
**REQUEST OF UNIVERSITY OF TEXAS AT ARLINGTON FOR ESTABLISHMENT
OF A TRANSPORTATION RATE ON ATMOS ENERGY CORP.'S SYSTEM**

APPEARANCES:

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**PROPOSAL FOR DECISION
ON INTERIM RATES**

PROCEDURAL HISTORY:

UTA's Initial Request to Set Rates	January 17, 2006
Atmos' Response	February 3, 2006
Prehearing Conference	February 7, 2006
Initial Briefs on Temporary Rates	February 10, 2006
Reply Briefs on Temporary Rates	February 14, 2006
210-day Statutory deadline	August 15, 2006

EXAMINERS:

Michelle Lingo, Hearings Examiner

Mark Evarts, Technical Examiner

STATEMENT OF THE CASE

On January 17, 2006, the University of Texas at Arlington filed with the Railroad Commission of Texas a request for the Commission to set a temporary transportation rate and to establish a cost-based transportation rate for the state agency on Atmos Energy Corporation's system, as provided for under TEX. UTIL. CODE §104.201.

UTA argued:

- Absent a contract, TEX. UTIL. CODE §104.201 allows the Commission to set temporary transportation rates and cost based transportation rates for state entities;
- Setting temporary rates does not violate the filed rate doctrine;
- The Commission has previously set temporary rates for state entities in GUD 9435;
- The Commission has previously set cost based rates for state entities in GUD 9291; and
- The Atmos-GLO negotiated contract rate is most appropriate temporary rate.

Atmos responded:

- Consistent with the filed rate doctrine, the utility offered transportation service to UTA under the GUD 9400 Rate T;
- UTA was not a party to the Atmos-GLO contract and therefore has no claim to transportation rates under that negotiated contract; and
- This matter should be addressed as a complaint under TEX. UTIL. CODE §104.151.

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I. Procedural History

On January 17, 2006, the University of Texas at Arlington (UTA) filed with the Railroad Commission of Texas (Commission) a request for the Commission to set temporary transportation rates and to establish an on-going, cost-based, transportation rate for the state agency on the Atmos Energy Corporation's (Atmos) system, as provided for under TEX. UTIL. CODE §104.201.

Atmos filed its responsive pleading on February 3, 2006. The parties met on February 7, 2006, for a prehearing conference with the undersigned Examiners. The parties filed initial briefs and reply briefs regarding the temporary rate issue.

The Commission's 210-day statutory deadline to set final cost based rates expires on August 15, 2006, in accordance with TEX. UTIL. CODE §104.201(a).

II. Jurisdiction

As defined under TEX. UTIL. CODE ANN. §101.003 (Vernon 1998 and Supp. 2005), Atmos is a gas utility because it owns and operates for compensation in Texas equipment and facilities to transmit and distribute natural gas. UTA is classified as a state agency under TEX. UTIL. CODE §101.003(15) (Vernon 1998) and TEX. GOV'T CODE §572.002 (Vernon 2004 and Supp. 2005).

The Commission has jurisdiction over Atmos and over the matters at issue in this proceeding pursuant to TEX. UTIL. CODE ANN. §102.001, (Vernon 1998 and Supp. 2005), §104.001 (Vernon 1998), and §104.201 (Vernon 1998 and Supp. 2005). The statutes and rules involved in this proceeding include but are not limited to TEX. UTIL. CODE ANN., § 104.001, et seq. (Vernon 1998 and Supp. 2005) and 16 TEX. ADMIN. CODE, Chapter 7.

TEX. UTIL. CODE, CHAPTER 104, Subchapter E, entitled Rates for Governmental Entities, applies to the facts of this docket and provides for the Railroad Commission's exclusive original jurisdiction to establish a transportation rate for a state agency absent a contract with a gas utility.

III. Scope of Decision

The scope of this Proposal for Decision on Interim Rates (PFD) is narrow. The purpose is to address UTA's request for the Commission to set temporary rates. The PFD does not address Atmos' motion to dismiss. The PFD does not make a recommendation regarding the request for the Commission to set a cost based transportation rate under TEX. UTIL. CODE ANN., § 104.201. Those issues will be addressed in the evidentiary hearing.

IV. Background

Historically, Atmos has transported gas for the General Land Office (GLO) to delivery points at the UTA campus. While Atmos and GLO continue to have an on-going negotiated contractual relationship for the transportation of GLO's gas, UTA and GLO no longer enjoy a contractual relationship. No contract currently exists between UTA and Atmos for gas transportation. No motions to intervene have been received; UTA and Atmos are the parties in this proceeding.

In the Fall of 2005, UTA published request for bids, soliciting competitive transportation rates. In November 2005, GLO terminated its contract with UTA, effective January 31, 2006. Negotiations between UTA and GLO have ceased.¹ UTA entered into a contract with Cokinos Gas (Cokinos) effective February 1, 2006, to supply gas to UTA. UTA's contract with Cokinos does not include transportation service.² UTA's initial petition requested the Commission set a transportation rate on Atmos' system for the transportation of natural gas. At this time, Atmos continues to deliver gas to the UTA campus, absent a contract.³

V. Arguments of the University of Texas at Arlington (UTA)

UTA asserted that the Commission has the authority and has precedent to set temporary rates. The filed rate doctrine does not preclude the Commission from setting a temporary rate under TEX. UTIL. CODE §104.201.

UTA requested the Commission set temporary rates the same as the Atmos-GLO negotiated contractual rates. As support for this position, UTA stated that higher rates would increase its overall natural gas costs, consume projected savings, and not allow UTA to take advantage of the gas cost reduction it had projected based on the UTA-Cokinos gas supply contract.⁴

According to UTA, setting temporary rates the same as the Atmos-GLO contract keeps Atmos whole because the utility receives exactly the same compensation for its transportation service. The Atmos-GLO negotiated rate reflected a rate which is deemed to be just and reasonable because it was freely negotiated between Atmos and GLO in accordance with TEX. UTIL. CODE §104.003(b).⁵

UTA further argued that, as required by statute,⁶ Atmos filed as a confidential tariff the Atmos-GLO negotiated contract rate, which provided rates, terms, and conditions related to the transportation of natural gas by Atmos to various state entities on behalf of the GLO. UTA is among the state entities benefitting from the Atmos-GLO contract. The Commission has not modified or

¹ Prehearing Conference (Feb. 7, 2006).

² UTA Initial Request for Establishment of a Transportation Rate (Jan. 17, 2006) at 2 and Prehearing Conference (Feb. 7, 2006).

³ Prehearing Conference (Feb. 7, 2006).

⁴ UTA Initial Request for Establishment of a Transportation Rate (Jan. 17, 2006) at 2.

⁵ UTA Initial Brief on Temporary Rates (Feb. 10, 2006) at 7.

⁶ TEX. UTIL. CODE §102.151 (Vernon 1998 and Supp. 2005).

revoked the tariffs; therefore, UTA believed the Atmos-GLO contract rates should be set as the applicable temporary rates.⁷

VI. Arguments of Atmos Energy Corporation (Atmos)

Atmos acknowledged that UTA is a state agency, but argued that the absence of a contract does not necessitate the setting of temporary rates under TEX. UTIL. CODE §104.201(c).⁸

Atmos asserted that it is under no obligation to offer transportation service to UTA under rates privately negotiated with another state agency or to offer transportation service at a rate lower than Rate T simply because UTA desires to save money on gas costs.⁹ Atmos argued that because UTA is a general transportation customer, it is subject to the existing transportation rate offered by Atmos.¹⁰

To support its arguments, Atmos relied upon the filed rate doctrine that a rate approved by an administrative agency and on file as a tariff with the agency is presumed to be reasonable. Atmos argued that the purpose and intent of the filed rate doctrine will not be served in this proceeding if Rate T is disregarded.¹¹

VII. Examiners' Analysis

There are three primary issues for consideration in this Proposal for Decision on Interim Rates:

- First, in the absence of a contract between a state entity and a gas utility, does the Commission have authority to set temporary rates for transportation service?
- If so, what temporary transportation rate should the Commission set for UTA on the Atmos system?
- If the Commission sets temporary rates, on what date should the temporary rates take effect?

(1) Does the Commission have authority to set temporary rates?

⁷ UTA Initial Brief on Temporary Rates (Feb. 10, 2006) at 7.

⁸ Atmos Brief (Feb. 10, 2006) at 2-3 and 5.

⁹ *Id.* at 5 and 7-8.

¹⁰ *Id.* at 5-6.

¹¹ *Id.* at 6 and Atmos Reply Brief (Feb. 14, 2006) at 3-4.

Summary of Examiners' Recommendation: Yes, the Commission has statutory authority to set temporary rates. TEX. UTIL CODE, CHAPTER 104, Subchapter E, entitled Rates for Governmental Entities, applies to the facts of this docket.

TEX. UTIL CODE § 104.201

Transportation Rates Between Gas Utility or Municipally Owned Utility and State Agency

(a) Notwithstanding Section 104.003(b), absent a contract for transportation service between a state agency and a gas utility or municipally owned utility, the railroad commission, not later than the 210th day after the date either party files a request to set a transportation rate, shall establish the transportation rate for the state agency. The commission has exclusive original jurisdiction to establish a transportation rate for a state agency under this section.

(b) The railroad commission shall base its determination of the transportation rate under Subsection (a) on the cost of providing the transportation service for both the distribution system and the transmission system, as applicable, of the gas utility or municipally owned utility.

(c) The railroad commission may order temporary rates under Subsection (a) as provided for under the commission's appellate jurisdiction.

Acts 1997, 75th Leg., ch. 166, §§ 1, eff. Sept. 1, 1997.

TEX. UTIL CODE § 103.056

Applicability of Rates

Temporary or permanent rates set by the railroad commission are prospective and observed from the date of the applicable railroad commission order, except an interim rate order necessary to provide a gas utility the opportunity to avoid confiscation during the period beginning on the date a petition for review is filed with the railroad commission and ending on the date of a final order establishing rates.

Acts 1997, 75th Leg., ch. 166, §§ 1, eff. Sept. 1, 1997.

TEX. UTIL. CODE §104.201 provides that absent a contract for transportation service between a state agency and a gas utility, the Railroad Commission shall establish the cost based transportation rate for the state agency. The statute provides the Commission exclusive original jurisdiction to establish a transportation rate for a state agency. TEX. UTIL. CODE §104.201(c) provides that the Commission may also order temporary rates under the Commission's appellate jurisdiction. TEX. UTIL CODE §103.056 provides the Commission's appellate jurisdiction for setting temporary rates in this proceeding.

The facts of this case fit squarely within the statutory requirements of TEX. UTIL CODE §104.201. Clearly, the Commission is authorized but not required to set temporary transportation rates. In the instant case where Atmos is currently providing transportation service without a contract, the Examiners recommend that the Commission set a temporary rate.

The Commission's authority to set the transportation rate is conditioned on the absence of a contract. The statute does not require the state agency to prove the absence of a potentially applicable tariff.

The Examiners disagree with Atmos that UTA failed to allege facts to establish a basis for the Commission to invoke its authority to set a temporary rate. UTA is a state agency. No

contract exists between UTA and Atmos. Even though the GUD 9400 Rate T currently exists, TEX. UTIL. CODE §104.201 applies.

