# ACTION FORM
## BRYAN CITY COUNCIL

**Meeting Date** (?) 05/24/2016

**Subject Matter*** (?) Atmos 2016 RRM
This must match rolling agenda entry

**Department of Origin*** EXECUTIVE

**Submitted By*** Hugh R. Walker

**Type of Meeting*** ○ BCD ○ Special ◉ Regular

**Classification*** ○ Public Hearing ○ Consent ◉ Statutory ○ Regular

**Ordinance*** ◉ None ○ First Read ○ Second Read ○ First & Only Read

**Strategic Initiative*** ☐ Public Safety ☑ Service ☐ Economic Development ☑ Infrastructure ☑ 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 Energy 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 Energy 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 or Atmos Energy) that seeks to increase its rates and change its rates. Herrera & Boyle, PLLC and Utilitech, Inc. have participated in prior rate cases involving Atmos Energy and have extensive knowledge and experience in rate matters affecting Atmos' rates, operations, and services.

In about 2008, Atmos Energy and the various city coalitions agreed to a rate review process referred to as the Rate Review Mechanism (RRM). Since that time, the RRM process has been revised but continues to essentially provide a systematic process to determine how rates will be set over a specified period of time. The intent of RRM is to suspend the Gas Reliability Infrastructure Program (GRIP), reduce rate case expenses borne by customers, provide better transparency in reviewing Atmos Energy expenses and investment, cap certain expenses, and better manage large rate increases. Atmos rate increase requests typically occur and are reviewed each year, and the RRM process has been used since implementing the method. Atmos rate increases typically address multiple expenses, including system growth, replacing aging infrastructure, costs of relocations, and return on investment.

History of Atmos Energy rate cases going back to 2010 include:

• March 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. (RRM)

• April 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. (RRM)

• 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%. (General Rate Case) (Note: Since 1920, the

Railroad Commission of Texas has been the State agency with oversight responsibility of gas utilities.)

• Summer 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. (RRM)

• 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%. (RRM)

• February 28, 2014: Atmos filed its second request to increase rates under the current iteration of the RRM (the "2014 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 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 after the hearing, the hearing examiner proposed an increase of $42.9 million, that is, only about $860,000 less than Atmos requested. (RRM and Gas Utility Docket or GUD)

• February 27, 2015: Atmos submitted its third application under the current RRM seeking a system-wide rate increase of $28.7 million ("2015 RRM"), which equates to an increase of about 5.6%. After review of Atmos' application, the Railroad Commission's proposal for decision in GUD No. 10359, and the Hearing Examiner's Proposal for Decision (PFD) for the 2014 RRM, ATM's Special Counsel and consultants concluded that if the matter were appealed to the Railroad Commission, the result would be an increase closer to about $23 million. Ultimately, ATM and Atmos settled the appeal related to Atmos' proposed increase for Atmos' 2014 RRM, and Atmos' 2015 RRM, for a combined increase in rates of about $65.69 million, comprised of an increase of about $43.82 million for its 2014 RRM and about $21.87 million for its 2015 RRM. (RRM)

On March 17, 2016 (current RRM), the City received a letter from Atmos Energy (dated March 1, 2016), which notified the City that Atmos was filing a RRM representing "a requested increase in annual revenue of approximately $28.9 million." The letter stated the increase "represents a monthly increase of $1.52 for the average residential customer." The residential customer increase represents a 2.92% overall increase. An attachment to the letter provided the following information:
• Average commercial customer using 376.4 Ccf a month will have an increase of $4.58/month, 1.71% overall;
• Average industrial/transportation customer using 4,379 MMBtu a month will have an increase of $123.64, 2.39% overall for industrial and 3.37% for transportation customers overall.

Upon further review, the ATM consultants suggest that the March 1, 2016, Atmos rate increase is the fourth application under the current RRM seeking a system-wide rate increase of $35.4 million ("2016 RRM"), which equates to an increase of about 6.04%. After review of Atmos' application, the Railroad Commission's prior rulings, and Atmos' responses to requests for information submitted to Atmos by ATM's Special Counsel and consultants, ATM's consultants concluded that Atmos merited an increase of about $10.8 million. ATM's Special Counsel presented its findings to Atmos, with which Atmos disagrees. Following negotiations with Atmos, Atmos agreed to an increase of $29.9 million, which equates to an increase of about 5.5%.

The ATM cities' (including the City of Bryan's) options are as follows:

Option 1: Approve the proposed resolution and the Atmos Energy's requested increase as negotiated through the 2016 RRM in a settlement agreement amount of $29.9 million.

Option 2: Approve the ATM consultant's preliminary report of $10.8 million, which will likely be appealed to the Railroad Commission and could result in the City of Bryan being responsible for costs associated with the appeal. This action may require consideration at a future City Council meeting, which could result in Atmos Energy's requested rate increase taking effect on June 1st.

Option 3: Deny Atmos Energy's requested increase under the 2016 RRM and do not approve a rate increase, which will likely be appealed to the Railroad Commission and could result in the City of

increase, which will likely be appealed to the Railroad Commission and could result in the City of Bryan being responsible for costs associated with the appeal.

Option 4: Take no action and allow Atmos Energy's proposed increase of $35.4 million in the affected cities and its related rates to go into effect. This option likely results in Bryan residents having higher Atmos Energy rates than most other cities in Texas.

If the City elects Options 2 or 3, Atmos Energy likely will appeal to the Railroad Commission of Texas and request that they intervene. Given the Commission's tendency to err in favor of utilities, Atmos Energy stands a good chance to prevail with such an appeal. An appeal could 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. However, another scenario could result in the City of Bryan be directly responsible for costs associated with an appeal to the Railroad Commission as other cities are likely to approve the negotiated settlement agreement, which means the City of Bryan will have a stand-alone appeal.

The City needs to take action by May 31, 2016; otherwise, the rates as request by Atmos Energy will become effective on June 1, 2016.

**Staff Analysis & Recommendation** *

After a series of negotiations with Atmos Energy, and given the possible downside of continued litigation of this matter, ATM's Special Counsel recommends approving the proposed resolution regarding the 2016 RRM settlement agreement with an increase of $29.9 million. Continued efforts will result in more rate case expenses and are unlikely to result in any material changes in favor of ATM and the City of Bryan.

If the ATM or the City of Bryan rejects Atmos Energy's settlement offer, Atmos Energy likely will appeal the denial to the Railroad Commission. The probability is high that on appeal the Railroad Commission will award Atmos Energy an amount not materially different than the settlement agreement of $29.9 million or perhaps an even greater amount.

In comparison to the project increase to customers as provided in the March 1, 2016 Atmos letter, ATM consultants suggest a different impact on customers. ATM consultants state the $29.9 million settlement increase results in an increase of 5.5% in non-gas revenue when compared with what Atmos is currently collecting. ATM consultants suggest the settlement rate on customers will have the following impact:

Current Class – Current Bill - Proposed Bill - Difference-% Increase w/ Gas Cost-%Increase w/o Gas Cost

Residential -$52.01-$53.27-$1.26-2.43% - 5.05%
Commercial - $267.17 - $270.98 - $3.81- 1.43% - 5.03%
Industrial - $5,184.05 - $5,286.77 - $102.72 - 1.98% - 5.41%
Transportation - $3,666.82 - $3,769.54 - $102.72 - 2.80% - 5.41%

Based on the provided information and because of the risk of an unfavorable outcome at the Railroad Commission and the possibility for increased litigation costs (and possibly directly to the City of Bryan), ATM's special counsel advises the ATM cities accept a settlement increasing rates by about $29.9 million over the current rates Atmos Energy is charging. The settlement agreement is addressed with the proposed resolution.

The City needs to take action by May 31, 2016; otherwise, the rates as request by Atmos Energy will become effective on June 1, 2016.

**Options** *

(In Suggested Order of Staff Preference)

1. Approve the proposed resolution and the Atmos Energy's requested increase as negotiated through the 2016 RRM in a settlement agreement amount of $29.9 million.

2. Approve the ATM consultant's preliminary report of $10.8 million, which will likely be appealed to the Railroad Commission and could result in the City of Bryan being responsible for costs associated with the appeal. This action may require consideration at a future City Council meeting, which could result in Atmos Energy's requested rate increase taking effect on June 1st.

3. Deny Atmos Energy's requested increase under the 2016 RRM and do not approve a rate increase, which will likely be appealed to the Railroad Commission and could result in the City of Bryan being responsible for costs associated with the appeal.

4. Take no action and allow Atmos Energy's proposed increase of $35.4 million in the affected cities and its related rates to go into effect. This option likely results in Bryan residents having higher Atmos Energy rates than most other cities in Texas.

The City needs to take action by May 31, 2016; otherwise, the rates as request by Atmos Energy will become effective on June 1, 2016.

**Funding Source** *

The City of Bryan does not bear a direct cost. However, rate case expenses are assumed to be passed on to Atmos Energy 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.

**Attachments**

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|---|---|
| 05242016_Atmos2016RRM_Resolution.docx | 31.9KB |
| 05242016_AtmosEnergy_Attachments_inpart.pdf | 2.64MB |

Please detail attachments and note attachments available for viewing in City Secretary's Office:

1. (Word document) Proposed Resolution (Note: The proposed resolution refers to and includes sheets for Attachments A, B, and C, which are tariff, proof of revenues, and other postemployment (OPEP) documents as provided in the other attachment (pdf file) to this Council Action Form.)

2. (pdf file) Atmos Energy rate increase supporting document including the Atmos Energy letter dated March 1, 2016, tariff information as provided by ATM consultants (Attachment A to the proposed resolution), proof of revenues (Attachment B to the proposed resolution) and other postemployment benefits (OPEB) information as provided by ATM consultants (Attachment C to the proposed resolution)

**Dept. Head Signature**

Hugh R. Walker

**Deputy City Manager Signature**

**City Manager Signature**

**City Attorney Signature**

Janis K Hampton