



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		February 27, 2012		
Department:		Customer and Utility Services		
Department Head		Mark Israelson		
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
CAPTION				
<p>A Resolution of the City of Plano suspending the March 6, 2012, effective date of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex") requested rate change to permit the City time to study the request and to establish reasonable rates; approving cooperation with Atmos Cities Steering Committee ("ACSC") and other cities in the Atmos Mid-Tex service area to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; requiring reimbursement of cities' rate case expenses; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company; ACSC's legal counsel; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S): N/A				
<p>COMMENTS: This item has no fiscal impact. STRATEGIC PLANO GOAL: Council Resolution to suspend an ATMOS natural gas rate increase relates to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
Resolution to suspend the March 6, 2012, Atmos Energy Corporation rate increase.				
List of Supporting Documents: Memorandum.			Other Departments, Boards, Commissions or Agencies	



Date: February 27, 2012
To: City Council
Through: Bruce D. Glasscock, City Manager
From: Mark D. Israelson, Director Office of Policy and Government Relations
Subject: Resolution Suspending Atmos Mid-Tex's Proposed March 6, 2012, Effective Date for a Rate Increase

The City, along with approximately 153 other cities served by Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On or about January 31, 2012, Atmos Mid-Tex filed with the City a Statement of Intent to increase rates within the City.

Background

In 2003, TXU Gas filed a statewide rate case which became known at the Railroad Commission of Texas ("RRC") as Gas Utilities Docket ("GUD") No. 9400. That same year the Texas Legislature passed legislation referred to as the Gas Reliability Infrastructure Program ("GRIP") which authorized annual piecemeal rate reviews that Texas courts have concluded significantly restrict city jurisdiction, participation, and input. Shortly after GUD No. 9400 was decided in 2004, Atmos Energy purchased TXU Gas and created what is known as Atmos Energy Corp., Mid-Tex Division. The City is within the Atmos Mid-Tex Division.

Atmos Mid-Tex filed four GRIP cases before filing a traditional rate case in September, 2007. As part of Cities' Settlement Agreement with Atmos of the 2007 rate case, ACSC and Atmos created a substitute process for annual piecemeal GRIP cases. That substitute process was called a Rate Review Mechanism ("RRM") and was intended as an expedited but comprehensive rate review that included a number of fixed values and constraints. The RRM was intended as a three-year experiment. Last year, it was extended for a fourth year with some slight modifications to the original formulas. ACSC negotiated with Atmos in the final quarter of last year to further extend the RRM process, but no agreement was reached. Atmos has expressed a desire to reach a settlement of the January 31, 2012 filing that includes a revised RRM process.

Enclosed are frequently asked questions ("FAQ") on ACSC and the RRM ratemaking process.

Discussion and Purpose

Atmos Mid-Tex filed a Statement of Intent on January 31, 2012, seeking to increase system-wide base rates (which exclude the cost of gas) by approximately \$49 million or 11.94%. However, the Company is requesting an increase of 13.6%, excluding gas costs, for its residential customers. Additionally, the application would change the way that rates are collected, by increasing the residential fixed-monthly (or customer) charge from \$7.50 to \$18.00 and decreasing the consumption charge from \$0.25 per 100 cubic feet ("ccf") to \$0.07 per ccf.

The law provides that a rate request made by a gas utility cannot become effective until at least 35 days following the filing of the application to change rates. Atmos has proposed an effective date of March 6, 2012. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, Atmos' rate request is deemed administratively approved.

The purpose of the resolution is to extend the effective date of Atmos Mid-Tex's proposed rate increase to give the City time to review the rate-filing package. The resolution suspends the March 6, 2012 effective date of the Company's rate increase for the maximum period permitted by law to allow the City, working in conjunction with the other ACSC cities, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy to pursue, including settlement and ultimately to approve reasonable rates.

Explanation of "Be It Resolved Paragraphs"

Section 1. The City is authorized to suspend the rate change for 90 days after the date that the rate change would otherwise be effective so long as the City has a legitimate purpose. Time to study and investigate the application is always a legitimate purpose. Please note that the resolution refers to the suspension period as the "maximum period allowed by law" rather than ending by a specific date. This is because the Company controls the effective date and can extend its effective date and, therefore, extend the deadline for final city action to increase the time that the City retains jurisdiction (for example, if necessary to reach settlement on the case). If the suspension period is not otherwise extended by the Company, the City must take final action on Atmos Mid-Tex's request to raise rates by June 4, 2012.

Section 2. This provision recognizes the City's membership in ACSC and authorizes the City to participate with other similarly situated cities served by Atmos Mid-Tex in order to more efficiently represent the interests of the City and its citizens.

Section 3. By law, the Company must reimburse the cities for their reasonable rate case expenses. Legal counsel and consultants approved by ACSC will present their invoices to the City of Arlington which will then seek reimbursement from Atmos Mid-Tex. The City will not incur liability for payment of rate case expenses by adopting a suspension resolution.

Section 4. This section merely recites that the resolution was passed at a meeting that was open to the public and that the consideration of the resolution was properly noticed.

Section 5. This section provides that both Atmos Mid-Tex's designated representative and counsel for ACSC will be notified of the City's action by sending a copy of the approved and signed resolution to certain designated individuals.

Recommendation

The City Staff recommends adoption of the resolution suspending the effective date of Atmos Mid-Tex's proposed rate increase.

A Resolution of the City of Plano suspending the March 6, 2012, effective date of Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex”) requested rate change to permit the City time to study the request and to establish reasonable rates; approving cooperation with Atmos Cities Steering Committee (“ACSC”) and other cities in the Atmos Mid-Tex service area to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; requiring reimbursement of cities’ rate case expenses; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company; ACSC’s legal counsel; and providing an effective date.

WHEREAS, on or about January 31, 2012, Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), pursuant to Gas Utility Regulatory Act § 104.102 filed with the City of Plano (“City”) a Statement of Intent to change gas rates in all municipalities exercising original jurisdiction within its Mid-Tex Division service area, effective March 6, 2012; and

WHEREAS, the City is a regulatory authority under the Gas Utility Regulatory Act (“GURA”) and under Chapter 104, §104.001 et seq. of GURA has exclusive original jurisdiction over Atmos Mid-Tex’s rates, operations, and services within the City; and

WHEREAS, in order to maximize the efficient use of resources and expertise, it is reasonable for the City to maintain its involvement in the Atmos Cities Steering Committee (“ACSC”) and to cooperate with the more than 150 similarly situated city members of ACSC and other city participants in conducting a review of the Company’s application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, Atmos Mid-Tex proposed March 6, 2012, as the effective date for its requested increase in rates; and

WHEREAS, it is not possible for the City to complete its review of Atmos Mid-Tex’s filing by March 6, 2012; and

WHEREAS, the City will need an adequate amount of time to review and evaluate Atmos Mid-Tex’s rate application to enable the City to adopt a final decision as a local regulatory authority with regard to Atmos Mid-Tex’s requested rate increase; and

WHEREAS, the Gas Utility Regulatory Act § 104.107 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days; and

WHEREAS, the Gas Utility Regulatory Act § 103.022 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. That the March 6, 2012, effective date of the rate request submitted by Atmos Mid-Tex on January 31, 2012, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

Section II. That the City is authorized to cooperate with ACSC and its member cities in the Mid-Tex service area and under the direction of the ACSC Executive Committee 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 administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Railroad Commission.

Section III. That the City's reasonable rate case expenses shall be reimbursed by Atmos.

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

Section V. A copy of this Resolution shall be sent to Atmos, care of David Park, Vice President Rates & Regulatory Affairs, at Atmos Energy Corporation, Mid-Tex Division, 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.

Section VI. This resolution shall become effective immediately.

DULY PASSED AND APPROVED this the 27th day of February, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY