



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: H-1

Date: April 12, 2006

Subject: Request that the City Council consider a public hearing for the purpose of receiving input and comments on the Atmos Energy Corporation, Mid-Tex Division rate adjustments proposed by the cities coalition expert and after receiving that input and the information from the cities consultants to either adopt the attached ordinance or to take action considered to be in the public interest by the City Council.

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Item Reference: In Resolution R-2005-32 adopted on December 14, 2005, the City Council began a review of Atmos gas rates, the results of that review and a recommendation are now available.

In 2005, seventy-six Texas cities served by Atmos Mid-Tex determined that Atmos should be required to establish the reasonableness of its current rates. On December 14, 2005, Tyler approved that action along with using attorney Geoffrey Gay to lead the coalition of cities. The “show cause” resolutions required Atmos to file by December 31, 2005, support for its current rates. Atmos filed schedules with the cities, which have been reviewed by the cities’ consultants. In addition, the cities’ consultants requested additional information from Atmos. As a result of their analysis of the filing and the additional information, the cities’ consultants have issued a report finding that Atmos’ current rates are excessive and should be reduced. Today the City Council is asked to hold a public hearing to take input from the public and/or Atmos in response to the rate review and recommendation. Included with this Communication is a memo dated March 30, 2005 from the City’s outside attorney explaining the situation and another Memo dated March 3, 2006, describing the consultant’s rate review and recommendations.

It is anticipated that if the City Council adopts the attached ordinance lowering Atmos’ rates that Atmos will appeal to the Railroad Commission and if so it is recommended that Tyler continue with other cities in the coalition to defend that appeal.

Overview of Consultants’ Report:

1. Rate of Return. Atmos’ filing used the same rate of return approved in GUD Number 9400, based upon the capital structure and component costs of TXU Gas. Atmos’ filing does not reflect the change in ownership; Atmos’ capital structure is markedly different from TXU Gas, and the rate of return should be adjusted.

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Overview of Consultants' Report cont...:

2. Rate Base. Atmos has allocated plant assets to Mid-Tex that did not come from TXU when Atmos purchased the system, and that may already be included in the rates of customers served by other Atmos operating units. Additionally, Atmos has failed to recognize the accumulated deferred income taxes and investment tax credits that were on the books of TXU when the assets were acquired, resulting in a loss by ratepayers of the benefits of the deferrals. As a result, Atmos' rate base should be reduced by \$185 million.

3. Depreciation Expense. A service unit was removed from rate base, but Atmos has not reduced its depreciation expense associated with this removal. As a result, Atmos' depreciation expense should be reduced by \$3.1 million.

4. Operating Expenses. Atmos has improperly adjusted its operation and maintenance expenses, resulting in a reduction of \$35.8 million to these expenses.

5. Service Charge Revenue. Atmos has not included service charge revenues to reduce its revenue requirements. These revenues need to be accounted for, and reduce Atmos' base rate revenue requirements by \$927,576.

As a result of these adjustments, Atmos' revenue requirement should be reduced by \$73.5 million from that reflected in its show cause filing, and by \$34.7 million below the revenue requirement approved in GUD No. 9400. The rates recommended by the cities' consultants are a reduction from both the monthly customer charge and the commodity rate established in GUD Number 9400.

Explanation of "Be It Ordained" Paragraphs:

1. A public hearing needs to be held so that Atmos and interested members of the public are given the opportunity to address the Council on the proposed rate ordinance.

2. Atmos' filing and its responses to requests for additional information, as analyzed by the cities' consultants, failed to show that its existing rates were just or reasonable, thus triggering the need for the City to take action to ensure that the regulated utility's rates are just and reasonable.

3. The rates in Attachment "A" are those rates recommended by the Cities' consultants that will meet the requirements of the Gas Utility Regulatory Act ("GURA"). That is, the rates will produce revenues for Atmos that will permit Atmos a reasonable opportunity to earn a reasonable return on its invested capital, but will not yield more than a fair return.

4. The rates ordered by the City will be effective immediately. GRIP surcharges will cease immediately. The GRIP statute contemplates that the investment associated with such surcharges will be reviewed for reasonableness and prudence in subsequent rate cases, and the surcharges will cease thereafter.

