

**BEFORE THE  
RAILROAD COMMISSION OF TEXAS**

<b>APPLICATION OF ATMOS PIPELINE-TEXAS FOR TEST YEAR 2006 ANNUAL INTERIM RATE ADJUSTMENT FOR THE PIPELINE SYSTEM</b>	§ § § § §	<b>GAS UTILITIES DOCKET NO. 9726</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 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, or the Company), a division of Atmos, owns and operates a gas pipeline transportation system.
3. On May 31, 2007, Atmos filed an application for an annual interim rate adjustment (IRA) applicable to customers located on Pipeline's system. By Order signed on May 30, 2007, the Commission has approved an extension of the deadline for this filing.
4. Atmos requested that the IRA for all customer classes become effective on July 30, 2007.
5. On June 04, 2007, the Commission suspended implementation of Atmos' proposed IRA for Pipeline until September 13, 2007, which is 45 days following the 60<sup>th</sup> day after the applications were complete.
6. On August 10, 2007, Atmos Texas Municipalities (ATM) Cities filed a Plea To Intervene with the Commission in the cause of the Company's application for an IRA. The

Commission filed a response on August 14, 2007, citing the IRA statute and rule and taking no action on the plea.

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 IRA.
8. 16 TEX. ADMIN. CODE, §7.7101 (2004) allows written comments or a protest concerning the proposed IRA to be filed with the Gas Services Division.
9. On August 13, 2007, the ATM Cities filed a plea to the jurisdiction of the Commission, citing the Company's failure to provide notice to residential and commercial customers as a defect in its IRA filing and requesting dismissal of the docket. The Commission filed a response on August 23, 2007, noting that the Company's notice met the requirements of the Commission's rule and took no action on the plea.
10. On August 22, 2007, the ATM Cities filed an appeal of the failure to admit ATM Cities as a party and to convene an adjudatory hearing. An order denying the appeal has been prepared for consideration by the Commission concurrent with its consideration of this Order.
11. On August 30, 2007, the ATM Cities filed an appeal of failure to grant plea to the jurisdiction for failure to provide notice to residential and commercial ratepayers and proper notice to pipeline customers. An Order denying the appeal has been prepared for consideration by the Commission concurrent with its consideration of the IRA order in this proceeding.
12. This docket is the fourth annual IRA for Pipeline.
13. 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.
14. Atmos' proposed IRA will allow Pipeline an opportunity to recover, subject to refund, 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

15. This docket applies to only those rates over which the Commission has original jurisdiction, which includes the entire Pipeline system.

16. As of year-end 2006, Pipeline customers totaled approximately 754 City Gate meters and 202 Pipeline Transportation rate meters.

Most Recent Comprehensive Rate Case

17. Atmos' most recent rate case for Pipeline for the area in which the IRA 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*.
18. GUD No. 9400 was filed on May 23, 2003.
19. The data used in GUD No. 9400 was based on a test-year ending December 31, 2002.
20. The Commission signed the GUD No. 9400 final Order on May 25, 2004, and the rates became effective the same day.
21. The Commission in GUD No. 9400 set the rates charged by Pipeline which have been adjusted by prior orders authorizing IRA adjustments.
22. The following chart shows the factors that were established in GUD No. 9400 to calculate the return on investment, depreciation expense, and incremental federal income taxes for Pipeline:

Rate of Return	8.258%
Depreciation Rate	2.097%
Federal Income Tax Rate	35%

Interim Rate Adjustment

23. Pipeline 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.
24. The revenue amounts to be recovered through Atmos' proposed annual IRA for Pipeline are incremental to the revenue requirement established in Atmos' most recent rate case for Pipeline for the area in which the IRA is to be implemented, GUD No. 9400, as adjusted for prior orders authorizing IRA adjustments.
25. The Company 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 IRA. 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 IRA.

26. For the first IRA following a rate case, the amounts by which Pipeline 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).
27. This docket is the fourth annual IRA for Pipeline. Therefore, to request its IRA in this docket, Atmos submitted data for Pipeline for the calendar year ending December 31, 2006.
28. The value of Pipeline's 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 IRA.
29. Pipeline 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 IRA is to be implemented.
30. Atmos filed the Commission's Annual Earnings Monitoring Report (EMR) for Pipeline as required by 16 TEXAS ADMINISTRATIVE CODE §7.7101. The Company's rate of return is 7.234%, which reasonably compares with the 8.258% allowed rate of return established in GUD No. 9400.
31. Atmos filed its Annual Project Report for Pipeline as required by 16 TEXAS ADMINISTRATIVE CODE §7.7101.
  - Pipeline capital project additions totaled \$109,532,973.
  - Safety-related improvements/infrastructure projects totaled \$14,293,343, or 13% of total additions.<sup>1</sup>
  - Integrity testing projects totaled \$15,245,076, or 14% of total additions.<sup>2</sup>
32. The Company is required to allocate the revenue to be collected through the IRA 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 IRA is to be implemented.
33. Atmos proposed the IRA 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. Pipeline is required to show its annual IRA on its customers' monthly billing statements as a surcharge.

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1 Response to Staff's RFI #1-03.

2 Response to Staff's RFI #1-05.

35. The proposed IRA 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 IRA.
36. Due process protections are deferred until Atmos files its next full statement of intent rate case for Pipeline.

Notice

37. The Company provided adequate notice to Pipeline's City Gate (CGS) customers on June 7 and 8, 2007.
38. The Company provided adequate notice to Pipeline's Pipeline Transportation (PT) customers on June 7 and 8, 2007.

Comprehensive Rate Case Required

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

Review of Interim Rate Adjustment

41. Pipeline presented its IRA calculation two different ways:
- An IRA calculation using all the factors from GUD No. 9400, Pipeline's most recent rate case, including the property-related taxes (Ad Valorem) percentage of 1.305%.
  - An alternate IRA calculation using the factors for GUD No. 9400 for rate of return, depreciation, and federal income tax, but using a property-related taxes (Ad Valorem) percentage of 1.503% based on the actual 2006 taxes paid by the Company to reflect the recently changed property tax law.<sup>3</sup>
42. Pipeline's proposed IRA is \$13,025,772 based on an incremental net utility plant investment increase of \$88,937,803 using the property-related taxes (Ad Valorem) percentage of 1.305% from GUD No. 9400.
43. Pipeline's proposed IRA is \$13,201,664 based on an incremental net utility plant investment increase of \$88,937,803 using the property-related taxes (Ad Valorem) percentage of 1.503% based on the actual 2006 taxes paid by the Company.

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3. 16 TEX. ADMIN. CODE §7.7101(f)(5) only refers to the return on investment, depreciation expense, and incremental federal income tax factors from the most recent rate case to calculate the IRA. The Ad Valorem taxes are not specifically designated as a factor that must remain the same.

- 44. The Company is also proposing a special one-year adjustment credit to the CGS and PT meter charges to update the 2005 allocation of Customer Support and General Office to Pipeline and remove the allocated costs of the Customer Support function since this function did not provide service to Pipeline in 2005.
- 45. Atmos' proposed allocation methodology for Pipeline complies with TEXAS UTILITIES CODE, §104.301, and with 16 TEX. ADMIN. CODE, §7.7101.
- 46. 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 IRA are reasonable:

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

- 47. Atmos' proposed customer and meter counts for Pipeline comply with TEXAS UTILITIES CODE, §104.301, and with 16 TEX. ADMIN. CODE, §7.7101.
- 48. For calculating the number of customer charges or meter charges per year, it is reasonable for the Commission to approve use of Pipeline's 2006 year-end number of customers multiplied by twelve. The following total numbers of customer and meter charges for use in the calculation of the IRA are reasonable:

Customer Class	Total Number of Customer Charges / Meters
Rate CGS (City Gate Service)	9,048
Rate PT (Pipeline Transportation)	2,424

- 49. It is reasonable for the Commission to approve the IRA, as proposed by Pipeline, using the alternative property tax calculation to comply with the recently changed property tax law. It is also reasonable for the Commission to approve Pipeline's request for a special one-year adjustment and credit to the meter charge to remove the 2005 allocated costs of the Customer Support function to Pipeline. The corresponding customer charges by customer class are as follows:

Customer Class	2006 IRA Customer/Meter Charge	Customer/Meter Charge Credit	One-Year Customer/Meter Charge
Rate CGS (City Gate Service)	\$1,822.06	(\$31.06)	\$1,791.00
Rate PT (Pipeline Transportation)	\$2,466.77	(\$42.52)	\$2,424.25

Reimbursements of Expense

50. As provided for in the statute and the rule, a gas utility that implements an IRA is required to reimburse the Commission for the utility's proportionate share of the Commission's annual costs related to the administration of the IRA mechanism.
51. After the Commission has finally acted on Atmos' application for an IRA 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.
52. In making the estimate of Pipeline's 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 IRAs during the fiscal year, and the costs expected to be incurred in processing such applications.
53. The Company 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 IRAs 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 IRA tariff for Pipeline's customers.
5. Atmos filed its application for IRA 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 IRA 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, the Company is required to file with the Gas Services Division of the Commission its revised tariffs for Pipeline.
8. The Company 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 IRA will apply, was no more than two years prior to the date Atmos filed its initial IRA 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 IRA 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 IRA 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 IRA application.
14. In accordance with 16 TEX. ADMIN. CODE §7.7101(i) (2004), all amounts collected from customers under Pipeline'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.

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 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 for Pipeline 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.
16. 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).
17. The Company 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 an IRA 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. The Company's IRA 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 IRA is implemented, no later than the 180th day after the fifth anniversary of the date its initial IRA 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 IRA mechanism.

**IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS THAT** Pipeline's IRA, as requested, and to the extent recommended to be approved in the findings of fact and conclusions of law, are **HEREBY APPROVED**, subject to refund, to be effective for bills rendered on or after September 11, 2007.

**IT IS FURTHER ORDERED THAT** Atmos **SHALL** file with the Commission no later than May 30, 2008, 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 May 30, 2008, 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 May 30, 2008, for Pipeline, an annual earnings monitoring report demonstrating Pipeline's earnings during the preceding calendar year.

**IT IS FURTHER ORDERED THAT** Atmos **SHALL** file with the Commission no later than May 30, 2008, for Pipeline, recalculations of its approved IRA and applications for annual IRA for the preceding calendar year.

**IT IS FURTHER ORDERED THAT** within 30 days of this order Atmos **SHALL** electronically file its IRA tariffs for Pipeline in proper form that accurately reflect the rates 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 11<sup>th</sup> day of September, 2007.

RAILROAD COMMISSION OF TEXAS



MICHAEL L. WILLIAMS  
CHAIRMAN



VICTOR G. CARRILLO  
COMMISSIONER



ELIZABETH A. JONES  
COMMISSIONER

ATTEST



SECRETARY

RAILROAD COMMISSION OF TEXAS

APPLICATION OF ATMOS PIPELINE- §  
TEXAS FOR TEST YEAR 2006 ANNUAL §  
INTERIM RATE ADJUSTMENT FOR §  
THE PIPELINE SYSTEM §

GAS UTILITIES DOCKET  
NO. 9726

ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time provided by law pursuant to Tex. Gov't Code Ann. Chapter 551 (Vernon 1994 and Vernon Supp. 2005).

After considering the ATM Cities' *Appeal of Failure to Grant Plea to the Jurisdiction for Failure to Provide Notice to Residential and Commercial Ratepayers and Proper Notice to Pipeline Customers*, and the letter of August 23, 2007, from the Gas Services Staff, the appeal of the ATM Cities is **DENIED**.

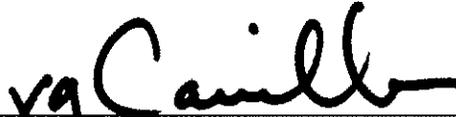
**IT IS FURTHER ORDERED THAT** all relief not specifically granted herein is **DENIED**.

SIGNED this 11<sup>th</sup> day of September, 2007.

RAILROAD COMMISSION OF TEXAS



MICHAEL L. WILLIAMS  
CHAIRMAN



VICTOR G. CARRILLO  
COMMISSIONER



ELIZABETH A. JONES  
COMMISSIONER

ATTEST:



SECRETARY

RAILROAD COMMISSION OF TEXAS

APPLICATION OF ATMOS PIPELINE- §  
TEXAS FOR TEST YEAR 2006 ANNUAL §  
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ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time provided by law pursuant to Tex. Gov't Code Ann. Chapter 551 (Vernon 1994 and Vernon Supp. 2005).

After considering the ATM Cities' appeal of their not being admitted as a party in this docket and their not being granted an adjudicatory hearing, and the letter of August 14, 2007, from the Gas Services Staff, the appeal of the ATM Cities is **DENIED**.

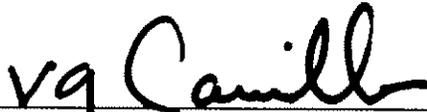
**IT IS FURTHER ORDERED THAT** all relief not specifically granted herein is **DENIED**.

SIGNED this 11<sup>th</sup> day of September, 2007.

RAILROAD COMMISSION OF TEXAS



MICHAEL L. WILLIAMS  
CHAIRMAN



VICTOR G. CARRILLO  
COMMISSIONER



ELIZABETH A. JONES  
COMMISSIONER

ATTEST:



SECRETARY