

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

APPLICATION OF ATMOS PIPELINE-TEXAS FOR TEST YEAR 2005 ANNUAL INTERIM RATE ADJUSTMENT FOR THE ENVIRONS AREA	§ § § § §	GAS UTILITIES DOCKET NO. 9664
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FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN, Chapter 551 (Vernon 2004). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

Background

1. Atmos Energy Corporation (Atmos) is a "gas utility," as that term is defined in the TEXAS UTILITY CODE, and is subject to the jurisdiction of the Railroad Commission of Texas (Commission).
2. Atmos Pipeline-Texas (Pipeline), a division of Atmos, owns and operates a gas pipeline transportation system.
3. On April 13, 2006, Atmos filed an application for an annual interim rate adjustment applicable to customers located on Pipeline's system.
4. Atmos requested that the interim rate adjustments for all customer classes become effective on June 12, 2006.
5. On April 19, 2006, the Commission suspended implementation of Atmos' proposed interim rate adjustments until July 27, 2006, which is 45 days following the 60th day after the applications were complete.
6. The Atmos Cities Steering Committee (ACSC), Atmos Texas Municipalities (ATM), and Intervening Cities filed Pleas of Intervention with the Commission in the cause of Pipeline's application for an interim rate adjustment.

7. Neither TEXAS UTILITIES CODE, §104.301 (Vernon Supp 2004-2005) nor 16 TEX. ADMIN. CODE, §7.7101 (2004) provide the opportunity for parties to intervene in the Commission's review of an application for an annual interim rate adjustment.
8. 16 TEX. ADMIN. CODE, §7.7101 (2004) allows written comments or a protest concerning the proposed interim rate adjustment to be filed with the Gas Services Division.
9. The Commission received no comments opposing the proposed increase.
10. This docket is the third annual interim rate adjustment for the intrastate pipeline system of Pipeline.
11. Until promulgation of TEXAS UTILITIES CODE, §104.301 (Vernon Supp 2004-2005), a utility could not increase its rates subject to the Commission's jurisdiction without filing with the Commission a formal statement of intent rate case, including a comprehensive cost of service rate review.
12. Atmos' proposed interim rate adjustment will allow Pipeline an opportunity to recover a return on investment, depreciation expense, and related taxes on the incremental cost of infrastructure investment since its last rate case, without the necessity of filing a statement of intent rate case and without review by the Commission of Pipeline's comprehensive cost of service.

Applicability

13. This docket applies to only those rates over which the Commission has original jurisdiction, which includes the entire Pipeline system.
14. As of year-end 2005, Pipeline customers included approximately 758 City Gate meters and 198 Pipeline Transportation rate meters.

Most Recent Comprehensive Rate Case

15. Atmos' most recent rate case for Pipeline for the area in which the interim rate adjustment will be implemented is GUD No. 9400, *Statement of Intent Filed by TXU Gas Company to Change Rates in the Company's Statewide Gas Utility System*.
16. GUD No. 9400 was filed on May 23, 2003.
17. The data used in GUD No. 9400 was based on a test-year ending December 31, 2002.
18. The Commission signed the GUD No. 9400 final Order on May 25, 2004, and the rates became effective the same day.
19. The Commission in GUD No. 9400 set the rates currently charged by Pipeline.

20. The following chart shows the factors that were established in GUD No. 9400 to calculate the return on investment, depreciation expense, incremental federal income tax, and ad valorem taxes for Pipeline:

Rate of Return	8.258%
Depreciation Rate	2.097%
Federal Income Tax Rate	35%
Ad Valorem Tax Rate	1.305%

Interim Rate Adjustment

21. Atmos seeks approval from the Commission for an adjustment to its revenue, based on incremental net utility plant investment, with regard to the following components: return on investment; depreciation expense; ad valorem taxes; revenue related taxes; and federal income taxes.
22. The revenue amounts to be recovered through Atmos' proposed annual interim rate adjustments for Pipeline are incremental to the revenue requirement established in Atmos' most recent rate case for Pipeline for the area in which the interim rate adjustment is to be implemented, i.e., GUD No. 9400.
23. Atmos calculated and presented all incremental values for investment, accumulated depreciation, return on investment, depreciation expense, ad valorem taxes, and incremental federal income taxes on a full calendar-year basis. Revenue related taxes are not included in Atmos' calculation of the interim rate adjustments. An existing rate schedule that was established by the final Order in GUD No. 9400 (Rider TAX) is applied to all revenues, including revenues that result from an interim rate adjustment.
24. For the first interim rate adjustment following a rate case, the amounts by which Atmos may adjust its rates are based on the difference between Pipeline's invested capital at the end of the most recent rate case test-year (December 31, 2002) and the invested capital at the end of the calendar-year following the end of the most recent rate case test-year (December 31, 2003).
25. This docket is the third annual interim rate adjustment for Pipeline. Therefore, to request its interim rate adjustments in this docket, Atmos submitted data for Pipeline for the calendar year ending December 31, 2005.
26. The value of Atmos' invested capital is equal to the original cost of the investment at the time the investment was first dedicated to public use minus the accumulated depreciation related to that investment for Pipeline's interim rate adjustments.

27. Pipeline's proposed interim rate adjustment is \$3,381,769 based on an incremental net utility plant investment increase of \$22,148,487.
28. Atmos is required to use the same factors to calculate the interim return on investment, depreciation expense, and incremental federal income tax as those established or used in the final order setting rates for Pipeline in Atmos' most recent rate case for the area in which the interim rate adjustment is to be implemented.
29. Atmos filed the Commission's Annual Earnings Monitoring Report (EMR) for Pipeline as required by 16 TEXAS ADMINISTRATIVE CODE §7.7101.
30. This is the first full year that the EMR can be realistically compared to the earnings anticipated in the statement of intent that was approved May 25, 2004 for the 2003 test year in GUD No. 9400. Pipeline's actual rate of return is 8.542%, which, compared with the 8.258% allowed rate of return established in GUD No. 9400, falls within the seventy-five (75) basis points threshold in accordance with 16 TEX. ADMIN. CODE, §7.7101.
31. Atmos filed its Annual Project Report for Pipeline as required by 16 TEXAS ADMINISTRATIVE CODE §7.7101.
32. Atmos is required to allocate the revenue to be collected through the interim rate adjustment for Pipeline among its customer classes in the same manner as the cost of service was allocated among its customer classes in its most recent rate case for the area in which the interim rate adjustment is to be implemented.
33. Atmos proposed the interim rate adjustment for Pipeline as a flat rate to be applied to the monthly customer charges and monthly meter charges rather than as a volumetric rate to be applied to the initial block usage rates.
34. Atmos is required to show its annual interim rate adjustments on its customers' monthly billing statements as a surcharge.
35. The proposed interim rate adjustment does not require an evidentiary proceeding; rather, TEXAS UTILITIES CODE, §104.301 and 16 TEX. ADMIN. CODE, §7.7101 require the regulatory authority to review a utility's method of calculating the interim rate adjustment.
36. Due process protections are deferred until Atmos files its next full statement of intent rate case for Pipeline.

Notice

37. Atmos provided adequate notice to Pipeline's City Gate (CGS) customers on May 1, 2006.
38. Atmos provided adequate notice to Pipeline's Pipeline Transportation (PT) customers on May 8, 2006.

Comprehensive Rate Case Required

- 39. Atmos is not required to initiate a rate case supporting a statement of intent, at the time it applies for an interim rate adjustment for Pipeline.
- 40. A gas utility that implements an interim rate adjustment and does not file a rate case before the fifth anniversary of the date its initial interim rate adjustment became effective is required to file a rate case not later than the 180th day after that anniversary.

Review of Interim Rate Adjustment

- 41. All capital items added during a test year, including expenses related to ancillary workplace improvements and signage for Company service centers, are appropriate expenses in the context of a full cost of service review, but are reasonably excluded in the context of an interim rate adjustment proceeding.
- 42. It is reasonable to decrease Atmos’ requested interim rate adjustment for Pipeline from \$3,381,760 to \$3,286,353 to reflect a \$662,725¹ reduction in net utility investment attributed to expenses for ancillary workplace improvements and signage.
- 43. Atmos’ proposed allocation methodology for Pipeline complies with TEXAS UTILITIES CODE, §104.301, and with 16 TEX. ADMIN. CODE, §7.7101.
- 44. For allocation methodology, it is reasonable for the Commission to approve use of Pipeline’s overall cost of service (less other revenue, gas cost, and revenue related taxes) as determined in its most recent rate case. The following overall cost of service allocation factors for use in the calculation of Pipeline’s interim rate adjustment are reasonable:

Customer Class	Allocation Factor
Rate CGS (City Gate Service)	0.731657
Rate PT (Pipeline Transportation)	0.268343

- 45. Atmos’ proposed customer and meter counts for Pipeline comply with TEXAS UTILITIES CODE, §104.301, and with 16 TEX. ADMIN. CODE, §7.7101.

¹ Atmos’ response to Staff’s RFI #1, Questions #1-5.

