



# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

September 16, 2009

TO: All Parties of Record

Re: **Gas Utilities Docket No. 9787**, *Severed Rate Case Expenses from Docket No. 9762.*

### **PFD and Deadlines for Exceptions, and Replies**

Enclosed are the Proposal for Decision ("PFD"), supporting exhibits and schedules issued by the examiners in this case. Pursuant to Section 1.141 of the Commission's General Rules of Practice and Procedure, these documents are being circulated to each party or its authorized representative. This is only a proposal and is not to be interpreted as a final decision unless an official order adopting the proposal is signed and issued by the Commission.

Under Section 1.142 of the General Rules of Practice and Procedure (16 T.A.C. §1.142), each party has the right to file written Exceptions to the PFD and Replies to the Exceptions of other parties. Parties are requested to file Exceptions by October 5, 2009, and Replies to Exceptions on October 15, 2009. All pleadings are considered filed only upon actual receipt by the Docket Services Section of the Office of General Counsel (Room 12-130). An original plus ELEVEN copies of exceptions and replies should be submitted to the Commission. PLEASE DO NOT STAPLE. Further, a copy of these pleadings must be submitted to each party. IN ADDITION PARTIES ARE REQUESTED TO PROVIDE THE EXAMINERS WITH A COPY OF ANY FILINGS ON A DISKETTE IN WORD OR WORDPERFECT FORMAT. THE DISKETTE SHOULD BE LABELED WITH THE DOCKET NUMBER, THE TITLE OF THE DOCUMENT, AND THE FORMAT OF THE DOCUMENT. Notice of consideration of this docket at any current or additional conference will be duly posted with the Secretary of State.

Contact for Additional Information – In accordance with Tex. Gov't Code Ann. §2001.061 (Vernon 2008) and 16 Tex. Admin. Code § 1.6 (2008), *ex parte* communications with the Hearings Examiners and Commissioners are prohibited. Any persons or entities desiring additional information may contact the Commission by writing to Colin Lineberry at the Railroad Commission of Texas, 1701 North Congress Avenue, P. O. Box 12967, Capitol Station, Austin, Texas 78711-2967, or by calling Mr. Lineberry at (512) 463-7033. Any persons or entities having clerical questions, such as questions regarding the number of copies of filings, the service list or reviewing the record, may contact the secretary of the Gas Services Section of the Office of General Counsel, Loretta Howard, at (512) 463-7033.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gene Montes".

Gene Montes

Hearings Examiner



# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

GUD NO. 9787

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### SEVERED RATE CASE EXPENSES FROM DOCKET NO. 9762

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#### APPEARANCES:

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**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY:**

Docket Established:	November 12, 2008
Final Hearing Date:	March 3, 2009
Heard By:	Gene Montes, Hearings Examiner Rose Ruiz, Technical Examiner Frank Tomicek, Technical Examiner
Record Closed:	September 13, 2009
PFD Circulation	September 16, 2009

### STATEMENT OF THE CASE

The parties in this case seek the recovery of rate cases expenses associated with GUD No. 9762, expenses in this case (GUD No. 9787), and all associated appeals related to these cases. The total rate case expenses, actual and estimated, alleged by the parties to prosecute the proposed rate increase is \$3,762,290.13.<sup>1</sup> Atmos Mid-Tex has entered into settlement agreements with several municipalities and does not seek recovery in *this* proceeding of the portion of expenses it has allocated to the settling municipalities and the rate case expenses of the settling municipalities are not to be decided in this proceeding. Those rate case expenses were determined as part of the settlement agreements with the municipalities. Thus, the total rate case expense sought to be recovered in this case for expenses related to Atmos Mid-Tex and the non-settling parties is \$2,018,845.71.

By way of comparison, total rate case expense approved in GUD No. 9670 was \$9,708,038 and total rate case expenses approved in GUD No. 9617 were \$10,122,345.<sup>2</sup> As originally filed, those cases were initiated to establish system-wide rates the same service area. As this case was originally filed to establish system-wide rates for the same service area it is appropriate to compare the overall rate case expenses alleged to have been expended in this case, \$3,762,290.13, to the rate case expenses approved in those cases. The alleged rate case expenses in this case are significantly less than in the prior system-wide rate proceedings.

Ultimately the rates approved in this case applied to the City of Dallas and the environs of Atmos Mid-Tex. GUD No. 9145-9148 was originally filed, and prosecuted as a rate proceeding to change rates within the City of Dallas, City of University Park, Town of Highland Park, and the environs of the City of Dallas. Rate case expenses approved in that case were \$2,249,806.44.<sup>3</sup> The total rate case expense request attributable to the determination of rates within the City of Dallas and the environs of the Atmos Mid-Tex service is lower in this case. Rate case expenses requested by the parties directly attributable to the determination of rates within the City of Dallas and all of the environs of Atmos Mid-Tex in this case are \$2,018,845.71.

In GUD No. 9670 and In GUD No. 9617 the parties reached an agreement regarding rate case expenses. In this case, the parties have challenged the rate case expense request and a hearing was held on the requested rate case expenses. After reviewing the proposed expenses of the parties the Examiners recommend several adjustment totaling \$119,905.21 and that the parties be permitted to recover no more than \$1,898,940.50. The requested expenses and the proposed adjustments are summarized in Table 1, Atmos Mid-Tex Requested Rate Case Expenses and Table 2, City of Dallas Requested Rate Case Expenses.

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<sup>1</sup> See Examiners Schedule No. 13.

<sup>2</sup> GUD No. 9695, *Rate Case Expenses Severed from GUD No. 9670*, Finding of Fact No. 13 (February 12, 2008); and GUD No. 9517 *Rate Case Expenses Severed from GUD No. 9400*, Findings of Fact No. 11 - 14 (March 5, 2005). GUD No. 9400 included the determination of rates for Atmos Pipeline.

<sup>3</sup> GUD No. 9145-9148, *Appeal of TXU Gas Distribution from the Action of the City of Dallas, City of University Park, and the Town of Highland Park Texas and the Statement of Intent Filed by TXU Gas Distribution to Increase Rates Charged in The Environs of the City of Dallas*, Finding of Fact Nos. 160 – 162.

Table 1

Atmos Mid-Tex Requested Rate Case Expenses and Examiner's Proposed Adjustments	
Atmos Mid-Tex Requested Rate Case Expenses (Actual and Estimated)	\$1,479,419.80
1. Expenses related to Ernst and Young.	\$4,740.49
2. Guernsey Consulting Firm	\$50,000.00
3. Towers Perrin	\$10,392.39
4. Attorneys' Fees	\$34,855.00
5. RRM Litigation Expenses	\$13,498.00
Total Rate Case Expense Recovery Recommended for Atmos Mid-Tex	\$1,365,933.92

Table 2

City of Dallas Requested Rate Case Expenses and Examiner's Proposed Adjustments	
City of Dallas Requested Rate Case Expenses (Actual and Estimated)	\$539,425.91
1. Consulting Expense	\$6,317.50
2. Attorneys Fees	\$101.83
Total Rate Case Expense Recovery Recommended for the City of Dallas	\$533,006.58

## 1. Procedural History

This case was severed from GUD No. 9762, *Statement of Intent Filed by Atmos Energy Corporation to Increase Utility Rates within the unincorporated areas served by the Atmos Energy Corp., Mid-Tex Division and Petition for De Novo Review of the Statement of Intent filed in various municipalities*. Atmos entered into settlement agreements with two city coalition groups, the Atmos Texas Municipalities (“ATM”) and the Atmos Cities Steering Committee (“ACSC”). Atmos also reached an agreement with several municipalities that were not part of the ACSC or ATM coalitions. The settlements were executed in January and February of 2008. The settlements did not apply to the environs customers or the City of Dallas. A final order establishing those rates was issued in GUD No. 9762 on June 24, 2008. The hearing on the merits in the rate case expense proceeding was held on April 2, 2009. Initial Briefs were filed on April 24, 2009, and Reply Briefs were filed on May 15, 2009.

The following individuals testified on behalf of Atmos Mid-Tex: (1) Philip F. Ricketts, Bracewell & Giuliani, LLP and (2) David Park, Vice-President of Rates and Regulatory Affairs. The following individuals testified on behalf of the City of Dallas: (1) Jacob Pous, Diversified Utility Consultants, Inc., and (2) James Z. Brazell. The parties offered documentary evidence in support of their rate request. In addition, the parties requested that official notice be taken of the proceeding in GUD No. 9762 and the request was granted.<sup>4</sup>

Atmos Mid-Tex alleged that actual and estimated expenses totaled \$2,516,373.87 in connection with the filing of the Statement of Intent and appeals that was ultimately docketed as GUD No. 9762, and this case, GUD No. 9787. Of this amount, the total cost requested by Atmos in this case for reimbursement from the City of Dallas and the unincorporated areas is \$1,479,419.80, plus carrying costs. The City of Dallas seeks the recovery of \$539,425.41 in actual and estimated rate case expenses.

## 2. Jurisdiction

The Commission has jurisdiction over Atmos Mid-Tex and over the matters at issue in this proceeding pursuant to *Tex. Util. Code Ann.* §§ 102.001, 103.003, 103.051, 104.001, 121.051, 121.052, and 121.151 (Vernon 2008). The statutes and rules involved in this proceeding include, but are not limited to *Tex. Util. Code Ann.* §§ 104.101, 104.102, 104.103, 104.105, 104.106, 104.107, 104.110, 104.301, and 16 *Tex. Admin. Code* Chapter 7.

## 3. Standard of Review of Rate Case Expenses

A municipality is entitled to recover its rate case expenses pursuant to *Tex. Util. Code Ann.* § 103.022. A utility is generally entitled to recover rate case expenses pursuant to *Tex. Util. Code* § 104.051 of the Texas Utilities Code. The general rule regarding rate case expenses is set out in the Commission regulations at Rule 7.5530.<sup>5</sup> In any proceeding, a utility or municipality claiming reimbursement for its rate case expenses has the burden to prove the reasonableness of the expenses by a preponderance of the evidence. Commission rules require that each gas utility

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<sup>4</sup> Tr. pp. 10 - 11.

<sup>5</sup> 16 *Tex. Admin. Code* 7.5530 (2007) (Tex. R.R. Comm’n, Allowable Rate Case Expenses).

and municipality detail and itemize rate case expenses. The party seeking reimbursement must also account for the allocation of those expenses. In meeting that burden, Rule 7.5530 requires evidence relevant to the following factors:

1. The amount of work done.
2. The time and labor required to accomplish the work.
3. The nature, extent, and difficulty of the work done.
4. The originality of the work.
5. The charges by others for work of the same or similar nature.
6. Any other factors taken into account in setting the amount of compensation.

Those factors are not exhaustive and the rule provides additional guidance:

1. Whether the request for a rate change was warranted.
2. Whether there was duplication of services or testimony.
3. Whether the work was relevant and reasonably necessary to the proceeding.
4. Whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted.

As noted by the Austin Court of Appeals, the Commission has broad discretion to determine recovery of expenses in a ratemaking proceeding. The Court of Appeals noted that the Commission is the sole judge of the weight of the evidence and the reliability of the witnesses. Nevertheless, the Commission may not disregard undisputed facts or testimony unless the record contains some explanation or reason upon which the reasonableness of the Commission's action may be judged.<sup>6</sup> The Court of Appeals noted that any fee incurred by a utility to establish its cost of service is not automatically recoverable as a rate case expense. The Court explained that it is precisely in this context where the Commission's discretion plays an integral role and the Commission must consider all relevant factors and determine whether the rate case expense was reasonable and necessary to the proceeding.<sup>7</sup>

Atmos Mid-Tex seeks the recovery of a total of \$1,479,419.80 in rate case expenses. Of that amount \$1,086,955.80 are actual expenses and \$392,464 are estimated expenses to complete these combined proceedings. The City of Dallas seeks the recovery of a total of \$539,425.91 in rate case expenses. Of that amount \$469,425.91 are actual expenses and \$70,000.00 are estimated expenses to complete these combined proceedings. Total expenses sought by the parties to this proceeding are \$2,018,973.71.

#### **4. Atmos Mid-Tex Expenses: Allocation of Expenses to Settling Cities.**

Atmos Mid-Tex proposed that municipalities that reached a settlement with the company pay only an allocated portion of the costs through the date of the settlement. After the settlement, those municipalities should not incur any additional expenses. The City of Dallas disagreed and argued that all municipalities should share in all of the expenses. As noted above,

<sup>6</sup> *City of Port Neches, City of Nederland, City of Groves and the Texas Gas Service Company v. Railroad Commission*, 212 S.W.3d 565, 579 - 581 (Tex. App. – Austin 2006) (*City of Port Neches*).

<sup>7</sup> *City of Port Neches*, 212 S.W.3d at 581.

Atmos Mid-Tex entered into a settlement agreement with several municipalities. As part of that agreement, Atmos Mid-Tex was to recover a pro-rata share of the rate case expenses incurred through February 29, 2008, from customers located within the cities represented by the settling cities.<sup>8</sup> Total rate case expenses incurred through February 29, 2008 were \$1,295,554.44.<sup>9</sup>

Pursuant to the agreement, the ATM city coalition customers were allocated \$125,801.74. The ACSC city coalition customers were allocated \$842,705.90. Cities that were not represented by ACSC and ATM, but with whom a settlement was ultimately reached were allocated \$68,446.43. Thus, the total to be recovered from ACSC, ATM, and the other settling cities is \$1,036,954.07. The company is recovering those amounts through a surcharge to those customers. Atmos Mid-Tex reduced the level of expenses it is requesting in this case by \$1,036,954.07 in order to recognize the amounts being recovered from ACSC and ATM. Atmos Mid-Tex proposed that the remaining portion of expenses incurred through February 29, 2008, \$258,600.37, be recovered from the City of Dallas and the unincorporated areas. Atmos Mid-Tex does not propose to allocate any costs incurred after February 29, 2008, to the settling cities. Atmos Mid-Tex proposed that all expenses incurred after February 29, 2008, be recovered from the City of Dallas and the unincorporated areas.<sup>10</sup> In sum, expenses incurred prior to and including February 29, 2008 are to be allocated among all customers. Whereas expenses incurred after February 29, 2008 are allocated among customers in the City of Dallas and the environs.

The City of Dallas objects to this proposed allocation. Mr. Brazell argued that all expenses should be allocated to all cities. In other words, instead of allocating 100% of the expenses incurred after February 29, 2008, to the City of Dallas and the environs customers, those costs should be allocated to all customers of Atmos Mid-Tex. Mr. Brazell argued that the proposed allocation fails to recognize that customers in the other cities served by Atmos Mid-Tex benefited from the participation of the City of Dallas in this case. He testified that the City of Dallas and Environs customers received greater rate relief than the customers in the settling cities. The results of this case put downward pressure on the rates and consequently Atmos Mid-Tex was willing to agree to lower rates with the settling cities in the subsequent rate proceedings. Further, the rate relief achieved by the City of Dallas provided the settling cities greater bargaining power. Mr. Brazell also argued that the proposed allocation violated the right of the customers within the City of Dallas and the environs provided by the Texas Utilities Code, the APA, the Texas Consitution and the U.S. Constitution to a hearing to contest a proposed rate increase.<sup>11</sup>

In response to Mr. Brazell's testimony, witnesses for Atmos Mid-Tex noted that the proposed adjustment would mean that the company would not recover any of the costs incurred after February 29, 2008 that would be allocated to the settling cities.<sup>12</sup> Mr. Park also explained that Mr. Brazell did not participate in any of the subsequent cases with the settling cities. Thus,

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<sup>8</sup> Atmos Exhibit 2, Direct Testimony of David Park, p. 5.

<sup>9</sup> Atmos Exhibit 2, Direct Testimony of David Park, p. 7.

<sup>10</sup> Atmos Exhibit 2, Direct Testimony of David Park, pp. 5 – 6, Atmos Exhibit 1, p. 1185.

<sup>11</sup> City of Dallas Exhibit 3, Direct Testimony of James Brazell, 44 - 49.

<sup>12</sup> Atmos Mid-Tex Initial Brief, 3 – 4 and 21 – 22; Atmos Exhibit 4, Rebuttal Testimony of David Park, p. 4.



he contended that Mr. Brazell could not have known what impact the rate case with the City of Dallas had on those cases. Mr. Park also averred that the timing of the subsequent rate cases made it unlikely that the rate case with the City of Dallas had any impact on negotiations with the settling cities.

In briefing filed by the State of Texas (State), the State echoes many of the arguments raised by the City of Dallas. The State notes that the cost of service and associated rates requested by the company were system-wide in scope, and thus were applicable to all customers served by the system by virtue of the most favored nation clause included in the settlements. Consequently, all customers benefited from the litigation undertaken by the remaining participants and allocation of the litigation costs exclusively to the remaining participants cannot be justified. The State notes that the appeal of the underlying proceeding is still pending and an adverse ruling for Atmos Mid-Tex would benefit the settling cities. Thus, those municipalities should share in the costs. Finally, the State also argues that the expenses were not occasioned by the non-settling cities unwillingness to reach an agreement. Instead, the litigation expense was occasioned by the hearing requirement of the Gas Utility Regulatory Act itself.

The Examiners estimate that the proposed change to allocation methodology offered by Atmos Mid-Tex would result in a stand-alone impact on the proposed rate case expense request of \$628,728.92. The City of Dallas did not provide the stand-alone impact of this recommendation. Table 3 below is an estimate of the amounts that would be allocated to the City of Dallas, assuming that the proposed allocation factor as proposed by Atmos Mid-Tex of approximately 0.1996 is applied.<sup>13</sup>

Table 3  
Estimated Impact of Allocating All Expenses on Rate Case Expense Request

Total Legal Expenses	
Legal Expenses - Through February 2008	93,372.95
Legal Expenses – After March 2008	134,119.03
Total Legal Expenses	227,491.97
Total Consulting Expenses	
Consulting Expenses - Through February 2008	30,015.89
Consulting Expenses – After March 2008	22,670.22
Total Consulting Expenses	52,686.11
Total Other Expenses	
Other Expenses - Through February 2008	135,201.53
Other Expenses – After March 2008	42,847.26
Total Other Expenses	178,048.79
Total Amount Allocated to City of Dallas	
Compared to \$1,086,955.80 Requested	458,226.88

<sup>13</sup> The allocation factor, 0.19959977 is an allocation factor based on usage. See also, Examiners' Schedule 3. Atmos Mid-Tex estimated the impact of the totality of all adjustments proposed by the City of Dallas regarding allocation to be approximately \$2.1 million. Atmos Ex. 4, Rebuttal Testimony of David Park, pp. 4 - 5. The City of Dallas contends that the allocation factor is inappropriate. Issues related to the allocation factor itself will be addressed in Section 18.

The Examiners recommend that the proposed adjustment be rejected. Atmos Mid-Tex has established that allocating additional costs to the settling cities is unreasonable. The decision to settle necessarily requires consideration of litigation expense. The settling municipalities decided to settle in order to avoid those litigation expenses. The approach posited by the City of Dallas and the State of Texas would eliminate any incentive to settle a case in which a global settlement is not achieved. Furthermore, to the extent that expenses incurred after the settlements are reasonable, the City of Dallas' proposal would necessarily preclude Atmos Mid-Tex from recovering those expenses.

#### **5. Atmos Mid-Tex Expenses: Ernst and Young Expenses.**

As part of its rate case expense request Atmos Mid-Tex sought the recovery of fees charged by Ernst and Young for the production of documents in support of the annual audit. The City of Dallas objected to this request. The City of Dallas argued that the sponsoring witness was unable to identify the date the service was performed, the personnel assigned, who charged for the work, the nature of the work or service performed by Ernst and Young, the hourly rate, or the number of hours. The City of Dallas contended that the documents were never made available to the City of Dallas for review. The City of Dallas argued that the entire request in the amount of \$23,750.00 should be removed from the rate case expense request of Atmos Mid-Tex.<sup>14</sup>

In response, Mr. Park testified that the documents were, in fact, made available to the City of Dallas. He provided documentation that established that the City of Dallas was provided notice that the documents from Ernst and Young were being prepared.<sup>15</sup> While no subsequent notice was provided that the documents were finalized, the City of Dallas was aware that the request had been made by one of the intervenors and that they would be available for inspection.<sup>16</sup> Through cross-examination Atmos Mid-Tex established that Mr. Brazell, a witness for the City of Dallas, testified that his initial impression was that the Ernst and Young expenses were valid expenses.<sup>17</sup>

The Examiners find that the documents were available for any party to the proceeding to review, including the City of Dallas. Nevertheless, the Examiners recommend that Atmos Mid-Tex not be allowed to recover expenses related to this item. The company failed to provide the requisite documentary evidence to support this request. Rule 7.5530 places an affirmative burden on the requesting party to "detail and itemize all rate case expenses . . . and provide evidence showing the reasonableness of the cost of all professional services." The evidence should include, but not be limited to, the amount of work done; the time and labor required to accomplish the work; and, the nature, extent, and difficulty of the work. Furthermore, the rule

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<sup>14</sup> City of Dallas, Exhibit 3, pp. 36 - 37

<sup>15</sup> Atmos Exhibit 5, Rebuttal Testimony of David Park, p. 23.

<sup>16</sup> See, Tr. p. 205. Mr. Park confirmed that notice that the documents were ultimately available was not provided to the City of Dallas.

<sup>17</sup> Tr. p. 136.

requires sufficient documentation to evaluate whether there was duplication of effort. The invoice provided lacks all of this essential information. Without any information it is impossible to evaluate this expense item.

Figure 1 – Invoice for Ernst & Young

**ERNST & YOUNG**

INVOICE NUMBER: 1261517946  
January 5, 2008

**PLEASE REMIT TO:**  
Ernst & Young  
1701 BlackView - Invoice #1261517946  
1701 BlackView - Invoice #1261517946  
1701 BlackView - Invoice #1261517946  
1701 BlackView - Invoice #1261517946

Atmos Energy Corporation  
300 First Montgomery  
Atlanta, GA 30303  
Atmos Energy, Suite 100  
Atlanta, GA 30303

1125

Professional services rendered in connection with the client's review of workpapers related to the 2006 consolidated audit as part of the 2007 Mid-Tex division rate filing.

Time / Fee \$7,339.40

**PLEASE PAY BY INVOICE NUMBER AND EXCLUSIVE REMITTANCE CODE**  
Due Upon Receipt  
CLIENT COPY

**1701 BlackView - Invoice #1261517946** Page 2 of 2

**ERNST & YOUNG**

INVOICE NUMBER: 1261517946  
January 5, 2008

**PLEASE REMIT TO:**  
Ernst & Young  
1701 BlackView - Invoice #1261517946  
1701 BlackView - Invoice #1261517946  
1701 BlackView - Invoice #1261517946

Atmos Energy Corporation  
300 First Montgomery  
Atlanta, GA 30303  
Atmos Energy, Suite 100  
Atlanta, GA 30303

1125

Professional services rendered in connection with the client's review of workpapers related to the 2006 consolidated audit as part of the 2007 Mid-Tex division rate filing.

Time / Fee \$7,339.40

**PLEASE PAY BY INVOICE NUMBER AND EXCLUSIVE REMITTANCE CODE**  
Due Upon Receipt  
CLIENT COPY

Ernst & Young  
1701 BlackView - Invoice #1261517946  
1701 BlackView - Invoice #1261517946  
1701 BlackView - Invoice #1261517946  
1701 BlackView - Invoice #1261517946

The totality of the evidence in support of this expenditure is two pages. Those pages have been reproduced in Figure 1 and are also attached to this proposal for decision as Exhibit 1. The sponsoring witness could not identify the total number of hours or days taken to complete the work product, he could not identify the number of people assigned to work on the project, and he could not identify the hourly rates.<sup>18</sup> Under these circumstances it is impossible to evaluate the expenditure as required by Rule 7.5530. The Commission cannot evaluate the amount of work done, the time and labor required to accomplish the work, the nature, extent, and difficulty of the work, the originality of the work, whether there was duplication of services, and the complexity of the work. The Examiners recommend that the expenditure be disallowed. The effect of this disallowance is only a partial reduction to the proposed rate request of \$4,740.49 as this particular expense was incurred directly as the result of a request made by one of the settling parties prior to the settlement.

## 6. Atmos Mid-Tex Expenses: Expense related to the RRM Litigation.

In the underlying rate proceeding, Atmos Mid-Tex proposed the adoption of a tariff entitled the Rate Review Mechanism (RRM). As noted in the *Proposal for Decision* that was issued in GUD No. 9762, the RRM underwent several permutations. The RRM considered at the hearing was not the same as the RRM considered at the municipal level. The RRM was revised

<sup>18</sup> Tr., pp. 37 – 38.

in rebuttal testimony and was also revised at the hearing. Ultimately, the Examiners' *Proposal for Decision* recommended adoption of an RRM mechanism with certain modifications. After the recommendation was issued, however, Atmos Mid-Tex decided to withdraw its request for an RRM tariff.

Mr. Brazell testified that the recovery of those costs were not reasonable for two reasons. First, he maintained that the RRM was a baseless claim. Second, Atmos Mid-Tex should not be allowed to recover rate case expenses because the utility ultimately abandoned its request. Mr. Brazell posited two possible approaches to an adjustment to the rate case expense request. First he noted that Atmos Mid-Tex did not segregate the expenses related to pursuing its request for an RRM tariff. He argued that all of the company's expenses, therefore, should be disallowed. Second, the proposal that Mr. Brazell recommended, he argued that the Commission determine the percentage of the case devoted to the RRM. Mr. Brazell estimated an adjustment based upon a ten percent factor applied to the total requested rate case expense. Specifically, this resulted in a proposed adjustment of \$113,976.00.<sup>19</sup>

In response, Mr. Ricketts noted that Mr. Brazell never elaborated his basis for concluding that the RRM was a baseless claim. Mr. Ricketts countered that many cities considered and agreed to the implementation of an RRM as part of a settlement. Those cities did not conclude that the RRM was unlawful or contrary to the Texas Utilities Code. Further, the Commission did not exclude consideration of the RRM from issues to be considered in this case. The Commission ultimately approved the use of a rate adjustment tariff in a subsequent case involving a different utility. Additionally, the Public Utility Commission has initiated a proceeding in which a similar mechanism was considered.<sup>20</sup>

Mr. Park noted that the timing of the withdrawal of its request was based upon two factors. First the company concluded at the hearing that the City of Dallas would under no circumstances work with the company to implement the RRM, even if approved by the Commission. Second, Atmos Mid-Tex was mindful of the settlement it reached with the other 438 cities that included the RRM. Because the *Proposal for Decision* in GUD No. 9762 recommended fundamental changes in the RRM, the company felt it was important to preserve the integrity of the settlements it had reached with every other city in the Mid-Tex division, which included the RRM that the company asked the Commission to adopt.<sup>21</sup>

The Examiners find that the proposal to include an RRM was not baseless. Indeed, although the Examiners found certain components to be problematic, the Examiners ultimately recommended approval of an RRM mechanism. Further, despite the fact that the Examiners opined that certain portions of the proposed RRM were illegal, it is clear that there is an honest difference of opinion on that subject. Similar mechanisms were approved in jurisdictions outside of the State of Texas and, as noted by Atmos Mid-Tex, several municipalities within the State of Texas approved the proposed RRM. A more troubling aspect was the timing of the withdrawal of the proposed RRM.

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<sup>19</sup> City of Dallas Exhibit 3, pp. 48 – 43; City of Dallas Exhibit 3A, pp. 39, 41, 43 – 44.

<sup>20</sup> Atmos Exhibit 3, Rebuttal Testimony of Phillip Ricketts, pp. 26 – 34.

<sup>21</sup> Atmos Exhibit 4, Rebuttal Testimony of David Park, pp. 24 – 29.

Based on the reasons for withdrawal proffered by Mr. Park, the Examiners find that it was not reasonable to delay the withdrawal of the proposed RRM until after the *Proposal for Decision* was issued. First, it was clear that the City of Dallas would refuse to implement the RRM long before the hearing was conducted. Certainly, it was clear after the prefiled testimony was submitted that the City of Dallas found the proposed RRM offensive and unworkable. Second, the potential always existed that a litigated proceeding would result in an approved RRM that was different from the proposed RRM or the RRM adopted by the settling cities. Atmos Mid-Tex could have withdrawn its request prior to the hearing or shortly after the hearing and saved the participants considerable expense. The Examiners find, however, the Mr. Brazell's calculation of the disallowance, based on ten percent of the entire expenses of Atmos Mid-Tex is unreasonable. As provided by Mr. Park the most accurate approximation of RRM related costs is reflected in the actual invoices. Those invoices reveal that Atmos Mid-Tex incurred approximately \$60,742 in RRM related costs.<sup>22</sup> Disallowance of that entire amount, however, is not reasonable.

The case was filed in October of 2007 and a Final Order was issued in June of 2008, thus the case was pending before the Commission approximately nine months. The *Proposal for Decision* was issued in May of 2008. The company's decision to wait until after the hearing to remove the expenditure resulted in expenses that could have been avoided had Atmos Mid-Tex withdrawn its claim prior to the hearing. Based on the proffered rationale for withdrawing the RRM it would have been prudent to withdraw the RRM prior to the hearing. Accordingly, the Examiners recommend that a fraction of the expenses be removed from the rate case expense request in the amount of \$13,498. This figure represents 2/9<sup>th</sup> of the total number of months this case was pending at the Commission and is intended to capture expenses incurred between the commencement of the hearing and the issuance of the order. It assumes that the \$60,742 expenditure calculated by Atmos Mid-Tex was evenly accrued throughout the period that the case was pending at the Commission on a monthly basis.

#### **7. Atmos Mid-Tex Expenses: C.H. Guernsey and Company Consulting Fees**

C.H. Guernsey and Company (C.H. Guernsey) was retained by Atmos Mid-Tex to prepare testimony related to the rate of return in this case. Dr. Donald Murry was the consultant from C.H. Guernsey who presented testimony on behalf of Atmos Mid-Tex. The overall expenses charged by C.H. Guernsey in this proceeding appear to be \$112,840.26.<sup>23</sup>

Mr. Brazell testified that the billing for this work was unreasonable. He contended that Dr. Murry's work was not documented by the entries included in the invoices while his economists/assistants documented their work, Dr. Murry provided no information in support of his work. Mr. Brazell was also critical of the number of entries that included the following statement: "Time incorrectly charged to the wrong project for period – Actual hours worked are as follows." He concluded that his notation undermined the credibility of the invoices. Additionally, he was critical of the fact that Dr. Murry's testimony did not provide any insight into the impact of the RRM on the rate of return analysis. Finally, Mr. Brazell asserted that the

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<sup>22</sup> Park, Rebuttal, p. 26 - 27.

<sup>23</sup> Atmos Ex. 1, pp. 159 - 161.

overall rates of C.H. Guernsey were well above what others would have charged for the same or similar work. Other consultants charged from \$10,000 to \$80,000 for the same or similar work. He recommended a disallowance of \$50,000.<sup>24</sup>

The Examiners find that Atmos Mid-Tex has not established the reasonableness of the fees billed by C.H. Guernsey. The evidence offered fails to establish the reasonableness of this expense request for four reasons. First, the amount charged for the service provided is outside the range charged by several other consultants. Second, the amount charged is outside the estimate provided by C.H. Guernsey. Third, the invoices did not provide sufficient documentation to support the expense request. Fourth, without the documentation the Commission is unable to evaluate the reasonableness of the time spent and whether there was duplication of effort.

As already noted, the City of Dallas provided testimony stating the range charged by other consultants for similar work was between \$10,000 to \$80,000. Examples of rate case expenses for rate-of-return testimony approved in other cases is set out in Table 4. Several of the examples contained in Table 4 were provided by Mr. Ricketts. As noted by the City of Dallas Mr. Ricketts incorrectly calculated the amounts related to PUCT Docket No. 33309 and 33310.

Table 4  
Costs for Preparation Rate of Return Testimony

Oklahoma Electric Rate Case (Murry)	\$148,485
GUD No. 9670 (Murry):	\$127,947
2006 PSC Oklahoma Rate Case (Murry):	\$109,183
PUCT, Docket No. 33309 and 33310:	\$ 78,257
GUD No. 9400:	\$ 61,762
Chesapeake Consulting (Intervenor):	\$ 9,782

In his prefiled testimony he alleged that the amount was \$155,990. At the hearing it was established that the correct amount was closer to \$78,257.<sup>25</sup> That amount is reflected in Table 4. As reflected in the table, the total amount sought for preparation of rate-of-return testimony in this case exceeds the amount approved in several other cases.

The engagement letter presented by C.H. Guernsey to Atmos Mid-Tex indicated that the “completion of the initial investigation, the completion of a report/testimony and the early stages of a rate proceeding typically cost in the neighborhood of \$25,000.00 to \$35,000.00.”<sup>26</sup> The very *first* invoice submitted by C.H. Guernsey exceeded this amount. The first invoice submitted in

<sup>24</sup> City of Dallas Exhibit 3, Direct Testimony of James Brazell, p. 29 – 31; City of Dallas Exhibit 3A, Errata Direct Testimony of James Brazell, pp. 31 – 35.

<sup>25</sup> Tr. 234-239, Dallas Exhibits 18 and 19. Q: And isn’t it correct, Mr. Ricketts, that the total amount that Dr. Hadaway charged was not \$155,990 but it was at most, according to these documents, \$78,257 allocated between the two companies? A: Yes. That is what it looks like.

<sup>26</sup> Atmos Exhibit 1, p. 199 – 201.

November 2007 was for \$37,654.44.<sup>27</sup> This amount exceeded the initial estimate included in the engagement letter for “completion of the initial investigation, the completion of a report/testimony and the early stages of a rate proceeding.” Furthermore, the work done by Dr. Murry could not be evaluated as no description was provided on that invoice.

Indeed, the eight invoices submitted provided no description of the work performed by Dr. Murry or the work performed by the “Senior Analyst.” The invoice submitted in November indicates that 219 hours were logged in preparation of the direct testimony filed by Mr. Murry. Mr. Murry, three economists, and a senior analyst recorded those hours. Several of the economists included entries that indicated work was done either in support of the preparation of direct testimony, or simply the preparation of direct and rebuttal testimony. Conversely, there is no indication of the actual work performed by Mr. Murry or Karen Flynn, the Senior Analyst. The lack of any description regarding the work of Dr. Murry and Ms. Flynn preclude any meaningful evaluation of the expenses pursuant to Rule 7.5530 and fails to meet the minimum standard set out in that rule. Specifically, the rule requires that parties “detail and itemize all rate case expenses” and that the supporting evidence establish the amount of work done; the time and labor to accomplish the work; and the nature, extent, and difficulty of the work; and the originality of the work done. Further, without any description of the work done there can be no evaluation of whether there was duplication of services or whether the work performed was relevant to the proceeding.

Furthermore, in this particular case, there are issues regarding the nature, extent, difficulty and originality of the work done. Dr. Murray has previously filed testimony on behalf of Atmos Mid-Tex. For example, testimony was submitted by Dr. Murry on behalf of Atmos Mid-Tex in GUD No. 9670 on May 24, 2006. Testimony was filed in the underlying case, GUD No. 9732, on October 23, 2007. While the testimony provided by Dr. Murry was not a duplicate of the testimony provided in the prior case, it is clear that Dr. Murry has performed a similar analysis for Atmos Mid-Tex in the past and it is apparent that he has provided testimony for Atmos Corporation in other proceedings. Accurate billing records, with a minimal description of the work performed, would assist in evaluating how much of the work performed in this case was the updating of prior work and how much was evaluating novel issues in the case.

The City of Dallas proposed a disallowance of \$50,000. This is less than the total billing attributable to Dr. Murry and Ms. Flynn. That amount is approximately \$57,800. The hearing in this case was conducted from March 28, 2008 to April 1, 2008. The bill dated May 29, 2008, Invoice No. 99801, includes this period and it is reasonable to assume that part of the bill reflects testimony at the hearing, although this is mere conjecture as the task performed is not reflected on the bill. The Examiners find that recovery of this amount is reasonable and the adjustment proposed by the City of Dallas would allow recovery for the time spent attending the hearing. Once this adjustment is made, the company will recover \$62,840 for the work performed by C.H. Guernsey. This is the approximately \$16,000 less than the midpoint of the range provided in the evidence at the hearing, reflected in Table 4. On the other hand, it exceeds the estimate provided in the engagement letter and it is within the range identified by Mr. Brazell that has been charged by other consultants in other cases of \$10,000 to \$80,000.<sup>28</sup>

<sup>27</sup> Atmos Exhibit 1, p. 195. All of the invoices related C.H. Guernsey are attached to this *Proposal for Decision* as Exhibit A.

<sup>28</sup> City of Dallas Exhibit 3A, Errata Direct Testimony of James Brazell, p. 31.

## 8. Atmos Mid-Tex Expenses: Towers Perrin Consulting Fees

A consultant with the firm of Towers Perrin Consulting (Towers Perrin) provided testimony during the hearing on behalf of Atmos Mid-Tex. Towers Perrin submitted an invoice to Atmos Mid-Tex for \$32,549.92.<sup>29</sup> Atmos Mid-Tex seeks the recovery of only \$11,187.42 in fees related and expenses related to that firm.<sup>30</sup> The invoice submitted by Towers Perrin Consulting to Atmos Mid-Tex reveals that John Ellerman billed Atmos Mid-Tex at \$925 per hour for his own work, and \$350 per hour for the work of his associate. Atmos Mid-Tex adjusted that request to make it consistent with work being billed at \$275 per hour by the two consultants assigned to this matter.

Mr. Brazell alleged that the invoices were insufficient to establish the reasonableness of the expense. He alleged that the invoices contained no hourly entries and no description of the work being done. Furthermore, he argued that documentation provided in discovery indicated that work done by Towers Perrin was done under a flat-fee agreement that was executed for other services. The flat-fee agreement was included in rate base and the request for additional expenses would represent "double dipping."<sup>31</sup> The City of Dallas also challenged the expenses related to unexplained and undocumented meals in the amount of \$172.83 and unexplained and undocumented transportation expenses in the amount of \$147.00.<sup>32</sup>

Mr. Park testified that the work performed was outside the scope of the flat-fee arrangement. He alleged that it would be unusual for an outside consultant to agree to a flat-fee arrangement that included expenses related to testifying as a witness in a rate case.<sup>33</sup> Mr. Ricketts testified that while no description is provided in the invoice it is possible to review the work of the consultant witness and determine whether the fees charged are commensurate with the complexity of the work performed. He averred that the thirty-seven hours billed by Towers Perrin to prepare rebuttal testimony and appear at a hearing in this case is reasonable.<sup>34</sup>

Two issues are presented by the City of Dallas. First, the City of Dallas argues that the work done in the context of the hearing, including the preparation of testimony was within the scope of work included in the pre-existing flat fee. The flat-fee agreement was for \$1,019,000. That amount was included in base rates in the last case and Atmos Mid-Tex is recovering that expense from ratepayers on an annual basis. The invoice submitted by Towers Perrin to Atmos Mid-Tex states that the testimony was out of the scope of the original flat fee agreement. The scope of work in the flat-fee agreement was described as follows: (1) Retirement and actuarial consulting services, (2) health and welfare actuarial and consulting services, (3) executive compensation consulting services, (4) risk management actuarial services, and (4) compensation

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<sup>29</sup> Atmos Exhibit 1, pp. 283 – 285.

<sup>30</sup> See, Examiners' Schedule 10. Mr. Park testified that the fees related to the billing rate were adjusted to reflect recovery of \$10,425. Examiners' Schedule 10 incorporates the adjustments of Mr. Park and reflects the impact of the adjusted rates.

<sup>31</sup> City of Dallas, Exhibit 3, Direct Testimony of James Brazell, pp. 31 - 32.

<sup>32</sup> Initial Brief, pp. 8 - 9.

<sup>33</sup> Atmos Exhibit 4, Rebuttal Testimony of David Park, p. 21.

<sup>34</sup> Atmos Exhibit 5, Rebuttal Testimony of Philip Ricketts, p. 25 – 26.



outsourcing services.<sup>35</sup> The consultant with Towers Perrin, Mr. Ellerman, provided testimony related to compensation plans offered by Atmos Mid-Tex: Variable Pay Plan (VPP), Management Incentive Plan (MIP), and Long-Term Incentive Plan.<sup>36</sup> There is nothing in the scope of work letter agreement that excludes the provision of testimony related to these matters. The Examiners find that Atmos Mid-Tex failed to establish that the testimony provided by Mr. Ellerman was not within the scope of the pre-existing flat-fee agreement. Thus, the Examiners recommend that the hourly fees related to the work of Mr. Ellerman and Sara Bivens in the amount of \$10,425 be excluded from the approved rate case expenses.

