



## Legislation Text

---

File #: ID 17-707, Version: 1

---

### Agenda Information Sheet

**DEPARTMENT:** Legal Department

**CM/ ACM:** Aaron Leal, Interim City Attorney

**Date:** May 30, 2017

#### **SUBJECT**

Consider approval of a resolution by the City of Denton, Texas ("City"), either (i) approving a change in the rates of Atmos Energy Corporation, Mid-Tex Division ("Atmos") as a result of a settlement between Atmos and the Atmos Texas Municipalities ("ATM") under the Rate Review Mechanism and finding the rates set by the attached tariffs to be just and reasonable, OR (ii) finding that the 2017 Rate Review Mechanism filing of Atmos for a rate increase of \$57,400,000 is unjust and unreasonable and denying Atmos' proposed rate increase and, if desired, approving a different rate increase amount; finding that the meeting complied with the Open Meetings Act; declaring an effective date; and requiring delivery of the resolution to the company and legal counsel; and providing an effective date. [This item to be considered only if a Motion for Reconsideration of the foregoing agenda item is approved.]

#### **ATMOS TEXAS MUNICIPALITIES**

The City is a member of the Atmos Texas Municipalities (ATM). The ATM group was organized by a number of municipalities served by Atmos and has been represented by the law firm of Herrera & Boyle, PLLC (through Mr. Alfred R. Herrera). ATM also retained the services of a consulting firm, Utilitech, Inc. (Mr. Mike Brosch and Mr. Steve Carver) to assist in reviewing an application submitted by the Atmos Energy-Mid-Tex Division (Atmos) that seeks to increase its rates. Herrera & Boyle, PLLC and Utilitech, Inc. have participated in prior rate cases involving Atmos and have extensive knowledge and experience in rate matters affecting Atmos' rates, operations, and services.

#### **HISTORY OF PRIOR RATE INCREASES**

##### ***Increase Under Previous Version of RRM (Approved October 2010)***

On March 15, 2010, Atmos requested an increase of \$70.1 million in its system-wide rates. ATM and Atmos settled on an increase of \$27 million for prospective rates.

##### ***Increase Under Previous Version of RRM (Approved September 2011)***

On April 1, 2011, Atmos filed a request to increase rates system-wide by \$15.6 million. ATM and Atmos agreed to not increase base rates and permitted Atmos to recover \$6.6 million for the steel pipe replacement program.

##### ***General Rate Case (Approved December 2012)***

In January 2012, Atmos sought an increase of about \$49.1 million. Ultimately, the ATM cities and Atmos were not able to reach agreement on an increase and Atmos filed an appeal to the Railroad Commission of Texas. The Railroad Commission approved an

increase of about \$24.1 million, representing an increase in revenue of about 7%.

***Prior Increase Under Current RRM (July 2013)***

In the summer of 2013, Atmos and ATM entered into an agreement that approved a revised Rate Review Mechanism (RRM). The RRM approved in the summer of 2013 is the third iteration of that rate-setting mechanism.

On about July 15, 2013, Atmos submitted a request to increase rates under the current RRM. Atmos requested an increase in rates on a system-wide basis of \$22.7 million, which is an increase of about 5%. Following a series of settlement negotiations between Atmos' experts and ATM's experts, Atmos agreed to an increase of \$16.6 million, an increase in revenue of about 3.7%.

***Prior Increase Under the RRM (June 2014) - Atmos Filed Appeal With the Railroad Commission - Gas Utility Docket (GUD) No. 10359:***

On about February 28, 2014, Atmos filed its second request to increase rates under the current iteration of the RRM (the "2014 RRM") and requested a system-wide increase of about \$45.6 million (9.2% increase in revenue). ATM's consultants' preliminary assessment indicated that Atmos warranted at most an increase of \$26.6 million. A settlement was not reached, the ATM cities denied Atmos' proposed increase, and Atmos appealed ATM's denial of its revenue increase to the Railroad Commission. On appeal Atmos revised its request downward from \$45.6 million to \$43.8 million. Atmos implemented the full rates on June 1, 2014, subject to refund. The Commission held a hearing on September 3, 2014, and after the hearing, the hearing examiner proposed an increase of \$42.9 million, that is, only about \$860,000 less than Atmos requested.

***Prior Increase Under the RRM (May 2015):***

On February 27, 2015, Atmos submitted its third application under the current RRM seeking a *system-wide* rate increase of \$28.7 million ("2015 RRM"), which equates to an increase of about 5.6%. After review of Atmos' application, the Railroad Commission's proposal for decision in GUD No. 10359, and the Hearing Examiner's PFD for the 2014 RRM, ATM's Special Counsel and consultants concluded that if the matter were appealed to the Railroad Commission, the result would be an increase closer to about \$23 million.

Ultimately, ATM and Atmos settled the appeal related to Atmos' proposed increase for Atmos' 2014 RRM, and Atmos' 2015 RRM, for a combined increase in rates of about \$65.69 million, comprised on an increase of about \$43.82 million for its 2014 RRM and about \$21.87 million for its 2015 RRM.

***Prior Increase Under the RRM (May 2016):***

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

***Pending Increase Under RRM (May 2017):***

On about March 1, 2017, Atmos submitted its fifth and final application under the current RRM seeking a *system-wide* rate increase of \$57.4 million ("2017 RRM"), which equates to a base-rate increase of about 8.35%. After review of Atmos' application, the Railroad Commission's prior rulings, and Atmos' responses to requests for information submitted to Atmos by ATM's Special Counsel and consultants, ATM's consultants concluded that Atmos merited an increase of about \$32.1 million. ATM's Special Counsel presented its findings to Atmos, with which Atmos disagrees. Following negotiations with Atmos, Atmos agreed to an increase of \$48.0 million, which equates to an increase of about 7%.

**OPTIONS FOR CITY ACTION REGARDING ATMOS' 2017 RRM:**

The item requiring City action is Atmos' 2017 RRM. At this juncture, the ATM cities' options are as follows:

**Option 1.** To deny Atmos' requested increase under the 2017 RRM of about \$57.4 million and approve no increase;

**Option 2.** To deny Atmos' requested increase and approve an increase of no more than \$32.1 million for its 2017 RRM, based on ATM's consultants' preliminary report;

**Option 3.** To take no action and allow Atmos' proposed increase of \$57.4 million to go into effect; or

**Option 4.** To approve a settlement agreement that resolves the 2017 RRM with an increase in rates of \$48.0 million.

Note that under Option 1 and Option 2, Atmos has the right to appeal the ATM cities' decisions to the Railroad Commission of Texas and pending such an appeal has the right to implement its proposed increase of \$57.4 million effective June 1, 2017, subject to refund if the Commission's review later finds a lower amount is appropriate. Atmos would very likely file an appeal to the Railroad Commission should the ATM cities approve an increase less than \$48.0 million.

In an appeal to the Commission, Atmos would in all likelihood argue that the costs of appeal should be borne by only those cities that "caused" the appeal. Given the Commission's tendency to err in favor of utilities, Atmos would likely prevail. An appeal would increase the burden on ratepayers by adding rate case expenses, which would include both ATM's and Atmos' costs of preparing and prosecuting the appeal, and the costs of a hearing.

#### **RECOMMENDATION:**

ATM's Special Counsel recommends resolving the 2017 RRM with an increase of \$48.0 million.

If the ATM Cities reject Atmos' settlement offer, Atmos would likely appeal the cities' decision to the Railroad Commission. While there are a number of contested issues whose outcome is uncertain in an appeal, based on the Railroad Commission's history and prior decisions, ATM's Special Counsel and consultants are of the opinion that the Railroad Commission would reach a result not materially different than the settlement amount of \$48.0 million, and perhaps approve a higher increase.

Therefore, because of the risks of a litigated outcome, including the cost of litigation at the Railroad Commission, ATM's special counsel advises the ATM cities to accept a settlement that increases Atmos' revenue by about \$48.0 million over the current revenue Atmos is collecting.

An increase under the 2017 RRM of \$48.0 million over the base-rate revenue Atmos is *currently* collecting, represents an increase of about 8% in a customer's bill excluding the cost of gas, and an increase of about 3% - 4% including the cost of gas, as shown in the attached table.

The rate schedules to accomplish the increase are attached to the Resolution related to Atmos' 2017 RRM.

**The City should take action as soon as possible but no later than May 31, 2017.**

Respectfully submitted:  
Aaron Leal  
Interim City Attorney

Prepared By:  
Larry Collister  
Deputy City Attorney