

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 15, 2011

IN RE:	)	
	)	
PETITION OF ATMOS ENERGY CORPORATION	)	
FOR APPROVAL, <i>NUNC PRO TUNC</i> , OF	)	DOCKET NO.
NEGOTIATED FRANCHISE AGREEMENT WITH	)	10-00216
THE CITY OF ELIZABETHTON, TENNESSEE	)	
PURSUANT TO TCA 65-4-107	)	

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ORDER APPROVING FRANCHISE AGREEMENT

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This matter came before Chairman Mary W. Freeman, Director Eddie Roberson and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a Hearing held on January 24, 2011 for consideration of the *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* (the "*Petition*") filed by Atmos Energy Corporation ("Atmos" or "Company") on November 15, 2010. The filing also included the Pre-Filed Direct Testimony of Jim Pugh, Operations Supervisor for Atmos' East Tennessee region, and the Agreement between Atmos and the City, as required by Tenn. Code Ann. § 65-4-107 (2004).<sup>1</sup>

**THE PETITION**

Prior to April 2008, Atmos provided service to the City of Elizabethton, Tennessee ("Elizabethton" or "City") pursuant to a twenty-year franchise agreement. City Ordinance 23-8

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<sup>1</sup> 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."

was approved by the City and accepted by the Company in 1987. The parties began negotiations for renewal of its franchise authority prior to the expiration of the previous franchise agreement.<sup>2</sup> The resulting agreement (City Ordinance 44-4) was passed on the second reading by Elizabethton's City Council on March 13, 2008, approximately one month prior to the expiration of the previous franchise agreement. Subsequently, Atmos accepted the agreement on April 22, 2008.<sup>3</sup> The new agreement initiates another twenty-year term, effective March 13, 2008.<sup>4</sup> Pursuant to the new agreement, the Company continues to pay the City on a quarterly basis five percent of the annual gross revenues from all customers who are located within the city limits for the right to serve those customers.<sup>5</sup>

The Company states that both parties agreed with the terms negotiated in the franchise agreement, that the franchise agreement is necessary and proper for the public convenience, and that it is in the public interest.<sup>6</sup> The Company also states that due to an unintentional administrative oversight, it failed to submit the franchise agreement to the Authority when it was executed.<sup>7</sup> The Company submits that no customers were harmed by the oversight.<sup>8</sup>

#### **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." Tenn. Code Ann. § 65-4-107 (2004) further provides that in considering such privilege or franchise, the Authority

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<sup>2</sup> *Petition*, p. 2.

<sup>3</sup> *Petition*, p. 3.

<sup>4</sup> *Petition*, Exhibit A, p. 1.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Jim Pugh, Pre-Filed Direct Testimony, unnumbered p. 4 (November 15, 2010).

<sup>7</sup> *Petition*, p. 4.

<sup>8</sup> *Id.* at 5.

“shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require.”

**PRE-FILED DIRECT TESTIMONY OF JIM PUGH**

Mr. Pugh listed the following five reasons that the new franchise is in the public interest:<sup>9</sup>

1. Maintains availability of high quality natural gas to residents, businesses and governmental entities located within the City;
2. Ensures 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. Provides adequate and proper access to public rights-of-way in order to ensure Atmos is able to provide adequate, efficient and safe service;
4. Provides an incentive for Atmos to invest in infrastructure needed to improve and expand service within the City; and
5. Includes protective provisions to ensure the citizens of Elizabethton are benefited and not economically harmed by the activities of Atmos.

**FINDINGS AND CONCLUSIONS**

The Authority issued a *Notice of Hearing* on January 10, 2011. On January 24, 2011, a Hearing was held before the voting panel at a regularly scheduled Authority Conference. Mr. Jim Pugh, Operations Supervisor for the East Tennessee Region, participated in the Hearing telephonically. Jennifer Arnold, a licensed Notary Public in good standing in the State of Tennessee, administered the testimonial oath to Mr. Pugh and remained present with him throughout his examination and testimony. In addition, as required, the Authority received a

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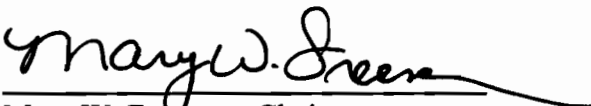
<sup>9</sup> Jim Pugh, Pre-Filed Direct Testimony, unnumbered p. 3 (November 15, 2010).

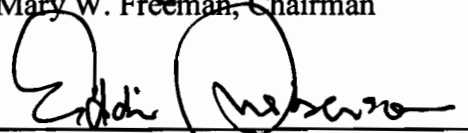
properly executed *Witness Certification* and a *Notary Public Affidavit* on January 27, 2011. The Company was represented by Scott Ross, Esq., who appeared at the Hearing in person.

At the Hearing, Mr. Pugh adopted his pre-filed testimony as his testimony before the panel. No person sought intervention prior to or during the Hearing. Thereafter, based upon the testimony presented and review of the information in the record, the panel found that the franchise is in the public interest, and customers have not been harmed by the delay in filing the agreement with the Authority. Based on these findings, the panel voted unanimously to approve Atmos' *Petition, nunc pro tunc*, to enter into a Franchise Agreement with Elizabethton, with an effective date of March 13, 2008.

**IT IS THEREFORE ORDERED THAT:**

*The 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 is approved, with an effective date of March 13, 2008.*

  
Mary W. Freeman, Chairman

  
Eddie Roberson, Director

  
Sara Kyle, Director