The City of Dallas also complained that there is no description of the work performed. The extent of the documentary evidence in support of this expense is reflected in Figure 2.<sup>37</sup> As can be seen, no explanation of the work is provided. There is no basis, other than the prefiled testimony itself, upon which to evaluate the work done by Mr. Ellerman and there is no basis to conclude that the work of the consulting staff was not duplicated. Furthermore, during the hearing the Atmos Mid-Tex witness was unable to identify Sara Bivins, Mr. Ellerman's associate, her role in the firm of Tower Perrin, her educational background, or the task she performed.<sup>38</sup> Thus, there is no basis on which to assess the reasonableness of her rate. Accordingly, the Examiners recommend an adjustment of two hours for the fees billed by Ms. Bivins. The Examiners recommend that the adjustment be made at the rate of \$275 per hour reflected in the rate request. As the Examiners have recommended removal of all expenses related to the fees of the consultants no further adjustment is required.

Figure 2:  
Towers Perrin Invoice.

Atmos Energy Corporation			
Towers Perrin Invoice			
March 1 - 31, 2008			
	QUANTITY	UNIT PRICE	TOTAL
Consulting Staff			
John Ellerman	20	\$1,000	\$20,000
Sara Bivins	8	\$1,000	\$8,000
Researcher/Analyst	20	\$1,000	\$20,000
Investment Professional Fee	20	\$1,000	\$20,000
<b>Total Professional Fees</b>			<b>\$68,000</b>
Administrative Fee (Based on 15% of Consulting Professional Fees)			
			\$10,200
<b>Total Fees</b>			<b>\$78,200</b>
Other Fees			
Travel			\$1,000
Travel Insurance			\$1,000
Travel Expenses			\$1,000
Travel Expenses			\$1,000
<b>Total Other Fees</b>			<b>\$4,000</b>
<b>Total Amount Due</b>			<b>\$82,200</b>

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<sup>35</sup> Atmos Exhibit 4, Rebuttal Testimony of David Park, Exhibit DJP-R-3, Scope of Work Letter Agreement.

<sup>36</sup> GUD No. 9762, Atmos Exhibit 37, Rebuttal Testimony of John Ellerman

<sup>37</sup> A copy of the Invoice submitted by Towers Perrin and the Scope of Work Letter Agreement is attached as Exhibit 3.

<sup>38</sup> Tr., p. 82.

Finally, the City of Dallas argued that certain incidental expenses lacked any documentary support and should be excluded from the rate case expense of Atmos Mid-Tex. As noted in the scope of work letter agreement incidental expenses were not included as part of the flat fee paid by Atmos Mid-Tex. Tower Perrin included \$597.53 in incidental expenses. The City of Dallas objected to expenses for taxis, trains, and parking in the amount of \$147.00 that were not documented and the \$172.83 in undocumented meal expenses. Documentation must be provided to ensure that meal expenses are reasonable and that the transportation expense is commensurate with the transportation service required. As no explanation for these expenses have been provided the Examiners recommend removal of expense associated with these items.

#### **9. Atmos Mid-Tex Expenses: Alliance Consulting Group.**

Atmos Mid-Tex engaged Alliance Consulting Group to perform analysis related to depreciation. Dane Watson, a consultant with that firm, provided testimony at the hearing. Mr. Brazell alleged that Atmos Mid-Tex did not properly manage Mr. Watson's time during the hearing. Mr. Watson was scheduled to testify the week of Monday, March 31, 2008. He flew to Austin on March 27<sup>th</sup>, and left by air the next day. He returned to Austin on Sunday, March 30<sup>th</sup> so that he would be available the following day. The City of Dallas maintains that his first trip was an unnecessary expense. Furthermore, the City of Dallas argued that Atmos Mid-Tex has submitted expenses related to a car rental while he was in Austin. As Atmos Mid-Tex maintained that lodging at the Doubletree Hotel was acquired to avoid rental expenses it is not clear that Mr. Watson's rental expense was a necessary expense. Mr. Brazell recommended an adjustment of \$311.00.<sup>39</sup>

Mr. Park testified that Mr. Watson traveled to Austin because it was anticipated that he would testify at the end of the week.<sup>40</sup> The City of Dallas established that the Mr. Watson was scheduled to testify on Monday, 31, 2008.<sup>41</sup> Mr. Park testified, however, that the pace of the proceedings had changed and that there was some possibility that Mr. Watson would be reached on Friday, March 28, 2008.<sup>42</sup>

The Examiners find that the travel arrangements for Mr. Watson were reasonable. The parties should be allowed some flexibility in the proceedings and it was not unreasonable to have Mr. Watson available on Friday, March 28, 2008, in the event the pace of the proceeding would allow Mr. Watson to take the stand. Furthermore, the Examiners note that it appears that most other witnesses appeared at the designated time. One instance in which a witness was present at the hearing, but was not called on that day is not unreasonable.

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<sup>39</sup> City of Dallas, Exhibit 3, Direct Testimony of James Brazell, pp. 29, 34 – 35.

<sup>40</sup> Atmos Exhibit 4, Rebuttal Testimony of David Park, pp. 22-23.

<sup>41</sup> City of Dallas Ex. 11, Copy of Email from Laurie Robinson and attachments.

<sup>42</sup> Tr. p. 201-202.

**10. Atmos Mid-Tex Expenses: Lovinger Airfare Expenses**

The City of Dallas raised a concern regarding one of the expenses of Alan Lovinger, an energy consultant with the firm of Brown, Williams, Moorhea & Quinn, Inc. Specifically, the rate case expense request included two invoices for airfare in the amount of \$1,331.50 and \$735.00. Mr. Brazell contended that the expenditure in the amount of \$1,331.50 represented first class travel and he recommended removal of this amount.<sup>43</sup> In response Mr. Park provided documentation that established that Mr. Lovinger travel expenses were for economy class travel.<sup>44</sup> The Examiners do not recommend that any adjustment be made at this time.

**11. Atmos Mid-Tex Expenses: Attorneys Fees – The Number of Lawyers.**

Atmos Mid-Tex engaged the outside law firm of Clark, Thomas and Winters to represent the utility in this proceeding. The City of Dallas alleged that Atmos Mid-Tex did not properly manage the activities of the firm by not monitoring the number of attorneys assigned to the case, managing the total number of hours billed by the attorneys, or managing the rate charged by the law firm.

The City of Dallas asserted that Atmos Mid-Tex did not properly manage the number of lawyers assigned to this proceeding. Namely, Mr. Brazell asserted that the law firm retained by Atmos Mid-Tex used more than the necessary number of lawyers at various stages in the proceedings. Thus, the total number of hours logged exceeded what was reasonable and necessary. First, Mr. Brazell noted that there was a significant disparity between the number of lawyers retained by the City of Dallas and the number of lawyers retained by Atmos Mid-Tex. Second, he maintained that the total number hours logged by attorneys in the preparation of testimony was excessive and appears to suggest that the lawyers, who charge more than the consultants, prepared the testimony. Third, he alleged that the company had too many lawyers working on the case during the hearing with at least six to as many as eight lawyers on each day of the hearing. Mr. Brazell proposed the disallowance of \$28,734.18 in fees. This amount was calculated based upon an estimate that Atmos Mid-Tex used about one or two extra lawyers approximately twenty-five percent of the time during the period from January, February, March, and April of 2008.<sup>45</sup>

In response, Mr. Park testified that Atmos Mid-Tex employed fewer lawyers than have been used in other cases of this magnitude. He also asserted that the Company employed a core team of lawyers from the outside law firm that was managed by Douglas Walther, Associate Senior Counsel for Atmos. He also stated that any additional legal support required the express approval of Mr. Walther. Mr. Park challenged Mr. Brazell's testimony because Mr. Brazell did not identify particular instances in which the work performed by outside counsel was unnecessary or duplicative. In response to the statement that the City of Dallas employed far fewer lawyers, Mr. Park asserted that the lawyer-to-witness ratio was much lower for Atmos Mid-Tex than for the City of Dallas.<sup>46</sup>

<sup>43</sup> City of Dallas, Exhibit 1, Direct Testimony of James Brazell.

<sup>44</sup> Atmos Exhibit 4, Rebuttal Testimony of David Park, p. 22, Exhibit DJP-R-4.

<sup>45</sup> City of Dallas, Exhibit 3, Direct Testimony of James Brazell, pp. 18 – 24.

<sup>46</sup> Park Rebuttal, pp. 12 – 17.

The Examiners have reviewed the legal billing and find that the total number of attorneys assigned to specific tasks appears reasonable. Atmos Mid-Tex established that the Associate Legal Counsel for Atmos managed the number of attorneys. Unlike previous proceedings where several attorneys were assigned to tasks, the outside legal staff appears to have been reasonably dispatched in this case. Furthermore, the City of Dallas did not identify a single instance in which the work performed was excessive or duplicative. Accordingly, the Examiners find that the total number of lawyers in this case was reasonable. The other instances cited occurred during the hearing on the merits and it is not unreasonable to expect a larger number of lawyers to bill during the hearing in a case with so many witnesses.

**12. Atmos Mid-Tex Expenses: Attorney's Fees – Billing in Excess of 12 hours per day.**

Mr. Brazell objected to twelve instances where attorneys and/or paralegals billed more than twelve hours per day. He calculated that the hours in excess of twelve hours totaled approximately \$2,246.00. In response, Mr. Park testified that one of the entries noted by Mr. Brazell was not in excess of twelve hours; seven of the entries noted by Mr. Brazell occurred during the hearing on the merits; three of the entries involved travel to and from Dallas; and the remaining entry was for six minutes in excess of the theoretical twelve-hour cap.<sup>47</sup>

The Examiners find that billing in excess of twelve hours per day raises issues of efficiency and adequate management of personnel during a hearing. While it may be necessary on some occasions, billing in excess of twelve hours may not have been required on all occasions. Furthermore, billing in excess of twelve hours a day may indicate misconduct.<sup>48</sup> In this case, however, after carefully scrutinizing the billing entries the Examiners find that the outside counsel reasonably managed resources and there is no evidence of misconduct. Accordingly, no adjustment is recommended. The hearings occurred on consecutive days and lasted most of the day. It is not unreasonable that a lawyer, after attending a hearing, would be required to prepare for the next day and ultimately bill in excess of twelve hours in a single day. Furthermore, the other instances involved travel. Again, it is not unreasonable for attorney to bill in excess of twelve hours if the attorney spent the day traveling.

**13. Atmos Mid-Tex Expenses: Attorneys Fees – Change in Hourly Rates.**

The City of Dallas raised three issues regarding the overall rates charged by Clark Thomas and Winters. First, the City of Dallas was critical of the billing process itself and contended that the billing records provided to Atmos Mid-Tex did not provide information regarding the rates charged by the legal team working on the case. Thus, it would have been impossible for Atmos Mid-Tex to exercise any meaningful control over the rates charged, as the company would have simply been uninformed regarding the rates or any changes to those rates.<sup>49</sup> Second, the City of Dallas was critical of the change in rates charged by members of the legal team that occurred during the hearing. The City of Dallas contended that an increase in the

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<sup>47</sup> Atmos Exhibit 4, Rebuttal Testimony of David Park, p. 17.

<sup>48</sup> See generally, ABA Formal Opinion 93-979, *Billing for Professional Fees, Disbursements, and Other Expenses*.

<sup>49</sup> City of Dallas, Initial Brief, p. 13.

hourly rate during the hearing is opportunistic and Mr. Brazell argued that raising rates while a matter is pending is presumptively invalid under long standing rules governing the fiduciary duty of lawyers to clients. Additionally, Mr. Brazell testified that by seeking recovery at the initial lower rates Atmos Mid-Tex and the law firm retained by the company admit that those initial rates are reasonable. It is unreasonable to seek recovery of higher rates since there is no change in the service provided or in economic conditions that support the higher rates being charged. Furthermore, Mr. Brazell chides Atmos Mid-Tex for not using its economic and market power to maintain rates at the lower initial level. Third, the City of Dallas challenged the reasonableness of the overall rates that were charged after the increases went into effect. As evidence challenging the reasonableness of the rate, Mr. Brazell noted that the rates charged by Clark Thomas and Winters for a case pending at the same time at the Public Utility Commission reflected rates that were lower.<sup>50</sup>

Witnesses for Atmos Mid-Tex argued that it was not unusual for lawyers and consultants to raise rates while a proceeding is pending. In that context, Atmos Mid-Tex alleged that the firm representing the City of Dallas in a prior case, GUD No. 9400, provided an example of this practice. Through cross-examination the company established that in that case the law firm representing the City of Dallas changed rates while the proceeding was pending.<sup>51</sup> Mr. Park noted that in this case Atmos Mid-Tex agreed to periodic hourly rate increases for its outside legal counsel.<sup>52</sup> Mr. Ricketts maintained that this was a common feature of engagement letters.<sup>53</sup> Mr. Ricketts also pointed to several proceedings in which consultants and attorneys raised their rates during the proceeding. His central position was, however, that the rates charged by outside counsel were reasonable, irrespective of the change in rates that occurred during the proceeding. In other words, the question is whether particular rates charged by the outside consultants are reasonable. Mr. Ricketts concluded that the rates charged by the attorneys were just and reasonable because they were within the range he considered reasonable.<sup>54</sup>

As to the first issue raised by the City of Dallas, the Examiners find that the documentation submitted to the company by the legal team representing Atmos Mid-Tex did not include a description of the rates charged by the individual attorneys and Atmos Mid-Tex has not established that it was aware of the amounts charged by those lawyers while this case was pending. Furthermore, based upon those documents Atmos Mid-Tex could not be aware that the rates charged by the individual attorneys were increased. As to the second issue, the Examiners find that the fact that the rates change during the hearing is not necessarily opportunistic, invalid or fraudulent and the contract with Clark, Thomas, and Winters specifically provided for periodic changes in rates.<sup>55</sup>

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<sup>50</sup> City of Dallas Exhibit 1, Direct Testimony of James Brazell, p. 25, City of Dallas Initial Brief, p. 13.

<sup>51</sup> Tr. p. 175 – 177,

<sup>52</sup> Atmos Exhibit 4, Rebuttal Testimony of David Park, p. 19.

<sup>53</sup> It should be noted that the only consultant to change its fees during the hearing was C.H. Guernsey & Company. Tr. p. 57. No mention is made in the October 5, 2007, engagement letter that the hourly rate for consultants may be increased. Atmos Exhibit 1, pp. 199 – 200.

<sup>54</sup> Atmos Exhibit 5, Rebuttal Testimony of Phillip Ricketts Rebuttal, p. 13 – 19.

<sup>55</sup> Atmos Exhibit 5, Rebuttal Testimony of Philip Ricketts, Exhibit PFR-R-1. It is possible, of course, that a consultant or law firm might benefit somehow if a proceeding is unreasonably extended past a periodic rate change. No evidence, or suggestion,

As noted above, however, aside from the allegation that the change in rates was opportunistic, presumptively invalid, or fraudulent the City of Dallas also challenged the reasonableness of the changed rate. In other words, the third point made by the City of Dallas specifically questioned the reasonableness of the amended higher rate. In objecting to the higher rates Mr. Brazell testified as follows:

The Company has proposed recovery of a significant number of hours for the lawyers billed at the lower, initial rates. The Company, thus, vouches for the reasonableness of those rates. There is no evidence of any change in economic conditions that would make those initial rates unreasonable. Therefore, seeking to recover for charges at the higher rates is inconsistent with the claimed reasonableness of the initial rates. And, if the Company was justified in hiring the Firm at the initial, lower rates, it was imprudent to pay the higher rates for the same services in the same matter.<sup>56</sup>

This statement squarely places the reasonableness of the higher hourly rate that resulted from the periodic increase imposed by Clark, Thomas, and Winters at issue in this proceeding. As stated by the City of Dallas, in briefing, the issue of the hourly rates is whether the “increased hourly rates charged in year 2008 are reasonable.”<sup>57</sup> Thus, all increased rates were placed at issue by the City of Dallas in this proceeding. As the reasonableness of the rates has been placed at issue in this contested case proceeding, the Examiners and the Commission, must evaluate those rates.<sup>58</sup>

Thus, the City of Dallas challenged the increased rates and the overall hourly rates charged by those attorneys whose rates were changed. Evidence was presented by the City of Dallas that the same law firm charged lower rates for attorneys participating in other rate proceedings. Those attorneys had a comparable level of experience in terms of the number of years of practice.<sup>59</sup> In certain specific instances the same attorney, during the same period of time, charged a different rate for representation in a rate proceeding. For example, Rana Siam was billed an hourly rate of \$250 in GUD No. 9762. On the other hand, in a rate proceeding at the Public Utility Commission, Ms. Siam billed at an hourly rate of \$220. Dane McKaughan initially billed at an hourly rate of \$220 per hour. That rate was increased to \$240.00 per hour and then \$280.00 per hour. In a proceeding before the Railroad Commission, during the same period of time, he billed at an hourly rate of \$220.

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has been made that the parties purposefully extend the procedural schedule in the underlying case in a manner that would have resulted in an unjust windfall to the individuals and entities representing the participants.

<sup>56</sup> City of Dallas Exhibit 3, Direct Testimony of James Brazell, p. 24.

<sup>57</sup> City of Dallas Reply Brief, p. 12.

<sup>58</sup> Of course, the Railroad Commission has the authority to evaluate the reasonableness of the rates charged by individual attorneys regardless of whether a party to the proceeding raised an issue regarding those rates. In this particular case, the City of Dallas has unequivocally challenged the reasonableness of the rates charged by the attorneys whose rates were increased during the proceeding.

<sup>59</sup> City of Dallas Initial Brief, p. 14; City of Dallas Reply Brief, p. 13 citing to Atmos Ex 4, Direct Testimony of Philip Ricketts, pp. 18 – 20 and citing to Atmos Ex. 6.

Thus, the record established that these particular attorneys charged a different lower rate than the rate charged to Atmos Mid-Tex. While GUD No. 9762 was pending Mr. McKaughan, participated in another case before the Railroad Commission, GUD No. 9790. In January and February of 2008 he billed at a rate of \$240 per hour in GUD No. 9762. In March, April, May, and June of 2008 he billed at a rate of \$280 per hour. On the other hand, in GUD No. 9790 he billed at a rate of \$220 per hour in January, February, and March of 2008. A similar set of circumstances occurred with Rana Siam. In March, April, and May of 2008 she billed at a rate of \$220.00 per hour in a proceeding before the Public Utility Commission representing Entergy Gulf States, Inc.<sup>60</sup> In GUD No. 9762, she billed at a rate of \$250.00 in March, April, and May of 2008. Mark Santos billed at an hourly rate of \$150.00 in GUD No. 9790 in March of 2008. In GUD No. 9762 his hourly billing rate was \$160.00. In GUD No. 9811, Mr. Santos billed at an hourly rate of \$160.00 during the month of February 2009. In GUD No. 9762 his billing rate was \$240 during that month.

In response to a query from the Examiners, Atmos Mid-Tex responded that the difference in rates charged might be attributable to many factors. For example, the difference may be attributable to timing associated with the implementation of new rates. Atmos Mid-Tex contended that the implementation of hourly billing rate changes do not and cannot occur on a simultaneous basis. The company elaborated further by stating that the implementation of hourly billing rate changes is contingent on a number of factors including the engagement letter, the rate change cycle for certain clients, and the timing of the client's approval of the requested change. Thus, Atmos Mid-Tex concluded that overlapping cases involving different clients may necessarily have different billing rates for the same time period. Additionally, the company argued that the issue is not the rate charged to other clients, but rather the reasonableness of the rates charged.

Evidence in the record suggests that both parties agree that rates charged by attorneys practicing before the Commission range from \$150 to \$450. This does not mean that every rate within that range is reasonable. It is evident that within that range, attorneys with different levels of experience charged different rates. For example, attorneys representing Atmos Mid-Tex with eleven years of experience billed at an hourly rate of \$250 whereas attorneys with twenty years of experience billed at \$400 per hour. It would not be reasonable, to have an attorney with one, five, ten, or eleven years experience bill at the same rate charged by an attorney with twenty years of experience. Thus, despite the fact that an attorneys' billing rate falls within the range found to be reasonable, evidence may be presented that calls into question the reasonableness of a specific rate. In this case, evidence in the record challenged the reasonableness of the specific rates charged by several attorneys. As noted above, the evidence fell into two categories. First, the City of Dallas presented evidence that attorneys with a similar level of experience charged a different rate in rate cases. Second, there is also evidence in the record that the rates charged by the same attorney differed in other cases.

