, opportunity for review by the Cities or their consultants.

However, the City has another option available to it which is to "suspend" the implementation of the surcharge. The Allied Coalition of Cities ("Coalition"), which city staff is requesting authorization to join in this matter and another filing, recommends that the appropriate allowable option is to suspend the implementation of this surcharge.

From everything the Coalition can determine, the implementation of the proposed GRIP surcharges will allow substantial over-earning by the utility. The GRIP authorizing legislation does not specify a time period for suspension by cities, and thus the proposed ordinance does not include a specific end date for the suspension period. The suspension will allow the cities to review the information and determine if the GRIP surcharges are appropriate.

City staff recommends that Council approve an ordinance suspending the GRIP surcharge and authorize the City Manager to join the Coalition.

(2) Gas Costs Prudence Review:

Atmos Energy Corporation filed a three-year gas cost prudence review at the RRC. This filing is one in a series of triennial filings required by the RRC. The purpose of the filing requirement is to allow a periodic review of the prudence of gas purchases. TXU's Gas Cost Review documentation regarding its purchasing practices and the actual amount and cost of gas purchases for the period of November 1, 2000 to October 31, 2003, was filed at the Commission on September 24, 2004. It was assigned gas utilities docket (GUD) No. 9530. The sale of TXU's gas utility operations to Atmos was completed on October 1, 2004.

TXU purchased gas during the three-year period covered by the review at a total cost of \$2.2 billion. This is twice the cost of gas purchases included in TXU's filing for the previous three-year period. For this filing, monthly average gas costs that TXU paid to gas producers ranged from \$2.34 to \$8.17, with the average cost being \$4.67. Testimony included in the filing indicates that TXU only sought to lock in prices for 35-40 percent of the gas needed to meet its anticipated winter demand during this three-year period. Over half of all of the gas purchases were made on the spot market. The spot market is a commodity market for the purchase of gas. The spot price is set on the supply and demand of immediate requirements at one particular point in time on that market. The price varies extensively in times of extreme heat or cold.

It is appropriate that cities intervene in Gas Utilities Docket No. 9530 to evaluate the possibility of refunds attributable to excessive gas cost purchases. If these or other purchases are found to be imprudent by the Commission, Atmos will be ordered to pay refunds to all of its customers.

The Railroad Commission examiners established a December 10, 2004 intervention deadline. An intervention was filed on behalf of the Coalition and the City of Arlington by the December date. As cities pass resolutions, they will be added to the initial intervention by the Coalition and the City of

Arlington.

Finally, there will be no cost to the City of Austin to participate in these filings with the Coalition. The Coalition's steering committee will be seeking reimbursement from Atmos for any expenses.

City staff recommends the City Council approve a resolution authorizing the City Manager to participate with Allied Coalition of Cities and to intervene in the Atmos Gas Cost Prudence Review.

Please contact me at 974-2422 if you have further questions.

cc: Toby Hammett Futrell, City Manager
John Stephens, Chief Financial Officer
Vickie Schubert, Deputy Financial Officer