

**BEFORE THE  
RAILROAD COMMISSION OF TEXAS**

<b>APPLICATION OF ATMOS ENERGY, WEST TEXAS DIVISION FOR ANNUAL GAS RELIABILITY INFRASTRUCTURE PROGRAM RATE ADJUSTMENT FOR THE WEST TEXAS RATE DIVISION</b>	§ § § § §	<b>GAS UTILITIES DOCKET NO. 9693</b>
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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, West Texas Rate Division (Atmos or The Company) 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. On September 01, 2006, Atmos filed an application for an annual interim rate adjustment (IRA) applicable to customers located in its distribution environs area.
3. The subject docket is the second annual IRA for the distribution system environs of Atmos.
4. On September 12, 2006, the Commission suspended implementation of Atmos' proposed IRA until December 15, 2006, which is 45 days following the 60<sup>th</sup> day after the applications were complete.
5. The Commission received no letters of opposition regarding the subject proceeding, and no requests to intervene have been received from any party.
6. This docket applies to only those rates over which the Commission has original jurisdiction, which includes all of the Company's environs customers.

First Interim Rate Adjustment

7. Atmos' first IRA, **GUD 9608**, was filed on September 2, 2005, using a test year ended December 31, 2004. A Final Order approving the Company's first IRA was signed on December 13, 2005.
8. In **GUD 9608**, Atmos sought and obtained approval from the Commission to adjust 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.
9. Atmos is required to use the same factors to calculate the IRA, depreciation expense, and incremental federal income tax as those established or used in the Final Order setting rates in its most recent rate case, **GUD 9573**, for the area in which the IRA is to be implemented. Atmos is also required to allocate the revenue to be collected through the IRA 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, **GUD 9573**, for the area in which the IRA is to be implemented.

Review of Interim Rate Adjustment

10. Notice was provided to all cities in the Company's West Texas Rate Division regarding the subject proceeding.
11. Atmos filed the Railroad Commission of Texas' Annual Earnings Monitoring Report (EMR) as required by 16 Texas Administrative Code § 7.7101.
12. The Company's actual rate of return is 9.01%, as compared with the 8.77% allowed rate of return that was established in **GUD No. 9573**, falls within the seventy-five (75) basis points threshold in accordance with 16 TEX. ADMIN. CODE, §7.7101.
13. Atmos filed its Annual Project Report as required by 16 Texas Administrative Code § 7.7101.
14. Although Atmos has experienced positive growth in investments in capital infrastructure in 2005, the Company is not seeking to adjust its tariff to recover the costs of these increased investments. Rather, in this filing Atmos has decided to forego the rate increase that Texas Utilities Code §104.301 allows it to make to recover those costs.
15. The proposed interim rate adjustment Atmos has chosen to forego is \$331,754 based on an incremental net utility plant investment increase of \$3,801,587.

Reimbursements Of Expense

16. 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.

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' application for IRAs 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.
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 IRA tariff for environs customers.
5. Atmos filed its application for an IRA 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 IRA 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 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, in which there is a final order setting rates for the area in which the IRA will apply, was no more than two years prior to the date Atmos filed its initial IRA.
8. 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, 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.

9. Atmos shall include in all future annual IRA filings, relocation project reports that provide additional information about relocation project costs included in investment projects, in the same format as required in this docket.
10. 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 its earnings during the preceding calendar year.
11. Atmos is required, under 16 TEX. ADMIN. CODE §7.7101(h) (2004), to recalculate its approved IRA 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.
12. In accordance with 16 TEX. ADMIN. CODE §7.7101(i) (2004), all amounts collected from customers under the Company's IRA 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 IRA and shall be the subjects of specific findings of fact in the Commission's final order setting rates.
13. In accordance with 16 TEX. ADMIN. CODE §7.7101(j) (2004), in the rate case that Atmos files or the Commission initiates after the implementation of an IRA, any change in investment and related expenses and revenues that have been included in any IRA 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 or the Commission initiates after the implementation of an IRA, any change in investment and related expenses and revenues that have been included in any IRA shall no longer be subject to review for reasonableness or prudence.
14. The Commission has authority to suspend the implementation of the IRA, under TEX. UTIL. CODE ANN. §104.301(a) (Vernon Supp. 2004-2005) and 16 TEX. ADMIN. CODE §7.7101(e) (2004).
15. 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).
16. Atmos' application for an IRA, 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).
17. Atmos' IRAs 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).
18. 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 the

areas in which the IRA is implemented, not later than the 180th day after the fifth anniversary of the date its initial interim rate adjustment became effective.

19. 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' proportionate share of the Commission's annual costs related to the administration of the IRA mechanism.

**IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS THAT** the referenced docket be **HEREBY APPROVED** as a **compliance** filing to comply with the Final Order in **GUD 9608**.

**IT IS FURTHER ORDERED THAT** Atmos **SHALL NOT** need to amend its rates or tariffs because it has decided to forego the rate increase allowed by Texas Utilities Code 104.301 for recovery of capital infrastructure costs.

**IT IS FURTHER ORDERED THAT** Atmos **SHALL** file with the Commission no later than September 4, 2007, 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 September 4, 2007, 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 September 4, 2007, an annual earnings monitoring report demonstrating its earnings during the preceding calendar year.

**IT IS FURTHER ORDERED THAT** Atmos **SHALL** file with the Commission no later than September 4, 2007, recalculations of its approved IRAs and applications for annual IRAs for the preceding calendar year.

**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 Atmos' 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 5<sup>th</sup> day of December, 2006.

RAILROAD COMMISSION OF TEXAS

  
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ELIZABETH A. JONES  
CHAIRMAN

  
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MICHAEL L. WILLIAMS  
COMMISSIONER

  
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VICTOR G. CARRILLO  
COMMISSIONER

ATTEST

  
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SECRETARY