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5. It is expected that Atmos will appeal the rate ordinance to the Railroad Commission. The City should intervene in that appeal in conjunction with the Atmos Cities Steering Committee. A full hearing on the merits of Atmos' appeal will be held at the Commission. It is expected that the hearing will take place later this year.

6. GURA requires the utility to reimburse the City for its reasonable costs associated with the City's activities related

RECOMMENDATION:

It is recommended that the City Council hold a public hearing for the purpose of receiving input and comments on the Atmos Energy Corporation, Mid-Tex Division rate adjustments proposed by the cities coalition expert and after receiving that input and the information from the cities consultants to either adopt the attached ordinance or to take action considered to be in the public interest by the City Council.

Drafted/Recommended By: *Gary C. Landers*
Department Leader Gary C. Landers, City Attorney

Edited/Submitted By:
City Manager

M E M O R A N D U M

TO: Seventy-Six Cities That Initiated Show-Cause Rate Actions Against Atmos Gas

FROM: Geoffrey Gay
Kristen Doyle
Georgia Crump

DATE: March 30, 2006

RE: Atmos Mid-Tex Rate Ordinance

Representatives of Mid-Tex Cities Served by Atmos Energy met in Arlington last Thursday, March 23, 2006, to discuss the report prepared by Cities' consultant Karl Nalepa, and to discuss the next steps in the show cause action involving Atmos' natural gas rates. The Steering Committee unanimously approved distribution of a rate ordinance that sets rates for Atmos Energy in the Mid-Tex region in accordance with Mr. Nalepa's findings and suspends the collection of the GRIP surcharges. The Steering Committee also approved a recommendation that cities adopt the ordinance.

Attached to this memorandum is a model rate ordinance and staff report. In addition, we have attached Mr. Nalepa's report and a brief Power Point presentation regarding the history of this proceeding and Mr. Nalepa's findings. Please place the rate ordinance on your council's agenda for action as soon as possible and inform our paralegal, Barbara Kimmell (bkimmell@lglawfirm.com, 512/322-5871), of the date the ordinance is to be considered. To the extent that you find it necessary, Geoffrey, Kristen, or Georgia will be available to attend council meetings to answer any questions and discuss the basis for the ordinance for the first dozen cities to take action. Once action has been taken on the ordinance, please forward a copy of the ordinance to Barbara.

Process for Considering the Atmos Rate Ordinance

A general guideline for the hearing process at the city level is discussed below. Individual city charters will control the details of the city hearing process (number of readings, timing of the readings, etc.) that must occur when considering the rate ordinance. Please consult your city charter and your city attorney if you have questions regarding the specific requirements applicable to your city.

A hearing must be held before the council in conjunction with the consideration of any rate ordinance. Besides city staff, only the affected utility should be granted a formal opportunity to address the council as part of the hearing process. However, citizens attending the meeting may be invited to address the ordinance briefly. It is within the city's discretion to set a limit upon the amount of time that the company representative has to address the council. Because the record of the hearing before the city council will not be considered by the Railroad Commission if the Company elects to appeal the rate ordinance, we encourage the city designate that company representatives have ten to fifteen minutes to address the council regarding the rate ordinance. To the extent that the Company believes that it has more information to provide the council than can be accommodated in a fifteen minute presentation, you may wish to direct the Company to file any additional information on paper with the council members' offices.

The opportunity to formally address the city council affords the Company reasonable due process. Due process does not require an evidentiary hearing, or that the Company be provided an opportunity to cross-examine witnesses. In approving the rate ordinance, cities are functioning in a quasi-legislative fashion. Therefore, written findings of fact and conclusions of law are not required and will not be considered by the Railroad Commission in the review of an appeal of the ordinance.

A copy of the approved ordinance shall be sent to Atmos Energy Corporation, c/o Richard Reis, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240. Please forward a copy to our office also. Once the council has approved the rate ordinance, Atmos will likely appeal the ordinance to the Railroad Commission. The first city to pass an ordinance will establish the timetable for Commission jurisdiction over an appeal from rates set by the municipalities. There were 137 cities represented in GUD No. 9400 (the last TXU Gas system-wide rate case). An intervention will be crafted so that cities that did not initiate a rate review can nonetheless participate in Commission proceedings to set Atmos' rates.

March 3, 2006

MEMOTO: Geoffrey Gay, Georgia Crump
FROM : Karl Nalepa
SUBJECT : Atmos Energy Mid Tex Rate Recommendation

On December 30, 2005 Atmos Energy Mid Tex (Atmos) filed with the Atmos Cities Steering Committee (ACSC) certain rate schedules summarizing its claimed revenue requirement in accordance with city show cause resolutions. The resolutions directed Atmos to file with the cities information sufficient to determine the Company's rate base, expenses, investment, and rate of return for a rate year ending June 30, 2005.

Atmos' rate filing alleged that its current revenue requirement is \$38.7 million more than was granted by the Railroad Commission of Texas (RRC) to TXU Gas Company (TXU Gas) in the final order in GUD 9400. Atmos' initial schedules contained adjustments to the GUD 9400 rates, but no workpapers to support the adjustments. RJC completed three rounds of discovery on Atmos to obtain supporting documentation to evaluate the schedules.

RJ Covington Consulting (RJC) has reviewed and evaluated the schedules filed by Atmos and submits these findings and recommendations to the Cities.

Summary of Recommendations

The total impact of RJC's recommendations on Atmos' filed revenue requirement is attached as Exhibit 1. This Exhibit reflects the adjustments described in this report, as well as any associated tax effects of those adjustments. These changes **reduce Atmos' revenue requirement by \$73.4 million from that reflected in its show cause filing, and \$34.7 million below the revenue requirement approved in GUD 9400.**

Exhibit 2 summarizes the resulting impact on rates for each customer class. RJC did not change Atmos' cost of service class allocations, but did adjust the rate design for both the customer and commodity charges. **For residential customers, RJC proposes to reduce the customer charge \$1.50, from \$9.00 to \$7.50 per customer, and reduce the commodity rate 4.75¢, from \$1.2390 to \$1.1915 per mcf in the first block and from \$0.9890 to \$0.9415 per mcf in the second block.** These recommended rates essentially reflect a rollback to pre-GUD 9400 levels for the residential class.

Rate of Return

Atmos included on Schedule G of its filing the same rate of return approved in GUD 9400. This rate derived from the same capital structure, same cost of debt, and same return on equity as in GUD 9400. Atmos responded in discovery that its position is that there has been no change to the capital structure and component costs established in the Company's rates since the Final Order in GUD 9400 was approved.¹

¹ Atmos response to ACSC 1-9.

Of course, Atmos is incorrect. The final order in GUD 9400 was based on the capital structure and component costs of TXU Gas. Since then, Atmos has acquired the TXU Gas assets, and its rates should reflect that change in ownership. Using the capital structure and weighted average cost of debt reported in Atmos' Form 10Q filing as of June 30, 2005, Atmos' rate of return calculation is markedly different. Exhibit 3 summarizes these differences:

Exhibit 3

	TXU Gas - GUD 9400			Atmos Energy - Form 10Q		
	Ratio	Cost	Total	Ratio	Cost	Total
Debt	48.3%	6.57%	3.173%	57.5%	5.27%	3.026%
Preferred Stock	1.9%	5.51%	0.105%	-	-	-
Common Equity	49.8%	10.00%	4.980%	42.5%	10.00%	4.250%
Return			8.258%			7.276%

If Atmos' test year end actual capital structure and cost of debt is used, even with the 10% return on equity approved for TXU Gas in GUD 9400, its rate of return is lowered by nearly a full percentage point and its return on investment would be reduced by \$22.6 million if applied to the reduced rate base as described below.

Rate Base

Atmos included on Schedule H of its filing a total rate base of \$990 million. This includes net plant of \$1,097 million and rate base deductions of \$107 million. RJC recommends two adjustments to rate base.

First, Atmos has included \$80.4 million of general plant assigned from its shared services unit, along with \$43.9 million of accumulated depreciation. This net plant of \$36.5 million represents plant assets of Atmos Energy that have been allocated to Mid Tex since its acquisition from TXU. The details of this plant has not been documented, and since the plant did not come from TXU with the acquisition, it is plant for which a return and depreciation is likely already being recovered in the rates of other Atmos customers served by other Atmos operating units.

Second, Atmos does not recognize as rate base deductions the accumulated deferred federal income taxes (ADFIT) and investment tax credits (ITC) that existed on the books of TXU Gas when the assets were acquired. Atmos responded in discovery that when TXU Gas sold its assets, the accumulated deferred income taxes recorded on its books *presumably* became due and payable.² As of December 31, 2003, the amount of ADFIT was \$140 million and the amount of ITC was \$9.6 million. RJC recommends that rates be set as though these income tax adjustments are on the books of Atmos. Atmos customers have been paying these taxes, yet lose the benefit of the adjustments if TXU keeps the deductions. And as rate base deductions, they have been used by the Company as a cost free source of capital.

The impact of these allocated plant and income tax adjustments is to reduce the rate base by \$185 million.

Depreciation Expenses

² Atmos response to ACSC 1-14.

Atmos included on Schedule I of its filing total depreciation expenses of \$65.7 million. RJC recommends reducing depreciation expense by \$3.1 million. This amount is associated with the \$36.5 million of net general plant assigned from Atmos shared services unit that was removed from rate base.

Operating Expenses

Atmos included on Schedule L of its filing total Operation & Maintenance (O&M) expense of \$162 million. These expenses are \$2 million less than the amount of O&M expense approved in GUD 9400, but \$7.6 million more than the test year ending June 30, 2005.

The test year included three months when TXU Gas operated the distribution system, and nine months when the system was operated by Atmos Energy. In order to adjust its test year expenses, Atmos revised its operating expenses to account for the portion of the test year operated by TXU Gas by simply removing the three months of TXU operating data and using instead the annualized amount of the 9 months operated by Atmos (i.e. 9 months of actual data / 9 months x 12 months). The adjustment results in a \$7.4 million reduction to expenses. Atmos made additional adjustments to expenses to recognize the transition of operations from TXU and Capgemini to Atmos that increase expenses by \$15.0 million.³

On the other hand, Atmos Energy Corporation held a conference call on August 9, 2005 to present its third quarter 2005 earnings report. During that call, Atmos described a reduction in O&M expenses of \$20-\$25 million by bringing TXU Gas onto the Atmos platform, \$6 million in annualized savings by bringing back in the Waco call center (previously operated by Capgemini), and \$25 million of reduced General & Administrative (G&A) expenses due to over-allocation of costs from the TXU parent to TXU Gas. Atmos clarified in discovery that the \$6 million call center savings are contained in the \$20-\$25 million of O&M savings,⁴ but these estimates still suggest a reduction of \$45-\$50 million from TXU Gas' total O&M expenses.

Atmos O&M adjustments are unreasonable in several respects:

- First, Atmos clearly does not trust the validity of TXU Gas' operating expenses since it removes these expenses entirely from the test year rather than try to verify and adjust the numbers.
- Second, Atmos' method of adjusting the TXU expense values by substituting annualized Atmos values introduces another bias into the expense levels. The months removed by Atmos – July, August and September - represent traditionally low consumption months. If these expenses are replaced by expenses weighted towards winter months with the highest consumption, the replacement expenses are overstated. This problem is compounded by the cost of inevitable transition inefficiencies in the early months of operation by Atmos.
- Third, the additional adjustments made by Atmos to recognize the transition of operations to Atmos comprise, in large part, no more than management estimates of the cost of certain functions impacted by the acquisition, and are not supported by detailed workpapers. And these transition costs increase overall O&M expenses rather than reduce them.
- Fourth, Atmos' schedules do not reflect in any fashion the reductions in O&M expense discussed by the Company at its earnings conference call with the financial markets. During the call, J. Patrick Reddy, Atmos Senior Vice President and Chief Financial Officer, confirmed a \$45 million year to date reduction in expenses from that budgeted

³ Atmos response to ACSC 1-1 and 1-2.

⁴ Atmos response to ACSC 3-2.

by Atmos. Assuming Atmos' budgets were set no higher than TXU Gas' operating expenses, then some or all of this reduction should be passed on to consumers as an adjustment to revenue requirements.

RJC recommends the following adjustments to O&M expenses:

- Use the O&M expenses associated with the last three months of the test year – April, May and June – to estimate the TXU expense levels. This moderates the impact of the winter bias and early transition inefficiencies and results in an additional \$5.8 million reduction in O&M expense.
- Remove one half of the transition adjustments proposed by Atmos. None of the components of the total increase of \$15.0 million are adequately supported, so it is reasonable to expect that some level of adjustment is necessary. This adjustment results in a \$7.5 million reduction to O&M expense.
- Adjust account no. 922, Administrative Expenses Transferred, to reflect \$22.5 million of expense reductions associated with acquisition of the TXU Gas assets by Atmos. This represents one half of the \$45 million savings suggested by Atmos and allows for some uncertainty in the specific nature of the savings.

Total O&M expense reductions are \$35.8 million.

Service Charge Revenue

Atmos included on Schedule O-4 of its filing service charge revenues of \$19.9 million. However, test year service call revenues were \$0 when GUD 9400 test year reflected 35,676 calls and \$927,576 in revenues. Atmos responded in discovery that it did not record any revenue from service calls during the test year ending June 30, 2005.⁵ This does not mean Atmos had no service calls and does not explain what happened to the 35,676 calls received in the prior test year. Therefore, RJC recommends these revenues be added back into total service charge revenues and this reduces base rate revenue requirements by the same \$927,576.

Gas Reliability Infrastructure Program (GRIP)

The GRIP statute was intended to encourage a gas utility to make investments in safety and reliability upgrades to its system. To the extent that a utility did not over-earn on its approved rate of return, the utility was granted the opportunity to impose a surcharge on its customers to recover return, depreciation, and taxes associated with its annual incremental investment.

Atmos has filed requests to impose GRIP surcharges related to its incremental investment in 2003 (filed December 2004) and 2004 (filed September 2005). Atmos sought recover \$6.7 million through its 2003 surcharge and another \$6.7 million through its 2004 surcharge. While Cities did deny these requests, Atmos appealed these decisions to the Texas Railroad Commission, which approved the surcharges.

According to the statute, now that the investments reflected in GRIP are incorporated into the rates being set in this proceeding, the approved GRIP surcharges should end with adoption of the Cities' rate ordinance.

Cities have also shown in previous analyses that the GRIP surcharges were unnecessary because Atmos was already generating additional revenues in excess of its return on incremental investment. Therefore, any amounts collected under the GRIP surcharges should be refunded in

⁵ Atmos response to ACSC 1-26.

this proceeding. However, Atmos did not impose its 2003 GRIP surcharge until October 2005 and its 2004 surcharge until February 2006.⁶ While there are no GRIP revenues for which to adjust the revenue requirements, any amounts collected prior to the Cities' rate ordinance should be refunded.

EXHIBIT 1

Atmos Energy Corp., Mid-Tex Division

Cities Show Cause Rate Filing

Cities Recommended Systemwide Cost of Service

Line No.	Description	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05	Difference From Final Order	
	(a)	(b)	(c)	(c)	(d)	
1	Operating Revenue					
2	Residential (non-gas costs)	\$ 270,584,752	\$ 295,503,658	\$ 238,767,430	\$ (31,817,321)	
3	Residential (gas costs)	<u>314,197,054</u>	<u>314,197,054</u>	<u>314,197,054</u>	-	
4	Total Residential	584,781,805	609,700,712	552,964,484	(31,817,321)	
5						
6	Commercial (non-gas costs)	\$ 68,103,234	\$ 73,415,254	\$ 60,303,270	\$ (7,799,964)	
7	Commercial (gas costs)	<u>194,651,072</u>	<u>194,651,072</u>	<u>194,651,072</u>	-	
8	Total Commercial	262,754,306	268,066,326	254,954,342	(7,799,964)	
9						
10	Industrial/Transportation (non-gas costs)	\$ 18,924,434	\$ 24,173,053	\$ 19,677,447	\$ 753,013	
11	Industrial/Transportation (gas costs)	<u>26,063,143</u>	<u>26,063,143</u>	<u>26,063,143</u>	-	
12	Total Industrial/Transportation	44,987,577	50,236,196	45,740,590	753,013	
13						
14	Total (non-gas costs)	\$ 357,612,420	\$ 393,091,965	\$ 318,748,147	\$ (38,864,273)	
15	Total (gas costs)	<u>534,911,269</u>	<u>534,911,269</u>	<u>534,911,269</u>	-	
16	Total Operating Revenue	892,523,689	928,003,234	853,659,416	(38,864,273)	
17						
18	Total Other Revenue	\$ 17,882,192	\$ 21,085,415	\$ 22,012,991	\$ 4,130,799	
19						
20	Total Operating and Other Revenue	<u>\$ 910,405,881</u>	<u>\$ 949,088,649</u>	<u>\$ 875,672,407</u>	<u>\$ (34,733,473)</u>	
21						
22						
23	Total Revenue Requirement					
24						
25	Operating Expenses					
26	Gas Cost	\$ 534,911,269	\$ 534,911,269	\$ 534,911,269		
27						
28	Operation and Maintenance Expenses	164,130,220	162,340,824	126,522,180		
29						
30	Taxes Other than Income Taxes	70,374,371	75,400,544	71,423,693		
31						
32	Depreciation and Amortization Expense	55,042,990	65,663,511	62,591,960		
33						
34	Interest on Customer Deposits	1,472,587	2,325,821	2,325,821		
35	Interest on Customer Advances	124,993	126,573	126,573		
36						
37	Federal Income Taxes	20,785,888	26,568,125	18,627,900		
38						
39	Return on Rate Base	<u>63,563,562</u>	<u>81,751,983</u>	<u>59,143,011</u>		
40						
41	Total Revenue Requirement	<u>\$ 910,405,880</u>	<u>\$ 949,088,649</u>	<u>\$ 875,672,407</u>		
42						
43	Note: The above figures include the cost of gas.					

⁶ Atmos response to ACSC 3-15.

EXHIBIT 2

Atmos Energy Corp., Mid-Tex Division

Cities Show Cause Rate Filing

Cities Recommended Rates

Line No.	Rate R - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
1	Customer Charge	\$ 9.00	\$ 9.73	\$ 7.50
2				
3	Block 1 Commodity Rate (0-3 Mcf)	\$ 1.2390	\$ 1.3991	\$ 1.1915 per Mcf
4	Block 2 Commodity Rate (over 3 Mcf)	\$ 0.9890	\$ 1.1491	\$ 0.9415 per Mcf
5				
6	Average Monthly Bill (6 Mcf without Gas Cost)	\$ 16.61	\$ 18.40	\$ 14.72 per Month
7				
8	Average Monthly Bill (6 Mcf with Gas Cost)	\$ 36.64	\$ 38.44	\$ 34.75 per Month
9				
10				
11				
12	Rate C - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
13				
14	Customer Charge	\$ 15.50	\$ 17.93	\$ 12.50
15				
16	Block 1 Commodity Rate (0-30 Mcf)	\$ 0.7894	\$ 0.8215	\$ 0.7417 per Mcf
17	Block 2 Commodity Rate (30-350 Mcf)	\$ 0.5394	\$ 0.5715	\$ 0.4917 per Mcf
18	Block 3 Commodity Rate (Over 350 Mcf)	\$ 0.2894	\$ 0.3215	\$ 0.2417 per Mcf
19				
20	Average Monthly Bill (30 Mcf without Gas Cost)	\$ 41.44	\$ 45.03	\$ 36.76 per Month
21				
22	Average Monthly Bill (30 Mcf with Gas Cost)	\$ 141.46	\$ 145.05	\$ 136.78 per Month
23				
24				
25				
26	Rate T - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
27				
28	Customer Charge	\$ 150.00	\$ 241.86	\$ 300.00
29				
30	Block 1 Commodity Rate (0-1,500 MMBtu)	\$ 0.4882	\$ 0.5935	\$ 0.4977 per MMBtu
31	Block 2 Commodity Rate (Next 3,500 MMBtu)	\$ 0.3382	\$ 0.4435	\$ 0.3477 per MMBtu
32	Block 3 Commodity Rate (Next 45,000 MMBtu)	\$ 0.1882	\$ 0.2935	\$ 0.1977 per MMBtu
33	Block 4 Commodity Rate (Over 50,000 MMBtu)	\$ 0.0382	\$ 0.1435	\$ 0.0477 per MMBtu
34				
35	Average Monthly Bill (300 MMBtu without gas cost)	\$ 313.48	\$ 443.98	\$ 475.07 per Month
36				
37	Average Monthly Bill (300 MMBtu with gas cost)	\$ 1,313.43	\$ 1,443.84	\$ 1,474.93 per Month

ORDINANCE NO. 0-2006-34

AN ORDINANCE FINDING THAT THE EXISTING NATURAL GAS DISTRIBUTION RATES OF ATMOS MID-TEX SHOULD BE REDUCED; ORDERING ATMOS ENERGY CORP., MID-TEX DIVISION, TO REDUCE ITS EXISTING RATES WITHIN THE CITY; ADOPTING SPECIFIC NEW RATES R, T & C AND ORDERING ALL RATES, SERVICE CHARGES AND TARIFF LANGUAGE NOT INCONSISTENT WITH ATTACHMENT 1 TO REMAIN OPERATIVE EXCEPT THAT ALL GRIP SURCHARGES SHALL IMMEDIATELY CEASE; ORDERING ATMOS MID-TEX TO REIMBURSE THE CITY FOR ITS REASONABLE COSTS INCURRED IN THIS SHOW CAUSE AND ANY RELATED RATEMAKING PROCEEDINGS OR APPEALS OF SAID PROCEEDINGS; AUTHORIZING THE ATMOS CITIES STEERING COMMITTEE TO ACT ON BEHALF OF CITY AND INTERVENE IN ANY PROCEEDINGS BEFORE ADMINISTRATIVE OR JUDICIAL BODIES; REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, the City of Tyler, Texas (City) is a regulatory authority under the Gas Utility Regulatory Act (“GURA”) and has original jurisdiction over the gas utility rates of Atmos Energy Corp., Mid-Tex Division (the “Company”); and

WHEREAS, the City has the authority under §§ 103.001 and 104.151, GURA, to initiate a proceeding to determine whether the existing rates of a gas utility are unreasonable or in any way in violation of any provision of law; and

WHEREAS, the City previously authorized participation with the Atmos Cities Steering Committee (ACSC); and

WHEREAS, on December 14, 2005, the City ordered the Company to show cause regarding the reasonableness of its existing natural gas distribution rates within the City; and

WHEREAS, the Company filed its rate filing package with the City on or about December 31, 2005; and

WHEREAS, the City’s representatives obtained additional information from the Company through written requests for information; and

WHEREAS, the City’s consultants and representatives through cooperative efforts under the direction of the ACSC have reviewed the rate filing package and responses to information requests and have made a recommendation to the City regarding the rates to be charged by the Company within the City; and

WHEREAS, on April 12, 2006, a public hearing was held, at which time the Company was given an opportunity to address the City Council regarding its current rates; and

WHEREAS, GURA § 104.151(a) provides that if a regulatory authority, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of a gas utility for a service are unreasonable or in violation of law, the regulatory

authority shall enter an order establishing the just and reasonable rates to be observed thereafter, and serve a copy of the order on the gas utility; and

WHEREAS, GURA § 104.151(b) provides that the rates thus ordered by the regulatory authority constitute the legal rates of the gas utility until changed as provided by GURA; and

WHEREAS, after affording reasonable notice and hearing to the Company, it is the City's opinion that the Company's current rates are not reasonable; and

WHEREAS, based upon such hearing, the briefing of staff, and the consultants' findings, the City has made a determination of the reasonableness of the existing rates of the Company, and has determined just and reasonable rates to be hereafter observed and enforced for all services of the Company within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1. That the Company was given reasonable notice of the hearing held on April 12, 2006, and the Company had a reasonable opportunity to show to the City that its rates were just and reasonable.

