

RECEIVED
BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

NOV 15 PM 3:28

T.R.A. DOCKET ROOM

IN RE:)
)
PETITION OF ATMOS ENERGY)
CORPORATION FOR APPROVAL,)
NUNC PRO TUNC, OF NEGOTIATED)
FRANCHISE AGREEMENT WITH)
ELIZABETHTON, TENNESSEE)
PURSUANT TO TCA § 65-4-107)

00

Docket No. 10- 00216

PETITION OF ATMOS ENERGY CORPORATION FOR APPROVAL, *NUNC PRO TUNC*, OF NEGOTIATED FRANCHISE AGREEMENT WITH THE CITY OF ELIZABETHTON, TENNESSEE PURSUANT TO TCA § 65-4-107

Atmos Energy Corporation (“Atmos” or “Company”), pursuant to Tennessee Code Annotated § 65-4-107, respectfully requests approval by the Tennessee Regulatory Authority (“Authority”), *nunc pro tunc*, of a negotiated franchise agreement between Atmos and the City of Elizabethton, Tennessee (“Elizabethton” or the “City”). In support of its Petition, Atmos respectfully shows unto the Authority as follows:

1. Full name and address of the principal place of business of the company are:

Atmos Energy Corporation
5430 LBJ Freeway S 1800
Dallas, TX 75240

2. All correspondence and communications with respect to this Petition should be

sent to the following:

Patricia D. Childers
Vice President, Rates & Regulatory Affairs
Mid-States Division
Atmos Energy Corporation
810 Crescent Centre Drive, Suite 600
Franklin, TN 37067-6226
(615) 771-8301 – Facsimile

A. Scott Ross, Esq.
Neal & Harwell, PLC
2000 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219-2498
(615) 726-0573 – Facsimile

Douglas C. Walther, Esq.
Associate General Counsel
Atmos Energy Corporation
P. O. Box 650205
Dallas, TX 75265-0205
(972) 855-3080 – Facsimile

3. Atmos serves approximately 129,000 residential, commercial, and industrial customers in Tennessee. Among the areas served is the City of Elizabethton, Carter County, Tennessee.

4. Atmos is currently providing natural gas service within Elizabethton, Tennessee. That service was formerly provided pursuant to a twenty year franchise agreement between the Company and Elizabethton incorporated into City Ordinance 23-8 and approved by the City and accepted by Atmos in 1987.

5. That franchise agreement and the authorizations contained therein expired in accordance with their terms in 2008.

6. Prior to the expiration of the pre-existing franchise agreement authorizing service within Elizabethton, and in the ordinary course of the Company's business, Atmos conducted negotiations with the city of Elizabethton for renewal of its franchise authority.

7. These negotiations ultimately resulted in a franchise agreement acceptable to both the Company and the City. This franchise agreement was then incorporated into City Ordinance 44-4 and presented to the City of Elizabethton's Council for approval. That Ordinance, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, was subsequently

approved by the City's Council on its second reading on March 13, 2008 and signed by the Mayor of the City of Elizabethton.

8. Consistent with the procedures established by the City of Elizabethton, the Company subsequently executed its written acceptance of Ordinance 44-4, as reflected on the next to last page of Exhibit A.

9. Pursuant to TCA § 65-4-107 the new franchise agreement between Atmos and the City of Elizabethton must be approved by the Authority in order to be valid. Such approval is proper where, as here, the franchise is necessary and proper for the public convenience and properly conserves the public interest.

10. In this case, Atmos submits that the new franchise agreement contained in Ordinance 44-4 is necessary and proper for the public convenience and properly conserves the public interest on at least the following grounds:

a. The new franchise agreement establishes a twenty year arrangement which secures the provision of natural gas service to citizens, businesses and governmental institutions within Elizabethton;

b. The new franchise agreement ensures the continued and uninterrupted provision of high quality natural gas service by an established provider of such service to existing customers, as well as the availability of such service to new customers within Elizabethton.

c. The new franchise agreement establishes adequate and proper mechanisms for access to public rights-of-way, new and existing customers, and existing service lines, transmission and distribution facilities, and thereby ensures the protection of the property and citizenry of Elizabethton.

d. The new franchise agreement provides an incentive to Atmos to make appropriate investments in infrastructure to provide improved and expanded natural gas service within the limits of Elizabethton.

e. Payment of the franchise fees provided for in the new franchise agreement will offset additional expenses associated with the Company's activities that will be incurred by Elizabethton during the franchise period to repair and maintain roads and related facilities.

11. Atmos hereby advises the Authority that pursuant to TCA § 65-4-105(e) Atmos has in the past and intends in the future, insofar as practicable, to bill its customers subject to the franchise agreement on a pro rata basis for any "franchise payment or other payment for the use of public streets, alleys or other public places or any license, privilege, occupation or excise tax payment."

