

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

RATE CASE EXPENSES SEVERED	§	
FROM GAS UTILITIES DOCKET	§	GAS UTILITIES DOCKET
NO. 9869 AND 9870	§	NO. 9901
	§	

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" or the "Company") 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").
3. 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 (collectively the "Environs").
4. 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.
5. 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 which was docketed by the Commission as GUD No. 9869.

6. On April 23, 2009, Atmos filed with the Commission a statement of intent to change rates in the unincorporated areas served by Atmos which was docketed by the Commission as GUD No. 9870 and was consolidated by the Examiners into GUD No. 9869.
7. On January 26, 2010, the Commission issued a final order in GUD No. 9869. On February 23, 2010, the Commission issued a final order nunc pro tunc in GUD No. 9869.
8. On May 1, 2009, the City of Dallas ("Dallas") intervened as a party to GUD No. 9869 and is a party in this docket. No other parties from GUD No. 9869 and 9870 intervened and or participated in this docket.
9. The parties filed a joint motion to abate the procedural schedule on July 23, 2010, which was granted by the Examiners and no final hearing was conducted in this docket.
10. On September 13, 2010, Atmos and Dallas filed a unanimous stipulation and settlement agreement (the "Agreement") in order to settle all issues presented in this docket and therefore avoid a fully contested case hearing. In the Agreement, both Dallas and Atmos stipulated that the total amount of reasonably and necessarily incurred rate case expenses is \$1,678,730.09, comprised of \$1,005,630.07 incurred by Atmos, and \$667,104.81 incurred by Dallas. The Agreement stipulates that the requested amounts of rate case expenses, including estimated future expenses, were reasonably and necessarily incurred.
11. The Examiners reviewed all invoices supporting the rate case expenses incurred by Atmos and did not find any duplication of services or testimony. There is no evidence in the record that any of the expenses submitted for reimbursement were not necessarily incurred in the prosecution of Atmos's rate case proceeding before the Commission.
12. The Examiners reviewed all invoices supporting the rate case expenses incurred by Dallas and did not find any duplication of services or testimony. There is no evidence in the record that any of the expenses submitted for reimbursement by Dallas were not necessarily incurred in actively intervening in Atmos's rate case proceeding before the Commission.
13. Atmos's total rate case expenses of \$1,005,630.07 are reasonable and were necessary to prosecute GUD No. 9869. Of that amount, \$830,630.07 are actual expenses and \$175,000 are estimated future expenses.
14. The evidence submitted establishes that Dallas' total rate case expenses of \$667,104.81 are reasonable and were necessary to prosecute GUD No. 9869. Of that amount, \$587,104.81 are actual expenses and \$80,000 are estimated future expenses.

15. It is reasonable that Atmos recover all rate case expenses approved herein over a period of twenty-four (24) months. It is reasonable that Atmos recover rate case expenses by using a per month surcharge.
16. It is reasonable that rate case expenses incurred in prosecuting GUD No. 9869 before the Commission be recovered from all customers located within the City of Dallas and the Environs because these customers primarily benefitted from the participation of Dallas in these proceedings and were subject to the Commission's jurisdiction in GUD No. 9869 and 9870.
17. Rate case expense surcharges of \$0.22 per month for Residential customers, \$0.68 per month for Commercial customers, and \$8.63 per month for Industrial and Transportation customers are reasonable because these surcharges are designed to recover rate case expenses over a twenty-four (24) month period, based on non-gas revenues.
18. It is reasonable to require Atmos to true-up rate case expenses after the twenty-four month recovery period because it will allow the utility to recover the exact amount of rate case expenses without over-recovering or under-recovering the utility's rate case expenses from customers.
19. It is reasonable that Atmos file a report detailing recovery with the Commission forty-five (45) days after the end of December 2011 and December 2012, identifying the beginning balance for the period, the recovery by month, the interest calculation, the ending balance, and a reconciliation of estimated amounts. It is reasonable that the report include a reconciliation of the estimated rate case expense approved by providing invoices submitted to the total authorized recovery of the estimated rate case expense.
20. The Agreement filed by Atmos and Dallas, attached hereto as Exhibit A, is reasonable because it allows for the recovery of reasonable and necessary rate case expenses incurred by the parties in GUD No. 9869 and reduces rate case expenses by settling all issues pertaining to this docket.
21. The Agreement and the proposed tariff Surcharge Rider 15 and 16, attached hereto within Exhibit A, are reasonable and allow for the recovery of rate case expenses and surcharges approved by this Order.

CONCLUSIONS OF LAW

1. Atmos Energy Corp., Mid-Tex Division is a gas utility as defined in TEX. UTIL. CODE ANN. §§ 101.003(7), 121.001 (Vernon 2007 & Supp. 2010) and is subject to the Commission's jurisdiction under TEX. UTIL. CODE ANN. §§ 104.001, 121.051 (Vernon 2007 & Supp. 2010).

2. Each party seeking reimbursement for its rate case expenses has the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence, under 16 TEX. ADMIN. CODE § 7.5530 (2002).
3. The rate case expenses enumerated in the findings of fact herein are reasonable and comply with 16 TEX. ADMIN. CODE ANN. § 7.5530 (2002).
4. The Commission has the authority to allow Atmos to recover rate case expenses through a surcharge on its rates, under TEX. UTIL. CODE ANN. § 104.051 (Vernon 2007 & Supp. 2008).

IT IS THEREFORE ORDERED that Atmos is authorized to recover all rate case expenses incurred in GUD No. 9869 and 9870 and approved by this order by means of a surcharge on its rates charged to ratepayers subject to the final orders entered in GUD No. 9869 and 9870. A rate case expense surcharge of \$0.22 per month for Residential customers, \$0.68 per month for Commercial customers, and \$8.63 per month for Industrial and Transportation customers to be implemented over a period of approximately twenty-four (24) months, commencing with the date this final order becomes effective. The per month surcharge shall be a separate line item on each customer's bill clearly identifying the recovery rate and amount recovered each month.

IT IS FURTHER ORDERED that Atmos shall true-up any amounts over-recovered or under-recovered at the end of the twelve month recovery period. If at the end of the twenty-four (24) month recovery period, Atmos is either over or under recovered, the utility shall file a report with the Director of the Gas Services Division identifying the over or under recovered amount and the estimated number of months required to fully collect any under recovered amount. All over-recovered amounts shall be refunded, with interest, in the following billing cycle.

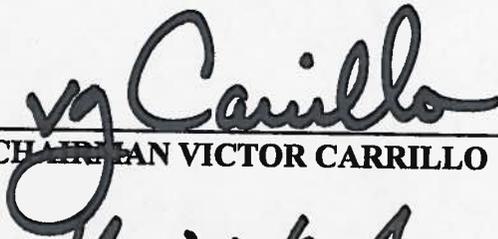
IT IS FURTHER ORDERED that any proposed findings of fact and conclusions of law not specifically adopted herein are **DENIED**. **IT IS ALSO ORDERED** that each exception to the Examiners' Proposal for Decision not expressly granted herein is overruled and all pending motions and requests for relief not previously granted herein are hereby **DENIED**.

IT IS FURTHER ORDERED THAT Atmos may begin surcharging rates for rate case expenses on and after the date of this Order. This Order will not be final and appealable 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.

Each exception to the examiners' proposal for decision 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 30th day of November, 2010.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN VICTOR CARRILLO



COMMISSIONER ELIZABETH A. JONES



COMMISSIONER MICHAEL L. WILLIAMS

ATTEST:



SECRETARY

SECRETARY

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GAS UTILITIES DOCKET NO. 9901

**RATE CASE EXPENSE SEVERED
FROM GAS UTILITIES DOCKET NO.
9869 AND 9870**

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**BEFORE THE
RAILROAD COMMISSION
OF TEXAS**

UNANIMOUS STIPULATION AND SETTLEMENT AGREEMENT

This Unanimous Stipulation and Settlement Agreement ("Agreement") is entered into by and between Atmos Energy Corp., Mid-Tex Division ("Atmos" or the "Company") and the City of Dallas (collectively, the "Parties").

WHEREAS, it is agreed that the terms of this Agreement represent a fair and reasonable compromise and settlement of all the issues in this proceeding, GUD No. 9901, and that this Agreement is just, reasonable, and in the public interest, and should therefore be approved and adopted by the Railroad Commission of Texas (the "Commission");

NOW, THEREFORE, the Parties, through their undersigned representatives, agree to and recommend for approval by the Commission the Stipulation and Settlement Terms listed below as a means of resolving all issues in dispute.

STIPULATION AND SETTLEMENT TERMS:

1. **Costs Incurred to Date:** The Parties stipulate that the total amount of reasonably and necessarily incurred rate case expenses is \$1,678,730.09. This amount is supported by the expense reports and affidavits of future estimated expenses filed by each party in GUD No. 9901. Future estimated expenses represent the amount expected to be incurred for the completion of this case and litigation of the appeals from the Commission's Order Nunc Pro Tunc in GUD No. 9869. Actual expenses incurred to date will be reimbursed within seven business days of issuance by the Commission of an order approving this Stipulation. Estimated future expenses will be reimbursed upon presentation of invoices evidencing that the amounts were actually incurred. Total reimbursement to parties will not exceed amounts listed below. The Parties agree that the total amount of reasonably and necessarily incurred rate case expenses consists of the following respective costs:

a. **Atmos:** \$1,005,630.07

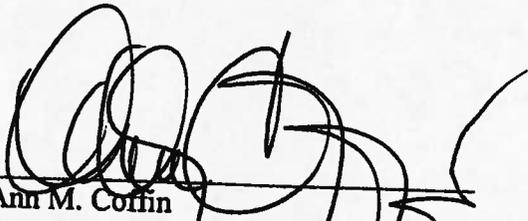
b. **City of Dallas:** \$667,104.81

2. Surcharge & Amortization: The Parties agree that the total reimbursable rate case expenses agreed upon herein shall be recovered over an approximate 24-month period by application of a fixed-price surcharge on the customer's bill commencing within a reasonable period from the date a final order in this proceeding, GUD No. 9901, becomes effective. Use of a surcharge is a reasonable mechanism for recovering rate case expenses and a 24-month recovery period is reasonable in this case. The Parties agree that the attached Rate Schedule authorizing the recovery of rate case expenses is reasonable and should be approved.
3. Evidentiary Support for Settlement Agreement: In support of this Settlement Agreement, the Parties agree that the expense reports and affidavits attesting to future estimated expenses that have been submitted by Atmos and the City of Dallas shall be admitted into the evidentiary record of this proceeding. The parties further agree that, if requested by the Examiner, the parties shall offer respective witnesses to appear before the Examiner to respond to any clarifying questions regarding the expenses at issue in this proceeding, the treatment of these expenses under the terms of this Agreement, and why Commission approval of this Agreement is reasonable and in the public interest.
4. Additional Terms: The Parties agree to the following additional terms and conditions:
 - a. The Parties arrived at this Agreement through negotiation and compromise. The Parties agree that the failure to address any specific issue in this proceeding does not mean that any Party or the Commission approves of any particular treatment of costs or the underlying assumptions associated with costs. Furthermore, the Parties stipulate that the failure to litigate any specific issue in this docket does not waive any Party's right to contest that issue in any other current or future docket and that the failure to litigate an issue cannot be asserted as a defense or estoppel, or any similar argument, by or against any Party in any other proceeding.
 - b. The Parties urge the Commission to adopt an appropriate order consistent with the terms of this Agreement. Other than to support the implementation by Atmos of the stipulated surcharge, the terms of this Agreement may not be used either as an admission or concession of any sort or as evidence in any proceeding. The Parties further agree that: (a) oral or written statements made during the course of the settlement negotiations may not be used for any purposes other than as necessary to support the entry by the Commission of an order implementing this Agreement, and (b) other than to support the entry of such an order, all oral or written statements made during the course of the settlement negotiations are governed by Texas Rule of Evidence 408 and are inadmissible. The obligations set forth in this subsection shall continue and be enforceable, even if this Agreement is terminated as provided below.
 - c. This Agreement reflects a compromise, settlement and accommodation among the Parties, and the Parties agree that the terms and conditions herein are interdependent. If the Commission does not issue a final order which implements provisions consistent with the material terms of this Agreement, each Party has the right to withdraw from this Agreement and to assume any position it deems

appropriate with respect to any issue in this proceeding. A Party who withdraws shall not be deemed to have waived any procedural right or taken any substantive position on any fact or issue by virtue of the Party's entry into the Agreement or its subsequent withdrawal. However, the parties agree that, if a Party withdraws from this Agreement, all negotiations, discussions and conferences related to this settlement are privileged, inadmissible, and not relevant to prove any issues in GUD No. 9869 or GUD No. 9901 or their respective appeals, pursuant to Texas law, including but not limited to Texas Rule of Evidence 408.

- d. This Agreement is binding on each of the Parties only for the purpose of settling the issues as set forth herein and for no other purposes. Except to the extent that this Agreement expressly governs a Party's rights and obligations for future periods, this Agreement shall not be binding or precedential upon a Party outside this case. It is acknowledged that a Party's support of the matters contained in this Agreement may differ from the position taken or testimony presented by it in other dockets. To the extent that there is a difference, a Party does not waive its position in any other dockets. Because this is a stipulated resolution, no Party is under any obligation to take the same positions as set out in this Agreement in other dockets, whether those dockets present the same or a different set of circumstances, except as may otherwise be explicitly provided in this Agreement.
- e. Each person signing this document represents that he or she is authorized to sign it on behalf of the Party represented. For administrative convenience, this document may be executed in multiple counterparts with facsimile signatures. This agreement supersedes any prior agreements executed by any party to this proceeding.

Agreed to this 9th day of September, 2010.

By: 

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ATTORNEY FOR THE CITY OF DALLAS

RIDER:	SUR 15 & 16	
APPLICABLE TO:	City of Dallas and Unincorporated Areas Customers	
EFFECTIVE DATE:	11/01/2010	PAGE:

RATE CASE EXPENSE SURCHARGE

A. APPLICABILITY

The Rate Case Expense Surcharge (RCE) rate as set forth in Section (B) below is pursuant to Final Order in GUD 9901. This rate shall apply to the following rate schedules of Atmos Mid-Tex in the City of Dallas and in all unincorporated areas served.

B. RCE RATE

Residential Customers:	\$ 0.22 per month
Commercial Customers:	\$ 0.68 per month
Industrial and Transportation Customers:	\$ 8.63 per month

This rate will be in effect for approximately 24 months until all approved and expended rate case expenses are recovered from the applicable customer classes as documented in the compliance filing on rate case expense recovery for GUD 9901.

C. OTHER ADJUSTMENTS

Taxes: Plus applicable taxes and fees (including franchise fees) related to above.

D. CONDITIONS

Subject to all applicable laws and orders, and the Company's rules and regulations on file with the regulatory authority.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs