

RAILROAD COMMISSION OF TEXAS

**ATMOS ENERGY CORP., MID-TEX
DIVISION, PROPOSED REVISIONS
TO THE GAS COST REVIEW
PROCESS SEVERED FROM GAS
UTILITIES DOCKET NO. 9670**

GAS UTILITY DOCKET NO. 9696

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FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOVT. CODE ANN. Chapter 551, *et seq.* (Vernon 2008). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Atmos Energy Corporation acquired the operations of TXU Gas Company. After the merger, the name of TXU Gas Distribution was changed to Atmos Energy Corp., Mid - Tex Division ("Atmos Mid-Tex" or "the Company" or "Applicant"). References to Atmos Mid-Tex and the Company, include, any, and all of the relevant predecessors in interest.
2. On May 31, 2006, Atmos Energy Mid-Tex filed a *Statement of Intent* to change rates in the company's statewide gas utility system. The filing was docketed as Gas Utilities Docket No. 9676 and was subsequently consolidated with Gas Utilities Docket No. 9670.
3. Atmos Mid-Tex filed a petition for review of the action of several municipalities reducing its rates.
4. Several dockets were consolidated into GUD No. 9670.
 - a. GUD No. 9672, Petition for Review of City Rate Reductions and Request for Expedited Approval of Supersedeas Bond and Agreed Reinstatement of Preexisting Rates by the City of Justin, filed on May 11, 2006.
 - b. GUD No. 9674, Petition for Review of City Rate Reductions and Request for Expedited Approval of Supersedeas Bond and Agreed Reinstatement of Preexisting Rates by the Cities of Benbrook, Crandall, et al.
 - c. GUD No. 9675, Petition for Review of City Rate Reductions and Request for Expedited Approval of Supersedeas Bond and Agreed Reinstatement of Preexisting Rates by the Cities of Blue Ridge, Caddo Mills, et al.

- d. GUD No. 9677, Petition for Review of City Rate Reductions and Request for Expedited Approval of Supersedeas Bond and Agreed Reinstatement of Preexisting Rates by the Cities of Bedford and Colleyville.
 - e. GUD No. 9678, Petition for Review of City Rate Reductions and Request for Expedited Approval of Supersedeas Bond and Agreed Reinstatement of Preexisting Rates by the Cities of Fort Worth and Sulphur Springs.
 - f. GUD No. 9699, Petition for Review of City Rate Reductions and Request for Expedited Approval of Supersedeas Bond and Agreed Reinstatement of Preexisting Rates by the City of Dallas.
 - g. GUD No. 9680, Petition for Review of Atmos Energy Corporation from the Actions of Municipalities Denying a Rate Request.
 - h. GUD No. 9681, Petition for Review of Atmos Energy Corporation from the Actions of Municipalities Denying a Rate Request.
 - i. GUD No. 9682, Petition for Review of Atmos Energy Corporation from the Actions of Municipalities Denying a Rate Request.
 - j. GUD No. 9683, Petition for Review of Atmos Energy Corporation from the Actions of Municipalities Denying a Rate Request.
 - k. GUD No. 9684, Petition for Review of Atmos Energy Corporation from the Actions of Municipalities Denying a Rate Request.
 - l. GUD No. 9697,, Petition for Review of Atmos Energy Corporation from the Actions of Municipalities Denying a Rate Request.
 - m. GUD No. 9698, Petition for Review of Atmos Energy Corporation from the Actions of Municipalities Denying a Rate Request.
 - n. GUD No. 9700, Petition for Review of Atmos Energy Corporation from the Actions of Municipalities Denying a Rate Request.
5. The Atmos Cities Steering Committee (ACSC) intervened on behalf of the following municipalities: Abilene, Addison, Allen, Alvarado, Argyle, Arlington, Bedford, Benbrook, Beverly Hills, Blue Ridge, Bowie, Boyd, Bridgeport, Brownwood, Burkburnett, Burleson, Caddo Mills, Carrollton, Cedar Hill, Celeste, Clyde, College Station, Colleyville, Colorado City, Comanche, Coolidge, Coppell, Corinth, Corral City, Crandall, Crowley, Denison, DeSoto, Duncanville, Eastland, Edgecliff Village, Emory, Ennis, Everman, Fairview, Farmers Branch, Farmersville, Fate, Flower Mound, Fort Worth, Frisco, Frost, Gainesville, Garland, Grand Prairie, Grapevine, Haltom City, Harker Heights, Haslet, Heath, Hewitt, Highland Park, Highland Village, Honey Grove, Hurst, Iowa Park, Irving, Justin, Kaufman, Keene, Keller, Kemp, Kennedale, Kerrville, Killeen, Krum, Lake Worth, Lancaster, Lewisville, Little Elm, Mansfield, McKinney, Mesquite, Midlothian, Murphy, Newark, North Richland Hills, Northlake, Palestine,

Pantego, Paris, Parker, Plano, Ponder, Prosper, Quitman, Reno (Parker County), Red Oak, Richland Hills, Robinson, Rockwall, Roscoe, Rowlett, Saginaw, San Angelo, Sherman, Snyder, Southlake, Springtown, Stamford, Sulphur Springs, Sweetwater, Terrell, The Colony, Tyler, University Park, Vernon, Waco, Watauga, Waxahachie, Whitesboro, White Settlement, Woodway, and Wylie.

6. The following additional parties intervened: the City of Dallas (Dallas); Railroad Commission of Texas (Staff); and the State of Texas (State).
7. On August 15, 2006, the Commission issued an Interim Order (August 15th Interim Order) limiting certain issues in GUD No. 9670 and established this docket. Specifically, the Commission determined that it was reasonable that issues regarding Atmos' proposed revision to the gas cost review process be severed and considered in a separate docket. That proceeding has been docketed as GUD No. 9696, *Atmos Energy Corp., Mid-Tex Division Proposed Revisions to the Gas Cost Review Process Severed from Gas Utilities Docket No. 9670*.
8. Gas cost is the most significant expense of a gas utility.
9. The Commission has the authority to conduct a prudence review of a utility's gas management practices.
10. The operation of a purchase gas adjustment clause is always subject to review and a potential adjustment or refund in a subsequent proceeding.
11. In GUD No. 8664, the Commission determined that it was reasonable to impose restrictions on the predecessors in interest of Atmos Mid-Tex to force it to comply with the statutory standard for affiliate transactions.
12. The Commission established a triennial review procedure and imposed seven standards on the gas purchases of the utility:
 - a. Affiliate purchases may be included at the lowest price charged by the affiliated supplier to other divisions, affiliates, or third parties for the same class of purchased gas.
 - b. Spot purchases made to cover imbalances to transportation customers may not be included.
 - c. The duplicative approximately \$0.58 per Mcf NGPA §311 transport fee component for LSGCOT/ONEOK purchases may not be included.
 - d. Any other similar double charges for transportation due to an NGPA §311 rate charged for service that is implicitly contained in the city gate rate, or any other cause, may not be included.
 - e. Charges under the LSGCOT/ONEOK contract may be included at LSGCOT's actual cost.

- f. Charges by affiliates of any margin above the affiliate's cost of gas may not be included.
 - g. Take-or-pay payments to affiliated companies may not be included, unless the Company obtains approval of the Director of the Gas Services Section in writing prior to inclusion, i.e., Contract No. 3708, Enserch Exploration, Inc.
- 13. This proceeding was established to evaluate the process of reviewing the Company's gas costs.
- 14. This proceeding will not result in an increase or a decrease in rates. The proceeding is limited to the process of the review of gas costs of Atmos Mid-Tex.
- 15. The parties to the original statement of intent proceeding were invited to file briefs regarding the gas cost review process.
- 16. Briefs were filed by the following parties: Atmos, ACSC, the City of Dallas, the State of Texas, and Staff of the Railroad Commission.
- 17. All parties agree that the current gas cost review process be terminated.
- 18. On July 16, 2001, the Company filed its first reconciliation proceeding, GUD No. 9233.
- 19. That case was resolved through a settlement agreement of the parties and all parties agreed that all of the Company's gas purchases during the review period were just and reasonable.
- 20. On September 4, 2004, Atmos Mid-Tex filed its second triennial review for the period from November 1, 2000, through October 31, 2003, GUD No. 9530.
- 21. The seven factors set out in GUD No. 8664 were not the focus in GUD No. 9530 and that case was ultimately resolved through a settlement of the parties.
- 22. On April 30, 2007, Atmos Mid-Tex filed its gas cost review data and testimony related to the third triennial review for the period from November 1, 2003, through October 31, 2006, GUD No. 9732.
- 23. No issue was raised regarding the seven factors set out in GUD No. 8664 and the Commission found that the gas costs incurred during the 36-month review period were reasonable, necessary, and prudent in GUD No. 9732.
- 24. From the date that Second Order on Rehearing Nunc Pro Tunc was issued in GUD No. 8664, November 25, 2007, no finding has ever been made that any of the factors set out in that order has been violated.
- 25. Issues regarding the seven factors have rarely been raised in any of the three triennial review cases.

26. The the system that was the subject of the Second Order on Rehearing *Nunc Pro Tunc* in GUD No. 8664 was operated by Lone Star Gas Company.
27. The system is no longer operated by Lone Star Gas Company. The system subsequently was operated by TXU Gas Distribution, an unincorporated division of TXU Gas Company. Atmos Energy Corporation acquired the operating of TXU Gas Company on October 1, 2004. The name of the operator was ultimately changed to Atmos Energy Corp., Mid-Tex Division.
28. In the two reconciliation cases conducted after Atmos Mid-Tex acquired the system, no finding has been made that Atmos Mid-Tex violated any of the factors set out in GUD No. 8664.
29. In GUD No. 9732, the last triennial review, testimony was presented by one of the intervenors that Atmos Mid-Tex fully complied with the requirements of GUD No. 8664.
30. This proceeding will not impact the rates charged by Atmos Mid-Tex and is focused solely on the process of the gas cost review.
31. At the time the Second Order *Nunc Pro Tunc* was issued in GUD No. 8664, the operator of the system had not sought a rate increase in over fifteen years.
32. In the last five and a half years Atmos Mid-Tex has sought, and received, five rate adjustments.
33. Additionally, there is a case pending before this Commission regarding Atmos Mid-Tex.
34. Atmos Mid-Tex has filed an application for an increase, either a Statement of Intent case or an Interim Rate Adjustment, an average of every 255 days. Thus, the period between rate proceedings is relatively short, averaging about 65 days between the issuance of an order and the filing of a subsequent case.
35. The regulatory authorities have in the past initiated a review of the gas purchases made by utilities without the necessity of a firm, regular periodic review.

CONCLUSIONS OF LAW

1. Atmos Mid-Tex is a Gas Utility as defined in TEX. UTIL. CODE ANN. § 101.003(7) (Vernon 2007 and Supp. 2008) and § 121.001(Vernon 2007 and Supp. 2008) and is therefore subject to the jurisdiction of the Railroad Commission (Commission) of Texas.
2. The Railroad Commission of Texas (Commission) has jurisdiction over Atmos Mid-Tex and the Statement of Intent initially filed under TEX. UTIL. CODE ANN. § 102.001 (Vernon 2007 and Supp. 2008), § 103.001 (Vernon 2007 and Supp. 2008), §103.003 (Vernon 2007 and Supp. 2003), § 103.051 (Vernon 2001 and Supp. 2008), '104.001 (Vernon 2007 and Supp. 2008), § 104.001 (Vernon 2007), § 104.201(Vernon 2007), § 121.051 (Vernon 2007) and § 121.052 (Vernon 2007).

3. Under TEX. UTIL. CODE ANN. § 102.001 (Vernon 2007 and Supp. 2008), the Commission has exclusive original jurisdiction over the rates and services of a gas utility that distributes natural gas in areas outside of a municipality and over the rates and services of a gas utility that transmits, transports, delivers, or sells natural gas to a gas utility that distributes the gas to the public.
4. In addition, TEX. UTIL. CODE ANN. § 102.001 (Vernon 2007 and Supp. 2008) also provides that the Commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality.
5. Under TEX. UTIL. CODE ANN. § 103.003 (Vernon Supp. 2004), a municipality may have the Commission exercise original jurisdiction over gas utility rates, operations, and services in the municipality.
6. Under TEX. UTIL. CODE ANN. § 103.001 (Vernon 2007 and Supp. 2008) and § 103.051 (Vernon 2007 and Supp. 2008), a municipality has exclusive original jurisdiction and the Commission has appellate jurisdiction over the rates, operations, and services of a utility within the municipality.
7. A municipality has standing in a case before the Commission that relates to a gas utility's rates and services in the municipality. The Commission has the right to consolidate a municipality with any other party on an issue of common interest. TEX. UTIL. CODE ANN. § 103.023 (Vernon 2007).
8. It was reasonable for the Commission to allow Atmos Mid-Tex to include a Gas Cost Recovery Factor in its municipal and environs rates to provide for the recovery of all of its gas costs, in accordance with 16 TEX. ADMIN. CODE '7.5519 (2008).
9. The findings contained in this order will have no impact on the legal authority of the Commission or municipalities to conduct a review of the rates and services of Atmos in the future or to initiate other proceedings to investigate the reasonableness and necessity of the gas purchases.

IT IS THEREFORE ORDERED that the current triennial established in GUD No. 8664 is hereby terminated.

IT IS FURTHER ORDERED that the Commission and the municipalities retain the authority to evaluate the Company's gas costs at any time.

IT IS FURTHER ORDERED that this Order shall not be final and effective until twenty days after a party is notified of the Commission's Order. Under TEX. GOV'T CODE § 2001.142(c), a party shall be presumed to have been notified of the Commission's Order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this Order shall not become final and effective until such motion is overruled or, if granted, this Order shall be subject to further action by the Commission pursuant to TEX. GOV'T CODE § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this

case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted in this Order are hereby **DENIED**. **IT IS ALSO ORDERED** that all pending motions and requests for relief not previously granted or granted herein are hereby **DENIED**.

SIGNED this 18th day of August, 2009.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN VICTOR G. CARRILLO



COMMISSIONER ELIZABETH A. JONES



COMMISSIONER MICHAEL L. WILLIAMS

ATTEST:



SECRETARY