





MEMORANDUM

TO: Audit and Finance Committee

THROUGH: Ed Van Eenoo, Chief Financial Officer 

FROM: Diana Thomas, Deputy Chief Financial Officer 

DATE: July 18, 2024

SUBJECT: Staff recommendation regarding bylaw amendments proposed by the Resource Management Commission

The agenda for the July 23, 2024 Audit and Finance Committee includes bylaw amendments proposed by the Resource Management Committee (RMC). These proposed amendments represent a significant shift in the RMC's scope and responsibilities to include private gas distribution companies, taking it in a direction that is beyond its established purpose and duties. In fact, the current RMC bylaws explicitly exclude natural gas from the purview of the committee:

Article 2. Purpose and Duties

The purpose of the commission is to:

- (A) Maintain an overview of all programs, studies and proposals concerning the efficient use of energy, alternate energy technologies, renewable energy resources, including solar and wind, and the conservation of energy, *excluding the use of conventional coal, nuclear, natural gas, or petroleum technologies.*

Staff are concerned that the proposed changes by the RMC will take the committee out of its advisory position and into a regulatory role, a function statutorily exclusive to the governing body, the City Council. Key points of concern include:

- **Scope of Influence:** The City of Austin owns and operates electricity and water utilities, and thus has the ability to influence their policies and operations. However, the City of Austin does not own private gas utilities. While the City maintains jurisdiction over rates, services and operations, the City lacks control over their policy, direction, or actions.
- **Regulatory Authority and Commission Responsibilities:** The proposed amendments seek to broaden the Commission's responsibilities to include aspects of energy efficiency and conservation over gas utilities that are beyond its current mandate. With the passage of HB2263 by the 88th Legislature (2023), the Railroad Commission has sole and exclusive jurisdiction over state-wide natural gas energy efficiency programs. The City no longer has

regulatory authority to approve rates, program offerings or cost-effectiveness measures for natural gas energy-efficiency programs.

- **Changes in Commission Purpose:** As previously noted, the proposed amendments mark a substantial change in the RMC's purpose and functions. Specifically, the proposal to expand the RMC's role to include gas utility rate setting and franchise negotiations is a significant deviation from its current scope. The City's regulatory jurisdiction to approve gas rates charged to City residents lies solely with its governing body, the City Council. City management, assisted by the City Attorney and specialized rate consultants, is responsible for reviewing and advising the Council through the administrative discovery and litigation of rate cases, with the ultimate approval resting with the City Council rather than an advisory commission. The responsibility for right-of-way use franchise negotiations currently rests with the City Manager with ultimate approval by the City Council. Expanding the Commission's role in this manner would expand its responsibilities well beyond its established scope and create a process of negotiation by committee -- a committee without delegated management authority -- a fundamental shift in the Commission's function from an advisory body to one with regulatory and right-of-way management decision making.
- **Potential Expanded Commission Scope/Duplication:** Again, as noted, the current bylaws exclude natural gas energy technologies from the purview of the RMC. Issues related to conventional thermal electric energy technologies, including natural gas generation, are under the purview of the Electric Utility Commission (EUC). While the proposed language appears to limit the additional RMC oversight to natural gas distribution utilities, the language arguably could be interpreted to give the RMC broad authority over Austin Energy's natural gas electric generation. Expanding the RMC's oversight in this way would be duplicative of the EUC's oversight and would go beyond the scope of the RMC's stated purpose to review alternative energy technologies, renewable energy resources, and energy conservation.

In summary, the proposed amendments introduce changes that are inconsistent with the RMC's current scope and authority. Therefore, staff recommend denying these amendments due to their significant departure from the Commission's established responsibilities and the regulatory framework governing such issues.

cc: T.C. Broadnax, City Manager
CMO Executive Staff
Stephanie Hall, Assistant City Clerk
Tammy Cooper, Austin Energy
Marija Jukic, City Controller