

# Memorandum



CITY OF DALLAS

DATE March 17, 2017

TO Members of the Budget, Finance, & Audit Committee: Jennifer S. Gates (Chair), Philip T. Kingston (Vice Chair), Erik Wilson, Rickey D. Callahan, Scott Griggs, Lee M. Kleinman

SUBJECT Utility Franchising

On Monday, March 20, 2017, the Office of Financial Services will brief the Budget, Finance, & Audit Committee on Utility Franchising. I have attached the briefing for your review.

Please let me know if you need additional information.

A handwritten signature in blue ink that reads "M. Elizabeth Reich". The signature is fluid and cursive.

M. Elizabeth Reich  
Chief Financial Officer

#### Attachment

c: Honorable Mayor and Members of City Council  
T.C. Broadnax, City Manager  
Larry E. Casto, City Attorney  
Craig D. Kinton, City Auditor  
Rosa A. Rios, City Secretary  
Daniel F. Solis, Administrative Judge  
Kimberly Bizer Tolbert, Chief of Staff to the City Manager  
Majed A. Al-Ghafry, Assistant City Manager  
Theresa O'Donnell, Interim Chief of Economic Development & Neighborhood Services

Mark McDaniel, Assistant City Manager  
Eric D. Campbell, Assistant City Manager  
Jill A. Jordan, P.E., Assistant City Manager  
Joey Zapata, Assistant City Manager  
Alan E. Sims, Interim Chief of Community Services  
Directors and Assistant Directors

# Utility Franchising

**Budget, Finance, and Audit Committee**  
**March 20, 2017**

**Nick Fehrenbach**  
**Manager of Regulatory Affairs**  
**Office of Financial Services**  
**City of Dallas**



# Presentation Overview

- Purpose
- History of franchises
- City Charter requirements
- Natural gas distribution
- Electric distribution
- Telecom
- Cable TV



# Purpose

- Provide overview of current municipal franchises
  - Briefing is informational only
  - No action is required



# History of Franchising

- Utility franchise agreements grant non-exclusive authority to utility to use public property in exchange for monetary and other considerations
- Utilities require use of publicly owned Rights-of-Ways (ROW) to install facilities and provide service
  - ROW includes streets, alleys, highways, easements, and other public ways



# History of Franchising – continued

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



# History of Franchising – continued

- Franchise is both contract and regulatory document
  - Franchise is contract for lease of public property
  - Franchise also spells out certain regulatory responsibilities of City
  - Franchise prescribes regulatory obligations of utility
- Utility must accept franchise ordinance

# History of Franchising – continued

- Historically, City has franchised all utilities and cable TV providers
  - Natural gas
  - Electric
  - Telephone
  - Cable TV





# City Charter Chapter XIV

- City may grant franchise or right to use public property for purpose of furnishing to public any general public service or benefit
  - No exclusive franchise may be granted
  - No term longer than 40 years
  - Minimum franchise fee of 4% of gross receipts
  - Non-discriminatory ubiquitous service



# Natural Gas Distribution

- Original franchise granted to The Dallas Gas Company in 1905
- Current franchise, ordinance #27793 granted to Atmos Energy Corporation on Jan 13, 2010
  - Initial term of 15 years – may be automatically renewed for additional 15 year term
  - Franchise fee of 5% of gross revenue, FY 2015-16 actual revenue \$10.6m

# Natural Gas Distribution – continued

- Atmos must relocate facilities to accommodate City public improvements
- City has original jurisdiction over distribution rates
- Railroad Commission of Texas has appellate jurisdiction over distribution rates and original jurisdiction over pipeline rates



# Natural Gas Distribution – continued

- Atmos filed Dallas Annual Rate Review (DARR) case on Jan 13
  - Staff and consultant currently reviewing case
  - Will bring findings to BFA on May 15
  - Council action scheduled for May 24 (Council action required by May 28)
- Atmos Pipeline filed rate case Jan 6 with Railroad Commission of Texas
  - Hearing on merits begins April 19
  - Statutory deadline July 10

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# Electric Distribution

- Original franchise granted to Dallas Electric Lighting Company in 1882
- Current franchise, ordinance #27485 granted to Oncor Electric Delivery Company LLC on Feb 11, 2009
  - Initial term of 15 years - automatic 6 month extensions until terminated not to exceed total of 40 years
  - Franchise fee of \$0.002753/kWh, FY 2015-16 actual revenue \$50.9m

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# Electric Distribution – continued

- Oncor must relocate facilities to accommodate City public improvements
- City has original jurisdiction over local distribution rates
- Public Utility Commission of Texas (PUCT) has appellate jurisdiction
- In practice, all City rate orders are appealed to the PUCT by Oncor to maintain system wide rates

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# Electric Distribution – continued

- Oncor filed LED street light tariff with City on Dec 16
  - Jan 11 resolution #17-0130 suspended effective date to allow staff time to review filing and make recommendations
  - Mobility and Street Services will brief the Transportation Committee on findings and recommendations on April 10
  - Voting item will be placed on April 12 Council agenda
  - Deadline for final action is April 22

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# Electric Distribution – continued

- Oncor rate case expected to be filed March 17 with all cities in Oncor service area and PUCT
  - Rates will become effective 35 days after filing unless City takes action
  - City may suspend effective date for an additional 90 days to allow time to review
  - Voting item to suspend rates will be placed on April 12 Council agenda





# Electric Distribution – continued

- Appeal of prior Oncor case (2009) has been remanded to PUC from Texas Supreme Court
  - City prevailed on franchise fee issue and lost the consolidated tax savings issue
  - May impact cost recovery in current case
  - Staff will continue to participate in this case as needed
- Additionally, staff is monitoring PUCT proceedings related to acquisition of Oncor by NextEra

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# Telecom

- House Bill 1777 adopted in 1999 eliminated municipal franchising of telephone companies
- HB 1777 based initial rates on historic franchise fee payments
- Current compensation to cities for use of ROW is a per access line basis
  - PUCT adjusts annually by 50% of CPI
  - FY 2015-16 actual revenue \$27.5m

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# Telecom – continued

- No requirement for ubiquitous service
- Rates are not regulated
- Telecom providers are required under State law to relocate for street widening or straightening projects



# Telecom – continued

- Staff monitors federal legislation related to telecom and wireless providers use of ROW
  - Wireline industry has been trying to eliminate local franchising and municipal fees for use of ROW
  - Wireless providers are attempting to eliminate municipal regulation of placement of small cells in ROW and payment for use of ROW

# Telecom – continued

- Staff monitors State legislation related to wireless providers use of ROW including SB1004 (HB2838) and SB1515
  - Would authorize wireless providers use of ROW
  - Would greatly restrict city's ability to regulate placement of wireless facilities
  - Limit compensation for use of ROW



# Cable TV

- State of Texas became franchise authority for Cable TV based on Senate Bill 5 adopted in 2005
- Compensation to cities for use of ROW is 5% of gross receipts, FY 2015-16 actual revenue \$13.2m



# Cable TV – continued

- Ubiquitous service not required
- Public Utility Commission prohibited from taking consumer complaints
- Per federal regulations Cable TV rates are not regulated



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