

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 10, 2009

IN RE:)	
)	
PETITION OF ATMOS ENERGY)	DOCKET NO.
CORPORATION FOR APPROVAL OF)	08-00211
NEGOTIATED FRANCHISE AGREEMENT)	
WITH CITY OF FRANKLIN, TENNESSEE)	

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before Chairman Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this Docket, at a Hearing held on January 26, 2009 for consideration of the *Petition for Approval of Franchise Agreement with City of Franklin, Tennessee* (the “*Petition*”) filed by Atmos Energy Corporation (“Atmos” or the “Company”) on November 14, 2008.

BACKGROUND

Atmos has its local offices in Franklin, Tennessee, and operates natural gas distribution systems in several non-contiguous counties within the State of Tennessee. Atmos currently provides natural gas service to the City of Franklin (the “City”) pursuant to its franchise agreement dated November 10, 1983 (City Ordinance 83-23). The twenty-five year franchise agreement expired on November 17, 2008. Atmos and the City agreed to continue operating under the terms of the expired agreement pending the Authority’s consideration of the new franchise agreement.

In its *Petition*, Atmos requests Authority approval, pursuant to Tenn. Code Ann. § 65-4-107 (Supp. 2004), of a negotiated franchise agreement (the “Agreement”) between the Company and the City. Negotiations between the Company and the City began in early 2008 which resulted in an Agreement which was presented to the Board of Mayor and Aldermen (“Board”). The Agreement, embodied in Ordinance No. 2008-42 (the “Ordinance”), passed on first reading on October 28, 2008. After subsequent revisions and corrections to the Agreement, the Ordinance was adopted by the Board on second reading on November 25, 2008. Atmos filed a copy of the Ordinance and its Acceptance of Franchise on December 5, 2008.

On December 8, 2008 Atmos filed the pre-filed testimony of Wayne Turner and a copy of the City’s notice of public hearing.¹ On December 30, 2008, the Authority filed its Notice regarding the Hearing to be held on January 26, 2009. On January 9, 2009, Atmos filed a copy of its customer notification pursuant to TRA Rule 1220-4-1-.05.²

REQUIREMENT OF AND STANDARDS FOR AUTHORITY APPROVAL

Tenn. Code Ann. § 65-4-107 (2004) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 (2004) requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.”³ Tenn. Code Ann. § 65-4-107 (2004) further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose conditions as to construction, equipment,

¹ Notice of the Board’s November 25, 2008 public hearing was published in the *Williamson Herald* on November 6, 2008.

² Notice of the Authority’s January 26, 2009 public hearing was published in *The Tennessean* on December 24, 2008 and again in *The Tennessean Williamson A.M.* section on January 1, 2009.

³ Tenn. Code Ann. § 65-4-107.

maintenance, service or operation as the public convenience and interest may reasonably require.”⁴

PRE-FILED TESTIMONY OF WAYNE TURNER

Atmos filed the Direct Testimony of Wayne Turner on December 8, 2008. Mr. Turner is Operations Manager for Atmos in the Middle Tennessee region which includes the City. In his pre-filed testimony, Mr. Turner stated that the Agreement between Atmos and the City is necessary and proper for the public convenience and properly conserves the public interest. Mr. Turner listed the following five reasons that the Agreement is in the public interest:

1. Continued reliable and safe natural gas service to the City’s residents, businesses and governmental entities;
2. Provision of natural gas service by an established and proven provider that possesses the requisite expertise, facilities, gas supply and transportation assets to provide such service;
3. Continued adequate and proper access to public rights-of-way in order to ensure Atmos is able to provide adequate, efficient and safe service;
4. Inclusion of protective provisions that enable the City to ensure that its citizens are benefited and not economically harmed by the activities of Atmos within the City; and
5. Incentive for Atmos to invest in the infrastructure needed to provide improved and expanded service within the City by granting the right to provide service for a sufficient period time to recover its investment in such infrastructure.⁵

The franchise fees under the Agreement are based on sales volumes and transport volumes. Rates escalate each year during the five year term⁶ of the Agreement. The rates in effect in year five shall continue in effect during any extension of the Agreement.

⁴ *Id.*

⁵ Direct Testimony of Wayne Turner, pp. 3-4.


⁶ The effective date for the rates is the date the Authority approves the franchise agreement.

FINDINGS AND CONCLUSIONS

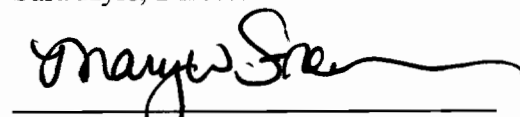
On January 26, 2009, a Hearing was held before the voting panel at a regularly scheduled Authority Conference. Appearing for the Company were A. Scott Ross, Counsel, and Wayne Turner, Operations Manager. At the Hearing, Mr. Turner adopted his pre-filed testimony as his testimony before the panel. No person sought intervention prior to or during the Hearing. At the request of counsel, the panel adopted the proposed protective order filed by Atmos on December 3, 2008. Thereafter, based upon the testimony and the administrative record as a whole, the panel found that Atmos' franchise agreement with the City continues a long standing partnership with a community where Atmos has extensive operations that rely on the use of the public rights-of-way; the new agreement was the result of extensive negotiations; and the new agreement was in the public interest. Based upon these findings, the panel voted unanimously to approve the Agreement.

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Approval of Franchise Agreement with City of Franklin, Tennessee* filed by Atmos Energy Corporation on November 14, 2008 is approved.
2. The proposed protective order filed by Atmos Energy Corporation on December 3, 2008 is adopted.


Eddie Roberson, Chairman


Sara Kyle, Director


Mary W. Freeman, Director