

ORDINANCE NO. 35-2005

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, DENYING THE REQUEST OF ATMOS ENERGY CORP., MID-TEX DIVISION, FOR AN ANNUAL GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) RATE INCREASE IN THIS MUNICIPALITY, AS A PART OF THE COMPANY'S STATEWIDE GAS UTILITY DISTRIBUTION SYSTEM; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE ATMOS ENERGY CORP., MID-TEX DIVISION DISTRIBUTION SYSTEM AS PART OF THE ATMOS CITIES STEERING COMMITTEE (ACSC); AUTHORIZING ACSC TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; AUTHORIZING INTERVENTION AS PART OF ACSC IN ANY APPEAL OF THE CITY'S ACTION TO THE RAILROAD COMMISSION; APPROVING COSTS INCURRED AS REASONABLE AND PROVIDING A REQUIREMENT FOR PROMPT REIMBURSEMENT OF COSTS; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING FOR NOTICE OF THIS ORDINANCE TO ATMOS ENERGY CORP., MID-TEX DIVISION.

WHEREAS, on or about December 17, 2004, Atmos Energy Corp., Mid-Tex Division, (the "Company") filed with the City of Abilene ("City"), a request pursuant to Texas Utilities Code § 104.301 for an annual gas reliability infrastructure program (GRIP) rate increase for customers on the Company's statewide gas utility system to be effective February 15, 2005, and subsequently extended that effective date until March 4, 2005, for some cities on its system; and

WHEREAS, the City has exclusive original jurisdiction to evaluate the Company's request as it pertains to the distribution facilities located within the City, pursuant to Texas Utilities Code §§ 102.001(b) and 103.001; and

WHEREAS, the City timely acted to suspend the effective date of Atmos' proposed rate increase; and

WHEREAS, it is reasonable for the City of Abilene to cooperate with other cities in a coalition of cities in opposition to the Company's filing at the Railroad Commission ("Commission"), said coalition being known as Atmos Cities Steering Committee ("ACSC"), in any appeal of the cities' actions to the Commission; and

WHEREAS, the Gas Utility Regulatory Act grants local regulatory authorities the right to intervene in rate proceedings filed at the Railroad Commission; and

WHEREAS, the Texas Utilities Code § 103.022 provides that costs incurred by the City in ratemaking activities are to be reimbursed by the regulated utility; and

WHEREAS, ACSC's rate case expenses incurred in this proceeding are reasonable and should be reimbursed by the Company; and

WHEREAS, counsel for ACSC, upon review of the Company's filing and upon consultation with various consultants, recommends finding that the Company's proposal is unjustified, unreasonable and is not in compliance with the GRIP statute (Texas Utilities Code § 104.301) either in fact or in law; and

WHEREAS, information provided by the Company in response to ACSC's requests for information indicates that the Company actually decreased per-customer investment in infrastructure during calendar year 2003; and

WHEREAS, the Company has publicly stated that it will receive substantial profit in 2005 over that approved by the Commission in GUD No. 9400; and

WHEREAS, the Company's GRIP request fails to account for growth in numbers of customers, thereby undercounting the revenues it will receive from its proposed GRIP rate increase; and

WHEREAS, the Company's GRIP request fails to recognize that GUD No. 9400 rates included profit based on TXU Corporation's capital structure rather than Atmos Energy Corp.'s current capital structure, which justifies a lower rate of return; and

WHEREAS, the information reviewed by the ACSC consultants indicates that implementation of the Company's GRIP request would result in further over-earning by the Company above that approved by the Commission in GUD No. 9400; and

WHEREAS, in consideration of the city taking action before August 12, 2005, on the currently pending GRIP request, the Company has agreed not to file any additional GRIP requests before September 15, 2005.

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

SECTION 1. That the Company's GRIP rate increase request is found to be unjustified, unreasonable and in violation of the GRIP statute and is therefore **denied** in all respects. The defects in the request include, but are not limited to, the following: (a) the Company improperly calculated its 2003 rate base; (b) the Company included in its calculation projects unrelated to system improvement; (c) the Company failed to recognize the increased revenues it is now receiving due to increased rates approved by the Commission in GUD No. 9400 and due to customer growth; (d) information supplied by the Company indicated that the Company actually decreased its per-customer investment in infrastructure in calendar year 2003; (e) approval of the Company's GRIP request would result in over-earning by the Company in the year of implementation; and (f) the Company has failed to demonstrate that it meets the statutory prerequisites to qualify for a GRIP rate increase or that its proposed method of implementation of the GRIP statute constitutes a constitutional application of the statute.

SECTION 2. That the City is authorized to cooperate with other Cities within the Company's Distribution System that have formed ACSC to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City regarding reasonable rates and to direct any necessary litigation associated with an appeal of this ordinance to the Commission.

SECTION 3. That the costs incurred by ACSC in reviewing the Company's GRIP request and representing ACSC in this proceeding are hereby found to be reasonable and, upon submission to the Company, shall be promptly reimbursed by the Company.

SECTION 4. That the City is authorized to intervene in any appeal of the city's action filed at the Commission, and to participate in any such appeal as a member of ACSC.

SECTION 5. That this Ordinance shall become effective immediately from and after its passage, as the law and charter in such cases provide.

SECTION 6. That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

SECTION 7. That a copy of this ordinance, constituting final action on the Company's application, shall be forwarded to the appropriate designated representative of the Company within 10 days as follows: Richard Reis, Manager, Gas Regulation, Atmos Energy Corp., Mid-Tex Division, Lincoln Center II, 18th Floor, 5420 LBJ Freeway, Dallas, Texas, 75240.

PASSED on first reading the 14th day of July, 2005.

PASSED on second and final reading the 28th day of July, 2005.

ATTEST:



CITY SECRETARY



MAYOR

APPROVED:



CITY ATTORNEY