

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Office of the City Attorney  
**AGENDA DATE:** January 15, 2008  
**CONTACT PERSON/PHONE:** Bertha Ontiveros, (915) 541-4550  
**DISTRICT(S) AFFECTED:** Citywide

CITY CLERK DEPT.  
08 JAN 10 PM 1:17

**SUBJECT:**

Texas Gas Service Company Statement of Intent to Change Rates

**BACKGROUND / DISCUSSION:**

On August 31, 2007, Texas Gas Company filed a Statement of Intent to increase rates in El Paso by \$5,450,250. The filing stated that the rate increase would be effective October 19, 2007. The Public Utility Review Board considered this request at its meeting of December 14, 2007. Prior to the meeting, City staff, outside counsel and consultants reviewed the filing, requested supplemental information from TGS and negotiated a proposed resolution of the issues with TGS. The proposal would include a base rate revenue increase of \$1,145, 069 and miscellaneous service charges estimated at \$291,473 and several related issues, as more specifically discussed in the attached memorandum

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

On September 25, 2007, the Council adopted a resolution suspending the effective date of the TGS increase by 90 days.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

N/A

**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

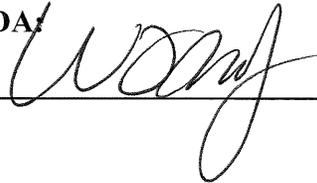
The Public Utilities Regulation Board considered the proposed settlement at its December 14, 2007 meeting and unanimously recommended that it be approved by the Council.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**  
**CITY MANAGER:**  **DATE:** \_\_\_\_\_

**RESOLUTION**

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**WHEREAS**, Texas Gas Service Company, an operating division of ONEOK, Inc. (“Company”), is a regulated utility subject to the exclusive original jurisdiction of the City of El Paso (“City”) for rates, services and operations within the City; and

**WHEREAS**, on August 31, 2007, the Company filed a Statement of Intent to increase rates for the El Paso Service Area by \$5,450,250, consisting of an increase of \$4,724,571 in base rates and \$725,689 by recovery of revenue related taxes as a separate line item on the bill, said rate increase specified to be effective October 19, 2007; and

**WHEREAS**, the City Council suspended the operation of the filings for 90 days from the effective date or the maximum allowed by law; and

**WHEREAS**, the Company has provided evidence that it has complied with the notice requirements of Texas Utilities Code §104.103 by publication in the *El Paso Times* on September 30, October 7, 13, and 21, 2007; and

**WHEREAS**, City Council finds that a base rate revenue increase of \$1,145,069 per annum, an increase in miscellaneous service charges as proposed by the Company and as indicated on the attached gas tariff and rules of service estimated to total \$291,473, and the amendments to the rate schedules and cost of gas clause as indicated for the El Paso Service Area permits the Company a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses; and

**WHEREAS**, the City Council finds that it is reasonable to amend the Company’s Cost of Gas Clause, Rate Schedule 1-1, to permit recovery of a portion of uncollectible

expense related to the cost of gas through the cost of gas clause, and to permit calculation of balancing fees to reflect the current pricing structure charged to the Company by El Paso Natural Gas Company for interstate pipeline service; and

**WHEREAS**, the City Council finds that the base rate increase approved herein should be applied on an equal percentage basis to all customer classes; and

**WHEREAS**, the City Council finds that the rate schedules attached hereto are appropriate to allow the Company to charge just and reasonable rates from its customers in the El Paso Service Area; and

**WHEREAS**, the City Council finds that the base rate increase subsumes within it the total revenues to be recovered through the rates herein set, including all reasonable rate case expenses of the Company and the City in this proceeding as well as proceedings in 2004, 2005, and 2006, pursuant to Texas Utility Code §104.301 (“GRIP” statute); and

**WHEREAS**, the City Council finds it reasonable to utilize the same rate of return, property tax factor, depreciation rates, and income tax factors that were authorized for use on August 31, 2004, for any interim rate request filed by the Company pursuant to Texas Utility Code §104.301 between the date of this resolution and the next general rate case in the El Paso Service Area; and

**WHEREAS**, the City Council retained Mounce, Green, Myers, Safi, Paxon & Galatzan, a Professional Corporation, Diversified Utility Consultants, Inc, Chesapeake Regulatory Consultants, McFadden Consulting Group, Inc, and Larkin and Associates to review various portions of the request, and to make presentations to the Public Utility Regulation Board and assist in settlement discussions; and

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**WHEREAS**, the Public Utility Regulation Board met on December 14, 2007, and after presentation and consideration of this proposed resolution voted to recommend approval of the Modified Rate Increase to the City Council; and

**WHEREAS**, the City Council finds that the Proposed Settlement as outlined in a Memorandum from Norman Gordon dated January 8, 2008, attached hereto should be adopted; and

**WHEREAS**, the City Council finds that actual and estimated fees and expenses of \$204,935.00 are reasonable for the City's evaluation of this request.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT:**

**SEC 1.** The Rate Schedules 1-01-Inc., 10, 20, 21, 25, 26, 27, 40, C-1, S.S. T-1, T-Gen and the Gas Tariff, Rules of Service attached hereto as Exhibit A be approved for gas service within the City Limits of the City of El Paso for gas sold or transported on or after January 17, 2008.

**SEC. 2.** The Company is ordered to reimburse the City for its expenses as invoiced by the City, not to exceed \$204,935.00, within 30 days after invoice from the City.

**SEC. 3.** Consistent with the procedures authorized by City Council on August 31, 2004, the factors approved by City Council on August 31, 2004, for rate of return of 8.42%, property tax factor of 1.4219%, federal income tax rates of 35%, and existing depreciation rates in effect will be utilized by The Company for any filings with the City of El Paso pursuant to the "GRIP" statute of the Texas Utility Code §104.301 until further order of the City Council.

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**SEC. 4** The Company agrees that it shall not file a general rate case for a change in rates within the City of El Paso prior to October 1, 2008, unless it is denied the ability to have an interim increase under provisions of the GRIP statute of the Texas Utilities Code §104.301, by action of the City Council or the Courts of the State of Texas.

**SEC. 5** All relief granted herein is contingent on The Company not filing an appeal of this Resolution to the Railroad Commission of Texas.

**SEC 6.** The Company has agreed to file by the end of January 2008, an amended request for Conservation Rider with the City, to be considered by the Public Utility Regulation Board. The City Council will consider adoption of a conservation rider at a later date in 2008.

**SEC. 7** The June 30, 2007, Plant in Service amount for any future filings under Texas Utilities Code §104.301 is \$ \_\_\_\_\_, and the June 30, 2007, amount of Accumulated Deferred Federal Income Taxes (ADFIT) is \$ \_\_\_\_\_. The Company will adjust the ADFIT , Customer Advances, Customer Deposits to the level as of the same date as the Plant in Service amount, but will not adjust Cash Working Capital or other working capital items, which for purposes of filings under Texas Utilities Code §104.301 will be identified at \$0.00.

**SEC. 8** All relief requested by The Company not granted herein is denied.

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**ADOPTED this 15th day of January, 2008.**

THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

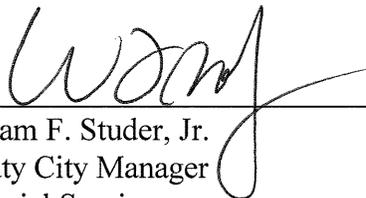
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bertha A. Ontiveros  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
William F. Studer, Jr.  
Deputy City Manager  
Financial Services

MOUNCE, GREEN, MYERS,  
SAFI, PAXSON & GALATZAN  
A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW  
100 N. STANTON, SUITE 1700  
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(915) 532-2000

NORMAN J. GORDON  
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Texas Board of Legal Specialization

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## MEMORANDUM

To: John Cook, Mayor  
City Council Members

From: Norman J. Gordon

Date: January 10, 2008

Re: Texas Gas Service Company Rate Increase Request

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On January 15, 2008, you will have for your consideration a proposed settlement, Resolution of the Texas Gas Service Company (the "Company") Rate Increase Request. The Public Utility Regulation Board considered this request at a meeting on December 14, 2007. Prior to that time, the City's staff, outside attorneys and consultants examined the request, sent information and data requests to the Company, negotiated with representatives of the Company and presented a proposed resolution to the Public Utility Regulation Board. The end result is a compromise of positions. As you know, the PURB found the compromise reasonable and unanimously recommended that the settlement be approved by the City Council as its action on the Texas Gas Service Rate Request.

### Background:

On August 31, 2007, the Company filed a request for a rate increase of \$5,470,250 for the El Paso Service Area.<sup>1</sup> The increase request was for an increase in base rates effective October 19, 2007, of \$4, 724,571, and inclusion of \$725,689 of revenue related taxes as a separate line item on the bill. The Company made a number of other proposals, which will be discussed individually below. The City engaged firms to examine the revenue and expenses, the proposed allocation to customer classes, the requested rate of return and issues related to Accumulated Deferred Income Taxes ("ADFIT").<sup>2</sup>

<sup>1</sup> The El Paso Service Area includes the City of El Paso Town of Anthony, Village of Vinton, Town of Clint, City of Socorro, City of Horizon, and the environs or unincorporated areas surrounding those municipalities.

<sup>2</sup> Accumulated Deferred Income Taxes are Income taxes that are deferred (not paid in the current year) chiefly due to the utility's ability to use accelerated depreciation on its tax return (while it uses straight line

After exchanging information with the Company, a compromise settlement was reached to resolve this case, as well as to resolve many of the issues and requests that the Company had made in its filing, and save the expense and effort of an appeal.

In cases filed with municipalities, if the Company is not satisfied with the decision of the City Council, it may appeal the case to the Railroad Commission of Texas. The Railroad Commission would hear the case *de novo*, holding a new hearing as if the City Council had not acted on the increase request. There would also be some additional expense associated with such appeals which would be borne by ratepayers. If the Council adopts this resolution no appeal will take place.

**Individual Items in the Settlement:**

1. Base Rate Increase.

The agreed base increase amount is \$1,145,069. On a comparable basis to the \$5.4 million request, the total increase is approximately \$2.7 million. The changes in base rates for the residential and commercial classes and comparison to the as filed request follow:

Item	Current	As Requested	As Settled
<b>Residential Minimum Charge</b>	\$10.39	\$11.65	\$10.50
Per Ccf over 200 Ccf	\$0.08515	\$0.13113	\$0.08772
Average Bill 45 Ccf (incl Gas)	\$42.69	\$44.31	\$43.15
Average Increase		\$1.62	\$0.47
<b>Commercial Minimum Charge</b>	\$17.11	\$27.00	\$17.30
200-500 Ccf	\$0.10448	\$Incl. in Minimum	\$0.10475
501-2500 Ccf	\$0.0845	\$0.08674	\$0.08472
Over 3000 Ccf	\$0.06446	\$0.06675	\$0.6473
Average Bill 251 Ccf	\$213.03	\$207.90	\$214.73
Average Increase		(\$5.13)	\$1.71

depreciation for its financial accounting, and regulatory filings). The theory is that the taxes will be paid at a future date when the amount of accelerated depreciation becomes less than the straight line depreciation. When ONEOK acquired the El Paso area assets in 2002, City Council insisted that ratepayers be protected from the loss of the benefits of the Deferred Taxes on the Books of Southern Union Company. Oneok agreed. In this case therefore, we needed to be certain that the ONEOK accounting was correct on this issue. The City engaged a regulatory accountant to perform that analysis.

2. Changes to Miscellaneous Service Charges.

The Company proposed, and the agreement contemplates, increases to miscellaneous service charges. The expected revenue effect of the increase to charges is \$291,473. The current charges and changes are shown below:

Item	Current	Proposed
Meter Testing Small <sup>3</sup>	\$15	\$80
Meter Testing Large	\$20	\$100
Meter Testing Orifice	\$30	\$100
Returned Check Fee	\$10	\$25
In person Collection Fee-Residential	\$5	\$10
In Person Collection Fee-non Residential	\$5	\$25
Special Meter Reading (after Estimated Bill)	\$6	\$10
Meter Exchange(Customer Request) <sup>4</sup>	None	\$100-\$150
Meter Tampering	None	\$100
Meter Removal <sup>5</sup>	None	\$50
Loan Processing Fee <sup>6</sup>	None	\$30

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The vast majority of the increased revenue will be realized from the returned check fees and collection fees.

3. Transportation Rate Changes.

Transportation Customers are customers who buy their own gas, arrange to have it transported to the service area, and purchase only “transportation” from the pipeline to their place of business from the Company<sup>7</sup>. Currently, there are two types of Transportation Customers, interruptible and firm, and there are different rates for those customers. One of the components of the rates is the charge which is added to transportation rates for upstream transportation charges. Due to the changes in the EPNG rate structure, the Company no longer uses the EPNG system to allow for an amount of gas for transportation customers. The transportation customers’ gas is transported to the El Paso Service Area on the intrastate pipeline, which is owned by ONEOK subsidiary[p1]. As a result, the Company proposed that the embedded charges to transportation customers be revised. For transportation customers who are currently classified as firm transportation customers, the charge will be decreased from \$.52 per Mcf to \$.07 per Mcf. For transportation customers who are currently classified as interruptible transportation customers, the charge will be increased from \$0.02 per Mcf to \$0.07 per Mcf. As those amounts were used to offset, in part, the charges

<sup>3</sup> One Meter Test every 4 years is at no charge. This is for an additional meter test.

<sup>4</sup> When meter working properly

<sup>5</sup> When access to the meter has been denied by the customer, customer has failed to provide access and been given notice of disconnection of service and access is still denied

<sup>6</sup> New Program described below.