PART 2. That the Company failed to show that its existing rates are just or reasonable.

PART 3. That the rates set forth on Attachment "A" to this Ordinance, which attachment shall be incorporated herein as if it were fully set forth herein, are just and reasonable rates:

a. The rates set forth in Attachment "A" establish the Company's overall revenues at an amount that will permit the Company a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of the Company's reasonable and necessary operating expenses, in compliance with GURA § 104.051; and

b. The rates set forth in Attachment "A" do not yield more than a fair return on the adjusted value of invested capital used and useful in providing service to the public, in compliance with GURA § 104.052.

PART 4. That the Company shall immediately begin charging the rates set forth on Attachment "A" hereto, and shall, pursuant to GURA § 104.301, immediately cease the imposition and collection of all Gas Reliability Infrastructure Program ("GRIP") surcharges.

PART 5. That the existing rates, service charges and tariff language not inconsistent with Section 4 and Attachment 1 shall remain operative.

PART 6. That the City is authorized to intervene in any appeal of the City's action filed at the Railroad Commission of Texas and to otherwise participate in any litigation associated with the Company's rates charged in the City, in conjunction with the ACSC.

PART 7. That the Company shall promptly reimburse ACSC for ratemaking costs associated with the City's activities related to the show cause proceeding, including appeals to the Railroad Commission or Courts, in accordance with GURA §103.022.

PART 8. That a copy of this Ordinance shall be sent to the Company, care of Richard T. Reis, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, legal counsel to ACSC, at Lloyd Gosselink, P.O. Box 1725, Austin, Texas 78767-1725.

PART 9. That this Ordinance shall become effective immediately from and after its passage, as the law and charter in such cases provide.

PART 10. That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

DULY PASSED and approved by the City Council of the City of Tyler, Texas, on this the 12th day of April, 2006.

JOSEPH O. SEEBER, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

CASSANDRA BRAGER, CITY CLERK

APPROVED:

CITY ATTORNEY

Attachment A TO ORDINANCE 0-2006-34

Atmos Energy Corp., Mid-Tex Division

Ordered Rates

Line No.	Rate R - Summary	Ordered Rates
1	Customer Charge	\$ 7.50
2		
3	Block 1 Commodity Rate (0-3 Mcf)	\$ 1.1915 per Mcf
4	Block 2 Commodity Rate (over 3 Mcf)	0.9415 per Mcf
5		
6	Average Monthly Bill (6 Mcf without Gas Cost)	\$ 14.72 per Month
7		
8	Average Monthly Bill (6 Mcf with Gas Cost)	\$ 34.75 per Month
9		
10		
11		
12	Rate C - Summary	Ordered Rates
13		
14	Customer Charge	\$ 12.50
15		
16	Block 1 Commodity Rate (0-30 Mcf)	\$ 0.7417 per Mcf
17	Block 2 Commodity Rate (30-350 Mcf)	\$ 0.4917 per Mcf
18	Block 3 Commodity Rate (Over 350 Mcf)	\$ 0.2417 per Mcf
19		
20	Average Monthly Bill (30 Mcf without Gas Cost)	\$ 36.76 per Month
21		
22	Average Monthly Bill (30 Mcf with Gas Cost)	\$ 136.78 per Month
23		
24		
25		
26	Rate T - Summary	Ordered Rates
27		
28	Customer Charge	\$ 300.00
29		
30	Block 1 Commodity Rate (0-1,500 MMBtu)	\$ 0.4977 per MMBtu
31	Block 2 Commodity Rate (Next 3,500 MMBtu)	\$ 0.3477 per MMBtu
32	Block 3 Commodity Rate (Next 45,000 MMBtu)	\$ 0.1977 per MMBtu
33	Block 4 Commodity Rate (Over 50,000 MMBtu)	\$ 0.0477 per MMBtu
34		
35	Average Monthly Bill (300 MMBtu without gas cost)	\$ 475.07 per Month
36		
37	Average Monthly Bill (300 MMBtu with gas cost)	\$ 1,474.93 per Month