



City Council  
Agenda Memo

City Council  
Meeting Date: 9-23-2010

TO: Larry D. Gilley, City Manager  
FROM: Mindy Patterson, Director of Finance

*Mindy*

**SUBJECT: SECOND READING AND PUBLIC HEARING OF ORDINANCE APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC" OR "STEERING COMMITTEE") AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "COMPANY") REGARDING THE COMPANY'S THIRD RATE REVIEW MECHANISM ("RRM") FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; APPROVING ATMOS MID-TEX'S PROOF OF REVENUES; EXTENDING THE RRM PROCESS FOR TWO CYCLES AND ADOPTING A NEW RRM TARIFF; RATIFYING THE SETTLEMENT AGREEMENT, INCLUDING COST RECOVERY FOR A STEEL SERVICE LINE REPLACEMENT PROGRAM; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.**

**GENERAL INFORMATION** - The Atmos Cities Steering Committee ("ACSC") and Atmos Mid-Tex created the Rate Review Mechanism ("RRM") as an alternative to the GRIP surcharge process. The RRM process has allowed for a more comprehensive rate review and annual adjustment and as a substitute for future GRIP filings during the three-year trial period.

There are two components to the RRM adjustment. The prospective component adjusts rates for known and measurable changes in O&M and net plant investment. Atmos Mid-Tex and ACSC agreed to cap changes to expenses and invested capital at no more than 5% per year. The true-up component evaluates whether the Company has over or under recovered its earnings for the previous year. For purposes of the RRM true-up component, the Atmos Mid-Tex rate of return on equity and its capital structure are frozen to avoid the parent company from manipulating the overall rate of return.

The purpose of the attached Ordinance is to approve rate tariffs and Proof of Revenues that reflect the negotiated rate change pursuant to the RRM process and to ratify a Settlement Agreement recommended by the ACSC Settlement Committee and Executive Committee. As a result of the negotiations, ACSC was able to reduce the Company's requested \$70.2 million RRM increase to \$27 million. Approval of the Ordinance will result in rates in the implementation of new rates that increase in Atmos' revenues effective October 1, 2010.

The Settlement Agreement to be ratified by the Ordinance authorizes an extension of the RRM process, in modified form to eliminate the true-up component, for an additional two annual filings. The Settlement Agreement also addresses the Atmos Mid-Tex steel service line replacement program and authorizes current cost recovery via an adder to residential and commercial customer charges.

The ordinance was approved on first reading on September 9, 2010.

**STAFF RECOMMENDATION** - Staff recommends the City Council approve the ordinance on second and final reading.

**ATTACHMENT** - Ordinance

Prepared by:

Name Theresa James / Odis Dolton

Title Asst. City Atty. / Asst. Dir. of Finance

Item No. 7.1

Disposition by City Council

- Approved Ord/Res# \_\_\_\_\_
  - Denied \_\_\_\_\_
  - Other \_\_\_\_\_
- City Secretary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, ("CITY") APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC" OR "STEERING COMMITTEE") AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "COMPANY") REGARDING THE COMPANY'S THIRD RATE REVIEW MECHANISM ("RRM") FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; APPROVING ATMOS MID-TEX'S PROOF OF REVENUES; EXTENDING THE RRM PROCESS FOR TWO CYCLES AND ADOPTING A NEW RRM TARIFF; RATIFYING THE SETTLEMENT AGREEMENT, INCLUDING COST RECOVERY FOR A STEEL SERVICE LINE REPLACEMENT PROGRAM; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.

WHEREAS, the City of Abilene, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"), a coalition of approximately 148 similarly situated cities served by Atmos Mid-Tex that have joined together to facilitate the review of and response to natural gas issues affecting rates charged in the Atmos Mid-Tex service area (such participating cities are referred to herein as "ACSC Cities"); and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC Cities and the Company worked collaboratively to develop a Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review

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process controlled in a three year experiment by ACSC Cities as a substitute to the current GRIP process instituted by the Legislature; and

**WHEREAS**, the City took action in 2008 to approve a Settlement Agreement with Atmos Mid-Tex resolving the Company's 2007 rate case and authorizing the RRM Tariff; and

**WHEREAS**, the 2008 Settlement Agreement contemplates reimbursement of ACSC Cities' reasonable expenses associated with RRM applications; and

**WHEREAS**, on or about March 15, 2010, Atmos Mid-Tex filed with the City its third application pursuant to the RRM tariff to increase natural gas base rates by approximately \$70.2 million, such increase to be effective in every municipality that has adopted the RRM tariff within its Mid-Tex Division; and

**WHEREAS**, ACSC Cities coordinated its review of Atmos Mid-Tex's RRM filing by designating a Settlement Committee made up of ACSC representatives, assisted by ACSC attorneys and consultants, to resolve issues identified by ACSC in the Company's RRM filing; and

**WHEREAS**, the Company has filed evidence that existing rates are unreasonable and should be changed; and

**WHEREAS**, independent analysis by ACSC's rate expert concluded that Atmos Mid-Tex is able to justify an increase over current rates of \$21 million; and

**WHEREAS**, Atmos Mid-Tex has commenced a program to replace steel service lines based on a relative leak repair risk analysis; and

**WHEREAS**, the Steering Committee has entered a Settlement Agreement ("Attachment C" to this Ordinance) with Atmos Mid-Tex to: (1) increase base rate revenues by \$27 million; (2) extend the RRM process, with modifications for an additional two cycles and to thereafter

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require the filing of a system-wide Statement of Intent rate case on or before June 1, 2013; and (3) in the interim to allow current recovery of incremental direct costs of the steel service line replacement program in rates set via this ordinance and in future RRM; and

**WHEREAS**, the ACSC Executive Committee, as well as ACSC lawyers and consultants, recommend that ACSC members approve the attached rate tariffs ("Attachment A" to this Ordinance), which will increase the Company's revenue requirement by \$27 million; and

**WHEREAS**, the attached tariffs implementing new rates and Atmos Mid-Tex's Proof of Revenues ("Attachment B" to this Ordinance) are consistent with the negotiated resolution reached by ACSC Cities and are just, reasonable, and in the public interest; and

**WHEREAS**, it is the intention of the parties that if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's Third RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City; and

**WHEREAS**, the negotiated resolution of the Company's RRM filing and the resulting rates are, as a whole, in the public interest.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:**

**Section 1.** That the findings set forth in this Ordinance are hereby in all things approved.

**Section 2.** That the City Council finds the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable and new tariffs and Atmos Mid-Tex's Proof of Revenues,

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which are attached hereto and incorporated herein as Attachments A and B, are just and reasonable and are hereby adopted.

**Section 3.** That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC Cities in processing the Company's rate application.

**Section 4.** That the Settlement Agreement, attached as Attachment C, which includes in addition to resolution of the Third RRM: (1) extension of a modified RRM process; (2) requirement that Atmos Mid-Tex file a system-wide Statement of Intent rate case on or before June 1, 2013; and (3) current recovery of incremental direct costs for a steel service line replacement program, is hereby ratified.

**Section 5.** That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

**Section 6.** That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

**Section 7.** That if any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

**Section 8.** That if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's Third RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City.

**Section 9.** That this Ordinance shall become effective from and after its passage with rates authorized by attached Tariffs to be effective for bills rendered on or after October 1, 2010.

**Section 10.** That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of David Park, Vice President Rates and Regulatory Affairs, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

**PASSED on FIRST READING** this 9th day of September, 2010.

A notice of the time and place said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News on September 5th, a daily newspaper of general circulation in the City of Abilene, the same being more than ten (10) days prior to the time designated for said hearing. After such opportunity for the public to be heard, said ordinance was passed on its second and final reading.

**PASSED on SECOND AND FINAL READING** after **PUBLIC HEARING** this 23<sup>rd</sup> day of September, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

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