

RAILROAD COMMISSION OF TEXAS

**PETITION FOR DE NOVO REVIEW OF §
THE DENIAL OF THE STATEMENT OF §
INTENT FILED BY ATMOS ENERGY §
CORP., MID-TEX DIVISION BY THE §
CITY OF DALLAS; STATEMENT OF § **GAS UTILITIES DOCKET NO. 9869**
INTENT TO INCREASE GAS UTILITY §
RATES IN THE UNINCORPORATED §
AREAS SERVED BY THE MID-TEX §
DIVISION §**

FIRST REVISED PROPOSED 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, et seq. (Vernon 2004 & Supp. 2008). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Atmos Energy Corp., Mid-Tex Division ("Atmos") is a 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 owns and operates a gas distribution system that provides gas service to customers located within the City of Dallas ("Dallas"). Atmos provides gas distribution services to environs customers located in the following counties: Anderson, Archer, Bandera, Baylor, Bell, Bosque, Brazos, Brown, Burleson, Burnet, Callahan, Cherokee, Childress, Clay, Coke, Coleman, Collin, Comanche, Cooke, Coryell, Dallas, Delta, Denton, Eastland, Ellis, Erath, Falls, Fannin, Fisher, Foard, Freestone, Gillespie, Grayson, Gregg, Hamilton, Hardeman, Haskell, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jack, Johnson, Jones, Kaufman, Kendall, Kerr, Knox, Lamar, Lampasas, Lee, Leon, Limestone, Llano, Madison, McLennan, Milam, Mills, Mitchell, Montague, Navarro, Nolan, Palo Pinto, Parker, Rains, Red River, Robertson, Rockwall, Runnels, Rusk, San Saba, Scurry, Shackelford, Smith, Somervell, Tarrant, Taylor, Throckmorton, Tom Green, Travis, Van Zandt, Wichita, Wilbarger, Williamson, Wise, Wood, and Young
3. On November 5, 2008, Atmos filed a statement of intent to increase rates within the City of Dallas, Texas. On March 25, 2009, Dallas denied Atmos' rate request and reduced Atmos' rates for providing gas service to customers located within Dallas.
4. On April 23, 2009, Atmos filed with the Commission a petition for *de novo* review of Dallas' denial of Atmos' statement of intent and reduction in rates. Atmos included in its petition for *de novo* review a request that the Commission reinstate Atmos' rates for gas service that the utility was charging prior to Dallas' March 25, 2009, ordinance reducing the utility's rates.
5. On April 23, 2009, Atmos filed with the Commission a statement of intent to change rates in the

unincorporated areas served by Atmos. Atmos has proposed that the rates become effective on May 28, 2009.

6. On May 19, 2009, the Commission suspended the implementation of Atmos' proposed rates for up to 150 days.

7. In support of its request to reinstate rates Atmos submitted a supersedes bond, in the amount of \$2,099,687, to protect the rate-payers pending the issuance of a final and appealable Commission decision establishing just and reasonable gas utility rates for the gas service Atmos provides within the City of Dallas. The commission approved Atmos' supersedes bond on June 18, 2009.

8. On May 1, 2009, the City of Dallas ("Dallas") intervened in this proceeding. On April 27, 2009, the Staff of the Railroad Commission of Texas ("Staff") intervened in this proceeding. On May 11, 2009, the State of Texas ("State"), by and through the Office of the Attorney General of Texas, Consumer Protection and Public Health Division, Public Agency Representation Section, intervened in this proceeding. No other persons intervened, filed protests or otherwise participated in this docket.

9. On May 8, 2009, Atmos filed a Motion to Adopt Joint Proposed Procedural Schedule which extended the statutory deadline in this proceeding until November 24, 2009, and was granted by the Hearings Examiners assigned to this docket on May 12, 2009.

10. Atmos' proposed rate increase will affect approximately 43,414 residential, 2,016 commercial, and 74 industrial sales and transportation customers.

Test Year

11. The test year in this case was the 12-month period ending June 30, 2008.

Books and Records

12. Atmos maintains its books and records in accordance with the requirements of the Federal Energy Regulatory Commission's (FERC) Uniform System of Accounts.

Notice and Hearing

13. For its customers located in the City of Dallas, Atmos Mid-Tex published notice once each week for four consecutive weeks in newspapers of general circulation in each county in which Atmos provides gas service. Notice was published once a week for four consecutive weeks beginning November 11, 2008 and ending the week of December 1, 2008. For customers located in the environs, Atmos provided notice by means of a bill insert beginning on May 22, 2009 and ending on June 19, 2009.

14. On August 4, 2009, the Examiners mailed by United States mail, postage prepaid, a Notice of Hearing to all affected parties giving notice of the final hearing to be conducted in Austin, Texas, at the offices of the Railroad Commission of Texas on August 18, 2009.

15. On August 4, 2009, the Examiners mailed by United States mail, postage prepaid, a Notice of Hearing to all county judges of the counties in which affected customers reside, giving notice of the final hearing to be conducted in Austin, Texas, at the offices of the Railroad Commission of Texas on August 18, 2009.
16. The Hearing convened on August 18, 2009 and was concluded on August 21, 2009.

Rate Base

17. The total amount of costs identified and attributable to Poly 1 pipe replacement is \$59,838 and has been removed from Atmos' rate base.
18. Atmos proposed adjustments to gross plant, accumulated depreciation, and ADIT balances for the time period January 1, 2009, through March 31, 2009, in an errata filing submitted by Atmos on August 4, 2009. Atmos added more than 1,200 new projects in the August 4, 2009, errata filing which totaled approximately \$33 million in capital investment to be added to Atmos' rate base. Atmos' proposal to add 1,200 new capital projects to rate base in its August 4, 2009, errata filing is unreasonable because the Commission, Examiners and intervenors in this proceeding do not have adequate time to review the data. It is unreasonable for Atmos to make post-test year adjustments to gross plant, accumulated depreciation and ADIT for the time period January 1, 2009 through March 31, 2009.
19. It is reasonable for the Commission to remove the January through March 2009 plant additions of \$32,792,028 for Mid-Tex and \$268,610 for SSU for a total removal of \$33,060,638 from Atmos' rate base.
20. It is reasonable for Atmos to update its test year data through December 31, 2008, for known and measurable changes.
21. The net plant amounts shown in the attached schedules are reasonable for the plant that is used and useful in providing gas utility service.
22. Atmos initially requested a Cash Working Capital adjustment to rate base of (\$31,935,075). Atmos updated this request to (\$33,017,661).
23. Atmos Mid-Tex prepared a lead-lag study to determine an amount of cash working capital.
24. The evidence establishes that Atmos' proposed collection lag period of 17.95 days is reasonable and accurate.
25. The billing lag is the one-day lag between receiving payment and having funds available to draw at the bank. It is reasonable for Atmos to use a one-day billing lag.
26. The evidence establishes that a 42.02 day gas cost expense lag is reasonable and accurate.
27. The evidence establishes that a 24.64 day total labor expense lag is reasonable and accurate.

28. The evidence establishes that a 29.41 day non-labor O&M lag is reasonable and accurate.
29. The evidence establishes that a 95 day lag on franchise fees paid is reasonable and accurate.
30. The evidence indicates that Atmos made an appropriate adjustment to prepayments related to local gross receipts taxes of \$4,875,708 and no further adjustment is necessary.
31. A negative cash working capital of (\$33,017,661) as set out in the attached schedules is just and reasonable.
32. It is reasonable to remove from rate base remodeling costs of \$71,293 that were allocated to Mid-Tex from Shared Service Unit as part of Project Nos. 010.11352 and 010.11353.
33. Accumulated Deferred Income Taxes ("ADIT") arise because Internal Revenue Code timing requirements related to the recognition of tax assets and liabilities differ from the timing requirements established by U.S. Generally Accepted Accounting Procedures (GAAP). Atmos' proposed treatment of ADIT is reasonable.

Expenses

34. Atmos' proposal to include \$5,744,689 in incentive compensation in this request, consisting of \$3,544,716 in SSU expenses and \$2,229,973 of direct incentive expenses, is reasonable because Atmos' aggregate level of compensation is not outside the normal range of compensation.
35. Atmos' proposed adjustment to annualize employee base salaries and to include a 3.5 percent annual merit increase which occurred and was effective October 1, 2008 is reasonable
36. Atmos' proposed overtime expense level is reasonable because there is no evidence that establishes Atmos incurred unnecessary overtime expenses or mismanaged its employees so that excessive overtime was taken during the test year.
37. Atmos' proposed employee benefits expense is based on the projected per employee cost from an actuarial study performed by Towers Perrin and is reasonable and necessary.
38. Atmos' proposal to average the uncollectible expense for three years 2006, 2007 and 2008 is reasonable and necessary.
39. Atmos' proposed outside services expense is reasonable and necessary.
40. Atmos' proposed distribution load dispatching expense during the test year was reasonable and necessary.
41. Atmos' proposed test year level of gasoline expense is reasonable and necessary.
42. Atmos' proposed test year level of pipeline integrity testing expense is reasonable and necessary.

43. Atmos' proposed test year level of pipeline employee expense is reasonable and necessary.
44. Atmos' proposed test year level of relocation expense is reasonable and necessary.
45. Atmos' proposed test year level of office supply expense is reasonable and necessary.

Rate of Return and Cost of Capital

46. It is reasonable for Atmos to use a quarterly Discounted Cash Flow ("DCF") model as one method to determine a reasonable cost of equity because Atmos' and the companies in the proxy group make dividend payments on a quarterly basis and the quarterly DCF model accurately reflects the cash flows an investor receives.
47. It is not reasonable to include four companies, Energen, EQT, ONEOK, and Questar, in a proxy group for purposes of determining Atmos' cost of equity because these four companies generate a higher percentage of revenues earned from non-gas distribution activities than does Atmos and the other proxy group companies.
48. The inclusion of an estimation of flotation costs is not necessary, reasonable and required to determine Atmos' cost of equity because there is no evidence that flotation costs affect the opinions of investors.
49. It is not reasonable for Atmos to use a growth rate utilizing analyst estimates of future EPS growth for the individual companies used in the proxy study because there is no evidence that estimates of future EPS growth rates for the individual companies in the proxy group are reliable, accurate, and capable of forecasting the future EPS growth of these specific companies with accuracy and reliability.
50. It is not reasonable for Atmos to use the forecasted yield on the twenty-year Treasury bond in a CAPM study because there is no evidence that the forecasted yield is reasonable, reliable or accurate.
51. It is reasonable to use Atmos' actual capital structure of 48.91 percent common equity and 51.09 percent long-term debt for purposes of determining Atmos' weighted average cost of capital and allowable rate of return.
52. It is reasonable to use Atmos' actual cost of long-term debt of 6.88 percent for purposes of determining Atmos' weighted average cost of capital and allowable rate of return.
53. It is reasonable to use a cost of equity of 10.00 percent for purposes of determining Atmos' weighted average cost of capital and allowable rate of return.
54. An overall rate of return of 8.41 percent based on Atmos' weighted average cost of capital is reasonable.

Shared Services

55. Atmos' proposed allocation of both the Waco and Amarillo call centers and Cost Center 1158 using Rate 2 is reasonable.

56. Atmos did not make additions to accounts 399.01, 399.02, and 399.24 in 21 months sufficient to increase the balances in these accounts to a point where they would not be fully depreciated. It is reasonable to remove the depreciation expense of these three accounts be removed from the cost of service.

57. Atmos' proposed treatment of Cost Center 1502 - Corporate Secretary, Cost Center 1162 - Benefits Accounting, Cost Center 1226 - Customer Service, Cost Center 1228 - Customer Revenue Management, and Cost Center 1408 - Employee Development is reasonable.

58. Atmos' proposal to allocate costs for Shared Service Unit Cost Centers 1109, 1115, 1148, 1200, 1215, 1226, 1227, and 1228 based on allocation factor Rate 2 or 49.18% is reasonable.

Rate Design

59. Atmos' proposed minimum customer charges for all rate classes, as shown in the attached schedules is reasonable because it will allow for a higher recovery of fixed costs and result in a rate structure that is more de-coupled from volume usage than Atmos' previous rates.

60. Atmos' proposed declining usage adjustment is not reasonable.

62. Atmos' proposed weather normalization calculation is reasonable.

CONCLUSIONS OF LAW

1. Atmos Energy Corp., Mid-Tex Division ("Atmos") is a "Gas Utility" as defined in TEX. UTIL. CODE ANN. §101.003(7) (Vernon 2007 & Supp. 2008) and §121.001 (Vernon 2007 & Supp. 2008) and is therefore subject to the jurisdiction of the Railroad Commission ("Commission") of Texas.

2. Under TEX. UTIL. CODE ANN. §102.001(b) (Vernon 2007 & Supp. 2008) the Commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction over a gas utility.

3. The Commission has jurisdiction over Atmos and Atmos' petition for *de novo* review under TEX. UTIL. CODE ANN. §§ 102.001, 103.051, 103.054, 103.055, 104.001 and 104.201 (Vernon 2007 & Supp. 2008).

4. This Statement of Intent and Petition for Review was processed in accordance with the requirements of the Gas Utility Regulatory Act (GURA), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.001-2001.902 (Vernon 2000 and Supp. 2004) (APA).

5. Under TEX. UTIL. CODE ANN. §102.001 (Vernon 2007 & Supp. 2008), 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.
6. In accordance with the stated purpose of the Texas Utilities Code, Subtitle A, expressed under TEX. UTIL. CODE ANN. §101.002 (Vernon 2007 & Supp. 2008), the Commission has assured that the rates, operations, and services established in this docket are just and reasonable to customers and to the utilities.
7. TEX. UTIL. CODE ANN. §104.107 (Vernon 2007 & Supp. 2008) provides the Commission's authority to suspend the operation of the schedule of proposed rates for 150 days from the date the schedule would otherwise go into effect.
8. The proposed rates constitute a major change as defined by TEX. UTIL. CODE ANN. §104.101 (Vernon 2007 & Supp. 2008).
9. In accordance with TEX. UTIL. CODE §104.103 (Vernon 2007 & Supp. 2008), 16 TEX. ADMIN. CODE ANN. §7.230 (2002), and 16 TEX. ADMIN. CODE ANN. §7.235 (2002), adequate notice was properly provided.
10. Atmos did not meet the required burden of proof in accordance with the provisions of TEX. UTIL. CODE ANN. §104.008 (Vernon 2007 & Supp. 2008) on the elements of its requested rate increase identified in this order, and as set forth in the schedules and tariffs attached hereto.
11. The rates and tariffs proposed by the Examiners, as set forth in the above findings of fact and attached hereto, are found to be just and reasonable, not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of consumer, as required by TEX. UTIL. CODE ANN. §104.003 (Vernon 2007 & Supp. 2008).
12. The overall revenues as established by the findings of fact and attached schedules and tariffs are reasonable; fix an overall level of revenues for Atmos 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 over and above its reasonable and necessary operating expenses, as required by TEX. UTIL. CODE ANN. § 104.051 (Vernon 2007 & Supp. 2008); and otherwise comply with Chapter 104 of the Texas Utilities Code.
13. The rates and tariffs set forth in the findings of fact and attached schedules will not yield to Atmos more than a fair return on the adjusted value of the invested capital used and useful in rendering service to the public, as required by TEX. UTIL. CODE ANN. § 104.052 (Vernon 2007 & Supp. 2008).
14. It is reasonable for the Commission to allow Atmos to include a Cost of Gas Clause in its rates to provide for the recovery of all of its gas costs, in accordance with 16 TEX. ADMIN. CODE § 7.5519 (2002).

15. All expenses for lost and unaccounted for gas in excess of 5.0 percent shall be disallowed, consistent with TEX. ADMIN. CODE § 7.5519 (2002).
16. Atmos is required by 16 TEX. ADMIN. CODE § 7.315 (2002) to file electronic tariffs incorporating rates consistent with this Order within thirty days of the date of this Order.
17. Rate case expenses for GUD No. 9869 will be considered by the Commission in accordance with TEX. UTIL. CODE ANN. §104.008 (Vernon 2007 & Supp. 2008), and 16 TEX. ADMIN. CODE §7.5530 (2002), in a separate proceeding.
18. Atmos' mailing of notice meets the statutory and rule requirements of notice and provides sufficient information to rate payers about the statement of intent and satisfies the requirements imposed under TEX. UTIL. CODE ANN. §104.103(b)(2) (Vernon 2007 & Supp. 2008) and 16 TEX. ADMIN. CODE ANN. §7.230 (2002), and 16 TEX. ADMIN. CODE ANN. §7.235 (2002).

IT THEREFORE ORDERED that the rates, rate design, and service charges established in the findings of fact and conclusions of law and in the attached schedules for Atmos Mid-Tex are hereby **APPROVED**.

IT IS FURTHER ORDERED that, in accordance with 16 TEX. ADMIN. CODE §7.315, within 30 days of the date this Order is signed, Atmos Mid-Tex shall file tariffs with the Gas Services Division. The tariffs shall incorporate rates, rate design, and service charges consistent with this Order, as stated in the findings of fact and conclusions of law and shown in the attached Schedules.

IT IS FURTHER ORDERED that Atmos Mid-Tex shall not charge any rate that has not been successfully filed and accepted as a tariff filing electronically pursuant to TEX. UTIL. CODE §§ 102.151 and 104.002 and 16 TEX. ADMIN. CODE ANN. § 7.315 (2008).

IT IS FURTHER ORDERED that this Order shall not be final and effective until twenty days after a party is notified of the Commission's Order. Under TEX. GOV'T CODE § 2001.142(c), a party shall be 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 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.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted in this Order are hereby **DENIED**. **IT IS ALSO ORDERED** that all pending motions and requests for relief not previously granted or granted herein are hereby **DENIED**.

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 _____ day of _____, 2009.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN VICTOR G. CARRILLO

COMMISSIONER ELIZABETH A. JONES

COMMISSIONER MICHAEL L. WILLIAMS

ATTEST:

SECRETARY