

ORDINANCE NO. 128

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF Angus, TEXAS, ("CITY") APPROVING A SETTLEMENT AGREEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "THE COMPANY") REGARDING THE COMPANY'S STATEMENT OF INTENT TO CHANGE GAS RATES IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE SETTLEMENT AGREEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the City of Angus, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "the Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, on or about September 20, 2007, Atmos Mid-Tex, pursuant to Gas Utility Regulatory Act § 104.102 filed with the City a Statement of Intent to increase system-wide gas rates by approximately \$52 million, such increase to be effective in all municipalities exercising original jurisdiction within its Mid-Tex Division service area effective on October 25, 2007; and

WHEREAS, the City took action to suspend the October 25, 2007 Effective Date and to coordinate a response to Atmos' filing with more than 150 other similarly situated municipalities through the Atmos Cities Steering Committee ("ACSC") (such participating cities are referred to herein as "ACSC Cities"); and

WHEREAS, Atmos has agreed to extend the October 25, 2007, Effective Date such that the City's jurisdiction over this matter ends March 1, 2008; and

WHEREAS, the Railroad Commission of Texas ("RRC" or the "Commission") in GUD No. 9670, issued an Order approving new system-wide rates for customers of Atmos Energy's Mid-Tex Division in March 2007, which increased residential base rates by approximately \$10 million annually; and

WHEREAS, ACSC and Atmos have each appealed the RRC's decision in Atmos' most recent system-wide rate increase as well as the decision rendered in GUD No. 9400 to the Travis County District Court; and

WHEREAS, Atmos and ACSC have been in continuing disagreement, dispute, and litigation over the application of Section 104.301 of the Texas Utilities Code and the resulting rate increases ("GRIP surcharges") established by the RRC; and

WHEREAS, Atmos filed its application for its fourth GRIP surcharge in four years on May 31, 2007, seeking to increase the rates of all customers by approximately \$12 million annually; and

WHEREAS, the ACSC Cities desire to avoid the litigation expense that would result from another lengthy contested rate case proceeding before the RRC as well as the prosecution of the appeals in various courts of the GRIP surcharges and the two previous system-wide rate decisions; and

WHEREAS, ACSC desires to recoup certain costs it previously incurred in connection with GRIP-related proceedings (costs which Atmos contends are not reimbursable rate case expenses under the Texas Utilities Code), as well as costs incurred in connection with this proceeding; and

WHEREAS, on October 18, 2007, more than 60 ACSC members met in Arlington with officers and executives of Atmos to discuss various issues, including rate making, resulting in a mutual pledge to work toward settlement; and

WHEREAS, ACSC members designated a Settlement Committee made up of ACSC representatives to work with ACSC attorneys and consultants to formulate and review reasonable settlement positions, to resolve outstanding matters with Atmos, including the pending rate increase request; and

WHEREAS, the Settlement Committee and lawyers representing ACSC met several times with the Company to negotiate a Settlement Agreement resolving the issues raised in the Company's Statement of Intent filing as well as all outstanding appeals of the two prior rate cases and various GRIP filings; and

WHEREAS, the Settlement Committee, as well as ACSC lawyers and consultants believe existing rates are unreasonable and should be changed; and

WHEREAS, the ACSC Executive Committee recommends ACSC members approve the negotiated Settlement Agreement and attached tariffs; and

WHEREAS, the attached tariffs provide for an expedited rate review process as a substitute to the current GRIP process instituted by the Legislature; and

WHEREAS, the expedited rate review process as provided by the Rate Review Mechanism Tariff eliminates piecemeal ratemaking, the ACSC's major objection to the current GRIP process; and

WHEREAS, the attached tariffs implementing new rates are consistent with the Settlement Agreement and are just, reasonable, and in the public interest; and

WHEREAS, it is the intention of the parties that ACSC Cities receive the benefit of any Settlement Agreement that Atmos enters into with other entities arising out of its Statement of Intent or any associated appeals of a decision entered by the Railroad Commission regarding the Company's request to increase rates; and

WHEREAS, the Settlement Agreement as a whole is in the public interest.

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

Section 1. That the findings set forth in this Ordinance are hereby in all things approved.

Section 2. That the City Council finds that the Settlement Agreement, **which is attached hereto and incorporated herein as Attachment A**, is in the public interest and is hereby endorsed in all respects.