Atmos' arguments that it is UTA's burden to show why Rate T is unreasonable and that UTA should have brought a complaint action under TEX. UTIL. CODE §104.151 fail in light of TEX. UTIL. CODE §104.201 and Commission precedent¹² in setting both temporary transportation rates and cost based transportation rates under the authority of TEX. UTIL. CODE §104.201.

Currently, Atmos is transporting natural gas to UTA in the absence of a contract. As requested in UTA's initial petition, the Examiners recommend that the Commission set temporary transportation rates between the utility and the state agency to provide the opportunity to avoid confiscation.

(2) What temporary rates should the Commission set?

***Summary of Examiners' Recommendation:* The Examiners recommend the Commission set the GUD 9400 Rate T as a temporary rate between UTA and Atmos. GUD 9400 Rate T was approved by the Commission on May 25, 2004, and was based upon cost of service analysis.**

Atmos' argument - - that when the Commission has recently reviewed the utility's cost of service and established a rate for transportation customers, setting a temporary transportation rate or a cost based transportation rate under TEX. UTIL. CODE §104.201 is an unreasonable approach to setting a transportation rate for a state agency - - is not persuasive. As discussed above, TEX. UTIL. CODE §104.201 applies to setting transportation rates in the exact set of circumstances presented in this docket.

The Examiners agree with UTA that under TEX. UTIL. CODE §104.201(b) a temporary rate may also be a cost based, temporary rate. However, the Examiners disagree with UTA's assumption that the Atmos-GLO negotiated contractual rate should be applied as the temporary rate. The Examiners reject UTA's argument that a rate cannot apply to the state agency merely because it filed its petition to the Commission before the expiration of its GLO-UTA contract.

In GUD 9435, the Commission set a temporary transportation rate that was the same as the recently expired contract between the two parties. The Examiners find that GUD 9435 is distinguishable from the facts of this case because in that case, the parties to the

¹² See GUD 9291, *Request of the Texas General Land Office for Stay of Abandonment and for Establishment of Transportation Rate on Panther Pipeline, Ltd.* Final Order (Jul. 22, 2003) and see GUD 9435, *Request of Texas A&M University for Establishment of a Transportation Rate on TXU Gas Company Statement of Intent Filed by TXU Gas Company to Change Rates in the Company's Statewide Gas Utility System*, Interim Rate Order (Nov. 13, 2003).

contract and the parties before the Commission were the same entities. The Atmos-GLO negotiated contract rates may be the most recent contract rates, but UTA was not party to the Atmos-GLO contract.

The Examiners find that while Atmos would transport gas to the same delivery points located on the UTA campus, transportation service to UTA is not the same transportation service as under the Atmos-GLO contractual arrangement because Atmos would be delivering Cokinos' gas rather than GLO's gas and because Atmos would be transporting different total volumes of gas for UTA from the total volumes transported for GLO. UTA provided no legal argument, or citation to statute, regulation, or case precedent holding that a negotiated rate should apply to a third party. The Examiners find that in this proceeding, Atmos is not obligated to offer transportation service to UTA under rates privately negotiated with another state agency or to offer transportation service at a rate lower than Rate T under the TEXAS UTILITIES CODE.

If the Commission agrees with the Examiners and sets temporary rates based on the GUD 9400 Rate T, the Commission must also decide whether Rate T as determined in GUD 9400 applies, or whether the subsequent interim rate adjustments (increases) approved by the Commission in GUD 9560¹³ and 9615¹⁴ also apply.

In GUD 9400, the Commission approved rates based upon cost of service analysis. In GUD 9560 and GUD 9516, Atmos presented testimony and evidence relating to plant additions under TEX. UTIL. CODE §104.301. Consistent with the requirements of the interim adjustment statute, the return on investment, depreciation expense, and incremental federal income tax factors used to compute the interim increases were the same as the factors approved by the Commission in GUD 9400 in establishing the gas utility's latest effective rates for the UTA campus. Commission Staff conducted an administrative review of the interim rate applications before the Commission approved the interim increases. The interim increases approved under the authority of TEX. UTIL. CODE §104.301 are subject to refund.

¹³ GUD 9560, *Application of Atmos Energy Corp., Mid-Tex Division and Atmos Pipeline - Texas for Annual Gas Reliability Infrastructure Program Rate Adjustment for the Environs Area and Pipeline System*, Final Order (Mar. 22, 2005).

¹⁴ GUD 9615, *Application of Atmos Energy Corp., Mid-Tex Division and Atmos Pipeline - Texas for Test Year 2004 Annual Gas Reliability Infrastructure Program Rate Adjustment for the Environs Area and Pipeline System*, Final Order (Dec. 13, 2006).

As of the date of this Proposal for Decision, Atmos has electronically filed tariffs for the rates that were approved in GUD 9400 and GUD 9560. The Commission approved the GUD 9615 interim rate increase on December 13, 2006. The deadline for Atmos to file its electronic tariffs was January 13, 2006. The Examiners find that the most current tariff rate is the most appropriate rate to use for temporary rates on these facts.

A summary of Atmos' Rate T charges is provided at Table 1, below.

**Table 1:
Summary of Atmos' Rate T Transportation Charges¹⁵**

CHARGE	AMOUNT
Meter Charge approved in GUD 9400 and based on TY 2002	\$150.00/meter
Interim Rate Adjustment to Meter Charge approved in GUD 9560 and based on TY 2003	\$31.85/meter
Interim Rate Adjustment to Meter Charge approved in GUD 9615 and based on TY 2004	\$41.64/meter
Total Meter Charge	\$223.49/meter
First 0 MMBtu to 1,500 MMBtu	\$0.4882/MMBtu
Next 3,500 MMBtu	\$0.3382/MMBtu
Next 45,000 MMBtu	\$0.1882/MMBtu
All Additional MMBtu	\$0.0382/MMBtu
Pipeline Cost Recovery: Plus an amount for Pipeline System costs in accordance with Rider GCR	January, 2006 this factor was \$0.4195. This factor changes monthly.
Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.	Rider RA percentage is 3.58%
Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF.	The current franchise fee adjustment for UTA would be 4.927%
Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.	Current tax factor is 2.037%

¹⁵ Information compiled from RRC Tariff No. 12992; RRC Tariff No. 13111; Feb. 7, 2006, Hearing, and Feb. 14, 2006, E-mail from Robert Blunt to GUD 9636 parties in response to Examiners' inquiries at Feb. 7, 2006, PreHearing Conference.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).	Current surcharge is \$0.00439 per MMBtu for rate case expenses approved in GUD 9517 ¹⁶ from GUD 9400.
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(3) On what date should the temporary rates take effect?

***Summary of Examiners' Recommendation:* The Examiners recommend that the temporary rate go into effect on February 1, 2006.**

To provide the utility the opportunity to avoid confiscation, Tex. UTIL. CODE, §103.056, provides the Commission authority to set temporary interim transportation rates beginning as early as the date that UTA filed its petition and ending the date of the Commission's final order setting transportation rates. UTA filed its initial petition on January 17, 2006. UTA's contract with GLO terminated effective January 31, 2006. UTA's contract with Cokinos began February 1, 2006. Atmos has delivered gas to the UTA campus since February 1, 2006, without a contract. Therefore, the Examiners recommend that the Commission set temporary rates effective February 1, 2006, to avoid confiscation.

VIII. Recommendation

The Examiners recommend that the Commission set the GUD 9400 Rate T, with interim rate adjustments, as a temporary transportation rate between Atmos and UTA, effective February 1, 2006. A draft Order is attached for Commission consideration.

Issued this 21st day of February, 2006.

Respectfully submitted,

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 General Counsel Division

¹⁶ GUD 9517, *Rate Case Expenses Severed From Gas Utilities Docket No. 9400* (Jan. 25, 2005) Final Order.