

ORDINANCE NO. 06-11

**AN ORDINANCE DENYING THE RATE INCREASE
PROPOSED BY THE ATMOS ENERGY CORPORATION,
MID-TEX DIVISION; REQUIRING THE
REIMBURSEMENT OF MUNICIPAL RATE CASE
EXPENSES; FINDING THAT THE MEETING COMPLIES
WITH THE OPEN MEETINGS ACT; MAKING OTHER
FINDINGS AND PROVISIONS RELATED TO THE
SUBJECT; AND DECLARING AN EFFECTIVE DATE**

WHEREAS, Atmos Energy Corporation – Mid-Tex Division (“Atmos”) filed a Statement of Intent with the City of Commerce Texas (“City”) on May 31, 2006 to increase its system-wide, annual revenue requirement, by approximately \$73 million; and

WHEREAS, the City is a regulatory authority under the Gas Utility Regulatory Act (“GURA”) and under §103.001 of GURA has exclusive original jurisdiction over Atmos’ rates, operations, and services of a gas utility within the municipality; and

WHEREAS, the original effective date for the Atmos rate increase request was July 5, 2006, the City has suspended the effective date for the City to take final action until October 3, 2006; and

WHEREAS, the City, acting in concert with other cities known as the Atmos Texas Municipalities (“ATM”), has employed rate experts to review the testimony, schedules, workpapers and other documents provided by Atmos in its Statement of Intent and in response to discovery requests; and

WHEREAS, the City’s rate experts have reviewed thousands of pages of the books and records of Atmos and the review is on-going; and

WHEREAS, based upon the review of the rate experts the request to increase rates should be denied.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Commerce,
TEXAS THAT:**

PART 1. FINDINGS

(A) On May 31, 2006, Atmos filed a rate filing package with the City based on a test year ending December 31, 2005, seeking to increase rates by \$73 million with a proposed effective date of July 5, 2006 which was suspended to October 3, 2006.

(B) Based on Company-provided information, Atmos' proposal would result in an average monthly increase per customer within the City as follows:

Residential - \$4.02 or approximately 5.36%

Commercial - \$17.16 or approximately 5.25%

Industrial - \$7.10 or approximately .21%

(C) The City has exclusive original jurisdiction under the Gas Utilities Regulatory Act, Texas Utilities Code §103.001 to evaluate Atmos' proposed rate increase.

(D) The City has joined a coalition of cities, known as Atmos Texas Municipalities ("ATM").

(E) ATM has hired experts to evaluate and make recommendations regarding the proposed rate increase.

(F) While ATM's experts will not conclude their investigation until September 15, 2006, based on current information, they recommend that Atmos is not entitled to an increase in rates.

(G) These experts have determined that the rate increase proposed by Atmos is not just and reasonable based on the following:

The request seeks an excessive rate of return of 11.5%;

the request artificially decreases debt and increases equity;

the request seeks excessive levels of infrastructure adjustments for its Gas Reliability Infrastructure Program ("GRIP"); and

the request proposes a radical change in rate design for residential customers, which promotes waste of natural gas and shifts costs to low use customers.

(H) The 11.5% rate of return proposed by Atmos is 135 basis points more than the 10.12% rate of return considered to be reasonable in Atmos' most recent rate case before the Georgia Public Service Commission.

(I) Atmos' proposal treats some of its debt (at a cost of 5% to 6%) as equity (at a cost of 9% to 10.5%), artificially inflating the cost of equity and thereby increasing the overall return on investments and making the rate increase request considerably larger than justified.

(J) Contrary to the plain language and intent of the Gas Utilities Regulatory Act, Texas Utilities Code §104.301, some of the GRIP adjustments proposed by Atmos have nothing to do with capital investment for infrastructure improvements related to safety and reliability. Instead GRIP adjustments include the purchase of new computers, office furniture, signage for trucks and other vehicles and telecommunications systems.

(K) Atmos has proposed a rate design that unjustly shifts costs of the proposed increase to low use residential customers by increasing the residential customer charge and base rate cost for the first 3 Mcf of usage. In turn, Atmos has proposed to dramatically decrease the cost of gas above 3 Mcf thereby promoting consumption and waste of a finite natural resource as demonstrated in the chart below.

RESIDENTIAL RATES			
Charge	Current	Proposed	% Increase
Customer Charge	\$9.00	\$13.50	41 %
GRIP Adjustments	<u>0.58</u>	<u>0</u>	
Total	\$9.58	\$13.50	
0 - 1.5 Mcf	\$1.239/Mcf	\$3.546/Mcf	57 %
1.5 - 3 Mcf	<u>\$1.239/Mcf</u>	<u>\$0.346/Mcf</u>	
Total	\$2.478	\$3.892	

(L) The failure of Atmos to provide cost information related to assets of TXU Gas Company prior to the acquisition by Atmos on October 1, 2004, has made it difficult to analyze the components and reasonableness of the requested costs and expenses.

(M) The meeting at which this ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

PART 2. Based upon the foregoing findings the rate increase proposed by Atmos and filed with the City on May 31, 2006, is denied.

PART 3. Atmos is directed to reimburse all municipal rate case expenses incurred by the City in relation to the filing.

PART 4. A copy of this ordinance shall be sent to Mr. Richard Reis, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240 and to Mr. Jim Finley, City Attorney, City of Longview, Texas, at fax number 903-239-5539.

PART 5. This ordinance shall become effective from and after its passage.

PASSED AND APPROVED this 19 day of September, 2006.



Mayor

ATTEST:



City Secretary