

#10
11-17-05

ORDINANCE NO. _____

1 **AN ORDINANCE DENYING AN INTERIM RATE INCREASE PROPOSED BY**
2 **ATMOS ENERGY CORPORATION, MID-TEX DIVISION (FORMERLY TXU**
3 **GAS COMPANY), AND ORDERING THE CITY'S REASONABLE EXPENSES**
4 **BE REIMBURSED.**

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

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8 **PART 1. FINDINGS.**

- 9 (A) On or about September 17, 2005, ATMOS Energy Corporation, Mid-Tex
10 Division ("ATMOS" or "the Company"), formerly known as TXU Gas
11 Company ("TXU Gas"), filed with the City and the Texas Railroad
12 Commission ("the Commission") a request to assess a gas reliability
13 infrastructure program interim rate increase ("GRIP increase"), as authorized
14 by Texas Utilities Code §104.301, against all gas distribution customers served
15 by ATMOS Mid-Tex. The effective date of the proposed increase is November
16 19, 2005.
- 17 (B) The City has exclusive original jurisdiction under Sections 102 and 103 of the
18 Texas Utilities Code to evaluate the Company's GRIP request with respect to
19 distribution facilities inside the city and (1) approve the increase as requested;
20 (2) indefinitely suspend the effective date of the proposed rate increase; or (3)
21 deny the request in its entirety.
- 22 (C) In the fall of 2004, ATMOS Mid-Tex filed a similar interim rate increase
23 request with all cities in its service area, seeking a \$6.7 million statewide. This
24 proposed increase came only months after ATMOS was awarded an \$11.5
25 million traditional rate increase enacted statewide in May, 2004. Staff
26 concluded the GRIP increase was unreasonable, and recommended that
27 Council indefinitely suspend the proposed effective date of the increase. The
28 Council adopted an ordinance indefinitely suspending the proposed increase
29 on February 10, 2005, which ATMOS appealed to the Texas Railroad
30 Commission.
- 31 (D) The City has exclusive original jurisdiction under Sections 102 and 103 of the
32 Texas Utilities Code to evaluate the Company's GRIP request with respect to
33 distribution facilities inside the city and (1) approve the increase as requested;
34 (2) indefinitely suspend the effective date of the proposed rate increase; or (3)
35 deny the request in its entirety.

1 (E) Since that date, the City has cooperated with a coalition of other cities who are
2 also opposed to the Company's filing. The ATMOS Cities Steering
3 Committee (of which the City is a member) sought to intervene in the ATMOS
4 appeal, but was rebuffed by the Texas Railroad Commission. While that order
5 is on appeal, the Committee and its consultants have developed a significant
6 body of evidence showing the Company's current proposal is also unjustified,
7 unreasonable and not in compliance with the GRIP statute (Texas Utilities
8 Code § 104.301, including:

- 9 (1) An \$11.5 million annual system-wide general rate increase TXU Gas
10 received prior to its merger with ATMOS renders the proposed GRIP
11 increase duplicative and unnecessary;
- 12 (2) A twenty percent profit increase for the Company's fiscal year ending
13 September 30, 2004 (as reported by ATMOS), and has publicly stated
14 that it will receive substantial profit in 2005 over that approved by the
15 Commission in GUD No. 9400 indicates significant resources are
16 available to fund these accommodations without the proposed interim
17 GRIP increase;
- 18 (3) Growth in numbers of customers are not factored into the proposed
19 increase, thereby underreporting the revenues it will receive from the
20 proposed GRIP rate increase;
- 21 (4) An estimated savings of more than \$40 million or more annually due to
22 its merger with TXU Gas;
- 23 (5) Additional windfall from rates based on costs no longer incurred due to
24 merger, which together with the Company's GRIP request will result in
25 further over-earning by the Company above that approved by the
26 Commission in GUD No. 9400;
- 27 (6) Actual decrease in per-customer investment in infrastructure during
28 calendar year 2003; and
- 29 (7) ATMOS' increase in profits along with cost savings from the merger
30 will likely exceed any reasonable increase in invested capital, making
31 the GRIP assessment unnecessary and unreasonable while adversely
32 impacting approximately 4,800 city ratepayers.

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

1 (G) The meeting during which approval of this Ordinance is considered is open to
2 the public as required by law, and public notice of the time, place and purpose
3 of the meeting was given as required.

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

6 **PART 2.** The Council DENIES the gas reliability infrastructure program (GRIP) rate
7 adjustment sought by ATMOS Energy Corporation, Mid-Tex Division under Section
8 104.301 of the Texas Utilities Code.

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

13 This ordinance takes effect on _____, 2005.

14 **PASSED AND APPROVED**

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16 §
17 §
18 _____, 2005 § _____
19 Will Wynn
20 Mayor
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23 **APPROVED:** _____
24 David Allan Smith
25 City Attorney
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23 **ATTEST:** _____
24 Shirley A. Brown
25 City Clerk
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