REQUEST FOR APPROVAL NUNC PRO TUNC

12. Due to an unintentional and inadvertent administrative oversight, Atmos failed to submit the Elizabethton franchise to the Authority for approval at the time it was executed.

13. Notwithstanding this failure to file the franchise with the Authority when it was executed, Atmos and Elizabethton have acted in full conformance with the provisions of the franchise since that time providing benefits to Elizabethton, to Atmos customers within Elizabethton and to Atmos itself. All services provided by Atmos to customers within the municipal limits of Elizabethton have been provided at the rates and on the terms and conditions on file with and approved by the Authority.

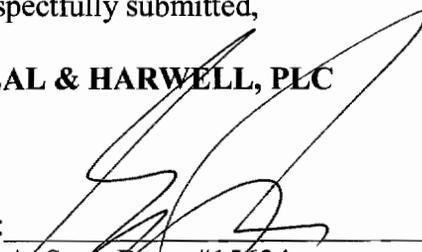
14. When the Company realized that Ordinance 44-4 had not been submitted to the Authority for approval, it directed its regulatory counsel to prepare this filing in order to remedy its prior failure in this regard and to comply with the provisions of TCA § 65-4-107.

15. Atmos regrets the error that led to the failure to file this Petition in a timely manner and submits that it was the result of an unintended administrative oversight. Atmos respectfully submits that no customers or other parties have been harmed by the Company's oversight in this regard. Atmos respectfully requests that the authorizations and approvals sought herein with respect to Ordinance 44-4 be granted *nunc pro tunc* to be effective March 13, 2008.

WHEREFORE, Atmos Energy Corporation respectfully requests that the Authority approve the negotiated franchise agreement incorporated into Ordinance 44-4 attached hereto as Exhibit A.

Respectfully submitted,

NEAL & HARWELL, PLC

By: 

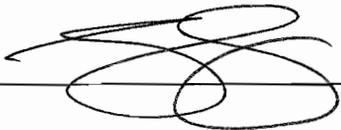
A. Scott Ross, #15634
2000 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219-2498
(615) 244-1713 – Telephone
(615) 726-0573 – Facsimile

Counsel for Atmos Energy Corporation

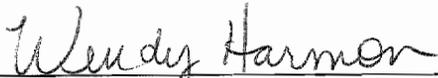
VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF WASHINGTON)

Jim Pugh, being duly sworn, deposes and says that he is Operations Supervisor for the East Tennessee region for Atmos Energy Corporation, that as such, he has read the foregoing Petition and knows the contents thereof; that on information and belief the same are true to the best of knowledge.

Jim Pugh 

SWORN to and subscribed before me
this 12 day of November, 2010.


Notary Public



ORDINANCE NO. 44-4

"AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO PROVIDE THE CITY OF ELIZABETHTON, CARTER COUNTY, TENNESSEE, WITH NATURAL GAS SERVICE, AND THE RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE CITY OF ELIZABETHTON, CARTER COUNTY, TENNESSEE."

WHEREAS, the Elizabethton City Council adopted Ordinance No. 23-8 on July 23, 1987, which Ordinance granted to Tennessee-Virginia Energy, a division of United Cities Gas Company, an exclusive franchise for a twenty (20) year period to provide natural gas to the citizens and residents of the City of Elizabethton, Tennessee; and,

WHEREAS, this twenty (20) year exclusive franchise is set to expire on April 15, 2008; and,

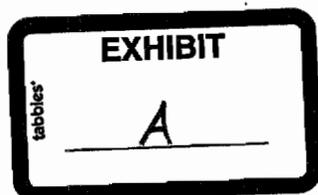
WHEREAS, United Cities Gas is now a division of Atmos Energy Corporation; and,

WHEREAS, the parties are in agreement that this exclusive franchise to provide the City of Elizabethton, Carter County, Tennessee, with natural gas service and the right to construct, maintain and operate a system of gas mains and service pipes for the purpose of transmitting and distributing gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds of the City of Elizabethton, Tennessee, should be extended; and,

WHEREAS, the health, safety and welfare of the citizens and residents of the City of Elizabethton, Tennessee, will be best served by the twenty (20) year extension of this gas franchise.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ELIZABETHTON, TENNESSEE, AS FOLLOWS:

Section 1. That there is hereby granted to Atmos Energy Corporation, a corporation organized and existing under the laws of the State of Texas, and the Commonwealth of Virginia, it successors and assigns (hereinafter for convenience, individually and



collectively, referred to as "Company"), the right, authority, privilege and franchise to serve the City of Elizabethton (hereinafter for convenience referred to as "Municipality"), and in the providing of such natural gas service to construct, maintain and operate a system of gas mains, service pipes, regulator stations and all other necessary and appropriate equipment and facilities for the distribution of gas, in, upon, under, along, across and over the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporate limits of the Municipality, for the supplying and selling of gas and its by-products to said Municipality and the inhabitants, institutions and businesses thereof, and for such purposes to construct, lay down, maintain, and operate all necessary gas mains, service pipes and other appliances, fixtures and facilities as may be necessary for the transmission, distribution and sale of such to said Municipality and the inhabitants thereof for domestic, commercial, industrial and institutional uses, and other purposes for which it is or may hereafter be used, for a period of twenty (20) years from and after the passage and approval of this Ordinance.

