

ORDINANCE NO. 26-2006

**AN ORDINANCE OF THE CITY COUNCIL 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; PROVIDING A REQUIREMENT FOR A PROMPT REIMBURSEMENT OF COSTS INCURRED BY THE CITY; 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 March 30, 2006, Atmos Energy Corp., Mid-Tex Division, (the "Company") filed with the City a request for an annual gas reliability infrastructure program ("GRIP") rate increase for customers on the Company's statewide gas utility system to be effective May 30, 2006; 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, it is reasonable for the City 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 ("GURA") 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, 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 and unreasonable; and

WHEREAS, the Company has publicly stated that it will receive substantial profit in 2005 and that its expenses are substantially below those on which the GUD No. 9400 rates it is charging were based; 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, under the provisions of § 104.301 of GURA, the interim rate adjustment is subject to true-up in a general rate case filed within five years of the effective date of the interim rate surcharge; and

WHEREAS, the Company has, on May 31, 2006, filed a Statement of Intent to increase its distribution rates on a system-wide basis, using calendar year ending December 31, 2005, as its test year; and

WHEREAS, the capital investment made by Atmos during 2005 will be reviewed in the Statement of Intent filing, making the 2005 GRIP filing superfluous, duplicative, and unnecessary;

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

PART 1. That the Company's GRIP rate increase request is found to be unreasonable, superfluous, duplicative, and unnecessary, and is therefore denied in all respects.

PART 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 a rate ordinance and the rate case filed at the Commission.

PART 3. That the costs incurred by the City in reviewing the Company's GRIP request shall be promptly reimbursed by the Company.

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

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

PART 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.

PART 7. A copy of this ordinance, constituting final action on the Company's application, be forwarded to the following: Richard T. Reis, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, legal counsel to ACSC, at Lloyd Gosselink Blevins Rochelle & Townsend, P.O. Box 1725, Austin, Texas 78767-1725.


PASSED on FIRST READING this 22 day of June, 2006.

PASSED on SECOND AND FINAL READING this 13 day of July, 2006.

ATTEST:

APPROVED:

  
Jo Moore, City Secretary

  
Norman Archibald, Mayor

APPROVED:

  
City Attorney