

## Memorandum



**DATE:** December 30, 2009  
**TO:** Honorable Mayor and Members of the City Council  
**SUBJECT:** Atmos Energy Corporation Franchise Renewal

On Wednesday, January 6, 2010, you will be briefed on the Atmos Energy Corporation Franchise Renewal. The presentation material is attached for your review.

If you have any questions or need additional information, please let me know.



David K. Cook  
Chief Financial Officer

cc: Mary K. Suhm, City Manager  
Deborah A. Watkins, City Secretary  
Thomas P. Perkins, Jr., City Attorney  
Craig D. Kinton, City Auditor  
Judge C. Victor Lander, Administrative Judge Municipal Court  
Ryan S. Evans, First Assistant City Manager  
A.C. Gonzalez, Assistant City Manager  
Jill A. Jordan, P.E., Assistant City Manager  
Forest E. Turner, Assistant City Manager  
Frank Libro, Public Information Office  
Helena Stevens-Thompson, Assistant to the City Manager



Atmos Energy Corporation

Franchise Renewal

Dallas City Council

January 6, 2010

# Purpose

- Brief the Council on the status of the Atmos Energy Corporation franchise renewal
  - Explanation of Utility Franchising
  - Other Utilities Franchised by the City
  - Gas Issues not related to Franchising
  - Current Franchise provisions
  - Key terms of proposed Franchise
  - Recommendation

# Utility Franchising

- A franchise grants non-exclusive authority to use public property in exchange for monetary and other considerations
  - Utilities require use of Public Rights-of-Ways (ROW) paid for by the taxpayers to install facilities necessary to provide service
    - ROW includes streets, alleys, highways, public utility easements and other public ways
    - Without use of Public ROW utilities would have to purchase easements to serve customers

# Utility Franchising

- Under State Constitution, City must receive fair compensation for allowing use of public property
  - ROW is a unique property and fair value is hard to determine
  - Historically a percentage of Gross Receipts was considered fair and reasonable compensation for use of ROW

# Utility Franchising

- Utility's use of public ROW and City's police power form the basis for City regulation of utility service
  - The City has original jurisdiction over the distribution rates and services of Atmos
  - Railroad Commission of Texas (RCT) has appellate jurisdiction of distribution rates and original jurisdiction over pipeline rates
  - City's role as a landlord and as a regulator are related but must be kept separate

# Utility Franchising

- A franchise is both a contract and a regulatory document
  - In part, a franchise is a contract for the lease of public property
  - Franchise also spells out certain regulatory responsibilities of City
  - Franchise prescribes regulatory obligations of the Utility
- A franchise Ordinance adopted by City Council requires acceptance by utility

# Utility Franchising

- City Charter Provisions (Chapter XIV)
  - City may confer upon any person, firm or corporation the franchise or right to use the public property of the city for the purpose of furnishing to the public any general public service or benefit
  - No exclusive franchise shall ever be granted
  - No term longer than 40 years
  - Minimum franchise fee of 4% of gross receipts

# Utility Franchising

- Historically City Franchised all utilities and cable TV providers
  - Telephone
  - Cable TV
  - Electric
  - Natural Gas

# Utility Franchising, Telephone

- House Bill 1777 adopted in 1999 by State Legislature
  - Eliminated municipal franchising of “Certificated Telecommunications Providers” (CTPs)
    - CTPs were allowed to terminate existing franchises
  - Provided for compensation to cities on a per access line bases
    - Initial access line fees based on historic franchise fee payments
    - Adjusted annually by 50% of Consumer Price Index (inflation)

# Utility Franchising, Cable TV

- Senate Bill 5 adopted in 2005 by State Legislature
  - State of Texas became franchising authority for Cable TV and Video providers
  - Existing franchises were grandfathered until their normal expiration date
  - Companies operating under a state issued franchise pay a 5% franchise fee to the local municipality

# Utility Franchising, Cable TV Cont.

- Time Warner Cable Municipal Franchise expires 12/31/2015
- Four entities operate in the City under a State issued Franchise:
  - AT&T (Uverse)
  - Verizon (Fios)
  - Grande Communications
  - Charter Communications

# Utility Franchising, Electric

- Oncor Electric Delivery Company LLC
  - Provides electric distribution service pursuant to City franchise
    - Ordinance #27485
    - Expires March 31, 2024
    - Will automatically be renewed for six month terms unless written notice is given 60 days before the expiration of any such renewal period
    - Maximum term not to exceed 40 years
    - Requires franchise fee based on per Kilowatt Hour of electricity delivered to customers within the City

# Utility Franchising, Gas

- Atmos Energy Corporation (Atmos)
  - Holds a Certificate of Convenience and Necessity (CCN) to provide natural gas utility service within the City
    - CCN issued by the Railroad Commission of Texas
    - CCN grants exclusive right to serve within its service area
    - Municipal franchise still required to use Public ROW

# Utility Franchising, Gas

- Other Atmos Issues
  - Rates and Services
    - Rates are not covered by the franchise
    - Rates charged to customers for local distribution services are regulated by the City
    - Atmos filed a rate case with the City on November 5, 2008
    - Dallas denied the rate increase
    - Atmos appealed that decision to the Railroad Commission of Texas (GUD 9869)
      - Rate case is still pending

# Atmos Energy Corporation

- **Current franchise Ordinance #16240**
  - Granted to Lone Star Gas Company, a Division of ENSERCH Corporation
    - ENSERCH was acquired by TXU Gas which merged with Atmos
  - 15 year term was to expire May 22, 1994
  - Franchise was amended by Ordinance #24980 which modified many provisions and extended the term to December 3, 2009
  - In November, 2009, City Council authorized an extension to March 31, 2010
  - No explicit authority to approve transfer of control in current franchise

# Atmos Franchise

- **BACKGROUND**

- Staff has met with Atmos representatives on numerous occasions over past six months to negotiate new franchise.

- Negotiating on behalf of the City were:

- Dave Cook, Chief Financial Officer
      - Nick Fehrenbach, Manager of Regulatory Affairs
      - Don Knight, Assistant City Attorney
      - Craig Kinton, City Auditor (Audit Provisions)

- Negotiating on behalf of Atmos were:

- David Park
      - Susan Harris
      - Erikka Hise

# Atmos Franchise

- **BACKGROUND**
  - The proposed franchise is an agreement between the City and Atmos (subject to Council approval)
  - Atmos has agreed to accept the terms of the proposed franchise

# Atmos Franchise Key Terms

- Atmos Facilities in the ROW
  - City retains the right to regulate the placement of facilities in the ROW
  - All facilities in the ROW must comply with applicable Safety Codes
  - Atmos must relocate its facilities at its own expense to accommodate changes to the street, alley, sidewalk or public ways required by the City for any public purpose

# Atmos Franchise Key Terms

- Compensation
  - Franchise fee of 5% of gross revenues from the sale of gas to all classes of customers within the City
    - Increased from 4% in current franchise
    - No deduction for bad debts
    - Revenue will vary from year to year due to weather and the market price of natural gas

# Atmos Franchise Key Terms

- Compensation Cont.
  - Annual revenues estimated to be approximately \$12 Million
  - The increase in franchise fees for the current year is approximately \$1.3 Million
    - consistent with budget assumptions

# Atmos Franchise Key Terms

- Compensation (cont.)
  - Atmos will pay the City a fee of 5% of Contributions In Aid of Construction (CIAC)
    - These fees not required by current franchise
    - Consistent with City Charter requirements of minimum of 4% franchise fee
    - Will result in additional revenue of approximately \$50k annually
    - First payment will be due in 2011 and will not affect current year budget

# Atmos Franchise Key Terms

- Compensation (cont.)
  - Franchise fees are in lieu of all other fees and charges due City with the exception of ad valorem taxes, sales and use taxes, and special taxes and assessments for public improvements

# Atmos Franchise Key Terms

- Right to Audit
  - City has right to audit books and records of Atmos as necessary to ensure proper compensation under franchise
- Good Faith Effort
  - Atmos agrees to faithfully adhere to all applicable federal, state and City rules and regulations pertaining to non-discrimination, equal employment and affirmative action. Atmos also agrees to continue in its commitment to maintain fairness and equality in the workplace and in its purchases of goods, equipment, and other services.

# Atmos Franchise Key Terms

- Administration of Franchise
  - Daily oversight and administration of the franchise given to the City Manager or her designee
    - Prior franchise assigned oversight of the franchise to the Director of Public Utilities (position and the department no longer exist)

# Atmos Franchise Key Terms

- Change of Control
  - Atmos may, without consent by City, transfer or assign the rights granted by this franchise to a parent, subsidiary or affiliate
    - Parent, subsidiary or affiliate must assume all obligations under the franchise
    - Parent, subsidiary or affiliate must have net capital and liquid assets reasonably equivalent to Atmos
  - City will have the right to approve the transfer or assignment of the franchise except as noted above

# Atmos Franchise Key Terms

- Term
  - Fifteen (15) year initial term
  - Unless written notices are provided by either party, franchise will automatically renew for an additional 15 year term
  - Unless written notices are provided by either party after second 15 year term, franchise will automatically renew for additional 1 year terms
  - Maximum term, including automatic renewals, is forty years
    - Maximum term of forty years is a charter requirement

# Options

1. Adopt Franchise as negotiated by Staff
  - Maintains City control of ROW
  - Provides reasonable compensation to City
2. Reject Franchise and direct staff to continue negotiations
  - Could require extension of current franchise
  - Revenue enhancements contained in current budget may not be realized if delayed beyond January 31, 2010

# City Manager's Recommendation

1. Adopt Franchise as negotiated by Staff

# What's Next

- January 13, 2010 agenda item to adopt franchise as negotiated by staff
- March 1, 2010 deadline for Atmos to file acceptance of Franchise Ordinance

# Attachments

1. Draft Franchise Agreement
2. Letter of David J. Park, Vice President, Rates & Regulatory Affairs, Atmos Energy Corporation, agreeing to franchise terms as negotiated by staff