<sup>7</sup> The rest of the customers are called “sales customers,” as they purchase gas from the Company as well.

from EPNG which are charged to sales customers, there will be an increase in those costs to sales customers. The estimated amount of that increase is \$165,000.

4. Cost of Gas Clause Changes.

The proposal changes the cost of gas clause to accomplish several substantive changes.

- a. A portion of uncollectible expense will be collected through the cost of gas clause rather than as part of the base rates. The collections should be more or less than the amount built into the rates. The amount of uncollectible expense representing gas cost during the year ending June 30, 2007 was \$537,769. The actual amount in the future may be greater or less than that amount. However, the clause will be designed to collect no more than the actual expense.
- b. Changes to reflect the new types of charges The Company pays to El Paso Natural Gas for transportation service. The Company transports virtually all the gas it purchases for sales customers in El Paso via the EPNG interstate pipeline. Due to recent changes in the EPNG rate structure, the Company's rates have increased.
- c. Changes to the reconciliation process by which the Company will provide more detail of the nature of the costs included in its annual reconciliation report.
- d. Changes to balancing charge provisions. The changes to the balancing provisions explicitly allow for inclusion of a credit for the benefit of sales customers from balancing charges the Company may assess to transportation customers.<sup>[p2]</sup> However, the costs currently assessed to transportation customers as part of their rate will be lowered. There is no net change to revenues, only a change between types of customers. Provisions will also be included to guard against customers switching from general sales customers to transportation customers.
- e. The annual reconciliation statement will be verified and include detail specific enough to determine the nature of the costs included, namely transportation costs, outside costs related to intervention in FERC interventions to protect El Paso Service Area customers, costs related to the commodity cost of gas, and balancing fees.

5. Appliance Financing Program.

The Company requested, and the PURB recommended approval of, the appliance financing program which will allow customers to pay the cost of purchase (and financing costs) of gas appliances (ranges, cook tops, ovens, hot water heaters) through their gas bills. The purchases can be made through approved dealers and financed through an approved lender such as GECU. (Any dealer is eligible to apply to become an approved dealer/installer under the program). The Company

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will not be at risk should anyone default on payments. On any payment, the payment will first be credited to the bill for natural gas service and then to the appliance payment. TGS will be allowed to collect a \$30.00 set up fee for setting up this payment plan. The benefits to the company are the probability of retention of customers of gas appliances easier as financing may become a little easier for some customers[p3].

6. Yard Line Replacement Program.

The Company requested, and the PURB recommended, approval of the yard line replacement program. This program will allow customers who have experienced leaks in yard lines (the line between a meter installed at the curb and the customer's house) replaced at a maximum cost to the Company of \$500.00. The customer will be responsible for costs in excess of the \$500.00. In this program, the meter will be moved from the curb or alley, to a location as close to the house as possible. The new meter installation location will include an electronic meter, one that can be read remotely as the meter reader walks or drives past the location. The benefit to the Company is more efficient meter reading, as well as a slight increase in its plant investment (and return). The benefit to customers who need yard line replacement is lower cost for replacement and installation by one of the Company's contractors. Replacement is typically needed in areas of the City which have older installations which have metal pipe yard lines. The program will be limited to 1,500 replacements a year. Currently, there are less than 500 such replacements a year.

7. GRIP Matters.

The so-called Gas Reliability Infrastructure Program ("GRIP") (Texas Utility Code § 104.301) provides a gas utility with a means to request interim rate adjustments for increases in invested capital between rate cases. The statute does not provide a means to increase its rates for increases in operating costs. Texas Gas Service filed for such increases in 2004, 2005, and 2006. The resolution of this case provides the baseline plant investment for the Company, as well as a baseline amount of Accumulated Deferred Income Taxes. An Austin District Court has issued a judgment which casts doubt on the ability of a gas utility to appeal a decision of a city denying such a request. The case has been argued to the Court of Appeals, but no appellate decision has yet been issued. Thus, the ability of a gas utility to use this interim method is in doubt. The GRIP factors will be the factors utilized in the 2004, 2005 and 2006 filings. Those factors are rate of return, depreciation rates, ad valorem tax rates, and federal income tax rates.

8. Rate Case Expenses.

The Company will reimburse the City its rate case expenses for this case and the three prior GRIP cases within 30 days of invoice by the City. There will be no

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surcharge of those expenses. All of the rate case expenses, those of the City and TGS are deemed to be subsumed within the rates to be charged. There will be no surcharge of such expenses.

9. Next Rate Case.

The Company agrees not to file a general rate case before October 1, 2008, so that new rates would not be effective earlier than January 15, 2009, unless it should be denied the ability to recover interim rates under the GRIP statute.

cc: Joyce Wilson, City Manager  
William Studer  
Nadia Powell  
Bertha Ontiveros

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