Section 3. That existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable and new tariffs, **which are attached hereto and incorporated herein as Attachment B**, are just and reasonable and are hereby adopted.

Section 4. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

Section 5. That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6. That if any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

Section 7. That if ACSC Cities determine any rates, revenues, terms and conditions, or subsequent benefits resulting from a Final Order or subsequent Settlement Agreement approved in any proceeding addressing the issues raised in Atmos' Statement of Intent would be more beneficial to the ACSC Cities than the terms of the attached Settlement Agreement, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the ACSC Cities. However, approval of the attached Rider RRM, Rider CEE, Rider GCR and the Rider WNA shall not be affected by the application of the provisions contained in this section, it being the understanding and the intent of the parties hereto that such tariffs shall continue according to their terms.

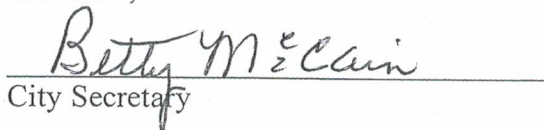
Section 8. That this Ordinance shall become effective from and after its passage with rates authorized by attached Tariffs to be effective for customer bills delivered on or after March 1, 2008.

Section 9. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Joe T. Christian, Director of Rates, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Blevins Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

PASSED AND APPROVED this 12 day of February, 2008.


Mayor

ATTEST;


City Secretary

APPROVED AS TO FORM:

Chry Beauf
City Attorney

FAX

DATE February 25, 2008

OF PAGES INCLUDING THIS PAGE 7

TO:

FAX # 903-242-4826 OFFICE PHONE: _____

DELIVER TO: Atmos Mid Tex Darwin Winfield

COMPANY: ATMOS GAS

FROM:

NAME: Betty McCain

CITY OF ANGUS

6008 S. IH45 W.

CORSICANA, TX 75110

903/874-3513 FAX 903/874-3513

••••• MESSAGE •••••

12, 2008 This is the ordinance passed February 12, 2008

FAX

DATE 2-25-2008

OF PAGES INCLUDING THIS PAGE 7

TO:

FAX # 512-472- 0532

OFFICE PHONE:

OFFICE PHONE:

DELIVER TO: Barbara Kimmell

COMPANY: Lloyd Gosssink

FROM:

NAME: Betty McCain

CITY OF ANGUS

6008 S. IH45 W.

CORSICANA, TX 75110

903/874-3513 FAX 903/874-3513

.....**MESSAGE**.....

SAGE
This is the ordinance passed on February 12,2008

MODEL STAFF REPORT

The City, along with 150 other cities served by Atmos Energy Mid-Tex Division ("Atmos" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC"). Since October, ACSC members have worked diligently with Atmos representatives to explore options to address Atmos' latest request to increase rates by \$52 million and to resolve other outstanding issues. The ordinance and tariffs (Attachment B to the Ordinance) reflect the agreement reached between ACSC and Atmos Mid-Tex to reduce Atmos' requested increase by more than 80 percent and ensure that the Company is able to provide safe and reliable natural gas service. The Settlement Agreement (Attachment A to the Ordinance) also provides rate certainty for customers by resolving outstanding appeals, creates a new process for expedited rate review by the cities, eliminates piecemeal ratemaking, reimburses ACSC for rate case expenses associated with the GRIP surcharge cases, and avoids the necessity of costly litigation. The ACSC Executive Committee recommends that ACSC members approve the Settlement Agreement.

Purpose of the Ordinance:

The purpose of the Ordinance is to endorse the Settlement Agreement between ACSC and Atmos regarding the Company's Statement of Intent to increase rates and to approve tariffs that implement the terms of the Settlement Agreement.

Approval of the Ordinance will result in a \$10 million increase in Atmos' revenues. This is an 80 percent reduction of the \$52 million increase requested by Atmos in its Statement of Intent. In addition, the tariffs approved by the Ordinance will replace the current piecemeal ratemaking GRIP surcharge system with an expedited rate review process that ensures that cities can review all components of future Company rate change requests. The Settlement Agreement also resolves all outstanding issues between ACSC and Atmos, including six appeals currently pending in Texas courts.

Procedural History and Background on Atmos Rate Increases Since 2004:

On September 20, 2007, Atmos filed with the City the Company's Statement of Intent to increase natural gas rates system-wide by approximately \$52 million. The City suspended the October 25th Effective Date to work with other ACSC members to analyze the schedules and evidence offered by Atmos to support its request to increase rates. In order to facilitate approval of this Ordinance and the attached tariffs, Atmos Mid-Tex has agreed to extend the deadline for final city action until March 1, 2008.

Atmos' rate request represents the seventh increase in natural gas rates for customers in the Atmos Mid-Tex service area since 2004. Four rate increases are the result of Gas Reliability Infrastructure Program (GRIP) surcharges enacted pursuant to the Texas Utilities Code § 104.301. A primary complaint of cities around the state regarding GRIP filings is that it is piecemeal ratemaking and only looks at changes in the utility's invested capital, rather than a more comprehensive review of all components affecting rates charged. Cities thus far have been unsuccessful in defeating GRIP at the Legislature and in court.

In addition to the four GRIP surcharges, base rates charged to customers served by Atmos Mid-Tex have increased as the result of two system-wide cost of service rate filings since 2004. The Company's current request to increase base rates would be the third system-wide cost of service increase for customers in Atmos Mid-Tex's service area since 2004.

In the most recent cost of service rate request, GUD No. 9670, the Railroad Commission of Texas ("RRC" or "Commission") issued an order in March, 2007, approving new system-wide rates for customers of Atmos Mid-Tex. Residential customers were impacted disproportionately by the Commission's final order, with residential rates increasing by \$10 million annually, despite an overall system-wide rate increase of \$5 million.

System-wide rates charged to residential customers in the Atmos Mid-Tex region were also increased by several million dollars in 2004 in GUD No. 9400. In GUD Nos. 9400 and 9670, the hearings examiners that heard the testimony and evaluated the evidence recommended that rates be reduced for customers. However, in both cases, the Railroad Commission reversed key decisions of its own hearings examiners, ultimately issuing final orders that approved rate increases instead of the recommended rate reductions.

Reasons Justifying Settlement:

During the time that the City has retained original jurisdiction in this case, consultants working on behalf of ACSC members have investigated the support for the Company's requested rate increase. While the evidence does not support the \$52 million increase requested by the Company, ACSC consultants agree that the Company can justify an increase in revenues of at least \$8 million and that there is a reasonably high probability that the RRC would award an increase of at least \$10 million.

A contested case proceeding before the RRC on the Company's current application will take several months and cost ratepayers millions of dollars in rate case expenses and would not likely produce a request more favorable than that to be produced by the settlement. The ACSC Executive Committee recommends that ACSC members take action to approve the Settlement Agreement. This Settlement Agreement achieves several desirable outcomes, including:

- Reverses rate design decisions that unfairly impact residential ratepayers
- Does away with piecemeal ratemaking problems inherent to the GRIP surcharge process
- Eliminates exposure to potential court reversal of the multi-million dollar Poly-1 Pipe disallowance (Atmos' issue on appeal in Docket No. 9400)
- Avoids uncertainty and potential negative consequences of Railroad Commission rate review (in the two most recent rate cases affecting Atmos Mid-Tex customers, the Commission has reversed rate reductions recommended by its own hearings examiners in favor of rate increases)
- Implements an expedited rate review process that includes the cities and allows review of all aspects of Atmos' cost of service

• Requires Atmos to reimburse ACSC for more than \$500,000 paid to litigate GRIP surcharge cases

• Protects ACSC members and their citizens from the remote possibility that a litigated outcome or settlement with other parties produces a result more favorable than the ordinance passed by ACSC members by including a Most Favored Nations provision in the Settlement Agreement.

Explanation of "Be It Ordained" Paragraphs:

1. This paragraph approves all findings in the ordinance.

2. This section adopts the Settlement Agreement in all respects and finds it to be just, reasonable and in the public interest.

3. This section adopts the attached Tariffs in all respects and finds the rates set pursuant to the attached Tariffs to be just, reasonable and in the public interest. Note that only new tariffs or existing tariffs that are being revised are attached to the Ordinance. Existing tariffs that are not being changed in any way are not attached to the Ordinance.

4. This section repeals any resolution or ordinance that is inconsistent with this Ordinance.

5. This section finds that the meeting was conducted in compliance with the Texas Chapter Open Meetings Act, Texas Government Code, Chapter 551.

6. This section is a savings clause, which provides that if any section(s) is later found to be unconstitutional or invalid, that finding shall not affect, impair or invalidate the remaining provisions of this Ordinance. This section further directs that the remaining provisions of the Ordinance are to be interpreted as if the offending section or clause never existed.

7. This section is a "Most Favored Nations" clause, which protects the City by mandating that if a Final Order or subsequent settlement agreement approved in any proceeding addressing the issues raised in Atmos' Statement of Intent filing result in rates, revenues, terms and conditions, or benefits that would be more beneficial to the ACSC Cities than the terms of this Settlement Agreement, the City may, at its option, implement and benefit from such more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the ACSC Cities. However, the section makes it clear that application of the Most Favored Nations provision does not affect the approval of the Rider RRM, Rider CEE, Rider GCR and the Rider WNA, which shall continue according to their terms.

8. This section provides for an effective date upon passage.

9. This paragraph directs that a copy of the signed resolution be sent to a representative of the Company and legal counsel for ACSC.

**EXPLANATION OF KEY PROVISIONS OF
THE SETTLEMENT AGREEMENT BETWEEN ACSC AND ATMOS**

1. An 80% Reduction of Atmos' Requested \$52 Million Rate Increase

Atmos' Statement of Intent filing made with the Cities in September, 2007, requested a \$52 million rate increase. The Settlement Agreement substantially reduces the Company's request, authorizing a \$10 million rate increase effective for bills rendered by Atmos on or after March 1, 2008.

During the time that ACSC members have retained original jurisdiction in this case, rate experts working on behalf of ACSC have investigated the support for the Company's requested rate increase. It is likely that if the merits of the Company's requested increase were litigated before the Railroad Commission ("RRC"), testimony filed by ACSC experts would support an increase of approximately \$8 million. However, it is extremely unlikely that the RRC would adopt ACSC's position in its entirety.

A contested case proceeding before the RRC on the Company's current application will take several months and cost ratepayers millions of dollars in rate case expenses. The \$10 million rate increase provided by the Settlement Agreement is within the zone of reasonableness based on the evidence that would be offered at hearing. Cities' experience before the RRC indicates that it is more likely than not that the \$10 million rate increase agreed to as part of the settlement is a better result than what would be ordered by the RRC.

2. Elimination of Piecemeal Ratemaking ("GRIP") in Favor of a Comprehensive Rate Review Mechanism ("RRM")

The Settlement Agreement authorizes a three year experiment with an expedited rate review process that replaces GRIP ratemaking. There will be no GRIP filings while RRM is operative. ACSC has opposed all GRIP filings as piecemeal ratemaking because gas utilities were able to receive a rate increase simply by showing a change in their invested capital instead of a more comprehensive view of all of the components that affect rates, like revenues and expenses. However, Cities have been unsuccessful thus far in defeating GRIP at the Legislature and in court.

The RRM process, starting with the first filing to be effective in October, 2008, should be a more comprehensive process that will allow cities with original jurisdiction the opportunity to review information regarding changes to Atmos' revenues and expenses as well as its invested capital. In addition, Atmos and ACSC agreed to certain constraints on the magnitude of changes to expenses and invested capital under RRM. The agreement also freezes Atmos Mid-Tex's rate of return on equity and its capital structure for purposes of the RRM filings to avoid the parent company manipulating Atmos Mid-Tex's overall rate of return.

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Attorney Client Communication**

If the RRM process is not successful, Cities and the Company are free to revert to the statutory plan for rate changes (GRIP surcharges or a full contested case proceeding). Expenses incurred by ACSC to review RRM filings will be reimbursed by Atmos.

3. Establishes a Conservation Program to Reduce Natural Gas Consumption

Atmos' conservation program will be implemented effective with the first RRM in October. The Settlement Agreement calls for contributions of \$1 million from both ratepayer-supplied dollars to investment in materials and supplies.

4. Gas Cost Uncollectibles to be Recovered Through the Gas Cost Recovery Factor Instead of Base Rates

At Atmos' request, Cities will authorize a transition of gas cost uncollectibles from base rates to the gas cost recovery factor coincident with the RRM experiment in October. The level of uncollectibles recovered in base rates will be reduced dollar for dollar as uncollectibles are shifted to the gas cost recovery factor.

5. Improves Residential Rate Design

Atmos agrees to change residential rate design as part of the RRM process and to fix the residential customer charge at \$7.00 with all other costs being recovered through the commodity charge.

The settlement achieves what cities could not win through litigation on residential rate design. The RRC has systematically gutted the rate design policy approved by cities for TXU Gas during the 1990s. In the past two contested cases, the RRC has increased the residential customer charge, sending residential customers the false signal that the cost of natural gas declines as consumption increases.

6. Provides for Rate Certainty

As part of the Settlement Agreement, Atmos and ACSC agree to dismiss their appeals of the two most recent cost of service rate cases. Atmos has continued to pursue the appeal regarding cost responsibility for the replacement of poly-1 pipe. While the Commission came to the right decision in assigning that cost to shareholders, its findings and conclusions are not as strong as they could or should be and thus there is a potential that a business-oriented appellate court could rule in favor of Atmos. The poly-1 pipe issues have an invested capital potential liability in excess of \$80 million if an appellate court reverses the RRC. ACSC also agrees to drop its appeals of GRIP cases with the exception of the declaratory action case (regarding interpretation of the GRIP statute) that has already been argued to the Court of Appeals.

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7. Reimbursement of GRIP Rate Case Expenses

To date, the ACSC has expended more than \$500,000 litigating the four GRIP surcharges implemented by Atmos. Atmos and the RRC have taken the position that cities are not entitled to rate case expense reimbursement in GRIP surcharge cases. Pursuant to the Settlement Agreement, Atmos will reimburse ACSC for expenses associated with litigation of the four GRIP filings.

8. Protects Cities' Interest

The Settlement Agreement includes a "Most Favored Nations" clause so that ACSC members will receive the benefit of any concessions that may be made to other parties, including the RRC.

ACSC Cities

(151 Total)

Abilene	Palestine	Fate	Palestine
Addison	Pantego	Flower Mound	Pantego
Allen	Paris	Forest Hill	Paris
Alvarado	Parker	Fort Worth	Parker
Angus	Pecan Hill	Frisco	Pecan Hill
Anna	Plano	Frost	Plano
Argyle	Ponder	Gainesville	Ponder
Arlington	Pottsboro	Garland	Pottsboro
Bedford	Prosper	Garrett	Prosper
Bellmead	Putnam	Grand Prairie	Putnam
Benbrook	Quitman	Grapevine	Quitman
Beverly Hills	Red Oak	Haltom City	Red Oak
Blue Ridge	Reno (Parker County)	Harker Heights	Reno (Parker County)
Bowie	Richardson	Haskell	Richardson
Boyd	Richland Hills	Haslet	Richland Hills
Bridgeport	Roanoke	Heath	Roanoke
Brownwood	Robinson	Hewitt	Robinson
Buffalo	Rockwall	Highland Park	Rockwall
Burkburnett	Roscoe	Highland Village	Roscoe
Burleson	Rowlett	Honey Grove	Rowlett
Caddo Mills	Sachse	Hurst	Sachse
Carrollton	Saginaw	Iowa Park	Saginaw
Cedar Hill	Seagoville	Irving	Seagoville
Celeste	Sherman	Justin	Sherman
Celina	Snyder	Kaufman	Snyder
Cisco	Southlake	Keene	Southlake
Cleburne	Springtown	Keller	Springtown
Clyde	Stamford	Kemp	Stamford
College Station	Stephenville	Kennedale	Stephenville
Colleyville	Sulphur Springs	Kerrville	Sulphur Springs
Colorado City	Sweetwater	Killeen	Sweetwater
Comanche	Temple	Krum	Temple
Coolidge	Terrell	Lakeside	Terrell
Coppell	The Colony	Lake Worth	The Colony
Corinth	Throckmorton	Lancaster	Throckmorton
Corral City	Tyler	Lewisville	Tyler
Crandall	University Park	Lincoln Park	University Park
Crowley	Venus	Little Elm	Venus
Dalworthington Gardens	Vernon	Malakoff	Vernon
Denison	Waco	Mansfield	Waco
DeSoto	Watauga	McKinney	Watauga
Duncanville	Waxahachie	Melissa	Waxahachie
Eastland	Westlake	Mesquite	Westlake
Edgecliff Village	Westworth Village	Midlothian	Westworth Village
Emory	Whitesboro	Murphy	Whitesboro
Ennis	White Settlement	Newark	White Settlement
Eules	Wichita Falls	Nocona	Wichita Falls
Everman	Woodway	North Richland Hills	Woodway
Fairview	Wylie	Northlake	Wylie
Farmers Branch		Oak Leaf	
Farmersville		Ovilla	