

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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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

Docket No. 10- 00216

DIRECT TESTIMONY OF
JIM PUGH
ON BEHALF OF ATMOS ENERGY CORPORATION

Q: Please state your name and business address.

A: My name is Jim Pugh. My business address is 2833 West Market Street, Johnson City, Tennessee 37604.

Q: By whom and in what capacity are you employed?

A: I am employed by Atmos Energy Corporation, Kentucky/Mid-States Division ("Atmos") as Operations Supervisor for the East Tennessee region which includes Atmos' operations in the City of Elizabethton, Tennessee.

Q: Please describe your work history with Atmos.

A: I have been employed by Atmos Energy for 25 years, serving in various roles which have included Manager of our Tri-Cities Operation, Manager of our Virginia Operation, and Operations Supervisor.

Q: Have you previously offered testimony in any regulatory proceedings?

A: Yes. I provided testimony to this Authority in a docket seeking approval of the Bristol, Tennessee franchise.

Q: What is the purpose of your testimony in this case?

A: I am testifying on behalf of Atmos in support of the petition filed to approve the franchise between Atmos and the City of Elizabethton.

Q: In your capacity as the Operations Supervisor for the East Tennessee region of Atmos, are you familiar with the natural gas distribution system operated by Atmos in Elizabethton, Tennessee?

A: Yes. I am familiar with the operation in Elizabethton, Tennessee, as well as the operations in the other surrounding communities that are served by the Atmos system.

Q: Please give the Authority an overall description of the Elizabethton, Tennessee system and the customers served.

A: There are approximately 2,500 customers located within the city limits being served by the natural gas distribution system owned and operated by Atmos.

The Atmos system consists of approximately 61 miles of pipe within the Elizabethton, Tennessee city limits. The pipe is comprised of distribution mains, transmission mains, and service lines. The majority of the pipeline in the Atmos system is located within the public rights-of-way of Elizabethton. Without access to these public rights-of-way, Atmos could not adequately maintain, replace and/or operate its distribution system.

Q: Has Atmos operated a natural gas distribution system in Elizabethton for a number of years?

A: Yes. Atmos and its predecessor entity have operated for many years in Elizabethton under franchise agreement with the City. The prior franchise agreement, Ordinance No. 23-8, allowed Atmos' predecessor entity to operate a gas system within Elizabethton and to use the public rights of way of the City for its distribution system and related plant and access thereto, for a period of twenty years.

Q: Could you please explain the circumstances that caused a need for a new franchise agreement between Atmos and the City of Elizabethton.

A: Yes. Under § 65-26-101 of the Tennessee Code Annotated, Atmos is required to have the consent of the City of Elizabethton, in the form of a municipal ordinance, in order to enter onto the streets and alleys of Elizabethton for the purpose of placing, maintaining, or expanding its natural gas distribution facilities. Atmos and its predecessor entity have been providing natural gas service to the City of Elizabethton for many years pursuant to the ordinances I have previously mentioned. The prior franchise agreement, Ordinance 23-8, ran for a twenty-year period, and expired by its terms on April 15, 2008.

Q: What is the standard to be utilized by the Authority in determining whether to approve Ordinance No. 44-4?

A: Under the statute, the Authority is authorized to approve the ordinance if it finds that it “is necessary and proper for the public convenience and properly conserves the public interest.”

Q: In your opinion, are the franchise terms set forth in Ordinance No. 44-4 necessary and proper for the public convenience and in the public interest?

A: Yes, on a number of grounds.

First, the new franchise terms reflected in Ordinance No. 44-4 will establish a long-term arrangement through which the current and future residents, business enterprises and governmental facilities located within the City of Elizabethton will be able to receive, under the supervisory jurisdiction of the Authority, the benefits of continuing natural gas service provided by Atmos for an extended period. This arrangement will help ensure the continuing availability of high-quality natural gas service to the City of Elizabethton for the foreseeable future.

Second, the new franchise facilitates the provision of such natural gas service to the City of Elizabethton by an established and proven provider of that service well known to both the City of Elizabethton and this Authority and possessing the requisite expertise, facilities, systems and gas supply and transportation assets necessary to provide such service.

Third, the new franchise arrangement establishes adequate and proper mechanisms for access by the Company to public rights-of-way, new and existing customers, and its distribution facilities. These mechanisms help to ensure that Atmos is able to provide both adequate and efficient service and to comply with the requirements of this Authority to ensure the safety and protection of residents and property within the City of Elizabethton.

Fourth, the various other protective provisions set forth in the new franchise arrangement provide useful and important tools for the City of Elizabethton to ensure that its citizens are benefited and not economically harmed by the activities of Atmos within the City of Elizabethton.

Fifth, the new franchise arrangement provides an incentive for Atmos to invest in infrastructure needed to provide improved and expanded service within the City of Elizabethton by ensuring that Atmos will have the right to provide service within these areas for a sufficient period in order to permit Atmos the opportunity to recover the capital investment in such facilities under the rates approved by the Authority.

Q: Has the Elizabethton franchise agreement been renewed?

A: Yes. 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.

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.

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

Q: Could you please summarize your thoughts on the public convenience issue?

A: Yes. Approval of the new franchise arrangement between Atmos and the City of Elizabethton will ensure that the residents, businesses and governmental entities residing and operating with the City of Elizabethton continue to receive high quality, safe, reliable and economic natural gas service from a provider with a long and successful history of providing that service to these areas. The franchise ordinance also provides substantial protections to the citizens of the City of Elizabethton while concurrently offering Atmos a positive incentive to provide ongoing and expanded natural gas service to this area. That service will contribute to a stable infrastructure and expanded economic opportunity and will be beneficial to customers by bringing the desirable attributes of natural gas service to the City of Elizabethton for some time into the future.

Q: Do you know of any facts that would indicate that the new franchise arrangement reflected in Ordinance No. 44-4 is not in the public interest.

A: No.

Q: Why was there a gap between adoption of Ordinance No. 44-4 and the Petition seeking approval by the Authority?

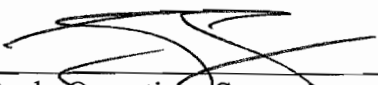
A: It was simply an oversight on the Company's part. Once we realized that this franchise renewal had not been approved by the Authority, we filed this proceeding seeking approval *nunc pro tunc*.

Q: What are you asking the Authority to do in this proceeding?

A: Based on the facts discussed above, we are asking the Authority to approve *nunc pro tunc* the franchise agreement between Atmos and the City of Elizabethton as reflected in Ordinance No. 44-4

Q: Do you have anything further to add to your testimony?

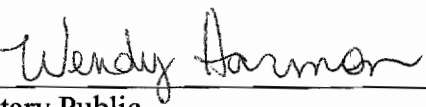
A: Not at this time.



Jim Pugh, Operations Supervisor
for the East Tennessee Region

STATE OF TENNESSEE)
)
COUNTY OF WASHINGTON)

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

EXHIBIT

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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

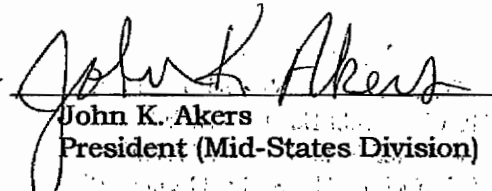
AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO PROVIDE THE CITY OF ELIZABETHTON, CARTER COUNTY, TENNESSEE, WITH NATURAL GAS SERVICE, AND THE RIGHT TO CONSTRUCT, MAINTAIN, AND OPERATE A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING 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
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.


City Clerk