Section 2. As consideration for the grant of the franchise and rights herein and for the use by Company of the streets, roads, highways, alleys, public ways and other real property owned or controlled by the Municipality, Company shall pay to Municipality, on or before the last day of January, April, July and October, during the term hereof, a franchise fee equal to five percent (5%) of Company's gross receipts derived from the sale and distribution by Company of natural gas within the city limits of the Municipality during the preceding calendar year.

The Municipality shall have access at all reasonable times, upon reasonable advance notice, to the relevant books of the Company for the purpose of ascertaining the amount of franchise fee due the Municipality. The Company shall furnish (not more than once each year) to the Municipality a report showing the amount of gross revenues from the Company's sale of gas within the Municipality annually.

The franchise fee provided herein, together with any and all charges of the Municipality for water, sewage and garbage services provided by the Municipality to Company, any and all ad valorem taxes assessed by the Municipality against Company's property, shall constitute the only amounts for which Company shall be obligated to pay to the Municipality and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that the Municipality, currently or in the future, may charge Company or assess against Company's property.

Section 3. All gas mains, service pipes, fixtures, facilities and other appliances so laid, constructed and maintained by virtue of this Ordinance, shall be so laid, constructed and maintained in accordance with all applicable engineering codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable Statutes of the State of Tennessee and the Rules and Regulations of the Tennessee Regulatory Authority or of any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be constructed as not to interfere with the drainage of said Municipality or unreasonably interfere with or injure any sewer or any other improvement which said Municipality has heretofore made or may hereafter make in, upon or along any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground, or unnecessarily impede or obstruct such highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds of said Municipality, and shall conform to the grade as then or hereafter established. The Company agrees to attempt to utilize known right-of-way whenever practical before resorting to the right of condemnation to which the Company may be entitled to utilize by law.

Section 4. When the streets, avenues, alleys and other public ways are opened, or any other opening is made by the Company within the Municipality, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of the Company, the Company shall place and maintain necessary safety devices, barriers, lights and warnings to properly notify persons of any dangers resulting from such entrances, and shall comply with all applicable safety regulations required by federal, state and local laws.

Section 5. In the event it becomes necessary or expedient for the Municipality to change the course or grade of any highway, street, avenue, road, alley, way, parkway, or other public ground in which the Company is maintaining gas mains, pipes or other appliances and fixtures, then, upon the written request of the Municipality, the Company will remove or change the location or depth of such mains, pipes or other appliances and fixtures as necessary to conform to the proposed street alteration.

Section 6. Whenever the Company wishes to enter upon any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public ground for the purpose of constructing, replacing or repairing any gas mains, pipes, or other appliances, it will, if the Municipality desires, notify the Municipality and file a plan or map of the proposed work, if practicable, before commencing same. Whenever any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public way shall be entered, dug up or disturbed by the Company, the Company shall, at its expense and as soon as possible after the work is completed, restore such highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground in as good condition as existed before the work was done and to the reasonable satisfaction of the Municipality. In the event the Company shall fail to fulfill its obligations under this Section, the Municipality, after giving the company reasonable written notice, and failure of the Company to make such repairs or restoration, may make the necessary restoration or repairs itself and the Company shall be liable for the cost of same.

The provisions of this Section shall not be applied or interpreted in such a way as to prevent or delay Company work that may be required as a result of any emergency, leak or other immediate hazard or danger. Likewise, the provisions of this Section anticipate that the Company shall not be unreasonably denied permission to perform necessary work.

Section 7. The Municipality will promptly notify Company in writing of any geographic areas annexed by the Municipality during the term hereof ("Annexation Notice). Any such Annexation Notice shall be sent to Company by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Company may reasonably require in order to ascertain whether there exists any customers of Company receiving natural gas service in said annexed area. To the extent there are such Company customers therein, then the gross revenues of Company derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provision hereof effective on the first day of Company's billing cycle immediately following Company's receipt of the Annexation Notice. The failure by the Municipality to advise Company in writing through proper Annexation Notice of any geographic areas which are annexed by the Municipality shall relieve Company from any obligation to remit any franchise fees to Municipality based upon gross revenues derived by Company from the sale and distribution of natural gas to customers within the annexed area until Municipality delivers an Annexation Notice to Company in accordance with the terms hereof.

Section 8. The Company shall at all times indemnify and hold harmless the Municipality from and against any and all lawful claims for injury to any person or property by reason of the Company or its employees' failure to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavation while said system is being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the Municipality on account thereof, and shall have been afforded the opportunity fully to defend the same.

Section 9. The Municipality and the Company hereby agree that this Ordinance shall from time to time be subject to rules and regulations adopted by the Company and approved by the Tennessee Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this Ordinance, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Regulatory Authority or any other regulatory body and that all such Rules and Regulations shall be and become a part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set out in full. The Company shall not be obligated or required to make any extension of distribution mains or service lines except in accordance with the provisions relating thereto adopted or approved by the Tennessee Regulatory Authority, or any other regulatory body having jurisdiction thereof during the term of this Ordinance.

Section 10. Nothing herein contained shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas services, from using any easements for gas service which are shown on any plats of any portion of said Municipality heretofore or hereafter platted or recorded or any such easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

Section 11. If any section, or portion of any section, of this Ordinance shall hereafter be declared or determined by any court of competent authority to be invalid, the Company and the Municipality at their election may ratify or confirm the remaining portions of this Ordinance, and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

Section 12. The Company shall, within sixty (60) days after the passage of the Ordinance, file with the City Clerk or other appropriate official of the Municipality its unconditional acceptance, signed by its President or Vice President, of the terms and conditions of this Ordinance. After filing of such acceptance, this Ordinance shall constitute a contract between the parties thereto and shall, subject to the rights and powers vested in the Tennessee Regulatory Authority or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Regulatory Authority or as may exercise statutory jurisdiction of gas companies furnishing gas service in the State of Tennessee, be the measure of the rights, powers, obligations, privileges and liabilities of said Municipality and of said Company.

Section 13. Company shall not be required to perform any covenant or obligation in this Ordinance, or be liable in damages to Municipality, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God, force majeure or by the other party. An "act of God" or "force majeure" is defined for purposes of this Ordinance as strikes, lockouts, sit-downs, material or labor restriction by any governmental authority, unusual transportation delays, riots, floods,

washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Company or which by the exercise of due diligence Company is unable, wholly or in part, to prevent or overcome.

Section 14. All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company.

Section 15. This Ordinance shall take effect ten (10) days from and after its final passage and shall be subject to acceptance by the Grantee and approved by the Tennessee Regulatory Commission.

PASSED ON FIRST READING: February 14, 2008

PUBLIC HEARING: March 13, 2008

PASSED ON SECOND READING: March 13, 2008

CITY OF ELIZABETHTON, TENNESSEE

By: Curt Alexander
CURT ALEXANDER, MAYOR

ATTEST:

Larry Clark
LARRY CLARK, CITY CLERK

APPROVED AS TO FORM:

Roger G. Day
ROGER G. DAY, CITY ATTORNEY
CITY OF ELIZABETHTON, TN
136 SOUTH SYCAMORE STREET
ELIZABETHTON, TN 37643
PHONE: (423) 547-6250
FAX: (423) 547-6253
BPR #14545

ACCEPTANCE OF FRANCHISE

City of Elizabethton, Tennessee

TO: City Recorder
Elizabethton, Tennessee

Atmos Energy Corporation hereby respectfully files with you its written acceptance of the franchise adopted by the Mayor and City Council of the City of Elizabethton, Tennessee, dated MARCH 13, 2008, entitled:

ORDINANCE NO. 44-4

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO PROVIDE THE CITY OF ELIZABETHTON, CARTER COUNTY, TENNESSEE, WITH NATURAL GAS SERVICE, AND THE RIGHT TO CONSTRUCT, MAINTAIN, AND OPERATE A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE CITY OF ELIZABETHTON, CARTER COUNTY, TENNESSEE.

and all the rights and privileges, terms and provisions therein contained.

IN WITNESS WHEREOF, Atmos Energy Corporation, has caused this instrument to be signed by its President on this 22nd day of April, 2008.

ATMOS ENERGY CORPORATION

By John K. Akers
John K. Akers
President (Mid-States Division)

RECEIPT

TO: ATMOS ENERGY CORPORATION

The Undersigned, City Clerk of the City of Elizabethton, Carter County, Tennessee hereby acknowledges receipt of an instrument of acceptance of a certain gas franchise ordinance signed by the President of the Mid-States division of Atmos Energy Corporation, and that the acceptance of such franchise ordinance was delivered to the undersigned as City Clerk of said City on the 5th day of May, 2008, and is now held as part of the records of said City.

WITNESS the hand of said City Clerk and the seal of said City on this 5th day of May, 2008.

Loy Clow
City Clerk