In the first instance, the City of Dallas noted that attorneys with similar years of practice charged different rates. That difference may be due to several factors. For example, the difference may be attributable to the type and level of experience. The fact that different rates are charged is not necessarily surprising. In the second instance, however, where the *same*

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<sup>60</sup> City of Dallas, Exhibit 7.

attorney is charging different rates, the Examiners find that the best evidence of a reasonable rate is the rate charged by the attorney performing the same, or similar task. In this particular instance the other tasks involved rate proceedings. In one case it is the Railroad Commission – the same agency – and in another case it was the Public Utility Commission. Additionally, the Examiners find that the response provided Atmos Mid-Tex raises questions about the reasonableness of the engagement agreement between Atmos Mid-Tex and the outside legal firm. Atmos Mid-Tex entered into a contract that was less beneficial to it than either Texas Gas Services Commission or Entergy. Apparently, those entities benefited from a contract that somehow postponed the implementation of higher rates. A benefit Atmos Mid-Tex was not able to garner. The fact is, that Atmos Mid-Tex could not be aware that other rates charged by the firm may have been lower as the company was not provided information regarding the rates charged to it. The Examiners recommend that an adjustment be made to reflect the billing rate charged by these individuals in other cases as the firm representing those entities considered those rates to be just and reasonable. The Examiners recommend an adjustment in the amount of \$34,855.00.

#### **14. City of Dallas Expenses: Consulting Expenses.**

The City of Dallas engaged Diversified Utility Consultants, Inc., (DUCI) as a consultant in this proceeding. Several of the entries for DUCI lacked sufficient information for an evaluation of the expenses. Mr. Pous included several entries that stated only “Review Information.” Atmos Mid-Tex pointed out that in several instances the level of detail included by the consultant for the City of Dallas was similar to the level of detail in the company’s invoices for C.H. Guernsey.<sup>61</sup>

The Examiners agree that in several instances the level of detail was insufficient, as in the case of C.H. Guernsey. There was no description of the work done or the subject of the review. The lack of any description regarding the work performed precludes any meaningful evaluation of the expenses pursuant to Rule 7.5530. Without a more precise description of the work done on a specific task, the work cannot be evaluated; the time and labor required to accomplish a task that is not described cannot be evaluated; the nature, extent, and difficulty of the work done cannot be evaluated. Finally, there can be no evaluation of whether there was duplication of services or whether the work performed was relevant to the proceeding. During the hearing Mr. Pous indicated that the number of consultants retained is sufficient evidence that there was not duplication of effort. DUCI engaged three consultants to evaluate the filing. Failure to provide a description of the work performed precludes evaluation of the question of duplication of effort. The City of Dallas has recommended a similar adjustment for the entries of Dr. Murry. His entries are discussed above in the context of the expenses related to C.H. Guernsey. The same standard should be applied here. A review of the invoices submitted by DUCI reveals that 36.1 hours were attributable to entries described simply as “Review information.” Accordingly, the Examiners recommend an adjustment of \$6,317.50.

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<sup>61</sup> Atmos Reply Brief, pp. 15 – 16.



**15. City of Dallas Expenses: Duplication of Service.**

The City of Dallas provided written testimony from James Z. Brazell and Jacob Pous. Mr. Pous presented evidence in support of the fees requested by the City of Dallas.<sup>62</sup> Mr. Brazell presented evidence in support of the proposed adjustments to the rate request of Atmos Mid-Tex.<sup>63</sup> Atmos Mid-Tex presented evidence during the hearing that indicated that Mr. Brazell initially prepared testimony in support of the fees requested by the City of Dallas.<sup>64</sup> The company also noted this issue in the Reply Brief.<sup>65</sup> Specifically, Atmos Exhibit 15 was a draft of the prefiled testimony prepared by James Brazell. The draft reveals that the Mr. Brazell initially prepared testimony in support of the rate request of the City of Dallas. On April 22, 2009, the *City of Dallas filed a Supplemental Expense Report of the City of Dallas*. That expense report included a revised invoice for work done by Mr. Brazell in January of 2009. It appears from the notation that the City of Dallas has removed expenses related to the preparation of testimony and review of evidence that was not subsequently used. An adjustment to remove \$9,893.50 was made by the City of Dallas and the Examiners do not recommend any further adjustment.

**16. City of Dallas Expenses: Allocation of Resources**

The Examiners recommend a minor adjustment to the invoice of Feb 5, 2009. One entry includes the following description: "Trip to J. Boyles' law office to obtain copies of Atmos documentation." An attorney performed this task at an hourly billing rate of \$235.00. Accordingly, the Examiners recommend an adjustment to that entry. In general, courts are reluctant to grant expenses for work that could be done by a paralegal.<sup>66</sup> The entry describes two other tasks to be included with that entry. Accordingly, the examiners recommend an adjustment removal of one third of the billed amount. The resulting adjustment is removal of \$101.83 from the rate request.

**17. Overall Request for a Rate Increase.**

Rule 7.5530 specifically provides that in determining the reasonableness of the rate case expenses the Commission shall consider the amount of any increase granted. The City of Dallas and the State of Texas alleged that the amount of the increase granted is lower than the rate case expense request. Accordingly, they argued that the rate case expense request should be denied. As stated in the briefing, the City of Dallas and the State of Texas asserted that the final order awarded an increase in rates of \$2,663,893 as applied to customers of the City of Dallas and the Environs.<sup>67</sup> On the other hand, Atmos Mid-Tex seeks rate case expenses of \$1,479,419.80 to be

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<sup>62</sup> City of Dallas Ex. 2, Direct Testimony of Jacob Pous.

<sup>63</sup> City of Dallas Ex. 3, Direct Testimony of James Brazell.

<sup>64</sup> Atmos Exhibit 15, Initial Draft of Direct Testimony of James Brazell.

<sup>65</sup> Atmos Reply Brief, p. 16.

<sup>66</sup> *Halderman ex rel. Halderman v. Pennhurst State Sch. & Hosp.*, 49 F.3<sup>rd</sup> 939, 942 (3<sup>rd</sup> Cir. 1995). See also, *Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3<sup>rd</sup> Cir. 1983) (Expenses that result in wasteful use of highly skilled and highly priced talent for matters easily delegable to non-professionals or less experienced associates will not receive approval); *Mares v. Credit Bureau of Raton*, 801 F.2d 1197 (10<sup>th</sup> cir. 1986) ( Lawyers may not charge their full rate for delivering documents when a messenger may do the job more cheaply).

<sup>67</sup> City of Dallas Initial Brief, p. 1; State of Texas Initial Brief, p. 8.

recovered from the City of Dallas and environs. Once the expenses from the City of Dallas are added the total rate case expenses requested are \$2,018,973.71. Thus, the rate increase for the City of Dallas and the environs is only \$644,919.29 above the rate case expenses. Based upon the recommendation in this Proposal for Decision, the total amount of rate case expenses to be recovered, not including interest carrying cost, is \$1,898,940.50. Thus, the increase awarded exceeded the rate case expense by \$764,952.50.

The Examiners find that, in fact, a rate increase was awarded. Furthermore, Atmos Mid-Tex initially sought the approval of a system-wide increase. In setting this rate for the City of Dallas and the environs the Commission was required to examine the revenues on a system-wide basis and the Commission determined that on a system-wide basis the utility established that an increase of \$19,653,516 was just and reasonable. Thus, on a system-wide basis the rates determined to be reasonable far exceed the total rate case expenses alleged to have been expended by all parties to the proceeding. Additionally, the City of Dallas sought to reduce rates charged by Atmos Mid-Tex and that proposal was denied. Several municipalities settled and the portion of that increase attributable to the remaining affected customers within the City of Dallas and the Environs was \$2,663,893. While that rate exceeds the recommended rate case expense by only \$764,952.50, the rate case expenses are to be recovered through a temporary surcharge. On the other hand, the approved rates will be in effect over a longer period and result in revenues that will quickly far exceed the rate case expenses.

#### **18. Allocation of Rate Case Expenses.**

Atmos Mid-Tex proposed that rate case expenses prior to February 29, 2008, be allocated based upon usage. The City of Dallas objected to this proposed allocation methodology. First, Mr. Brazell argued that allocation of the expenses on the basis of usage would achieve an unjust and discriminatory result because of weather. As the City of Dallas is in the extreme northern portion of the service area, customers in the City of Dallas tend to consume more gas per household than customers in other areas. Consequently, they would be adversely affected by the proposed allocation methodology.<sup>68</sup>

In response, Mr. Park asserted that allocation based upon customer load is a reasonable allocation methodology and consistent with settlement with the various settling municipalities. A potential problem with using a different allocation methodology from the methodology adopted by the settling municipalities is that Atmos Mid-Tex may not recover all of its rate case expenses. Mr. Park asserted that there was no factual basis for a claim of a weather bias against the City of Dallas. He noted that the weighted average normal heating degree-days of the system are 2,103, which exceed the normal heating degree-days for the City of Dallas of 2,078.<sup>69</sup>

Finally, as to allocation of expenses between the City of Dallas and the Environs. Atmos Mid-Tex proposed that rate case expenses be allocated between the City of Dallas and environs customer classes on the basis of non-gas revenue. The City of Dallas contended that it was based only on the basis of Residential non-gas revenue. The company responded that it was being allocated on the basis of all non-gas revenue, as requested by the City of Dallas. The Examiners

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<sup>68</sup> City of Dallas Exhibit 3, Direct Testimony of James Brazell.

<sup>69</sup> Atmos Exhibit 4, Rebuttal Testimony of David Park, pp. 11 – 12.

find that indeed, the company proposes to allocate the rate case expenses on the basis of all non-gas revenue.

#### **19. Rate Case Expense Surcharge**

The Examiners recommend recovery over an approximate one-year period at a rate of \$0.47 per Mcf for Residential customers, \$1.39 per Mcf for Commercial customers, and \$20.82 for Industrial and Transportation customers. It is reasonable to allow the utility an interest carrying charge on the un-recovered monthly balance at a rate equal to the deposit interest rate set annually each December by the Public Utility Commission. It is also reasonable to require Atmos Mid-Tex to file a report detailing recovery with the Commission 45-days after the end of June and December identifying the beginning balance for the period, the recovery by month with the monthly volumes, the interest calculation and the ending balance. The report should include a reconciliation of the estimated rate case expense approved by providing invoices submitted to the total authorized recovery of the estimated rate case expense.

Respectfully submitted,



Gene Montes  
Hearings Examiner  
Office of General Counsel



Rose Ruiz  
Technical Examiner  
Gas Services Division

## Schedule #

Description

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1	Adjustment to Rate Case Expense Request
1A	Surcharge Calculation
2	Total Expenses of Atmos Mid-Tex (Settling Cities, City of Dallas & Environs)
3	Allocation of Rate Case Expenses
4	Adjustments Recommended
5	Total Atmos Mid-Tex Expenses As Adjusted
6	Allocated Atmos Mid-Tex Actual Expenses to the City of Dallas
7	Atmos Mid-Tex Estimated Future Expenses
8	Total Atmos Mid-Tex Expenses As Adjusted
9	Total Pre-February 2009 Expense Allocations
10	Towers Perrin Invoice Adjustments
11	CH Guernsey Expenses with No Description
12	Adjusted Rate for Dane McKaughan
13	Adjusted Rate for Rana Siam
14	Adjusted Rate for Mark Santos
15	Overall Expenses to Prosecute Rate Request

**Examiners' Schedule 1**  
Adjustments to Rate Case Expense Request

Atmos Mid Tex

Rate Case Expenses Requested	\$1,479,419.80
Rate Case Expenses Recommended	\$1,365,933.92
Recommended Reduction	\$113,485.88

	Requested Reduction	Adjustment Recommended	Amt of Reduction Recommended
1 Ernst and Young Expenses	\$23,750.00	Yes	\$23,750.00
2 Guernsey Consulting Firm	\$50,000.00	Yes	\$50,000.00
3 Towers Perrin - Overall	\$11,683.90	Yes	\$10,072.56
4 Towers Perrin - Consultant	See Item #3	No	\$550.00
5 Towers Perrin - Misc.	See Item #3	Yes	\$319.83
6 Travel Expense Dane Watson	\$311.00	No	\$0.00
7 Lovinger Travel Expense	\$1,331.50	No	\$1,331.50
8 Attorneys' Fees: Number of Lawyers	\$35,922.10	No	\$0.00
9 Attorneys' Fees: Hourly Rate	\$91,115.00	Yes	\$34,855.00
10 Attorneys' Fees: Excess of 12 hours	\$2,096.00	No	\$0.00
11 RRM Litigation Expenses	\$113,976.00	Yes	\$13,498.00

City of Dallas

Rate Case Expenses Requested			\$539,425.91
Rate Case Expenses Recommended			\$533,006.58
Recommended Reduction			\$6,419.33
1 Consulting Expense	Yes	\$6,317.50	
2 Attorneys Fees	Yes	\$101.83	
Total Rate Case Expenses Recommended			\$1,898,940.50

**Examiners' Schedule 1A**  
Surcharge Calculation

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	Amounts
Amount to be Recovered from Dallas and Environs Customers	\$1,898,940.50
Residential Revenue without Gas Cost	340,426,369
Commercial Revenue without Gas Cost	94,255,250
Industrial and Transportation Revenue without Gas Cost	12,217,808
Revenue by Class without Gas Cost	446,899,427
Residential Class Percentage (line 3 divided by Line 6)	76.18%
Commercial Class Percentage (line 4 divided by line 6)	21.09%
Industrial and Transportation Class Percentage (line 5 divided by line 6)	2.73%
Residential Rate Case Expense Recovery (line 1 times line 8)	1446521.03
Commercial Rate Case Expense Recovery (line 1 times line 9)	400,504.23
Industrial Transportation Rate Case Expense Recovery (line 1 times line 8)	51,915.24
Total Rate Case Expense Recovery	1,898,940.50
Residential Annual Customer Charges Dallas and Environs	3,052,420
Commercial Annual Customer Charges Dallas and Environs	289,126
Industrial and Transportation Annual Customer Charges Dallas and Environs	2,494
Residential Rate Case Surcharge per Customer per Month	\$0.47
Commercial Rate Case Surcharge per Customer per Month	\$1.39
Industrial and Transportation Rate Case Surcharge per Customer per Month	\$20.82

**Examiners' Schedule 2**

**Total Expenses for Atmos Mid-Tex (Settling Cities, City of Dallas & Environs)**

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Atmos Legal - Through 2/29/08	\$	467,800.87
Atmos Legal - 3/1/08 Forward		671,964.01
		<hr/> 1,139,764.88
Atmos Consultants - Through 2/29/08	\$	150,380.40
Atmos Consultants - 3/01/08 Forward		134,592.24
		<hr/> 284,972.64
Atmos Expenses - Through 2/29/08	\$	677,363.17
Atmos Expenses - 3/01/08 Forward		44,367.65
		<hr/> 721,730.82
Total		2,146,468.34

**Examiners' Schedule 3**  
**Allocation of Rate Case Expense**

Proposed by Atmos - Residential Usage			Recommendation
ACSC City's Volumes	49,954,976	0.650464682	Approve
ATM City's Volume	7,457,433	0.097103375	
Dallas/Unincorporated Areas Volumes	15,329,044	0.19959977	
Non Coalition City's Volumes	4,057,453	0.052832172	
Total Adjusted Residential Volumes	76,798,906		

<b>All Costs Allocated</b>			Recommendation
Do not directly assign any costs to Dallas			
Option 1 Proposed by City of Dallas Allocate <b>All</b> Costs Based On Usage			
Allocation Factor	0.19959977		No
Option 2 Proposed by City of Dallas Allocate <b>All</b> Costs Based On Customers			
Allocation Factor	0.1792		No
Option 3 Proposed by City of Dallas Allocate <b>All</b> Costs Based On Non-Gas Revenues			
Allocation Factor	0.1815		No

<b>Pre-February-2008 Costs Allocated</b>			Recommendation
<b>All other Costs Directly Assigned to City of Dallas and Environs</b>			
Option 1 Proposed by City of Dallas Allocated Costs Allocated based on Customers			
Allocation Factor	0.1792		No
Option 2 Proposed by City of Dallas Allocated Costs Allocated based on Customers			
Allocation Factor	0.1815		No



Lookup Table for Allocations Pre-2/2008 Costs

1	0.19959977
0	0.1792
0	0.1815

Lookup Table for Allocations Post-2/2008 Costs

1	1
0	0.19959977
0	0.1792
0	0.1815

**Examiners' Schedule 4**  
Adjustments Recommended

Adjustments	Legal to 2/2008	Legal 3/2008 to present	Consulting to 2/2008	Consulting 3/2008 to present	Other to 2/2008	Other 3/2008 to present
January 16 Filing Adjustments (Atmos)				20,866.02		1,494.87
Adjustment Per Park Testimony (Atmos)		24.23		147.83		25.52
Ernst and Young			23,750.00			
Guernsey Consulting Fees				50,000.00		
Towers Perrin - Overall				10,072.56		
Towers Perrin - Consultant				0.00		
Towers Perrin - Misc.				319.83		
Dane Watson Travel Expense				0.00		
Lovinger Travel				0.00		
Attorney's Fees: Number of Lawyers				0.00		
Attorney's Fees: Hourly Rate				34,855.00		
RRM Expenses				13,498.00		
<b>Total Adjustments</b>	<b>0.00</b>	<b>24.23</b>	<b>23,750.00</b>	<b>129,759.24</b>	<b>0.00</b>	<b>1,520.39</b>
						<b>155,053.86</b>

# Examiners' Schedule 5

## Total Atmos Mid-Tex Expenses as Adjusted

Total Legal Expenses			
Legal Expenses - Through February 2008	467,800.87	0.00	467,800.87
Legal Expenses - March 2008	671,964.01	(24.23)	671,939.78
Total Legal Expenses			1,139,740.65
Total Consulting Expenses			
Consulting Expenses - Through February 2008	150,380.40	(23,750.00)	126,630.40
Consulting Expenses - March 2008 and Forward	134,592.24	(129,759.24)	4,833.00
Total Consulting Expenses			131,463.40
Total Other Expenses			
Other Expenses - Through February 2008	677,363.17	0.00	677,363.17
Other Expenses - March 2008 and Forward	44,367.65	(1,520.39)	42,847.26
			720,210.43
			1,991,414.48

### Examiners' Schedule 6

#### Allocated Atmos Mid-Tex Actual Expenses to City of Dallas and Environs

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Total Legal Expenses		
Legal Expenses - Through February 2008		93,372.95
Legal Expenses - March 2008		671,939.78
	Total Legal Expenses	765,312.73
Total Consulting Expenses		
Consulting Expenses - Through February 2008		25,275.40
Consulting Expenses - March 2008 and Forward		4,833.00
	Total Consulting Expenses	30,108.40
Total Other Expenses		
Other Expenses - Through February 2008		135,201.53
Other Expenses - March 2008 and Forward		42,847.26
	Total Other Expenses	178,048.79
		973,469.92

**Examiners' Schedule 7**  
**Atmos Mid-Tex Estimated Future Expenses**

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Estimated Legal Expenses for Appeal of GUD No. 9762 120,000.00

Estimated Legal Expenses GUD No. 9787 195,000.00

Estimated Consulting Expenses GUD No. 9787 77,464.00

The original estimated expense  
for Mr. Ricketts was \$40,000.  
This figure was revised through  
the affidavit of Mr. Ricketts.

Total Estimated Expenses 392,464.00

### **Examiners' Schedule 8**

#### **Total Allocated Expenses to City of Dallas**

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Total Actual Expenses	973,469.92
Total Estimated Expenses	392,464.00
Total Allocated to City of Dallas	1,365,933.92

**Examiners' Schedule 9**

**Total Pre-February 2009 Expense Allocations**

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Total Expenses incurred prior to 3/1/08    1,295,544.44

Total Allocated to COD and Environs        253,849.88

Total Allocated to Settling Cities.           1,041,694.56

## Examiners' Schedule 10

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### Towers Perrin Invoice -- As Adjusted By Atmos

John Ellerman	35	275 As adjusted by Atmos Mid-Tex - Org. Rate \$925	\$9,625.00
Sara Bivins	2	275 As adjusted by Atmos Mid-Tex - Orig. Rate 350	\$550.00
			\$250.00
Research Insight			
Consulting Professional Fees	37		\$10,425.00
Administrative Load			\$677.63
Expenses			
Airfare			\$257.50
Meals			\$172.83
Taxis Trains, Parking			\$147.00
Use of own car			\$20.20
Total Expenses			\$597.53
(10% Discount on Professional Fees and Administrative Load)			-\$1,110.26
			\$10,589.89

### Towers Perrin Invoice -- As Recommended by Examiners

John Ellerman	35	275 As adjusted by Atmos Mid-Tex - Org. Rate \$925	\$0.00
Sara Bivins	2	275 As adjusted by Atmos Mid-Tex - Orig. Rate 350	\$0.00
			\$250.00
Research Insight			
Consulting Professional Fees	37		\$250.00
Administrative Load			\$16.25
Expenses			
Airfare			\$257.50
Meals			\$0.00
Taxis Trains, Parking			\$0.00
Use of own car			\$20.20
Total Expenses			\$277.70
(10% Discount on Professional Fees and Administrative Load)			-\$26.63
			\$517.33



**Examiners' Schedule 11****C.H. Guernsey Expenses with No Description**

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Invoice #	Invoice Date	Amount	Phase of Proceeding	Murry and Senior Analyst
98322	11/28/2007	\$37,654.44	Direct Testimony	\$24,050.00
98584	12/26/2007	\$20,161.21		\$9,375.00
98734	1/8/2008	\$4,210.00	Discovery	\$3,250.00
99043	2/18/2008	\$2,840.00		\$2,500.00
99334	3/31/2008	\$2,445.00		\$2,000.00
99568	4/30/2008	\$26,217.61	Prepare Rebuttal	\$7,450.00
99801	5/29/2008	\$14,862.00	Hearing	\$9,175.00
100070	6/25/2008	\$4,450.00	Post Hearing	
		\$112,840.26		\$57,800.00

**Adjusted Rate for Dane McKaughan**

January			February			March		
21-Jan	4.7		1-Feb	2.7		6-Mar	1.1	
22-Jan	5.2		4-Feb	3.7		7-Mar	8.1	
23-Jan	1.2		5-Feb	3.7		8-Mar	3.4	
24-Jan	1.1		6-Feb	3.1		9-Mar	4.2	
25-Jan	1.3		8-Feb	1.2		10-Mar	7.3	
30-Jan	9.6		11-Feb	2.6		11-Mar	3.8	
31-Jan	1.2		12-Feb	1.8		12-Mar	4.1	
			13-Feb	0.6		13-Mar	5.4	
			20-Feb	0.7		14-Mar	2.1	
			26-Feb	0.3		15-Mar	5.2	
						16-Mar	7.2	
						17-Mar	7.1	
						20-Mar	1.6	
						21-Mar	4.1	
						22-Mar	1.5	
						23-Mar	4.1	
						24-Mar	10.5	
						25-Mar	12.6	
						26-Mar	12.2	
						27-Mar	11.4	
						28-Mar	7.5	
						30-Mar	4.8	
						31-Mar	8.9	
Total Hours	24.3		Total Hours	20.4			138.2	
January Rate	\$240.00	\$ 5,832.00	January Rate	\$240.00	\$ 4,896.00	January Rate	\$280.00	\$ 38,696.00
Rate in 9790	\$220.00	\$ 5,346.00	Rate in 9790	\$220.00	\$ 4,488.00	Rate in 9790	\$220.00	\$ 30,404.00
Adjustment		\$ 486.00	Adjustment		\$ 408.00	Adjustment		\$ 8,292.00

Total Adjustment to Legal Fees Related to Billing Rate of Dane McKaughan

\$15,054.00

**April**

1-Apr	7.3
3-Apr	2.8
6-Apr	4.5
7-Apr	4.9
8-Apr	4.2
9-Apr	4.2
10-Apr	4.7
11-Apr	1.1
13-Apr	5.3
14-Apr	4.1
15-Apr	4.2
16-Apr	5.1
17-Apr	6.1
18-Apr	2.1

Total Hours	60.6
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January Rate	\$280.00	\$ 16,968.00
Rate in 9790	\$220.00	\$ 13,332.00
Adjustment		\$ 3,636.00

## May

16-May	1.2
17-May	1.8
18-May	1.1
19-May	4.2
20-May	2.7
21-May	4.8
22-May	1.8
23-May	1.8
26-May	1.7
27-May	1.8
28-May	2.1
29-May	2.6
30-May	2.9

Total Hours	30.5
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January Rate	\$280.00	\$ 8,540.00
Rate in 9790	\$220.00	\$ 6,710.00
Adjustment		\$ 1,830.00

## June

2-Jun	2.4
3-Jun	2.1
5-Jun	1.2
6-Jun	0.4
10-Jun	0.6

6.7

January Rate	\$ 280.00	\$ 1,876.00
Rate in 9790	\$ 220.00	\$ 1,474.00
Adjustment		\$ 402.00

### Adjusted Rate for Rana Siam

March			April			May		
3-Mar	1.1		1-Apr	1.8		12-May	0.3	
4-Mar	1.2		2-Apr	2.5		16-May	1.6	
5-Mar	1.1		3-Apr	2.6		18-May	2.8	
6-Mar	3.6		4-Apr	4.2		19-May	5.6	
7-Mar	10.2		7-Apr	7.4		20-May	2.6	
10-Mar	8.6		8-Apr	6.2		21-May	6.3	
11-Mar	9.4		9-Apr	5.6		22-May	1.6	
12-Mar	9.1		10-Apr	4.3		23-May	3.7	
13-Mar	9.6		11-Apr	1.8		26-May	2.2	
14-Mar	7.8		14-Apr	3.2		27-May	1.8	
15-Mar	3.6		15-Apr	3.6		28-May	0.3	
16-Mar	4.8		16-Apr	1.8		29-May	3.8	
17-Mar	8.2		17-Apr	0.7		30-May	0.8	
18-Mar	4.2		20-Apr	0.4				
19-Mar	6.1		22-Apr	1.9				
20-Mar	7.3							
21-Mar	5.2							
23-Mar	3.5							
24-Mar	8.2							
25-Mar	8.8							
26-Mar	9.5							
27-Mar	9.2							
28-Mar	6.8							
31-Mar	4.5							
Total Hours	151.6		Total Hours	48			33.4	
March Rate	\$250.00	\$ 37,900.00	April Rate	\$250.00	\$ 12,000.00	May Rate	\$ 250.00	\$ 8,350.00
Rate in 34800	\$220.00	\$ 33,352.00	Rate in 34800	\$220.00	\$ 10,560.00	Rate in 34800	\$ 220.00	\$ 7,348.00
Adjustment		\$ 4,548.00	Adjustment		\$ 1,440.00	Adjustment		\$ 1,002.00

Total Adjustment to Legal Fees Related to Billing Rate of Rana Siam

\$7,188.00

**June**

2-Jun	1.2
3-Jun	3.4
4-Jun	0.6
6-Jun	0.7
9-Jun	0.3
27-Jun	0.4

Total Hours	6.6
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June Rate	\$ 250.00	\$ 1,650.00
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Rate in 34800	\$ 220.00	\$ 1,452.00
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Adjustment	\$	198.00
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### Adjusted Rate for Mark Santos

Mar-08			Feb-09			Mar-09		
11-Mar	2.8		2-Feb	1.4		3-Mar	0.6	
25-Mar	6		3-Feb	1.4		4-Mar	5.9	
26-Mar	3.6		6-Feb	1		17-Mar	7.6	
27-Mar	0.8		10-Feb	4.6		18-Mar	1	
			11-Feb	0.9		25-Mar	4.8	
			12-Feb	0.7		26-Mar	5.6	
December-08			16-Feb	5		27-Mar	9.7	
15-Dec	0.4		17-Feb	3		28-Mar	3.2	
			18-Feb	1.5		30-Mar	8.7	
			20-Feb	4		31-Mar	6.7	
			24-Feb	4.7				
			25-Feb	6.3				
			26-Feb	2.1				
			27-Feb	0.8				
31-Mar	4.5							
Total Hours	18.1		Total Hours	37.4			53.8	
March Rate	\$ 160.00	\$2,896.00	Feb Rate	\$ 240.00	\$8,976.00	March Rate	\$ 240.00	#####
GUD No. 9760	\$ 150.00	\$2,715.00	GUD No. 9	\$ 160.00	\$5,984.00	GUD No. 5	\$ 160.00	\$ 8,608.00
Adjustment		\$ 181.00	Adjustment		\$2,992.00	Adjustment		\$ 4,304.00

Total Adjustment to Legal Fees Related to Billing Rate of Mark Santos

\$12,613.00

Apr-09

1-Apr	10.6
2-Apr	11.4
3-Apr	3.1
6-Apr	3
8-Apr	1.1
9-Apr	7.5
10-Apr	4.8
12-Apr	3.4
13-Apr	2.8
14-Apr	8.6
15-Apr	7.9

Total Hours 64.2

June Rate \$ 240.00 #####

Rate in 348 \$ 160.00 #####

Adjustment \$ 5,136.00

### Examiners' Schedule 15

#### Overall Expenses to Prosecute Rate Request

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Expenses of ACSC (settled)	\$334,199.61
Expenses of ATM (settled)	\$372,290.74
City of Dallas Expenses	\$469,425.91
City of Dallas Estimated Expenses	\$70,000.00
Atmos Mid-Tex Expenses Allcoated to ACSC	\$842,705.90
Atmos Mid-Tex Expenses Allcoated to ATM	\$125,801.74
Atmos Mid-Tex Expenses Allocated to Other	\$68,446.73
Atmos Mid-Tex Expenses Allocated to Dallas	\$1,086,955.80
Atmos Mid-Tex Estimated Future Expenses	\$392,464.00
Total Expenses to Prosecute Statement of Intent	\$3,762,290.43
Total Rate Case Expenses at issue in this proceeding	\$2,018,845.71



RATE SCHEDULE:	TABLE OF CONTENTS	
APPLICABLE TO:	City of Dallas and All Environs Customers	REVISION: 1 DATE: 09/04/09
EFFECTIVE DATE:	09/29/09	PAGE: 1 OF 1

## RATE CASE EXPENSE SURCHARGE

### A. APPLICABILITY

The Rate Case Expense Surcharge (RCE) rate as set forth in Section (B) below is pursuant to **Final Order in GUD 9787**. This rate shall apply to the following rate schedules of Atmos Mid-Tex in the City of Dallas and in all unincorporated areas served.

### B. RCE RATE

Residential Customers:	\$ 0.47 per month
Commercial Customers:	\$ 1.39 per month
Industrial and Transportation Customers:	\$ 20.82 per month

This rate will be in effect for approximately 12 months until all approved and expended rate case expenses are recovered from the applicable customer classes as documented in the compliance filing on rate case expense recovery for GUD 9787.

### C. OTHER ADJUSTMENTS

Taxes: Plus applicable taxes and fees (including franchises fees) related to above.

### D. CONDITIONS

Subject to all applicable laws and orders, and the Company's rules and regulations on file with the regulatory authority.

## RAILROAD COMMISSION OF TEXAS

SEVERED RATE CASE EXPENSES  
FROM DOCKET NO. 9762

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GAS UTILITIES DOCKET NO. 9787

### PROPOSED 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. GOV'T CODE ANN. Chapter 551, et seq. (Vernon 1994 & Supp. 2009). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

### FINDINGS OF FACT

1. On October 26, 2007, Atmos Energy Mid-Tex filed a Statement of Intent to increase gas utility rates in the unincorporated areas of its Mid-Tex Division. The filing was docketed as Gas Utilities Docket No. 9762.
2. In addition to the Statement of Intent that was filed to change rates within the unincorporated areas served by Atmos Mid-Tex, the company also filed a Statement of Intent with all of the municipalities served by the utility.
3. Several municipalities reached an agreement with Atmos Mid-Tex regarding the proposed rate increase and several municipalities denied the proposed rate increase. Atmos Mid-Tex filed petitions for *de novo* review of the denial of the Statement of Intent by various municipalities that denied that rate request. Those cases were consolidated into GUD No. 9762.
4. On February 18, 2007, the Railroad Commission severed consideration of rate case expenses into this docket.
5. The Atmos Texas Municipality (ATM) intervened in GUD No 9762: Austin, Balch Springs, Bandera, Belton, Bryan, Burnet, Cameron, Cisco, Clifton, Coleman, Copperas Cove, Corsicana, Denton, Dublin, Electra, Fredericksburg, Frost, Gatesville, Georgetown, Goldthwaite, Granbury, Grandview, Greenville, Groesbeck, Hamilton, Henrietta, Hillsboro, Hutto, Lampasas, Leander, Llano, Longview, Lometa, Mexia, Olney, Pflugerville, Ranger, Riesel, Round Rock, San Saba, Somerville, Star Harbor, Thorndale, Trinidad, Whitney, and

Wortham. In addition to ATM the City of Dallas also intervened.

6. The State of Texas intervened in this case on behalf of State agencies. The Industrial Gas Users (IGU), Railroad Commission of Texas (Staff), and Coserv Gas, Ltd also intervened.
7. On February 11, 2008, Atmos Mid-Tex reached an agreement with several municipalities (February Settlement). As a direct result of the settlement agreement Atmos Mid-Tex filed a notice of withdrawal of petitions for review from the actions of the following municipalities: Austin, Balch Springs, Bandera, Bartlett, Belton, Blooming Grove, Bryan, Caldwell, Cameron, Cedar Park, Clifton, Chandler, Chillicothe, Commerce, Copperas Cove, Corsicana, Denton, Electra, Fredericksburg, Gatesville, Georgetown, Goldthwaite, Granger, Granbury, Greenville, Groesbeck, Hamilton, Henrietta, Hickory Creek, Hico, Hillsboro, Hutto, Kerens, Lampasas, Leander, Lometa, Longview, Mart, Mexia, Nevada, Olney, Pflugerville, Ranger, Reenville, Rice, Riesel, Rogers, Robert Lee, Round Rock, San Angelo, Sanger, Somerville, Star Harbor, Saint Joe, Sunnyvale, Talty, Trinidad, Trophy Club, Whitehouse, and Whitney.
8. As a result of the February Settlement, Atmos Mid-Tex filed a motion to dismiss the following proceedings: GUD Nos. 9763, 9764, 9771, 9777, 9781 and 9785.
9. On March 14, 2008, CoServ filed a Motion to Withdraw as an Intervenor indicating that CoServ and Atmos had resolved and settled the matters in dispute between them.
10. On, or about, January 23, 2008, the City of Dallas denied the requested rate increase, and reduced the rates then charged by Atmos Mid-Tex.
11. Atmos Mid-Tex appealed from the decision of the City of Dallas denying the increase requested in the Statement of Intent and filed a request for acceptance of supersedes bond and reinstatement of preexisting rates.
12. The Railroad Commission issued a Final Order setting rates in the City of Dallas and Environs served by Atmos Mid-Tex on June 24, 2008.
13. A notice of hearing was issued in this case on March 16, 2009.
14. The hearing in this matter was conducted on April 2, 2009.
15. The evidentiary record was closed on September 15, 2009.
16. The total expenses claimed by Atmos Mid-Tex in these proceedings were \$2,516,373.87. Of that amount, Atmos Mid-Tex claimed \$2,123,909.87 in actual expenses, and \$392,464.00 in estimated future expenses.

17. The total expenses claimed by the City of Dallas in these proceedings were \$539,425.91. Of that amount, the City of Dallas claimed \$469,425.91 in actual expenses, and \$70,000 in estimated future expenses.
18. The settlement with ACSC allowed for recovery from the ACSC municipalities \$842,705.90 in expenses for Atmos Mid-Tex and \$334,199.61 in expenses of the ACSC municipalities.
19. The settlement with ATM allowed for recovery from ATM municipalities \$125,801.74 in expenses for Atmos Mid-Tex and \$372,280.70 in expenses of the ATM municipalities.
20. The settlement with non-coalition cities allowed for recovery from those municipalities of \$68,446.43 in expenses for Atmos Mid-Tex.
21. Atmos Mid-Tex seeks the recovery of the remaining \$1,479,419.80 from the City of Dallas and the Environs customers.
22. The settlements occurred prior to February 29, 2008, and it is reasonable to allocate all costs incurred prior to that date to all parties participating in the proceedings.
23. As part of the decision to settle this proceeding several municipalities considered the impact of litigation expenses.
24. Allocation of the expenses to the other municipalities that are no longer in this proceeding would preclude recovery of reasonably incurred expenses by Atmos Mid-Tex.
25. After March 1, 2008, the only active intervenors participating in this proceeding were the City of Dallas, and the State of Texas.
26. It is reasonable to assign the expenses after March 1, 2008 to the entities participating in this proceeding.
27. Atmos Mid-Tex seeks the recovery of \$23,750.00 in expenses associated with the production of documents by Ernst and Young in support of its annual audit.
28. In support of this request Atmos Mid-Tex produced a two-page invoice prepared by Ernst for the recovery.
29. The documents produced by Ernst and Young were available for review by all participants to the proceedings.
30. The documents in support of this expense item do not itemize the expenses and do not

include any information regarding the amount of work done, the originality of the work the date the work was performed, the hours required to accomplish the task, the billing rate, the number of people assigned to the task, the complexity of the work, the time and labor required to accomplish the work, and the nature, extent, and difficulty of the work.

31. In the underlying rate proceeding, Atmos Mid-Tex proposed the adoption of a rate review mechanism (RRM).
32. All of the settling municipalities adopted the RRM.
33. The Examiners in the underlying proceeding recommended adoption of a modified RRM.
34. After the Proposal for Decision was issued in GUD No. 9732, Atmos Mid-Tex withdrew its request for an RRM.
35. Atmos Mid-Tex withdrew its request because the company concluded that the (1) City of Dallas would under no circumstances work with the company to implement the RRM and (2) because Atmos Mid-Tex was mindful of the settlement it reached with the other 438 cities that included the RRM.
36. The factors that formed the basis of the decision to withdraw the RRM were known before the commencement of the hearing.
37. Withdrawal of the RRM prior to the commencement of the hearing would have avoided unnecessary litigation expenses.
38. Since the denial of the proposed rate increase at the municipal level the City of Dallas maintained its position that the proposed RRM was unworkable.
39. The potential was present before the hearing that a litigated proceeding would result in an approved RRM that was different from the proposed RRM.
40. Based on the two factors set out in Finding of Fact No. 32 above, it was not reasonable to wait until after the issuance of the Proposal for Decision to withdraw its request for an RRM. The City of Dallas made its refusal to consider the RRM clear at the municipal level and the potential that a litigated proceeding would result in an approved RRM that was different from the proposed RRM was apparent prior to the commencement of the hearing.
41. Atmos Mid-Tex approximated the expenses related to the RRM issues at \$60,742 for the entire proceeding.
42. Expenses related to RRM litigation from the commencement of the hearing to the issuance

of the Proposal for Decision could have been avoided by a timely withdrawal of the proposed RRM and it is not reasonable for Atmos Mid-Tex to recover expenses associated with litigation of the RRM during that period.

43. The case was pending before the Railroad Commission for nine months and it is reasonable to average the expenses related to that period at \$6749 per month.
44. The period from the commencement of the hearing to the issuance of the Proposal for Decision is approximately two months and it is reasonable to estimate an expenditure of approximately \$13,498 in RRM-related litigation expenses.
45. Atmos Mid-Tex seeks the recovery of \$112,840.00 in expenses associated with the consulting work and prepared testimony of consultants with C.H. Guernsey and Company.
46. Evidence in the record established that other consultants charged from \$10,000 to \$80,000 for the same or similar work.
47. The engagement letter presented by C.H. Guernsey and Company Consulting to Atmos Mid-Tex indicated that the completion of the initial investigation, the completion of a report/testimony and the early stages of a rate proceeding typically cost between \$25,000 and \$35,000.
48. Based upon the invoices provided C.H. Guernsey and Company had at least five individuals working on GUD No. 9732.
49. The first invoice, totaling \$37,654.44, submitted by C.H. Guernsey and Company Consulting exceeded the estimated amount for the completion of the initial investigation, the completion of a report/testimony and the early stages of a rate proceeding.
50. There was no description of the work performed by the Principal Consultant and the Senior Analyst of C.H. Guernsey and Company Consulting.
51. The documents in support of the expense related to these individuals do not itemize the expenses, describe the work done, the hours required to accomplish a specific task, the complexity of the work performed by these individuals, the originality of the work, the novelty of the work, the time and labor required to accomplish the work, and the nature, extent, and difficulty of the work, and whether there was any duplication of effort.
52. The Principal Consultant and the Senior Analyst billed a total of \$57,800 during the underlying proceedings and removal of a portion of those expenses is reasonable as the work cannot be evaluated based upon the invoices submitted. An adjustment of \$50,000 is reasonable and would allow recovery for expenses associated with preparation and

attendance at the hearing in GUD No. 9762.

53. Consultants with Towers Perrin Consulting provided testimony on behalf of Atmos Mid-Tex during the hearing. The invoice submitted by Towers Perrin Consulting reflected total expense of \$32,549.92. The billing rate for two consultants was \$925 per hour and \$350 per hour.
54. Towers Perrin Consulting was previously retained as a consultant by Atmos Mid-Tex to the filing of these proceedings under a flat-fee agreement.
55. Pursuant to the flat-fee agreement Towers Perrin Consulting would provide the following services: (1) Retirement and Actuarial Consulting Services, (2) Health and Welfare Actuarial and Consulting Services, (3) Executive Compensation Consulting Services, (4) Risk Management Actuarial Services; and, (4) Compensation Outsourcing.
56. As compensation for the flat-fee agreement Atmos Mid-Tex agreed to provide a flat fee of \$1,019,000.
57. The flat-fee compensation \$1,019,000 was included in the base rates approved by the Railroad Commission and Atmos Mid-Tex is recovering that fee on an annual basis through the rates charged to customers.
58. Atmos Mid-Tex reduced its expense request for expenses related to the work of Towers Perrin Consulting to \$11,187.42 instead of \$32,549.92.
59. The documents in support of the expense related to the services provided by the consultants of Towers Perrin do not itemize the expenses, describe the work done, the hours required to accomplish a specific task, the complexity of the work performed by these individuals, the originality of the work, the novelty of the work, the time and labor required to accomplish the work, and the nature, extent, and difficulty of the work, and whether there was any duplication of effort.
60. The consulting services and testimony provided by Towers Perrin Consulting during the hearing were related to the subject matter of the flat-fee agreement and appear to be within the scope of work detailed in the engagement letter.
61. Dane Watson, a consulting expert from Alliance Consulting Group, retained by Atmos Mid-Tex was scheduled to testify on March 31, 2008.
62. The pace of the proceeding accelerated and Atmos Mid-Tex had Mr. Watson available prior to that date in the event that Mr. Watson would be able to take the stand.

63. No other expenses were incurred for witnesses who were available to testify and did not testify.
64. It was reasonable to have one witness appear early in the event that the pace of the proceeding accelerated.
65. Airfare expenses paid by Alan Lovinger, an energy consultant with the firm of Brown, Williams, Moorhea & Quinn, Inc. were for economy class travel.
66. Atmos Mid-Tex engaged fewer attorneys in this rate proceeding than in GUD No. 9670.
67. The billing records submitted by Atmos Mid-Tex do not reflect any instance where the work of the attorneys was duplicated or overstaffed.
68. Atmos Mid-Tex managed the outside team of lawyers retained to handle GUD No. 9762 and this proceeding by ensuring that there was no duplication of effort and that the case was not overstaffed.
69. Billing by attorneys in excess of twelve hours per day raises issues of efficiency and adequate management of personnel during a hearing.
70. The outside team of lawyers logged eleven entries in excess of twelve hours: Seven occurred during the hearing on the merits, three involved travel to and from the City of Dallas, and the remaining entry as for six minutes in excess of twelve hours.
71. It is reasonable that on certain occasion during a hearing a lawyer may be required to log more than twelve hours during a hearing.
72. Limiting billing to twelve hours when traveling to consult with clients and witnesses may result in added expenses to avoid a twelve-hour billing cap. Specifically, lawyers may be required to spend the night in order to avoid the theoretical cap.
73. The billing in excess of twelve hours a day reflected in the record of GUD No. 9762 is reasonable.
74. The billing records of provided to Atmos Mid-Tex by the outside legal team did not provide information regarding the rates charged by the individual attorneys.
75. The billing rates of several of the attorneys on the outside legal team increased during the hearing.
76. It is not unusual for lawyers and consultants to raise rates while a proceeding is pending and



the periodic increases may represent changes in the market that occur over time.

77. The engagement agreement between Atmos Mid-Tex and the outside legal firm provided for periodic increases to the rates of the attorneys assigned to GUD No. 9762 and this case.
78. It is not uncommon for outside legal and consulting firm to include a provision in the engagement agreement that allows for the periodic increase in rates.
79. The parties agree that rates charged by attorneys practicing before the Commission range from \$150 to \$450.
80. In the absence of any contravening evidence, the range charged by other attorneys provides guidance as to the reasonableness of the rate charged by a particular attorney.
81. The range does not necessarily establish that the rate for a particular attorney is a just and reasonable.
82. Evidence in the hearing established that the outside legal firm charged lower rates in other rate proceedings for certain attorneys.
83. The rate charged by a particular attorney in other rate proceedings is evidence bearing upon the reasonableness of the rate charged by that same attorney in this proceeding.
84. In three cases, particular attorneys of the outside legal team who participated in this case charged a lower rate in other proceeding before the Railroad Commission and before the Public Utility Commission.
85. The rates charged by the same attorneys in other cases are evidence that those lower rates are reasonable for the services and skill set of the particular attorney; and, it is unreasonable for Atmos Mid-Tex to pay higher rates for the same services in this case.
86. The City of Dallas engaged Diversified Utility Consultants as a consultant in this proceeding.
87. Several of the invoices submitted by Diversified Utility Consultants included an entry that stated that described the work as "Review Information."
88. The invoice entry does not itemize the expenses, describe the work done, the hours required to accomplish a specific task, the complexity of the work performed by these individuals, the originality of the work, the novelty of the work, the time and labor required to accomplish the work, and the nature, extent, and difficulty of the work, and whether there was any duplication of effort.

89. The City of Dallas made an adjustment to remove any duplication of services from the rate request.
90. James Brazell and Jacob Pous testified in support of the rate case expense request of the city of Dallas.
91. The initial draft of testimony prepared by James Brazell duplicated the testimony filed by Jacob Pous.
92. The City of Dallas adjusted its rate case expense request by \$9,893.50 in order to remove the expenses associated with the preparation of the duplicate testimony.
93. The consultant for the City of Dallas, billing at a rate of \$235.00 per hour, included a billing entry for a trip to retrieve copies of documentation.
94. Matters easily delegable to non-professional or less experienced consultants and associates should not be billed at the same rate as matters that require the technical and legal expertise of highly skilled and experienced consultants and attorneys.
95. It is reasonable to remove \$101.83 of the proposed rate case expenses related to copying and filing documents by highly trained and technical consultants.
96. Based upon the adjustments set forth above, Atmos Mid-Tex will recover \$1,365,933.92. Of that amount, \$973,469.92 are actual expenses and \$392,464.00 are estimated future expenses.
97. Based upon the adjustments set forth above, the City of Dallas will recover \$533,006.58. Of that amount, \$463,006.58 are actual expenses and \$70,000 are estimated future expenses.
98. The Railroad Commission awarded a rate increase for Atmos Mid-Tex and not a rate decrease. Further, the rate case expenses exceed the rate increase awarded.
99. Allocation of expenses incurred prior to February 29, 2008 by Atmos Mid-Tex based on usage is reasonable.
100. A rate case expense surcharge of \$0.47 per Mcf for Residential customers, \$1.39 per Mcf for Commercial customers, and \$20.82 for Industrial and Transportation customers. These rates are reflected in the attached Rate Case Expense Tariff.
101. It is reasonable to allow the utility an interest carrying charge on the un-recovered monthly balance at a rate equal to the deposit interest rate set annually each December by the Public Utility Commission.

102. It is reasonable that Atmos Mid-Tex file a report detailing recovery with the Commission 45 days after the end of June and December identifying the beginning balance for the period, the recovery by month with monthly volumes the interest calculation and the ending balance. It is reasonable that the report include a reconciliation of the estimated rate case expense approved by providing invoices submitted to the total authorized recovery of the estimated rate case expense.

### **CONCLUSIONS OF LAW**

1. Atmos Mid-Tex is a "Gas Utility" as defined in TEX. UTIL. CODE ANN. §101.003(7) (Vernon 1998 & Supp. 2005) and § 121.001 (Vernon 1998 & Supp. 2005) and is therefore subject to the jurisdiction of the Railroad Commission ("Commission") of Texas.
2. The Commission has jurisdiction over the utility's Statement of Intent under TEX. UTIL. CODE ANN. §§ 102.001, 104.001, 104.001, and §104.201 (Vernon 1998 & Supp. 2008).
3. Under TEX. UTIL. CODE ANN. § 102.001 (Vernon 1998 & 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. A "test year" is defined as the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a gas utility are available, TEX. GOV'T CODE ANN. §§ 101.003(16).
5. This Statement of Intent was processed in accordance with the requirements of the Gas Utility Regulatory Act ("GURA"), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-2001.902 (Vernon 2000 & Supp. 2008) ("APA").
6. In accordance with the stated purpose of the Texas Utilities Code, Subtitle A, expressed under TEX. UTIL. CODE ANN. §101.002 (Vernon 1998 & Supp. 2008), the Commission has assured that the rates, operations, and services established in this docket are just and reasonable to customers and to the utilities.
7. TEX. UTIL. CODE ANN. §104.107 (Vernon 1998 & Supp. 2008) provides the Commission authority to suspend the operation of the schedule of proposed rates for 150 days from the date the schedule would otherwise go into effect.
8. In accordance with TEX. UTIL. CODE §104.103 (Vernon 1998 and Supp. 2008), 16 TEX. ADMIN. CODE ANN. § 7.230 (2002), and 16 TEX. ADMIN. CODE ANN. § 7.235 (2008),

adequate notice was properly provided.

9. In accordance with the provisions of TEX. UTIL. CODE ANN. §104.102 (Vernon 1998 & Supp. 2008), 16 TEX. ADMIN. CODE ANN. § 7.205 (2002), and 16 TEX. ADMIN. CODE §7.210 (2008), BNG filed its Statement of Intent to change rates.
10. Each party seeking reimbursement for its rate case expenses has the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence, under 16 Tex. Admin. Code § 7.5530 (2008).
11. Any by a utility to establish its cost of service is not automatically recoverable as a rate case expense. *City of Port Neches, City of Nederland, City of Groves and the Texas Gas Service Company v. Railroad Commission*, 212 S.W.3<sup>rd</sup> 565, 579-581 (Tex. App. – Austin 2006).
12. Atmos Mid-Tex and the City of Dallas have not met their burden of proof in accordance with the provisions of TEX. UTIL. CODE ANN. § 104.008 (Vernon 1998 and Supp. 2008) that the proposed rate changes are just and reasonable.
13. The rate case expenses set out in Finding of Fact Nos. 96 and 97 are reasonable and Atmos Mid-Tex and the City of Dallas are entitled to recover those rate case expenses through a surcharge on its rates under TEX. UTIL. CODE ANN. § 104.051 (Vernon 1998 & Supp. 2005).
14. The rate case expenses enumerated in Finding of Fact Nos. 96 and 97 are reasonable and comply with the requirements of 16 Tex. Admin. Code Ann. § 7.5530.
15. Atmos Mid-Tex is required by 16 TEX. ADMIN. CODE § 7.315 (2008) to file electronic tariffs incorporating rates consistent with this Order within thirty days of the date of this Order.

**IT IS THEREFORE ORDERED** that Atmos Mid-Tex is authorized to recover \$973,469.42 in actual rate case expenses and that Atmos Mid-Tex is authorized to recover up to \$392,464.00 in estimated future rate case expenses provided that Atmos Mid-Tex submit evidence of actual incurrence and the reasonableness and necessity of future expenses to the Gas Services Division of the Commission.

**IT IS THEREFORE ORDERED** that the City of Dallas is authorized to recover \$463,006.58 in actual rate case expenses and that City of Dallas is authorized to recover up to \$70,000 in estimated future rate case expenses provided that City of Dallas submit evidence of actual incurrence and the reasonableness and necessity of future expenses to the Gas Services Division of the Commission.

**IT IS FURTHER ORDERED** that a surcharge on rates shall be calculated on a per Mcf basis on all customer classes and implemented over a period of approximately twenty-four (12) months, commencing on the date this final order becomes effective.

**IT IS FURTHER ORDERED** that a recovery of rate case expenses over an approximate two-year period at a rate of \$0.47 per Mcf for Residential customers, \$1.39 per Mcf for Commercial Customers, and \$20.82 for Industrial and Transportation customers is reasonable.

**IT IS FURTHER ORDERED** that Atmos Mid-Tex file a report detailing recovery with the Commission 45 days after the end of June and December identifying the beginning balance for the period, the recovery by month with monthly volumes the interest calculation and the ending balance. The report shall include a reconciliation of the estimated rate case expense approved by providing invoices submitted to the total authorized recovery of the estimated rate case expense

**IT IS FURTHER ORDERED** that the rates charged by Atmos Mid-Tex as requested and to the extent adjusted in the findings of fact and conclusions of law are **HEREBY APPROVED** to be effective for gas consumed and for services delivered on and after the date of this Order.

**IT IS FURTHER ORDERED THAT** Atmos Mid-Tex may begin surcharging rates for gas delivered and for services delivered on and after the date of this Order. This Order will not be final and appealable until 20 days after a party is notified of the Commission's order. A party is 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 such motion is 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. Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

**SIGNED** this \_\_\_\_th day of October, 2009.

**RAILROAD COMMISSION OF TEXAS**

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**CHAIRMAN VICTOR G. CARRILLO**

---

**COMMISSIONER ELIZABETH A. JONES**

---

**COMMISSIONER MICHAEL L. WILLIAMS**

**ATTEST:**

---

**SECRETARY**



INVOICE NUMBER: US0123579066

January 3, 2008

Atmos Energy Corporation  
Mr. Fred Meisenheimer  
3 Lincoln Center  
5430 LBJ Freeway, Suite 600  
Dallas, TX 75240

1125

**PLEASE REMIT TO:**

Ernst & Young  
Bank of America  
P.O. Box 848111  
Dallas, TX 75284-8111

EIN: 34-6565596

BU: US007 CLIENT NUMBER: 60018160

Professional services rendered in connection with the intervener's review of workpapers related to the 2006 consolidated audit as part of the 2007 Mid-Tex division rate case filing.

**Total Due**

**\$7,500.00**

<b>Wire Transfer:</b> Wachovia Bank, N.A. Chapel Hill, NC ABA#: 031201467; Swift code: PNBPU33 Account name: Ernst & Young U.S. LLP A/C #: 2000032587256	<b>ACH Transfer:</b> Wachovia Bank, N.A. Chapel Hill, NC ABA#: 031000503 Account name: Ernst & Young U.S. LLP A/C #: 2000032587256
<b>Reference Client and Invoice Number on Electronic Transmittal</b>	

PLEASE PAY BY INVOICE NUMBER AND ENCLOSE REMITTANCE COPY  
Due Upon Receipt

CLIENT COPY

Exhibit 1



INVOICE NUMBER: US0123680968

May 1, 2008

Atmos Energy Corporation  
Mr. Fred Meisenheimer  
3 Lincoln Center  
5430 LBJ Freeway, Suite 600  
Dallas, TX 75240

CE 1125

BU: US007 CLIENT NUMBER: 60018160

## PLEASE REMIT TO:

Ernst & Young  
Bank of America  
P.O. Box 848107  
Dallas, TX 75284-8107

EIN: 34-6565596

For professional services rendered in connection with the following:

- Atmos Texas Municipalities Workpaper Review \$16,250.00 \*
- State of Illinois Annual Reconciliation \$19,850.00

*Total Due* **\$36,100.00**

Wire Transfer:

Wachovia Bank, N.A. Chapel Hill, NC  
ABA#: 031201467; Swift code: FBNPUS33  
Account name: Ernst & Young U.S. LLP  
A/C #: 2000032587256

ACH Transfer:

Wachovia Bank, N.A. Chapel Hill, NC  
ABA#: 031000503  
Account name: Ernst & Young U.S. LLP  
A/C #: 2000032587256

*Reference Client and Invoice Number on Electronic Transmittal*

PLEASE PAY BY INVOICE NUMBER AND ENCLOSE REMITTANCE COPY  
Due Upon Receipt

CLIENT COPY



GUD No. 9762  
Atmos Energy Corp., Mid-Tex Division  
ATM RFI Set No. 2  
Question No. 2-14  
Page 1 of 1

REQUEST:

At page 12 of his Direct Testimony, Mr. Meziere states, "In addition to the audit of internal control, EY also conducts an annual audit of Atmos Energy's books and records. In addition, EY performs reviews of Atmos Energy's quarterly financial statements." Please provide access in the Company's offices in Dallas to review all of the workpapers prepared by or for EY in connection with the annual audit of Atmos 2006 financial statements and all interim and quarterly audit work done since July 1, 2006.

RESPONSE:

The following response was prepared by or under the direct supervision of Mr. Chris Forsythe.

The Company has contacted Ernst & Young regarding the request for workpaper access. The fiscal year 2007 audit workpapers are still in progress and will not likely be available until at least the end of December 2007. The requested documentation will be made available for review at the Company's Dallas offices during normal business hours. Please contact Ms. Pamela Perry at 214-206-2882 to make arrangements to inspect the data at Atmos' Corporate office in Dallas.



Invoice Number	Invoice Date	Account Number	Page
2-389-12567	Nov 22, 2007	3158-0732-8	9 of 12

Picked up: Nov 19, 2007  
Payor: Shipper  
Cust Ref: GUD 9762  
Ref #2

- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$ 6694.04
- Fuel Surcharge - FedEx has applied a fuel surcharge of 16.50% to this shipment
- Distance Based Pricing, Zone 3
- 1st attempt Nov 19, 2007 at 09:21 AM.
- Original address - 807 BRAZOS ST/AUSTIN, TX 78701

Automation	INET	Sender	Recipient
Tracking ID	791801458158	Regulatory Support	JOHN R HAYS
Service Type	FedEx Priority Overnight	Atmos Energy Corporation	HAYS & OWENS, LLP
Package Type	Customer Packaging	5420 LBJ FWY	807 BRAZOS STE 500
Zone	03	DALLAS TX 75240 US	AUSTIN TX 78701 US
Packages	1		
Rated Weight	3.0 lbs, 1.4 kgs	Transportation Charge	25.60
Delivered	Nov 19, 2007 09:25	Earned Discount	-10.24
Svc Area	A1	Automation Bonus Discount	-2.50
Signed by	ARAMIREZ	Address Correction	10.00
FedEx Use	000000000/0001508/_	Courier Pickup Charge	0.00
		Fuel Surcharge	2.11
		Total Charge	USD 25.97

GUD 9762

Picked up: Nov 19, 2007  
Payor: Shipper  
Cust Ref: GUD 9762  
Ref #2

- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$ 6694.04
- Fuel Surcharge - FedEx has applied a fuel surcharge of 16.50% to this shipment.
- Distance Based Pricing, Zone 3
- FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.
- The package weight exceeds the maximum for the packaging type, therefore, FedEx Pak was rated as Customer Packaging.

Automation	INET	Sender	Recipient
Tracking ID	791801488387	Regulatory Support	LAURIE ROBINSON
Service Type	FedEx Priority Overnight	Atmos Energy Corporation	CLARK THOMAS WINTERS
Package Type	Customer Packaging	5420 LBJ FWY	300 W 6TH ST
Zone	03	DALLAS TX 75240 US	AUSTIN TX 78701 US
Packages	1		
Rated Weight	18.0 lbs, 8.2 kgs	Transportation Charge	47.30
Delivered	Nov 19, 2007 10:19	Earned Discount	-18.92
Svc Area	A1	Direct Signature	2.50
Signed by	J.CASTRO	Fuel Surcharge	3.90
FedEx Use	000000000/0001508/_	Courier Pickup Charge	0.00
		Automation Bonus Discount	-4.73
		Total Charge	USD 30.05

GUD 9762

Picked up: Nov 16, 2007  
Payor: Shipper  
Cust Ref: GUD 9762  
Ref #2

- Fuel Surcharge - FedEx has applied a fuel surcharge of 16.50% to this shipment.
- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$ 6694.04
- Distance Based Pricing, Zone 2
- FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.
- We calculated your charges based on a dimensional weight of 9.0 lbs., 12" x 12" x 12", divided by 164.

Automation	INET	Sender	Recipient
Tracking ID	792800343383	Regulatory Support	NICK FEHRENBACH
Service Type	FedEx Priority Overnight	Atmos Energy Corporation	CITY OF DALLAS
Package Type	Customer Packaging	5420 LBJ FWY	1500 MARILLA ST
Zone	02	DALLAS TX 75240 US	DALLAS TX 75201 US
Packages	1		
Actual Weight	2.0 lbs, 0.9 kgs	Transportation Charge	26.60
Rated Weight	9.0 lbs, 4.1 kgs	Courier Pickup Charge	0.00
Delivered	Nov 19, 2007 08:10	Fuel Surcharge	2.19
Svc Area	A1	Direct Signature	2.50
Signed by	B.CRUIZ	Automation Bonus Discount	-2.66
FedEx Use	000000000/0001486/_	Earned Discount	-10.64
		Total Charge	USD 17.99

GUD 9762



Invoice Number	Invoice Date	Account Number	Page
2-389-12567	Nov 22, 2007	3158-0732-8	10 of 12

Picked up Nov 16, 2007

Gndt Rat GUD 9762 ATM Sht 283

Ref 2

Payor Shipper

Ref 3

- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$5694.04
- Fuel Surcharge - FedEx has applied a fuel surcharge of 16.50% to this shipment.
- Distance Based Pricing, Zone 3
- FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.
- We calculated your charges based on a dimensional weight of 10.0 lbs., 13" x 12" x 12", divided by 194.

Automation	INET	Sender	Recipient
Tracking ID	792600355950	Regulatory Support	LAURIE ROBINSON
Service Type	FedEx Priority Overnight	Atmos Energy Corporation	CLARK THOMAS WINTERS
Package Type	Customer Packaging	5420 LBJ FWY	300 W 6TH ST
Zone	03	DALLAS TX 75240 US	AUSTIN TX 78701 US
Packages	1		
Actual Weight	2.0 lbs, 0.9 kgs	Transportation Charge	38.55
Rated Weight	10.0 lbs, 4.5 kgs	Earned Discount	-14.62
Delivered	Nov 19, 2007 10:19	Courier Pickup Charge	0.00
Svc Area	A1	Fuel Surcharge	3.01
Signed by	J.CASTRO	Direct Signature	2.50
FedEx Usa	000000000/0001508/_	Automation Bonus Discount	-3.66
		Total Charge	USD \$23.78

GUD 9762

USD

\$23.78

Picked up Nov 16, 2007

Gndt Rat GUD 9762 ATM Sht 283

Ref 2

Payor Shipper

Ref 3

- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$5694.04
- Fuel Surcharge - FedEx has applied a fuel surcharge of 16.50% to this shipment.
- Distance Based Pricing, Zone 3
- FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.
- We calculated your charges based on a dimensional weight of 10.0 lbs., 13" x 12" x 12", divided by 194.

Automation	INET	Sender	Recipient
Tracking ID	799224210820	Regulatory Support	JIM BOYLE
Service Type	FedEx Priority Overnight	Atmos Energy Corporation	HERRERA & BOYLE, PLLC
Package Type	Customer Packaging	5420 LBJ FWY	818 CONGRESS AVE
Zone	03	DALLAS TX 75240 US	AUSTIN TX 78701 US
Packages	1		
Actual Weight	2.0 lbs, 0.9 kgs	Transportation Charge	38.55
Rated Weight	10.0 lbs, 4.5 kgs	Earned Discount	-14.62
Delivered	Nov 10, 2007 09:20	Automation Bonus Discount	-3.08
Svc Area	A1	Direct Signature	2.50
Signed by	K.MUSGRAVE	Fuel Surcharge	3.01
FedEx Usa	000000000/0001508/_	Courier Pickup Charge	0.00
		Total Charge	USD \$23.78

GUD 9762

USD

\$23.78

Picked up Nov 16, 2007

Gndt Rat GUD 9762 ATM Sht 283

Ref 2

Payor Shipper

Ref 3

- Fuel Surcharge - FedEx has applied a fuel surcharge of 16.50% to this shipment.
- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$5694.04
- Distance Based Pricing, Zone 3

Automation	INET	Sender	Recipient
Tracking ID	799224213600	Regulatory Support	JACK POUS
Service Type	FedEx Priority Overnight	Atmos Energy Corporation	DIVERSIFIED UTILITY CONSULTANT
Package Type	Customer Packaging	5420 LBJ FWY	12113 ROXIE DR
Zone	03	DALLAS TX 75240 US	AUSTIN TX 78729 US
Packages	1		
Rated Weight	2.0 lbs, 0.9 kgs	Transportation Charge	24.20
Delivered	Nov 19, 2007 10:22	Automation Bonus Discount	-2.42
Svc Area	A1	Direct Signature	2.50
Signed by	S.COLEMAN	Fuel Surcharge	2.00
FedEx Usa	000000000/0001508/_	Courier Pickup Charge	0.00
		Earned Discount	-9.88
		Total Charge	USD \$16.60

GUD 9762

USD

\$16.60



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

October 5, 2007

Mr. Joe Christian  
Atmos Energy Corporation  
PO Box 223705  
Dallas, TX 75222-3705

Dear Mr. Christian:

As we discussed by telephone, this letter will confirm our understanding concerning our understanding my potential engagement as a cost of capital expert in the rate filing of Atmos Energy Corporation's (Atmos) Mid-Tex Division. I understand that this filing was originally filed with Atmos' Mid-Tex Division Cities on September 20, 2007 and an appeal filing and Environs filing is being prepared for filing with the Texas Railroad Commission in October 2007.

**Cost of Capital Investigation.** In the course of this engagement, I expect to investigate the cost of capital, including the cost of the common stock equity component. I will review any unique financial risks of the Company in the context of the extant market conditions and the anticipated market conditions during the period that the rates are likely to be in effect. In this analysis of the cost of common stock, I will use the accepted methods of Discounted Cash Flow and a Capital Asset Price Model.

**Preparation of Cost of Capital and Recommended Allowed Return Report and Testimony.** For inclusion in the rate filing of the Company, I will produce a report and/or testimony detailing the results of my study of the cost of capital of the Company and my recommendation of an allowed return on capital.

**Meet with City Representatives and Consultants.** As required, I will meet with representatives of the affected cities and their consultants.

**Review and Respond to Reports and Testimony of City Representatives and Consultants.** As required, I will respond to reports and testimony of city representatives and consultants concerning cost of capital issues in this proceeding. This response, if necessary, will include written or oral rebuttal expert testimony.

**Respond to Interrogatory Questions.** If the representatives of the cities or their consultants submit interrogatory questions, I will submit responses to these questions in a timely manner.

**Live Testimony.** If appropriate, I will testify concerning my findings and recommendations and be available for explanations of these findings and cross-examination, if necessary.

5555 North Grand Boulevard  
Oklahoma City, OK 73112-5507  
405.416.8100  
Fax 405.416.8111  
www.chguernsey.com

**Analytical Support.** As required, members of my staff and I will be available to assist the Company and its representatives in analysis and negotiations of economic, regulatory and financial matters related to this proceeding.

Providing quality, professional services—a GUERNSEY hallmark since 1928.

Exhibit 2

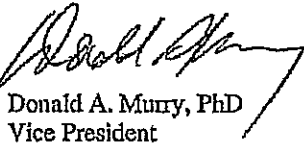
My billing rate for services in this matter is \$225.00 per hour. The billing rates of associates who may work on aspects of this engagement are Senior Consultant \$175.00 per hour, Senior Economist \$160.00 per hour, Consultant \$150.00 per hour and Support Staff \$55.00 per hour. We will submit a monthly invoice for professional services and actually incurred expenses.

The completion of the initial investigation, the completion of a report/testimony and the early stages of a rate proceeding typically cost in the neighborhood of \$25,000.00 to \$35,000.00. The effort required to respond to the cities and their consultants cannot be predicted at this time. A copy of our fee schedule is attached. Please let me know if you wish any additional information.

With this letter, I have attempted to capture our discussions and, from my experience, what the proceedings are likely to entail. If there are any corrections or additions to the anticipated tasks, please let me know. We can convert this or its revisions to a letter agreement or prepare one that meets your company's needs.

Sincerely,


C. H. GUERNSEY & COMPANY



Donald A. Murry, PhD  
Vice President

Enclosure

To accept this agreement as it appears, please execute two copies and return both originals to me. I will execute one original and send back to you for your records.



Authorized Signature of Company

Title: Director of Rates

Date: 10-5-2007

## G. H. GUERNSEY &amp; COMPANY

## FEE SCHEDULE - 2007

<u>Labor Category</u>	<u>Hourly Rate</u>
Principal Consultant	\$225
Senior Consultant	\$175
Senior Economist	\$160
Consultant	\$150
Associate	\$115
Sr. Analyst / Engineering Tech	\$100
Analyst / Tech	\$75
Support Staff	\$55
Non-Labor Expenses	@ Cost

Rates Effective 12/23/2006



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address: P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590816

ATMOS ENERGY CORP.  
ATTN: JOE CHRISTIAN  
PO BOX 223705  
DALLAS, TX. 75222-3705

Invoice Date : 11/28/2007  
Invoice # : 98322  
Project # : OK40049021  
Project Manager : MURRY, DON

For Professional Services Rendered through: 11/2/2007  
ATMOS MID-TX COC 2007

**Professional Fees**

Rate Schedule Labor

37,640.00

**Total Professional Fees**

**37,640.00**

**Expenses**

Regular Expenses

14.44

**Total Expenses**

**14.44**

**Amount Due This Invoice \*\***

**37,654.44**



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address: P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590816

Project : OK40049021 -- ATMOS MID-TX COC 2007

Invoice # :98322

Phase : \*\*\*\* -- ATMOS MID-TX COC 2007

**Labor**

**Class**

<u>Employee Name</u>	<u>Date</u>	<u>Hours</u>	<u>Amount</u>
<b>ECONOMIST</b>			
KNAPP, MICHAEL K.	10/06/2007	4.00	640.00
Financial analysis for DAM direct.			
	10/08/2007	4.00	640.00
Financial analysis for DAM direct.			
	10/09/2007	4.00	640.00
Financial analysis for DAM direct.			
	10/15/2007	1.00	160.00
Financial analysis for DAM direct.			
	10/16/2007	1.00	160.00
Financial analysis for DAM direct.			
	10/17/2007	3.00	480.00
Financial analysis for DAM direct.			
	10/19/2007	1.00	160.00
Financial analysis for DAM direct.			
	10/21/2007	6.00	960.00
Financial analysis for DAM direct.			
	10/22/2007	5.00	800.00
Financial analysis for DAM direct.			
	10/23/2007	2.00	320.00
Financial analysis for DAM direct.			
	10/24/2007	3.00	480.00
Financial analysis for DAM direct.			
		34.00	5,440.00
ZHU, ZHEN	10/08/2007	1.00	160.00
ROE determination analyses.			
	10/09/2007	2.00	320.00
	10/10/2007	2.00	320.00
	10/11/2007	3.00	480.00
	10/12/2007	1.00	160.00
	10/22/2007	1.00	160.00
ROE analyses.			
		10.00	1,600.00
CICCHETTI, MARK	10/15/2007	4.00	640.00
Industry/company/economic analysis.			
	10/16/2007	6.00	960.00
Industry/company/economic analysis.			
	10/17/2007	6.00	960.00
Industry/company/economic analysis.			
	10/18/2007	2.00	320.00
Industry/company/economic analysis.			
	10/19/2007	2.00	320.00
Industry/company/economic analysis.			
	10/23/2007	2.00	320.00
Direct testimony.			
	10/24/2007	8.00	1,280.00
Direct testimony.			
	10/25/2007	2.00	320.00
Direct testimony.			





**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address: P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590816

Project: OK40049021 - ATMOS MID-TX COC-2007

Invoice #: 98322

Phase: \*\*\*\* - ATMOS MID-TX COC 2007

**Labor**

**Class**

Employee Name	Date	Hours	Amount
ECONOMIST		32.00	5,120.00
Total: ECONOMIST		76.00	12,160.00

**PRINCIPAL**

MURRY, DON	10/07/2007	16.00	3,600.00
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Time charged to overhead pending receipt of contract  
for period ending 10/5/07.

Actual Hours worked are as follows:

10/1 4 hours  
10/2 4 hours  
10/3 4 hours  
10/4 2 hours  
10/5 2 hours

10/08/2007	4.00	900.00
10/09/2007	4.00	900.00
10/10/2007	4.00	900.00
10/11/2007	4.00	900.00
10/12/2007	6.00	1,350.00
10/15/2007	4.00	900.00
10/16/2007	2.00	450.00
10/17/2007	8.00	1,800.00
10/18/2007	5.00	1,125.00
10/19/2007	3.00	675.00
10/20/2007	5.00	1,125.00
10/21/2007	5.00	1,125.00
10/22/2007	4.00	900.00
10/23/2007	4.00	900.00
	78.00	17,550.00

**SR. ANALYST/ENGINEER/ARCHITECT TECH**

FLYNN, KAREN	10/06/2007	5.00	500.00
	10/07/2007	4.00	400.00
	10/08/2007	2.00	200.00
	10/09/2007	2.00	200.00
	10/10/2007	2.00	200.00
	10/11/2007	2.00	200.00
	10/12/2007	2.00	200.00
	10/13/2007	5.00	500.00
	10/14/2007	4.00	400.00
	10/15/2007	4.00	400.00
	10/16/2007	2.00	200.00
	10/18/2007	3.00	300.00
	10/19/2007	5.00	500.00
	10/21/2007	10.00	1,000.00
	10/22/2007	3.00	300.00
	10/23/2007	4.00	400.00
	10/24/2007	2.00	200.00
	10/25/2007	2.00	200.00



C. H. GUERNSEY & COMPANY  
Engineers • Architects • Consultants

Remittance Address: P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590816

Project: OK40049021 -- ATMOS MID-TX COC 2007

Invoice #: 98322

Phase: \*\*\*\* -- ATMOS MID-TX COC 2007

Labor

Class

Employee Name	Date	Hours	Amount
SR. ANALYST/ENGINEER/ARCHITECT TECH			
FLYNN, KAREN	10/26/2007	2.00	200.00
		65.00	6,500.00
SUPPORT STAFF			
SALYER, ANGELA	10/15/2007	1.00	55.00
	10/16/2007	1.00	55.00
	10/18/2007	2.00	110.00
	10/20/2007	1.00	55.00
	10/21/2007	3.00	165.00
	10/22/2007	4.00	220.00
	10/23/2007	5.50	302.50
	10/24/2007	4.50	247.50
	10/25/2007	4.00	220.00
		26.00	1,430.00
			<b>Labor</b>
			37,640.00

Expenses

Description

Description	Amount
POSTAGE	14.44
	<b>Expenses</b>
	14.44
Total	
	Labor :
	37,640.00
	Expense :
	14.44

Total Project: OK40049021 -- ATMOS MID-TX COC 2007

37,654.44



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address PO Box 96-0012  
Oklahoma City, OK 73106-0012  
Federal I.D. # 73-0590816

ATMOS ENERGY CORP.  
ATTN: JOE CHRISTIAN  
PO BOX 223705  
DALLAS, TX. 75222-3705

Invoice Date : 12/26/2007  
Invoice # : 98684  
Project # : OK40049021  
Project Manager : MURRY, DON

---

For Professional Services Rendered through: 11/30/2007

ATMOS MID-TX COC 2007

**Professional Fees**

Rate Schedule Labor	20,136.25
<b>Total Professional Fees</b>	

20,136.25

**Expenses**

Regular Expenses	24.96
<b>Total Expenses</b>	
<b>Amount Due This Invoice **</b>	

24.96

---

20,161.21



**G. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590818

Project : OK40049021 -- ATMOS MID-TX CQC 2007

Invoice # : 98584

Phase : \*\*\*\* -- ATMOS MID-TX CQC 2007

**Labor**

**Class**

Employee Name	Date	Hours	Amount
<b>ECONOMIST</b>			
KNAPP, MICHAEL K.	11/02/2007	1.00	160.00
Financial research			
	11/09/2007	1.00	160.00
Research for ATM DR 1-19			
	11/12/2007	2.50	400.00
Research for ACSC 4th DRs			
	11/13/2007	2.00	320.00
Research for ACSC 4th DRs			
	11/14/2007	8.00	1,280.00
Research for ACSC 4th DRs			
	11/15/2007	8.00	1,280.00
Research for ACSC 4th DRs			
	11/16/2007	8.00	1,280.00
Research for ACSC 4th DRs			
	11/17/2007	1.50	240.00
Research for responses to ATM 2nd DRs			
	11/19/2007	4.00	640.00
Research for responses to ATM 2nd DRs			
	11/20/2007	2.00	320.00
Research for responses to ATM 2nd DRs			
		38.00	6,080.00
ZHU, ZHEN	10/29/2007	1.00	160.00
ROE determination			
	11/02/2007	1.00	160.00
	11/05/2007	1.00	160.00
ROE analysis			
	11/06/2007	1.00	160.00
	11/16/2007	2.00	320.00
DR preparation			
		8.00	1,280.00
CICCHIETTI, MARK	11/15/2007	5.00	800.00
Data requests			
	11/16/2007	7.00	1,120.00
Data requests			
		12.00	1,920.00
<b>Total: ECONOMIST</b>		<b>56.00</b>	<b>8,960.00</b>
<b>PRINCIPAL</b>			
MURRY, DON	11/03/2007	4.00	640.00
Time incorrectly charged to wrong project			
Actual hours are for period ending 11/2/2007			
10/29 4 hours			
	11/06/2007	4.00	640.00
	11/17/2007	27.00	4,320.00



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address P.O. Box 98-0012  
Oklahoma City OK 73196-0012  
Federal I.D. # 73-0590816

Project: OK40049021 -- ATMOS MID-TX COC 2007

Invoice #: 98584

Phase: \*\*\*\* -- ATMOS MID-TX COC 2007

# Labor

## Class

Employee Name	Date	Hours	Amount
---------------	------	-------	--------

## PRINCIPAL

Time incorrectly charged to wrong project for period ending 11/16

Actual hours worked are as follows

11/12 2 hours  
11/13 2 hours  
11/14 7 hours  
11/15 8 hours  
11/16 8 hours

11/28/2007	4.00	900.00
	39.00	8,775.00

## SR. ANALYST/ENGINEER/ARCHITECT TECH

FLYNN, KAREN	11/15/2007	2.00	200.00
	11/16/2007	4.00	400.00
		6.00	600.00

## SUPPORT STAFF

SALYER, ANGELA	10/30/2007	1.00	55.00
	11/01/2007	0.75	41.25
	11/09/2007	1.00	55.00
	11/12/2007	1.00	55.00
	11/13/2007	3.00	165.00
	11/14/2007	4.00	220.00
	11/15/2007	8.00	440.00
	11/15/2007	2.00	110.00
	11/16/2007	8.00	440.00
	11/16/2007	2.00	110.00
	11/20/2007	2.00	110.00
		32.75	1,801.25

Labor 20,136.25

## Expenses

Description	Amount
-------------	--------

POSTAGE	24.96
---------	-------

Expenses 24.96

## Total

Labor :	20,136.25
Expense :	24.96

Total Project: OK40049021 -- ATMOS MID-TX COC 2007

20,161.21



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address: P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590816

---

ATMOS ENERGY CORP.  
ATTN: JOE CHRISTIAN  
PO BOX 223705  
DALLAS, TX. 75222-3705

Invoice Date : 1/8/2008  
Invoice # : 98734  
Project # : OK40049021  
Project Manager : MURRY, DON

---

For Professional Services Rendered through: 12/31/2007  
ATMOS MID-TX COC 2007

**Professional Fees**

Rate Schedule Labor 4,210.00

Total Professional Fees

4,210.00

Amount Due This Invoice \*\*

4,210.00



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address: P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590816

Project : OK40049021 – ATMOS MID-TX COC 2007

Invoice # :98734

Phase : \*\*\*\* – ATMOS MID-TX COC 2007

**Labor**

Class	Employee Name	Date	Hours	Amount
ECONOMIST				
	KNAPP, MICHAEL K.	12/11/2007	6.00	960.00
	Review and analysis of Hughes NG orders.			
PRINCIPAL				
	MURRY, DON	12/09/2007	6.00	1,350.00
	Time incorrectly charged to wrong project for period ending 12/7/2007.			
	Actual Hours for this project are as follows:			
	12/5 4 hours			
	12/6 2 hours			
		12/11/2007	4.00	900.00
			10.00	2,250.00
SR. ANALYST/ENGINEER/ARCHITECT TECH				
	FLYNN, KAREN	12/03/2007	8.00	800.00
		12/04/2007	2.00	200.00
			10.00	1,000.00

Total Project: OK40049021 – ATMOS MID-TX COC 2007

4,210.00



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Residence Address P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0580816

ATMOS ENERGY CORP.  
ATTN: JOE CHRISTIAN  
PO BOX 223705  
DALLAS, TX. 75222-3705

Invoice Date : 2/18/2008  
Invoice # : 89043  
Project # : OK40049021  
Project Manager : MURRY, DON

For Professional Services Rendered through: 2/1/2008  
ATMOS MID-TX COC 2007

Professional Fees

Rate Schedule Labor 2,840.00

Total Professional Fees

2,840.00

Amount Due This Invoice \*\*

2,840.00





**G. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address P.O. Box 98-0012  
Oklahoma City, OK 73198-0012  
Federal I.D. # 73-0590818

Project: OK40049021 - ATMOS MID-TX COC 2007

Invoice #: 99043

Phase : \*\*\*\* - ATMOS MID-TX COC 2007

**Labor**

**Class**

Employee Name	Date	Hours	Amount
<b>CONSULTING ECONOMIST</b>			
MURRY, DON	01/25/2008	2.00	600.00
	01/28/2008	4.00	1,000.00
	01/29/2008	4.00	1,000.00
		10.00	2,500.00
<b>ECONOMIST</b>			
KNAPP, MICHAEL K.	01/29/2008	2.00	340.00
Research of DUCI for rebuttal.			

**Labor** 2,840.00

**Total**

**Labor :** 2,840.00  
**Expense :** 0.00

**Total Project: OK40049021 - ATMOS MID-TX COC 2007**

**2,840.00**



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal ID. # 73-0590816

ATMOS ENERGY CORP.  
ATTN: JOE CHRISTIAN  
PO BOX 223705  
DALLAS, TX. 75222-3705

Invoice Date : 3/31/2008  
Invoice # : 99334  
Project # : OK40049021  
Project Manager : MURRY, DON

For Professional Services Rendered through: 2/29/2008  
ATMOS MID-TX COC 2007

Professional Fees

Rate Schedule Labor

2,445.00

Total Professional Fees

2,445.00

Amount Due This Invoice \*\*

2,445.00


**C. H. GUERNSEY & COMPANY**  
 Engineers • Architects • Consultants

 Pamillunco Address P.O. Box 96-0012  
 Oklahoma City, OK 73198-0012  
 Federal I.D. # 73-0590818

Project: OK40049021 -- ATMOS MID-TX COC 2007

Invoice # :99334

Phase : \*\*\* -- ATMOS MID-TX COC 2007

**Labor**
**Class**

Employee Name	Date	Hours	Amount
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**CONSULTING ECONOMIST**

MURRY, DON	02/16/2008	8.00	2,000.00
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Time Incorrectly charged to wrong project for period ending 2/8/08.

Actual Hours worked are as follows:

2/5 2 hours

2/6 2 hours

2/8 4 hours

**ECONOMIST**

KNAPP, MICHAEL K.	02/08/2008	1.00	170.00
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Research for ATM RFP

**SUPPORT STAFF**

SALYER, ANGELA	02/05/2008	1.00	55.00
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	02/06/2008	2.00	110.00
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	02/07/2008	2.00	110.00
--	------------	------	--------

		5.00	275.00
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<b>Labor</b>	<b>2,445.00</b>
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**Total**

<b>Labor :</b>	<b>2,445.00</b>
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<b>Expense :</b>	<b>0.00</b>
------------------	-------------

Total Project: OK40049021 -- ATMOS MID-TX COC 2007

2,445.00



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address: P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590816

ATMOS ENERGY CORP.  
ATTN: JOE CHRISTIAN  
PO BOX 223705  
DALLAS, TX. 75222-3705

Invoice Date : 2008-04-30  
Invoice # : 99568  
Project # : OK40049021  
Project Manager : MURRY, DON

For Professional Services Rendered through: 2008-03-31  
ATMOS MID-TX COC 2007

**Professional Fees**

Rate Schedule Labor

26,203.75

**Total Professional Fees**

**26,203.75**

**Expenses**

Regular Expenses

13.86

**Total Expenses**

**13.86**

**Amount Due This Invoice \*\***

**26,217.61**


**C. H. GUERNSEY & COMPANY**  
 Engineers • Architects • Consultants

 Remittance Address, P.O. Box 98-0012  
 Oklahoma City, OK 73188-0012  
 Federal I.D. # 73-0590818

Project: OK40049021 - ATMOS MID-TX COC 2007

INVOICE # 99555

Phase: \*\*\*\* - ATMOS MID-TX COC 2007

**Labor****Class**

Employee Name	Date	Hours	Amount
<b>CONSULTING ECONOMIST</b>			
MURRY, DON	03/07/2008	2.00	500.00
	03/16/2008	15.00	3,750.00
Time incorrectly charged to wrong project for period ending 3/14/08.			
Actual hours worked are as follows			
3/8	2 hours		
3/9	5 hours		
3/11	4 hours		
3/12	4 hours		
	03/23/2008	8.00	2,000.00
Hours incorrectly charged to wrong project for period ending 3/21/08.			
Actual hours worked are as follows			
3/17	1 hour		
3/18	4 hours		
3/20	3 hours		
		25.00	8,250.00
<b>ECONOMIST</b>			
KNAPP, MICHAEL K.	03/08/2008	2.00	340.00
Review and analysis of Copeland and Miraveto for rebuttal.			
	03/10/2008	4.00	680.00
Review and analysis of Copeland and Miraveto for rebuttal			
	03/11/2008	2.50	425.00
Review and analysis of Copeland and Miraveto for rebuttal.			
	03/12/2008	1.00	170.00
Review and analysis of Copeland and Miraveto for rebuttal.			
	03/13/2008	6.00	1,020.00
Review and analysis of Copeland and Miraveto for rebuttal.			
	03/17/2008	1.00	170.00
Research for DAM rebuttal.			
	03/28/2008	3.00	510.00
Research for hearing.			
		18.50	3,315.00
ZHU, ZHEN	03/07/2008	3.00	510.00
Review the testimony.			
	03/10/2008	3.25	552.50
Risk premium literature search and analyses			
	03/11/2008	3.00	510.00
		9.25	1,572.50
CICCHETTI, MARK	03/08/2008	6.00	1,020.00
Rebuttal testimony.			
	03/09/2008	6.00	1,020.00
Rebuttal testimony			
	03/10/2008	8.00	1,380.00

Page: 1



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590810

~~Project: OK40049021 - ATMOS MID-TX COC 2007~~

INVOICE # 193668

Phase : \*\*\*\* -- ATMOS MID-TX COC 2007

Labor				
Class	Employee Name	Date	Hours	Amount
ECONOMIST				
	Rebuttal testimony.			
		03/11/2008	8.00	1,360.00
	Rebuttal testimony			
		03/12/2008	8.00	1,360.00
	Rebuttal testimony			
		03/13/2008	2.00	340.00
	Rebuttal testimony			
		03/14/2008	2.00	340.00
	Rebuttal testimony.			
		03/18/2008	6.00	1,020.00
	Rebuttal testimony			
		03/19/2008	3.00	510.00
	Cross examination.			
		03/20/2008	3.00	510.00
	Cross examination			
		03/21/2008	4.00	680.00
	Cross examination			
		03/24/2008	3.00	510.00
	Cross-examination.			
		03/27/2008	6.00	1,020.00
	Cross-examination.			
		03/28/2008	5.00	850.00
	Cross-examination			
			70.00	11,900.00
	Total: ECONOMIST		98.75	16,787.50
SR. ANALYST/ENGINEER/ARCHITECT TECH				
	FLYNN, KAREN	03/27/2008	8.00	800.00
		03/28/2008	4.00	400.00
			12.00	1,200.00
SUPPORT STAFF				
	SALYER, ANGELA	03/10/2008	2.00	110.00
		03/11/2008	6.00	330.00
		03/12/2008	6.00	330.00
		03/13/2008	6.00	330.00
		03/17/2008	5.75	318.25
		03/18/2008	1.00	55.00
		03/19/2008	1.00	55.00
		03/25/2008	3.00	165.00
		03/26/2008	2.00	110.00
		03/27/2008	2.00	110.00
		03/28/2008	1.00	55.00
			35.75	1,986.25
				26,203.75
				Labor

Exposures	Amount
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Page; 2



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address P.O. Box 98-0012  
 Oklahoma City, OK 73198-0012  
 Federal I.D. # 73-0590818

~~Project: OK40049021 - ATMOS-MID-TX COC-2007~~

**Invoice # : 99568**

Expenses		
Description		Amount
POSTAGE		13.86
	Expenses	13.86
Total	Labor :	26,203.75
	Expense :	13.86
Total Project: OK40049021 -- ATMOS MID-TX COC 2007		26,217.61

JULY-23-2008 10:23 PM

10-MARKVIEW-LHA

**C. H. GUERNS,**  
Engineers • ArchiRemittance Address:  
Oklahoma  
Fock**ATMOS ENERGY CORP.**  
**ATTN: JOE CHRISTIAN**  
**PO BOX 223705**  
**DALLAS, TX, 75222-3705****Invoice Date : 5/29/2008**  
**Invoice # : 99801**  
**Project # : OK40049021**  
**Project Manager : MURRY, DON**

---

**For Professional Services Rendered through: 5/2/2008**  
**ATMOS MID-TX COC 2007****Professional Fees**

Rate Schedule Labor

14,482.50

**Total Professional Fees****14,482.50****Expenses**

Regular Expenses

379.50

**Total Expenses****379.50****Amount Due This Invoice \*\*****14,862.00**



JUN-05-2008 16:03 From:

To: MARKVIEWLTHX


**C. H. GUERNS**  
 Engineers • Archt

 Remittance Address  
 Oklahoma  
 Fedt

Project : OK40049021 - ATMOS MID-TX COC 2007

Invoice # : 98

Phase : "" - ATMOS MID-TX COC 2007

**Labor****Class**

<u>Employee Name</u>	<u>Date</u>	<u>Hours</u>
<b>CONSULTING ECONOMIST</b>		
MURRY, DON	03/28/2008	20.00
Time incorrectly charged to wrong project for period ending 3/28/08.		
Actual hours worked are as follows		
3/26 6 hours		
3/27 8 hours		
3/28 4 hours		
Actual hours for period ending 4/4 are as follows		
3/30 4 hours		
	03/30/2008	10.00
	03/31/2008	5.00
	04/20/2008	4.00
Time incorrectly charged to wrong project for period ending 4/18/08. Actual hours worked are as follows		
4/15 2 hours		
4/16 2 hours		
		38.00
<b>ECONOMIST</b>		
KNAPP, MICHAEL K.	03/30/2008	1.00
Research for hearing		
	03/31/2008	1.00
Research for hearing		
	04/07/2008	3.00
Research and analysis for brief		
	04/15/2008	2.00
Research for reply brief		
		7.00
CICCHETTI, MARK	03/31/2008	2.00
Case preparation		
	04/07/2008	3.00
Review/edit brief/presentation		
	04/09/2008	1.00
Review brief.		
	04/15/2008	4.00
Post hearing brief.		
	04/16/2008	2.00
		12.00
<b>Total: ECONOMIST</b>		
		19.00
<b>SR. ANALYST/ENGINEER/ARCHITECT TECH</b>		
FLYNN, KAREN	04/22/2008	4.00

JUN-05-2008 16:03 From:

To: MARKVIEW.FHX

**C. H. GUERNS,**  
Engineers • ArchiRemittance Address  
Oklahoma  
Fitch

Project: OK40049021 -- ATMOS MID-TX COC 2007

Invoice # : 99

Phase: \*\*\*\* -- ATMOS MID-TX COC 2007

**Labor****Class****Employee Name****Date****Hours****SUPPORT STAFF**

SALYER, ANGELA

04/07/2008

2.00

5.50

**Labor****Expenses****Description**

AIRFARE

**Expenses****Total****Labor :****Expense :**

Total Project: OK40049021 -- ATMOS MID-TX COC 2007



**C. H. GUERNSEY & COMPANY**  
Engineers • Architects • Consultants

Remittance Address: P.O. Box 96-0012  
Oklahoma City, OK 73196-0012  
Federal I.D. # 73-0590816

ATMOS ENERGY CORP.  
ATTN: JOE CHRISTIAN  
PO BOX 223705  
DALLAS, TX. 75222-3705

Invoice Date : 6/25/2008  
Invoice # : 100070  
Project # : OK40049021  
Project Manager : MURRY, DON

---

For Professional Services Rendered through: 5/31/2008  
ATMOS MID-TX COC 2007

Professional Fees

Rate Schedule Labor

4,450.00

Total Professional Fees

4,450.00

Amount Due This Invoice \*\*

4,450.00



**TOWERS  
PERRIN**

May 20, 2008

Mr. Wynn McGregor  
Atmos Energy Corporation  
5430 LBJ Freeway #1800  
Dallas, TX 75240


Dear Wynn:

Enclosed is our invoice for work done in March 2008. The amounts on the fee summary are professional fees and include the 6.5% load and data processing charges where applicable. Travel and out-of-pocket expenses are invoiced as separate line items. For out-of-scope project work, we have deducted the 10% discount, and I have also enclosed the updated spreadsheet showing the details.

- ✓ **Executive Compensation (Out-of-Scope)** – Time spent by John Ellerman for serving as an expert witness in the Texas Rate case - \$32,549.92  
*\*NOTE: Invoice was \$36,072.42 before 10% reduction in fees*

We would appreciate it if you would process these invoices for payment as soon as possible. Please do not hesitate to contact me if you have any questions about the invoices, the 10% discount, or anything else you would like to discuss.

Sincerely,



Gary S. Thompson

GST:tbp

Enclosure

**Exhibit 3**

Please enter Invoice Number 5077695 on your check or wire payable to Towers Perrin.

For electronic transfer of funds, wire payment to the account of:  
Wachovia Bank, N.A., ABA Routing Number 031 201 467  
Beneficiary: Towers Perrin, Account Number 201 415 918 9691.

For payment by check, remit a copy of this invoice with your check to:  
Towers Perrin  
P.O. Box 8500  
S-6110  
Philadelphia, PA 19178-6110

May 20, 2008

Wynn McGregor  
VP - HR  
Almos Energy Corporation  
5430 LBJ Freeway #1800  
Dallas, TX 75240

Invoice No: 5077695

March 2008 - Texas Rate Case	Amount
Fees for Services Rendered	\$32,549.92
Total	\$32,549.92

Invoices are due upon receipt. Any balance outstanding 30 days after the date of the invoice will incur a late charge of the lesser of 1.0% or the maximum allowed by law for each month outstanding, beginning from the date of the invoice.

All questions concerning remittance instructions should be addressed to: Receivable Support Unit, Towers Perrin, 1500 Market Street, Philadelphia, PA 19102. We can also be contacted at [RSUCustomerService@towersperrin.com](mailto:RSUCustomerService@towersperrin.com) or telephone number: 215-246-6427 or fax number: 215-246-6240. Questions or written communications concerning a billing dispute and partial payments intended to constitute payments in full of outstanding charges should be addressed to your consultant.

# Atmos Energy Corporation

## Texas Rate Case

March 1 - 31, 2008

<div>Atmos Energy Corporation Texas Rate Case March 1 - 31, 2008</div>			
Consulting Staff			
John Ellerman	35	\$925	\$32,375
Sara Bivins	2	\$350	\$700
Research Insight			\$250
Consulting Professional Fees	37		\$33,325.00
Total Professional Fees			\$33,250.00
Administrative Load (6.5% of Consulting Professional Fees)			\$2,149.89
Expenses			
Airfare			\$257.50
Meals			\$172.83
Taxis, Trains, Parking			\$147.00
Use of Own Car			\$20.20
Total Expenses			\$597.53
(10% Discount on Professional Fees and Administrative Load)			-\$3,522.5
Total Invoice			\$32,549.92

GLD 9787  
ATTACHMENT NO. 5  
TO DALLAS RFI SET NO. 1  
QUESTION NO. 1-04

*file*  
TOWERS  
PERRIN

SCOPE OF WORK

January 18, 2008

Mr. Wynn McGregor  
Senior Vice President – Human Resources  
Atmos Energy Corporation  
5430 LBJ Freeway, #1800  
Dallas, TX 75240

Dear Wynn:

Confirming our recent conversations concerning a three year consulting Services Agreement, this agreement documents the Scope of Work agreed between Atmos Energy Corporation ("Atmos" or "you") and Towers Perrin, whereby Towers Perrin will provide certain services to Atmos in accordance with the language of our Master Agreement dated May 23, 2003. This Scope of Work is effective October 1, 2007 and will run through September 30, 2010, and is subject to the provisions of the Master Agreement.

Please review this Scope of Work, and unless you have questions or concerns we need to address, indicate your acceptance by having an appropriate representative of Atmos sign the enclosed copy and return it promptly to me.

1. Services — The services included under this Scope of Work are described in the attached document, Atmos Energy Corporation, Towers Perrin's Consulting Services and Fees, dated September 2007.
2. Fixed Fee and Expenses — As we have discussed, you will compensate Towers Perrin on a fixed fee basis for the Services in connection with the project. Our charges will consist of the following components for each of the three years unless adjustments are agreed to:



GUD 8787  
ATTACHMENT NO. 6  
TO DALLAS RFI SET NO. 1  
QUESTION NO. 1-04

Mr. Wynn McGregor  
January 18, 2008  
Page 2.

TOWERS  
PERRIN

- A fixed fee in the amount of \$1,019,000 for professional fees as follows:
  - Retirement and Actuarial Consulting Services: \$500,000  
[Approximately \$420,000 will be paid from pension trust]
  - Health and Welfare Actuarial and Consulting Services: \$180,000
  - Executive Compensation Consulting Services: \$100,000
  - Risk Management Actuarial Services: \$170,000
  - Compensation Outsourcing Services: \$ 69,000
  - Total \$1,019,000
- Reimbursement, at cost, of direct expenses reasonably incurred by us in connection with the performance of our Services, such as travel and other vendor expenses; and
- The amount of any tax or similar assessment based upon our charges.

NOTE: Details of all services provided above are detailed in the attachment to this Scope of Work. We will enter into separate Scopes of Work for discretionary project work referred to in the attachment to this Scope of Work.

3. **Invoicing and Payment** — We will continue to record our time and expenses and invoice you actual charges on a monthly basis as we have for the past several years. We will review our actual fees with you on a quarterly basis to review how they are tracking against the established fixed fees.

Invoices are due upon receipt. Any charge or portion of a charge outstanding 30 days after the date of the invoice will be subject to a late charge, which you agree to pay, equal to the lesser of 1.0% or the maximum allowed by law for each month that payment remains outstanding, beginning from the date of the invoice.

4. **No Fiduciary Obligations** — You acknowledge that Towers Perrin is not a fiduciary with respect to any employee benefit plan (as that term is defined under section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA")) sponsored, adopted or maintained by Atmos. You agree and acknowledge that the determination of whether the fees and other charges due under this Scope of Work can be paid from the assets of any employee benefit plan (as that term is defined under section 3(3) of ERISA) is solely your responsibility. Further, you agree and acknowledge that any statements, whether written or oral and including, but not

GUD 9787  
ATTACHMENT NO. 5  
TO DALLAS RFI SET NO. 1  
QUESTION NO. 1-04

Mr. Wynn McGregor  
January 18, 2008  
Page 3.

TOWERS  
PERRIN

limited to, invoices and any oral statements made by Towers Perrin personnel, with respect to the permissibility of paying fees or other charges due under this Scope of Work from the assets of any employee benefit plan are provided for guidance purposes only and are in no way to be considered advice or direction from Towers Perrin as to whether the payment of such fees or other charges from plan assets is, in fact, permissible under ERISA.

Please indicate your acceptance of this Scope of Work by having an appropriate representative of Atmos sign in the space provided below and returning a copy to me. Alternatively, for work to be performed under this Scope of Work, an appropriate representative of Atmos can authorize Towers Perrin to perform these projects by acknowledging acceptance of the terms described in this Scope of Work via e-mail.

TOWERS, PERRIN, FORSTER & CROSBY, INC.  
(TRADING AS TOWERS PERRIN)

By: [Signature]  
Principal

Accepted and agreed:

ATMOS ENERGY CORPORATION

By: [Signature]

Print Name: Wynn McGregor

Print Title: SVP - Human Resources

Date: 1-25-08

**SERVICE LIST**  
**Gas Utilities Docket No. 9787**  
**Rate Case Expense Severed from Gas Utilities**  
**Docket No. 09762, Interim Order**  
**Examiner: Gene Montes**  
**Co Examiner: Rose Ruiz**  
**Co Examiner: Frank Tomicek**

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