46. For calculating the number of customer charges or meter charges per year, it is reasonable for the Commission to approve use of Pipeline's 2005 year-end number of customers multiplied by twelve. The following total numbers of customer and meter charges for use in the calculation of the interim rate adjustment are reasonable:

Customer Class	Total Number of Customer Charges / Meters
Rate CGS (City Gate Service)	9,096
Rate PT (Pipeline Transportation)	2,376

47. It is reasonable for the Commission to approve Atmos' applications for interim rate adjustments for Pipeline, as modified by Staff. The following amounts of interim rate adjustment revenue and additional customer charges by customer class are reasonable:

Customer Class	Interim Rate Adjustment Revenue	Additional Customer/Meter Charge	New Customer/Meter Charge
Rate CGS (City Gate Service)	2,404,482	\$264.34	\$754.52
Rate PT (Pipeline Transportation)	881,871	\$371.16	\$1,005.31

Reimbursements of Expense

48. As provided for in the statute and the rule, a gas utility that implements an interim rate adjustment is required to reimburse the Commission for the utility's proportionate share of the Commission's annual costs related to the administration of the interim rate adjustment mechanism.
49. After the Commission has finally acted on Atmos' application for an interim rate adjustment for Pipeline, the Director of the Gas Services Division will estimate Atmos' proportionate share of the Commission's annual costs related to the processing of such applications.
50. In making the estimate of Atmos' proportionate share of the Commission's annual costs related to the processing of such applications, the Director will take into account the number of utilities the Commission reasonably expects to file for interim rate adjustments during the fiscal year, and the costs expected to be incurred in processing such applications.
51. Atmos is required to reimburse the Commission for the amount determined by the Director of the Gas Services Division and approved by the Commission, within thirty days after receipt of notice of the amount of the reimbursement.

CONCLUSIONS OF LAW

1. Atmos Energy Corporation (Atmos) is a "gas utility" as defined in TEX. UTIL. CODE ANN. § 101.003(7) (Vernon 1998 and Supp. 2004) and § 121.001 (Vernon 1998 and Supp. 2004-2005), and is therefore subject to the jurisdiction of the Railroad Commission of Texas (Commission).
2. The Commission has jurisdiction over Atmos, Atmos' applications for interim adjustments for Pipeline for incremental changes in investment, and the subject matter of this case under TEX. UTIL. CODE ANN. §102.001, §104.001, §104.002, and §104.301 (Vernon 1998 and Supp. 2004-2005).
3. Under TEX. UTIL. CODE ANN. §102.001 (Vernon 1998 and Supp. 2004-2005), the Commission has exclusive original jurisdiction over the rates and services of a gas utility that distributes natural gas in areas outside of a municipality and over the rates and services of a gas utility that transmits, transports, delivers, or sells natural gas to a gas utility that distributes the gas to the public.
4. Under the provisions of the TEXAS UTILITIES CODE ANN. §104.301 and 16 TEX. ADMIN. CODE § 7.7101 (2004), Atmos is required to seek Commission approval before implementing an interim rate adjustment tariff for Pipeline's customers.
5. Atmos filed its applications for interim rate adjustments for Pipeline for changes in investment in accordance with the provisions of TEX. UTIL. CODE ANN. §104.301 (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE § 7.7101 (2004).
6. Atmos' application for an interim rate adjustment for Pipeline was processed in accordance with the requirements of TEX. UTIL. CODE ANN. §104.301 (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101 (2004).
7. In accordance with 16 TEX. ADMIN. CODE § 7.315 (2002), within thirty days of the effective date of any change to rates or services, Atmos is required to file with the Gas Services Division of the Commission its revised tariffs for Pipeline.
8. Atmos may not charge any rate for Pipeline that has not been successfully filed and accepted as a tariff filing electronically pursuant to TEX. UTIL. CODE ANN. § 102.151 and 104.002 and 16 TEX. ADMIN. CODE § 7.315 (2002).
9. In accordance with TEX. UTIL. CODE ANN. §104.301(a) (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101(a) (2004), the filing date of Atmos' most recent rate case for Pipeline, in which there is a final order setting rates for the area in which the interim rate adjustment will apply, was no more than two years prior to the date Atmos filed its initial interim rate adjustment for Pipeline.

10. Atmos is required, under TEX. UTIL. CODE ANN. §104.301(e) (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101(d) (2004), to file with the Commission an annual project report for Pipeline, including the cost, need, and customers benefited by the change in investment, and describing the investment projects completed and placed in service during the preceding calendar year and the investments retired or abandoned during the preceding calendar year.
11. Atmos shall include in all future annual interim rate adjustment filings for Pipeline, relocation project reports that provide additional information about relocation project costs included in investment projects, in the same format as required in this docket.
12. Atmos is required, under TEX. UTIL. CODE ANN. §104.301(f) (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101(e) (2004), to file with the Commission an annual earnings monitoring report demonstrating Pipeline's earnings during the preceding calendar year.
13. Atmos is required, under 16 TEX. ADMIN. CODE §7.7101(h) (2004), to recalculate its approved interim rate adjustments for Pipeline annually and is required to file an application for an annual adjustment no later than 60 days prior to the one-year anniversary of the proposed implementation date of the previous interim rate adjustment application.
14. In accordance with 16 TEX. ADMIN. CODE §7.7101(i) (2004), all amounts collected from customers under Pipeline's interim rate adjustment tariffs or rate schedules are subject to refund. The issues of refund amounts, if any, and whether interest should be included on refunded amounts and, if so, the rate of interest, shall be addressed in the rate case a gas utility files or the Commission initiates after the implementation of an interim rate adjustment and shall be the subjects of specific findings of fact in the Commission's final order setting rates.
15. In accordance with 16 TEX. ADMIN. CODE §7.7101(j) (2004), in the rate case that Atmos files for Pipeline or the Commission initiates after the implementation of an interim rate adjustment, any change in investment and related expenses and revenues that have been included in any interim rate adjustment shall be fully subject to review for reasonableness and prudence. Upon issuance of a final order setting rates in the rate case that Atmos files for Pipeline or the Commission initiates after the implementation of an interim rate adjustment, any change in investment and related expenses and revenues that have been included in any interim rate adjustment shall no longer be subject to review for reasonableness or prudence.
16. The Commission has authority to suspend the implementation of the interim rate adjustment, under TEX. UTIL. CODE ANN. §104.301(a) (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101(e) (2004).
17. Atmos provided adequate notice, in accordance with TEX. UTIL. CODE ANN. §104.301(a) (Vernon Supp. 2004 – 2005) and 16 TEX. ADMIN. CODE §7.7101(b) (2004).

18. Atmos' application for interim rate adjustments for Pipeline, as proposed, complies with all provisions of TEX. UTIL. CODE ANN. §104.301 (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101 (2004).
19. Atmos' interim rate adjustments set forth in the findings of fact and conclusions of law in this Order, comply with the provisions of TEX. UTIL. CODE ANN. §104.301 (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101 (2004).
20. In accordance with TEX. UTIL. CODE ANN. §104.301(h) (Vernon Supp. 2004 – 2005) and 16 TEX. ADMIN. CODE §7.7101(l) (2004), Atmos shall file a comprehensive rate case for Pipeline for the areas in which the interim rate adjustment is implemented, not later than the 180th day after the fifth anniversary of the date its initial interim rate adjustment became effective.
21. The Commission has authority, under TEX. UTIL. CODE ANN. §104.301(j) (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101(m) (2004), to recover from Atmos the Pipeline's proportionate share of the Commission's annual costs related to the administration of the interim rate adjustment mechanism.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS THAT Atmos' interim rate adjustments as requested, and to the extent recommended to be approved in the findings of fact and conclusions of law, are **HEREBY APPROVED** to be effective for bills rendered on or after July 6, 2006.

IT IS FURTHER ORDERED THAT Atmos **SHALL** file with the Commission no later than April 16, 2007, for Pipeline, an annual project report, including the cost, need, and customers benefited by the change in investment, and describing the investment projects completed and placed in service during the preceding calendar year and the investments retired or abandoned during the preceding calendar year.

IT IS FURTHER ORDERED THAT Atmos **SHALL** file with the Commission no later than April 16, 2007, for Pipeline, a relocation project report, which provides additional information about relocation costs included in investment projects, in the format provided in this docket.

IT IS FURTHER ORDERED THAT Atmos **SHALL** file with the Commission no later than April 16, 2007, for Pipeline, an annual earnings monitoring report demonstrating Distribution's earnings during the preceding calendar year.

IT IS FURTHER ORDERED THAT Atmos **SHALL** file with the Commission no later than April 16, 2007, for Pipeline, recalculations of its approved interim rate adjustments and applications for annual interim rate adjustments for the preceding calendar year.

IT IS FURTHER ORDERED THAT within 30 days of this order Atmos **SHALL** electronically file its interim rate adjustment tariffs for Pipeline in proper form that accurately reflect the rates, as expressed in Exhibit A, approved by the Commission in this Order.

IT IS FURTHER ORDERED THAT Atmos **SHALL** not charge any rate for Pipeline that has not been electronically filed and accepted by the Commission as a tariff.

IT IS FURTHER ORDERED THAT Atmos **SHALL** reimburse the expenses incurred by the Commission in reviewing this application. The amount of this reimbursement shall be determined by the Director of the Gas Services Division and must be approved by the Commission. This Order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

Any portion of Pipeline's application not expressly granted herein is overruled. All requested findings of fact and conclusions of law, which are not expressly adopted herein, are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

SIGNED this 6th day of July, 2006.

RAILROAD COMMISSION OF TEXAS


ELIZABETH A. JONES
CHAIRMAN


MICHAEL L. WILLIAMS
COMMISSIONER


VICTOR G. CARRILLO
COMMISSIONER

ATTEST


SECRETARY