

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 8, 2013

IN RE:

ATMOS ENERGY CORPORATION PETITION
FOR APPROVAL OF FRANCHISE AGREEMENT
WITH TOWN OF SMYRNA, RUTHERFORD
COUNTY, TENNESSEE

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DOCKET NO.
13-00024

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before Chairman James M. Allison, Director Kenneth C. Hill 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 March 13, 2013 for consideration of the *Petition for Approval of Franchise Agreement with Town of Smyrna, Rutherford County, Tennessee* (the “*Petition*”) filed by Atmos Energy Corporation (“Atmos” or “Company”). The Company seeks Authority approval of the negotiated franchise agreement as required by Tenn. Code Ann. § 65-4-107 (2004).

PETITION

On January 29, 2013, Atmos filed its *Petition* and the Pre-Filed Direct Testimony of Wayne Turner, Operations Manager of the Middle Tennessee region of Atmos. On February 26, 2013, the Company filed an executed copy of Ordinance No. 13-02, which proposes to grant a franchise to Atmos to provide service to the Town of Smyrna as required by Tenn. Code Ann. § 65-4-107.¹ Atmos also filed a *Notice of Compliance with TRA Rule 1220-4-1-.05* on March 5, 2013 indicating

¹ *Notice of Filing Franchise Ordinance* (February 26, 2013) (An unexecuted copy of Ordinance No. 13-02 had been filed with the *Petition* on January 29, 2013).

that it had provided public notice of this matter in relevant newspaper publications pursuant to TRA Rule 1220-4-1-.05.

Atmos currently provides natural gas service to approximately 400 customers in the Smyrna area, both inside and outside the Town limits.² In 1996, the Town of Smyrna and United Cities Gas Company³ entered into an agreement under which the Town of Smyrna would, among other things, grant a franchise to United Cities Gas Company to serve customers within the Town of Smyrna (the “1996 Franchise Agreement”).⁴ Neither the Town of Smyrna nor Atmos has a record of United Cities Gas Company’s formal acceptance of the 1996 Franchise Agreement or approval of the 1996 Franchise Agreement by the Tennessee Regulatory Authority.⁵

To rectify the oversight, Atmos and the Town of Smyrna have, subject to regulatory approval, entered into a new franchise agreement that will govern the relationship between the parties going forward.⁶ The initial term of the franchise runs through December 31, 2021, which is the expected expiration date of the 1996 Franchise Agreement with United Cities Gas Company under which the parties have been operating.⁷ The franchise fee will be 3% of revenues as defined by the Agreement and will apply only to customers located inside the town limits of Smyrna.⁸

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

² See *Petition*, p. 2 (January 29, 2013).

³ “The United Cities Gas system was transferred to Atmos when the two companies merged in 1997.” See Wayne Turner, Pre-Filed Direct Testimony, p. 2 (January 29, 2013).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 3.

⁷ *Id.*

⁸ See *Notice of Filing Franchise Ordinance*, Exhibit 1, p. 6 of 10 (February 26, 2013).

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 “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 WAYNE TURNER

In his Pre-Filed Direct Testimony, Mr. Turner states that the franchise agreement is necessary and proper for the public convenience and serves the public interest. Mr. Turner listed the following five reasons that the new franchise is in the public interest:

1. The franchise ensures the continuing availability of high-quality natural gas service for the Town of Smyrna;
2. It facilitates the 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. It 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. The new franchise arrangement includes protective provisions to ensure the citizens of Smyrna are benefited and not economically harmed by the activities of Atmos; and
5. The new franchise arrangement provides an incentive for Atmos to invest in infrastructure needed to improve and expand service within the Town of Smyrna.⁹

FINDINGS AND CONCLUSIONS

The Authority issued a *Notice of Hearing* on March 1, 2013. On March 13, 2013, a Hearing was held before the voting panel at a regularly scheduled Authority Conference. Appearing for the

⁹ See Wayne Turner, Pre-Filed Direct Testimony, p. 4 (January 29, 2013).


Company were Scott Ross, Esq. and Wayne Turner, Operations Manager of the Middle Tennessee region. Douglas Berry, Attorney for the Town of Smyrna and Mark O'Neal, Smyrna Town Manager, were also present representing the Town of Smyrna. At the Hearing, Mr. Turner adopted his Pre-Filed Direct Testimony as his testimony before the panel. No person sought intervention prior to or during the Hearing. Thereafter, based upon the testimony and the administrative record as a whole, the panel found that the Franchise Agreement is necessary and proper for the public convenience and conserves the public interest. Based upon this finding, the panel voted unanimously to approve Atmos' *Petition* to enter into a Franchise Agreement with the Town of Smyrna, to be effective immediately.

IT IS THEREFORE ORDERED THAT:

1. Atmos Energy Corporation's *Petition for Approval of Franchise Agreement with Town of Smyrna, Rutherford County, Tennessee* is approved and shall be effective immediately.
2. Atmos Energy Corporation shall file an updated page 70 in its tariff to reflect the new franchise tax rate.

Chairman James M. Allison and Director Kenneth C. Hill concur. Director Sara Kyle voted with the majority, but resigned her position prior to the issuance of this order.

ATTEST:



Earl R. Taylor, Executive Director