



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

**AGENDA ITEM NO.: 11
AGENDA DATE: Thu 08/18/2005
PAGE: 1 of 2**

SUBJECT: Approve an ordinance denying the request by ATMOS Energy for an annual GRIP (gas reliability infrastructure program) rate increase; approve participation in the ATMOS Cities Steering Committee (ACSC); authorize ACSC to hire legal and consulting services to negotiate and direct any necessary legal action on the City's behalf; approve reasonable costs incurred by ACSC when acting on the City's behalf; approve a requirement for prompt reimbursement of costs and provide notice of this ordinance to ATMOS Energy Corp., Mid-Tex.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: N/A

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

FOR MORE INFORMATION CONTACT: Rondella Hawkins, (512) 974- 2422

PRIOR COUNCIL ACTION: City Council suspended rates on February 10, 2005.

BOARD AND COMMISSION ACTION:

In December 2004, Atmos Energy Corporation, Mid-Tex Division, formerly TXU Gas Company, filed a request for an annual gas reliability infrastructure program ("GRIP") rate increase with all its cities and at the Railroad Commission of Texas ("RRC"). The City of Austin has exclusive original jurisdiction to evaluate the Company's request for in-city customers and on February 10, 2005, the Austin City Council approved an ordinance suspending Atmos Energy Corporation's proposed rate increase indefinitely and authorized the City Manager to join a coalition of cities known as Atmos Cities Steering Committee ("ACSC") in a review of filing.

In March 2005, the RRC approved the GRIP filing for out-of-city customers (environs). Cities were not deemed by the RRC to have any direct interest in those cases and were, therefore, not allowed to intervene and were not allowed to present evidence. This decision is on appeal by the coalitions so it is still subject to being settled and brought back to the Commission with a request for a new order. With the city GRIP filings by Atmos now being denied and appealed to the Commission, cities are being represented by various coalitions and will be allowed to participate and have some opportunity to present evidence and/or comments in opposition to Atmos' evidence and positions. This will give the Commission a different set of facts to consider in making its decision.

Counsel for ACSC reviewed the Company's filing on behalf of the City staff, and upon consultation with various consultants, recommends finding that the Company's proposal is unjustified, unreasonable, and not in compliance with the GRIP statute either in fact or in law.



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The costs incurred by ACSC in reviewing the Company's GRIP request shall be reimbursed by the company. Staff recommends that the City authorize intervention in any appeal of the city's action filed at the Commission, and to participate in any such appeal as a member of ACSC.

City staff recommends that Council approve an ordinance denying the request by ATMOS Energy for an annual GRIP (gas reliability infrastructure program) rate increase; approve participation in the ATMOS Cities Steering Committee (ACSC); authorize ACSC to hire legal and consulting services to negotiate and/or direct any necessary legal action on the City's behalf; approve reasonable costs incurred by ACSC when acting on the City's behalf; approve a requirement for prompt reimbursement of such costs and provide notice of this ordinance to ATMOS Energy Corp., Mid-Tex .



MEMORANDUM

TO: Mayor and Council members

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

DATE: August 10, 2005

SUBJECT: Atmos Energy - 8/18/05 Council Agenda Item #10

In December 2004, Atmos Energy Corporation, Mid-Tex Division, formerly TXU Gas Company, filed a request for an annual gas reliability infrastructure program ("GRIP") rate increase with all its cities and at the Railroad Commission of Texas ("RRC"). The City of Austin has exclusive original jurisdiction to evaluate the Company's request for in-city customers and on February 10, 2005, the Austin City Council approved an ordinance suspending Atmos Energy Corporation's proposed rate increase indefinitely and authorized the City Manager to join a coalition of cities known as Atmos Cities Steering Committee ("ACSC") in a review of filing.

In March 2005, the RRC approved the GRIP filing for out-of-city customers (environs). Cities were not deemed by the RRC to have any direct interest in those cases and were, therefore, not allowed to intervene and were not allowed to present evidence. This decision is on appeal by the coalitions so it is still subject to being settled and brought back to the Commission with a request for a new order. With the city GRIP filings by Atmos now being denied and appealed to the Commission, cities are being represented by various coalitions and will be allowed to participate and have some opportunity to present evidence and/or comments in opposition to Atmos' evidence and positions. This will give the Commission a different set of facts to consider in making its decision. If it makes the same decision in light of different facts, that gives us an argument on appeal that their decision was arbitrary and capricious.

Counsel for ACSC has reviewed the Company's filing and upon consultation with various consultants, recommends finding that the Company's proposal is unjustified, unreasonable, and not in compliance with the GRIP statute either in fact or in law. Information provided by the Company in response to ACSC's requests for information indicates that the Company actually decreased per-customer investment in infrastructure during calendar year 2003; and the Company has publicly stated that it will receive substantial profit in 2005 over that approved by the Commission last year in their statewide rate case, GUD No. 9400. Additionally, the Company's GRIP proposal fails to account for growth in customer base, thereby undercounting the revenues it will receive from its proposed GRIP rate increase and it fails to recognize that GUD No. 9400 rates included profit based on TXU Corporation's capital structure rather than Atmos Energy Corp.'s current capital structure, which

justifies a lower rate of return. Information also reviewed by the ACSC consultants indicates that

implementation of the Company's GRIP request would result in further over-earning by the Company above that approved by the Commission in GUD No. 9400.

The coalition has been negotiating with Atmos representatives and in consideration of the cities taking action before August 12, 2005, on the currently pending GRIP request; the Company has agreed not to file any additional GRIP requests before September 15, 2005. This will allow ACSC to include the current GRIP filing in our settlement discussion without having to concurrently review a new filing. It will also allow us to negotiate for what we want to see in the next GRIP filing to avoid the delay caused by having to ask for additional information after the filing. The City of Austin received permission from ACSC and Atmos representatives to have the City Council take action after the August 12th deadline.

ACSC is recommending the City authorize cooperation with other Cities within the Company's Distribution System that have formed ACSC to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City regarding reasonable rates and to direct any necessary litigation associated with an appeal of this ordinance to the Commission. The costs incurred by ACSC in reviewing the Company's GRIP request shall be reimbursed. ACSC is also recommending the City to authorize intervention in any appeal of the city's action filed at the Commission, and to participate in any such appeal as a member of ACSC.

City staff recommends that Council approve an ordinance denying the request by Atmos Energy for an annual GRIP rate increase on the basis that it is unjustified, unreasonable and in violation of the GRIP statute; approve cooperation as part of the ACSC; authorize ACSC to hire legal and consulting services and to negotiate with the Company and direct an necessary litigation; authorize intervention as part of ACSC in any appeal of the City's action to the Railroad Commission; approve costs incurred as reasonable and providing a requirement for prompt reimbursement of costs; and provide for notice of this ordinance to Atmos Energy Corp., Mid-Tex Division.

ORDINANCE NO. 20050818-

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	§ § § _____ Will Wynn Mayor
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APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk