

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: May 13, 2014		DATE SUBMITTED: April 30, 2014	
DEPARTMENT OF ORIGIN: City Manager's Office		SUBMITTED BY: Hugh R. Walker	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: A proposed resolution to deny an increase in rates as requested by Atmos Energy Corporation – Mid-Tex Division (Atmos) submitted on or about February 28, 2014, under the Rate Review Mechanism (RRM); finding Atmos' request unreasonable; directing Atmos to reimburse the City's rate-case expenses; authorizing the City's participation in appeals Atmos may take denying its requested increase; requiring delivery of the resolution (if approved) to Atmos and the City's special legal counsel; finding that the meeting complied with the Open Meetings Act; declaring an effective date; and making other findings and provisions related to the subject.			
SUMMARY STATEMENT: The City of Bryan is a member of the Atmos Texas Municipalities (ATM). The ATM group was organized by a number of municipalities served by Atmos Energy Corporation, Mid-Tex Division (Atmos) and has been represented by the law firm of Herrera & Boyle, PLLC (H&B) (through Mr. Alfred R. Herrera). ATM also retained the services of a consulting firm, Utilitech, Inc. (Utilitech) (Mr. Mike Brosch and Mr. Steve Carver) to assist in reviewing an application submitted by Atmos that seeks to increase its rates and change its rates. Both H&B and Utilitech have participated in prior rate cases involving Atmos and have extensive knowledge and experience in rate matters affecting Atmos' rates, operations, and services.			
<u>History/Background</u>			
In January 2012, Atmos sought an increase of about \$49.1 million. Ultimately, the ATM cities and Atmos were not able to reach agreement on an increase and Atmos filed an appeal to the Railroad Commission of Texas. The Railroad Commission approved an increase of about \$24.1 million, representing an increase in revenue of about 7%.			
In the summer of 2013, Atmos and ATM entered into an agreement that approved a revised Rate Review Mechanism (RRM). The RRM approved in the Summer of 2013 is the third iteration of that rate-setting mechanism.			
Less than a year ago, on or around July 15, 2013, Atmos submitted a request to increase rates under the RRM. Atmos requested an increase in rates on a system-wide basis of \$22.7 million, which is an increase of about 5%. Following a series of settlement negotiations between Atmos' experts and ATM's experts, Atmos agreed to an increase of \$16.6 million, an increase in revenue of about 3.7%.			
<u>2014 Rate Review Mechanism (RRM)</u>			
On about February 28, 2014, Atmos initiated a ratemaking proceeding with cities in the ATM coalition by submitting an application to increase its revenue by about \$45.6 million and to change its rates to collect that increase in revenue. An increase of \$45.6 million represents an increase of about 9.2% in annual base-rate revenue.			

The increase for an average customer is as follows:

Residential Customer:	\$ 2.02/month (9.96%) in base rates.
Commercial Customer:	\$ 2.16/month (10.16%) in base rates.
Industrial/Transportation Customer:	\$53.65/month (10.29%) in base rates.

ATM retained the law firm of H&B as Special Counsel and the consulting firm of Utilitech to review Atmos' filing. After an extensive review of Atmos' request to increase its revenue and change its rates, on about April 10, 2014, ATM's Special Counsel and consultants concluded Atmos merited an increase of no more than about \$26.6 million. Special Counsel's and the consultants' assessment was preliminary and excluded additional downward adjustments to Atmos' request that are not included in the \$26.6 million amount because of the amount of time to review Atmos' request and because of then-outstanding responses to requests for information submitted to Atmos by ATM's Special Counsel.

The basis for ATM's consultants' preliminary assessment that Atmos warranted at most an increase of \$26.6 million is based on numerous exclusions of costs or rejection of accounting practices for which Atmos failed to carry its burden of proof that such costs or practices were reasonable and consistent with sound ratemaking and regulatory principles. Examples of these items included Atmos' request with regard to:

- An increase in Uncollectible Revenue related to implementation of a new billing system and unexplained cost overruns associated with implementation of the new billing system
- An increase in promotional advertising expenses unrelated to the conservation of energy and more related to promoting Atmos' corporate image
- Atmos' Incentive Compensation program for its executives and upper management
- Inclusion in its capital accounts of items the Railroad Commission had in prior orders excluded from Atmos' cost of service
- Atmos' use of projected costs related to medical and dental benefits
- Atmos' deferred accounting treatment of certain pension benefits
- The amount of Cash Working Capital Atmos proposed to recover from customers
- Atmos' treatment of certain federal income tax expenses including its ratemaking treatment of accumulated deferred income tax (ADIT) reserves
- Atmos' calculation of accounting balances related to certain regulatory assets allowed under the Railroad Commission's rules

This list is not intended to be nor is it an exhaustive list of the issues identified by ATM's rate experts. It is provided to show some of the areas in Atmos' application to change rates in which ATM's Special Counsel and rate experts found deficiencies in Atmos' request.

ATM's Special Counsel and consultants engaged in good-faith negotiations with Atmos to attempt to reach a settlement of Atmos' proposed increase, but those negotiations failed to produce an agreement.

At this juncture, the ATM cities' options are as follows:

Option 1. To deny Atmos' requested increase and approve no increase;

Option 2. To deny Atmos' requested increase and approve an increase of no more than \$26.6 million, based on ATM's consultants' preliminary report; or

Option 3. To take no action and allow Atmos' proposed increase of \$45.6 million and its related rates to go into effect.

Note that under Option 1 and Option 2, Atmos has the right to appeal the ATM cities' decisions to the Railroad Commission of Texas and pending such an appeal has the right to implement its proposed increase of \$45.6 million effective June 1, 2014, subject to refund if the Commission's review later finds a lower amount is appropriate. Atmos has notified ATM's Special Counsel of Atmos' intent to file an appeal of the City's decision to deny its requested increase.

The City should take action as soon as possible but no later than May 31, 2014. If no action is taken, the requested rate increase will likely take effect June 1, 2014.

STAFF ANALYSIS AND RECOMMENDATION: ATM's experts' preliminary report suggests Atmos does not warrant an increase of \$45.6 million. Given that the ATM cities and Atmos were not able to reach agreement on an amount by which to increase Atmos' annual revenue and that ATM's Special Counsel and rate experts believe a much lower increase is in order, and in light of the significant increases Atmos has obtained in the recent past, ATM's Special Counsel recommends that the City deny Atmos' proposed increase in revenue and changes in rates.

Atmos will appeal the City's decision denying its requested increase and changes in rates to the Railroad Commission. ATM's Special Counsel recommends that the City participate in Atmos' appeal to the Railroad Commission and in any appeals to the courts of the Railroad Commission's decision.

The attached Resolution also directs Atmos to reimburse ATM's rate-case expenses incurred to date and to reimburse on a monthly basis, ATM's rate-case expenses for any and all related appeals.

The City should take action as soon as possible but no later than May 31, 2014.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the proposed resolution, which denies the request rate increase.
2. Modify (e.g., an increase of no more than \$26.6M) and approve the proposed resolution, which may require legal review by the ATM's Special Counsel, additional negotiations with Atmos, and consideration at a future City Council meeting. As a reminder, the City should take action as soon as possible but no later than May 31, 2014.
3. Take no action and allow Atmos' proposed rates to take effect June 1, 2014.

Note: Options 1 and 2 will likely result in Atmos appealing to the Railroad Commission of Texas. Option 3 may result in the City being allowed to participate in any negotiated settlement, including the findings of the Railroad Commission of Texas.

ATTACHMENTS:

1. Proposed resolution
2. Resolution No. 3487, which was passed on June 11, 2013, and is specific to the current RRM process; and a related document better detailing the RRM process (pdf file)

FUNDING SOURCE: The proposed Resolution directs Atmos to reimburse ATM's rate-case expenses incurred to date and to reimburse on a monthly basis, ATM's rate-case expenses for any and all related appeals. That is, there is no cost to the City of Bryan; however, costs are typically passed to rate payers.

APPROVALS: Hugh R. Walker, 04/30/2014

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 5/2/2014

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 05/05/2014

Revised 05/2013

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS DENYING AN INCREASE IN RATES REQUESTED BY ATMOS ENERGY CORPORATION – MIDTEX DIVISION, SUBMITTED ON OR ABOUT FEBRUARY 28, 2014, UNDER THE RATE REVIEW MECHANISM; FINDING ATMOS’ REQUEST UNREASONABLE; DIRECTING ATMOS TO REIMBURSE THE CITY’S RATE-CASE EXPENSES; AUTHORIZING THE CITY’S PARTICIPATION IN APPEALS ATMOS MAY TAKE DENYING ITS REQUESTED INCREASE; REQUIRING DELIVERY OF THE RESOLUTION TO ATMOS AND THE CITY’S SPECIAL COUNSEL; FINDING THAT THE MEETING COMPLIED WITH THE OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT.

WHEREAS, Atmos Energy Corporation-MidTex Division ("Atmos") filed a request with the City of Bryan, Texas ("City") on or about February 28, 2014, thereby initiating a ratemaking proceeding to increase its revenue and change its rates within the corporate limits of the City, and specifically to increase its system-wide, annual revenue requirement by approximately \$45.7 million, which is an increase in base rates exclusive of the cost of gas of approximately 9.2%; and

WHEREAS, the City is a regulatory authority under Utilities Code § 103.001 (more commonly referred to as the Gas Utility Regulatory Act ("GURA")) and has exclusive original jurisdiction over Atmos’ rates, operations, and services within the City; and

WHEREAS, Section 103.021 of GURA authorizes the City to obtain information from Atmos as necessary to make a determination of the basis for the Atmos’ proposed increase in rates in the City; and

WHEREAS, Section 103.022 of GURA provides that Atmos shall reimburse the City its reasonable cost of engaging personnel to assist it in reviewing Atmos’ application; and

WHEREAS, the City has participated in prior cases regarding Atmos as part of a coalition of cities known as the Atmos Texas Municipalities ("ATM"); and

WHEREAS, Atmos submitted its application to increase rates under the Rate Review Mechanism ("RRM"); and

WHEREAS, Special Counsel and experts representing ATM have analyzed the data furnished by Atmos, sought and obtained additional data, and have interviewed Atmos’ management regarding Atmos’ request to increase rates; and

WHEREAS, the City’s Special Counsel and rate experts concluded that Atmos’ request to increase rates by \$45.7 million is unreasonably high; and

WHEREAS, the City’s Special Counsel and rate experts’ conclusion that Atmos’ request to increase rates by \$45.7 million is unreasonably high is based on numerous elements in Atmos’ request that are inconsistent with sound rate-setting and regulatory principles; and

WHEREAS, the City’s Special Counsel and rate experts participated in discussions with Atmos to attempt to resolve Atmos’ proposed change in rates and increase in revenue through negotiations but were unable to reach agreement; and

WHEREAS, it is anticipated that Atmos will appeal the City's denial of its request to increase rates to the Railroad Commission of Texas and possibly to the courts, thus requiring the continued assistance of Special Counsel and rate experts in those proceedings.

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

Section 1.

The findings set forth in recitals are incorporated into the body of this Resolution and are hereby in all things approved.

Section 2.

Atmos' request to change its rates and to increase its revenue by approximately \$45.7 million is hereby **DENIED**.

Section 3.

Pursuant to Utilities Code Section 103.022 and under the terms of the RRM, Atmos is hereby directed to reimburse the City's rate case expenses, as participants in ATM, for engaging counsel, rate consultants, and other personnel in assisting the City in its investigation of Atmos' proposed increase in rates, and is further directed to reimburse the City's rate case expenses on a monthly basis for the City's participation in any appeal Atmos seeks of the City's denial of its request to increase rates.

Section 4.

This Resolution supersedes any Resolution previously adopted by the City Council to the extent such previously adopted Resolution is inconsistent with this Resolution.

Section 5.

The meeting at which this Resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6.

If any one or more sections or clauses of this Resolution is judged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Resolution and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

Section 7.

This Resolution shall become effective from and after its passage.

Section 8.

A copy of this Resolution shall be sent to Atmos, care of Christopher Felan, Vice President of Rates and Regulatory Affairs, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1600, Dallas, Texas

75240, and to Special Counsel, Mr. Alfred R. Herrera, Herrera & Boyle, PLLC, 816 Congress Avenue, Suite 1250, Austin, Texas 78701.

PASSED AND APPROVED this _____ day of _____, 2014.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney