

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: May 26, 2015		DATE SUBMITTED: May 11, 2015	
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 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 type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: A proposed resolution of the City Council of the City of Bryan, Texas, approving a change in the rates of Atmos Energy Corporation, Mid-Tex Division as a result of a settlement between Atmos and the Atmos Texas Municipalities (ATM) under the Rate Review Mechanism (RRM); finding the rates set by the attached tariffs to be just and reasonable; finding that the meeting complied with the Open Meetings Act; declaring an effective date; and requiring delivery of the resolution to the company and legal counsel.			
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 and has been represented by the law firm of Herrera & Boyle, PLLC (through Mr. Alfred R. Herrera). ATM also retained the services of a consulting firm, Utilitech, Inc. (Mr. Mike Brosch and Mr. Steve Carver) to assist in reviewing an application submitted by the Atmos Energy-Mid-Tex Division (Atmos) that seeks to increase its rates and change its rates. Herrera & Boyle, PLLC and Utilitech, Inc. have participated in prior rate cases involving Atmos and have extensive knowledge and experience in rate matters affecting Atmos' rates, operations, and services.			
<p>Historically, ATM has been represented by Herrera & Boyle. On March 15, 2010, Atmos requested an increase of \$70.1 million in its system-wide rates. ATM and Atmos settled on an increase of \$27 million for prospective rates. On April 1, 2011, Atmos filed a request to increase rates system-wide by \$15.6 million. ATM and Atmos agreed to not increase base rates and permitted Atmos to recover \$6.6 million for the steel pipe replacement program. 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%.</p> <p>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. (Note: the RRM is the method in which requested rate increases from Atmos are processed and reviewed.)</p> <p>On about July 15, 2013, Atmos submitted a request to increase rates under the current 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%.</p> <p>Action to be considered with this Council Action Form is for the 2014 Rate Review Mechanism (RRM) and 2015 RRM. For the 2014 RRM, on about February 28, 2014, Atmos filed its second request to increase rates under the current iteration of the RRM and requested a system-wide increase of about \$45.6 million (9.2% increase in revenue). ATM's consultants' preliminary assessment indicated that Atmos warranted at most an increase of \$26.6 million. A settlement was not reached, the ATM cities denied Atmos' proposed increase, and Atmos appealed</p>			

ATM's denial of its revenue increase to the Railroad Commission. On appeal Atmos revised its request downward from \$45.6 million to \$43.8 million. Atmos implemented the full rates on June 1, 2014, subject to refund. The Commission held a hearing on September 3, 2014, and did not issue the hearing examiner's proposal for decision ("PFD") until April 28, 2015. The hearing examiner proposed an increase of \$42.9 million, that is, only about \$860,000 less than Atmos requested.

On February 27, 2015, Atmos submitted the 2015 RRM application seeking a *system-wide* rate increase of \$28.7 million, which equates to an increase of about 5.6%. After review of Atmos' application, and of the Railroad Commission's proposal for decision in GUD No. 10359 (as is explained in more detail below), ATM's Special Counsel and ATM's consultant, Utilitech, Inc., concluded Atmos merited an increase of no more than about \$9.1 million ("Report"). However, ATM's consultants completed that report without the benefit of the Commission's PFD for the 2014 RRM. ATM's Special Counsel and consultants had hoped to have direction from the Commission on many of the disputes that arose in the 2014 RRM resolved so as to inform their analysis of Atmos' 2015 RRM. If the Commission adopts the PFD for the 2014 RRM, which is the most likely scenario, many of the recommendations supported by ATM will be eliminated or modified. Therefore, ATM's Special Counsel and the consultants' preliminary findings of a \$9.1 million increase would have to be adjusted to accommodate the PFD issued in the 2014 RRM and would produce an increase closer to about \$23 million.

At this juncture, the ATM cities' (including the City of Bryan's) options are as follows:

Option 1. To deny Atmos' requested increase under the 2015 RRM and approve no increase;

Option 2. To deny Atmos' requested increase and approve an increase of no more than \$9.1 million for its 2015 RRM, based on ATM's consultants' preliminary report;

Option 3. To take no action and allow Atmos' proposed increase of \$23.9 million in the affected cities and its related rates to go into effect; or

Option 4. To approve a settlement agreement that resolves the 2014 RRM *and* the 2015 RRM, which combined results in an increase in rates above 2013 revenues of \$65.7 million.

NOTE: If the City elects Option 1, Option 2, or Option 3, the City would also have to continue its participation in the appeal pending at the Railroad Commission in GUD No. 10359 and incur its attendant costs.

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 \$23.9 million effective June 1, 2015, 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 if the City's decision is to deny the requested increase.

In an appeal to the Commission, Atmos would in all likelihood argue that the costs of appeal should be borne by only the ATM cities. Given the Commission's tendency to err in favor of utilities, Atmos would likely prevail. An appeal would increase the burden on ratepayers by adding rate case expenses, which would include both ATM's and Atmos' costs of preparing and prosecuting the appeal, and the costs of a hearing.

STAFF ANALYSIS AND RECOMMENDATION: After a series of negotiations with Atmos, and given the significant downside of continued litigation of this matter, ATM's Special Counsel recommends resolving both the 2014 RRM and 2015 RRM in a single settlement agreement. Continued efforts at the Commission with regard to the 2014 RRM will result in more rate case expenses and are unlikely to result in any material changes to the PFD in favor of ATM. Also, because the Commission issued the PFD regarding the 2014 RRM at such a late date, it undermined the ATM's consultants' ability to incorporate the proposed decisions, regarding the 2014 RRM, into their 2015 RRM report.

If the ATM rejects Atmos' settlement offer, Atmos would appeal the cities' decision to the Railroad Commission. While there are a number of contested issues whose outcome are uncertain in an appeal, based on the Proposal for Decision regarding Atmos' 2014 RRM, ATM's Special Counsel and consultants are of the opinion that the Railroad Commission would reach the same results its hearing examiner reached regarding the 2014 RRM. That is, the probability is high that, on appeal, the Railroad Commission would award Atmos all or most of its 2015 RRM request, \$23.9 million, as well as \$42.9 million of its 2014 RRM request. As part of the settlement of Atmos' 2014 and 2015 RRM, Atmos will dismiss its appeal of the 2014 RRM and will not seek recovery of RRM rate case expenses.

Therefore, because of the risks of an unfavorable outcome at the Railroad Commission, ATM's special counsel advises the ATM cities to accept a settlement increasing rates by about \$21.87 million over the current, interim rates Atmos is charging. Because the current rates Atmos is charging have not been approved by either the cities or the Railroad Commission, the City's action in effect would be to approve an increase for the 2014 RRM filing **and** the 2015 RRM filing of about \$65.7 million, combined, over Atmos' 2013 proposed revenues. The Settlement Agreement is addressed with the proposed resolution.

The combined increases for the 2014 RRM and 2015 RRM are shown below:

2014 RRM	
System Wide	
2014 RRM Filed City Amount	\$45,732,838
Adjustments	(1,913,950)
2014 RRM Filed Appeal Amount	<u>43,818,888</u>
Adjustments:	
CC 1205	(27,748)
AtmoSpirit and Service Awards	(196,741)
Depreciation on Disallowed Projects	(349,906)
Incentive Compensation to Achieved payout of 150%	(84,555)
Flow Through effect of incentive adjustment	(6)
ADIT NOL Correction	(36,545)
Other Revenue: Forfeited Discount	(122,668)
Flow through effects of above adjustments	(42,088)
PFD Amount	<u>\$42,958,631</u>
2015 RRM	
System Wide	
2015 RRM Filed City Amount (adjusted as noted)	\$28,673,724
2014 Rate Case Expense	799,651
2015 RRM Filed Amount	<u>29,473,375</u>
Downward Adjustments:	
Billing Determinant Adjustment	(4,632,888)
AtmoSpirit and Service Awards	(93,977)
Depreciation on Disallowed Projects	(371,598)
Refund from Appeal	(860,257)
Correction from ATM RFI 1-26 and ATM RFI 5-10	(1,525,993)
Correction from ACSC RFI 3-01 and ACSC RFI 3-02	(115,499)
2015 RRM Adjusted	<u>\$21,873,163</u>
Total Increase in Base Rates for 2014 RRM and 2015 RRM	\$65,692,051

Note: The total (\$65,692,051) is derived from the 2014 RRM “PFD Amount” (\$42,958,631), the 2014 RRM “Adjustments” (which total \$860, 257), and the “2015 RRM Adjusted” (\$21,873,163).

An increase of about \$21.87 million over the rates Atmos is currently charging related to the 2015 RRM, represents an increase of about 4%, and the impact on an average customer’s bill would be as follows:

Customer Class	Current Bill	Proposed Bill	Difference	% Increase with Gas Cost	% Increase without Gas Cost
Residential	\$71.48	\$72.62	\$1.14	1.59%	4.45%
Commercial	\$280.04	\$282.73	\$2.69	0.96%	4.01%
Industrial	\$1,082.55	\$1113.37	\$30.82	2.85%	3.66%
Transportation	\$909.36	\$940.17	\$30.81	3.39%	3.70%

The rate schedules to accomplish the increase are attached to the resolution approving the increase.

The City Council should take action as soon as possible but no later than May 31, 2015.

Note: On May 11, 2015, City staff visited with a local Atmos Energy representative who stated Atmos Energy agrees the best option for the City of Bryan is to approve the proposed resolution, which provides concurrence with the negotiated settlement, as prepared by the ATM legal counsel. That is, the Atmos representative confirmed the settlement as outlined in the proposed resolution is a mutually agreeable compromise between Atmos Energy and the ATM legal counsel.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the proposed resolution resulting in a settlement agreement that resolves the 2014 RRM and the 2015 RRM, which combined results in an increase in rates above 2013 revenues of \$65.7 million.
2. Deny Atmos’ requested increase under the 2015 RRM and approve no increase; the result is not approving the proposed resolution and not bringing closure to either the 2015 RRM and the 2014 RRM. If the proposed resolution is not approved, the result could be additional expense to the City of Bryan and customer rate increases greater than those negotiated by external legal counsel.
3. Deny Atmos’ requested increase and approve an increase of no more than \$9.1 million for its 2015 RRM, based on ATM’s consultants’ preliminary report. The result is not approving the proposed resolution and not bringing closure to either the 2015 RRM and the 2014 RRM. If the proposed resolution is not approved, the result could be additional expense to the City of Bryan and customer rate increases greater than those negotiated by external legal counsel.
4. To take no action and allow Atmos’ proposed increase of \$23.9 million in the affected cities and its related rates to go into effect.

ATTACHMENTS: (attachments 2 – 9 are in a single pdf file)

1. Proposed Resolution
2. Agenda Information Sheet (as provided by external legal counsel)
3. Residential Sales Rate Schedule (to be included as Attachment A to the resolution)
4. Commercial Sales Rate Schedule (to be included as Attachment A to the resolution)
5. Industrial Sales Rate Schedule (to be included as Attachment A to the resolution)
6. Transportation Rate Schedule (to be included as Attachment A to the resolution)
7. Weather Normalization Adjustment (WNA) Rider (to be included as Attachment A to the resolution)
8. Summary Proof of Revenue at Proposed Rates – Base Rates (to be included as Attachment B to the resolution)

9. OPEB Baseline (Pensions and Retiree Medical Benefits) (to be included as Attachment C to the resolution)

10. Documents provided by Atmos Energy via email on May 11, 2015 (separate pdf file)

FUNDING SOURCE: The City of Bryan does not bear a direct cost. However, rate case expenses are assumed to be passed on to customers. Rate case expenses include the actual rate increase, the review/analysis of the requested rate increase, etc. If the City denies the request or the settlement (i.e., the proposed resolution), the City and Atmos' customers within the City of Bryan could result in higher rates and litigation costs not covered through the RRM process.

APPROVALS: Hugh R. Walker, 05/11/2015

APPROVED FOR SUBMITTAL: CITY MANAGER

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 05-18-2015

Revised 05/2013

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, APPROVING A CHANGE IN THE RATES OF ATMOS ENERGY CORPORATION, MID-TEX DIVISION AS A RESULT OF A SETTLEMENT BETWEEN ATMOS AND THE ATMOS TEXAS MUNICIPALITIES UNDER THE RATE REVIEW MECHANISM; FINDING THE RATES SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; FINDING THAT THE MEETING COMPLIED WITH THE OPEN MEETINGS ACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan, Texas (“City”) is a regulatory authority under the Gas Utility Regulatory Act (“GURA”) and under § 103.001 of GURA has exclusive original jurisdiction over Atmos Energy Corporation – Mid-Tex Division (“Atmos”) rates, operations, and service of a gas utility within the municipality; 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, pursuant to the Rate Review Mechanism (“RRM”) for 2015 filed with the City on or around February 27, 2015, for a proposed system-wide increase of \$28.7 million; and

WHEREAS, experts representing ATM have been analyzing data furnished by Atmos and interviewing Atmos’ management regarding the RRM; and

WHEREAS, in May 2015, ATM and Atmos entered into a settlement agreement which resolved the 2014 RRM and 2015 RRM; and

WHEREAS, the settlement agreement permits Atmos to implement an increase of \$21.87 million increase over the current interim rates Atmos is charging, which when combined with the increase under the 2014 RRM produces an increase of \$65.7 million increase over Atmos’ 2013 revenues; and

WHEREAS, as part of the settlement agreement, Atmos will dismiss its pending appeal at the Railroad Commission of Texas, Atmos will not seek to recover rate case expenses over and above the agreed rate increase; and

WHEREAS, the steering committee of ATM and its counsel recommend approval of the attached tariffs, set forth as Attachment A, along with the proof of revenues set forth as Attachment B, and Attachment C, setting forth the beginning balance for purposes of determining pension and other post-employment benefits to be recovered in the next RRM filing.

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

Section 1. The recitals are hereby incorporated into the body of this Resolution for all purposes and the findings stated therein are hereby in all things approved.

Section 2. The amended tariffs in Attachment A are hereby adopted to become effective on June 1, 2015.

Section 3. To the extent any Resolution previously adopted by the City Council is inconsistent with this Resolution, it is hereby superseded.

Section 4. The meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 5. 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 6. This Resolution shall be effective immediately upon its adoption.

Section 7. A copy of this Resolution shall be sent to Atmos Mid-Tex, care of Christopher Felan, Vice President of Rates and Regulatory Affairs, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1600, Dallas, Texas 75240 and to Mr. Alfred R. Herrera, Herrera & Boyle, PLLC, 816 Congress Avenue, Suite 1250, Austin, Texas 78701.

APPROVED AND ADOPTED by vote of the City Council of the City of Bryan, Texas this 26th day of May, 2015.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney