

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 12, 2016

IN RE:

**PETITION OF ATMOS ENERGY CORPORATION
FOR APPROVAL OF NEGOTIATED FRANCHISE
AGREEMENT WITH THE TOWN OF NOLENSVILLE,
TENNESSEE**

)
)
)
)
)
)

**DOCKET NO.
16-00108**

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before Chairman David F. Jones, Director Herbert H. Hilliard, and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on October 10, 2016, for hearing and consideration of the *Petition of Atmos Energy Corporation for Approval of Negotiated Franchise Agreement with the Town of Nolensville, Tennessee Pursuant to Tennessee Code Annotated § 65-4-107* (“*Petition*”) filed on September 8, 2016.

BACKGROUND

Atmos provides natural gas to approximately 132,000 residential, commercial, and industrial customers in Tennessee.¹ Approximately 2,480 customers are being served within the limits of The Town of Nolensville, Tennessee (“Nolensville” or “Town”) by the natural gas distribution system owned and operated by Atmos. Of that amount, approximately 96% are residential customers and 4% are in other customer classes such as commercial and industrial.²

¹ *Petition*, p. 2 (September 8, 2016).

² *Pre-Filed, Direct Testimony of James Robbins on Behalf of Atmos Energy Corporation*, p. 2 (September 8, 2016).

Atmos currently provides natural gas service to Nolensville pursuant to its franchise agreement incorporated into Ordinance No. 97-05, dated May 1, 1997. This franchise agreement will expire by its terms on May 1, 2017. In anticipation of the expiration of the existing franchise agreement, Atmos started negotiations in the spring of 2016. The negotiated new franchise agreement was submitted and passed first reading on June 2, 2016. The Ordinance incorporating the new franchise agreement passed second and final reading by the Board of Mayor and Alderman of Nolensville on August 4, 2016.³

On September 8, 2016, Atmos filed the *Petition* requesting TRA approval of a renewal of a negotiated franchise agreement between Atmos and Nolensville. In support of its *Petition*, Atmos attached a copy of Nolensville Ordinance No. 16-10, which grants the franchise, and the pre-filed direct testimony of James Robbins, Operations Supervisor Relations for Atmos' Murfreesboro region.

The franchise agreement grants Atmos "the exclusive right to construct, operate, and maintain, a gas utilities system within the City for production, transmission, distribution and sale of gas to consumers and users within the City and to the City and any and all agencies and departments thereof."⁴ The franchise agreement in Ordinance No. 16-10 extends the terms of the current franchise for twenty (20) years. The franchise fee under the new agreement is the same as the previous fee and is equal to "three percent (3%) of Atmos' gross receipts derived from the sale and distribution by Atmos of natural gas within the city limits of Nolensville during the proceeding calendar year."⁵

³ *Id.* at 2.

⁴ Town of Nolensville Ordinance No. 16-10, Exhibit 1 to *Petition*, p.1 (September 8, 2016).

⁵ *Pre-Filed, Direct Testimony of James Robbins on Behalf of Atmos Energy Corporation*, p.4 (September 8, 2016).

Franchise fees are a recoverable utility expense and a pass-through on customer bills. In its *Petition*, Atmos states that under Tenn. Code Ann. § 65-4-105(e), it intends in the future, insofar as practicable, to bill its customers 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.⁶ According to Atmos, the franchise is necessary and proper for the public convenience and properly conserves the public interest for the following reasons:

1. The franchise agreement maintains availability of high quality natural gas service for the Town;
2. The franchise agreement ensures the provision of high quality 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. The franchise agreement establishes adequate and proper mechanisms for access by Atmos to public rights-of-way in order to ensure Atmos is able to provide adequate, efficient and safe service;
4. The franchise agreement includes protective provisions to ensure the citizens of the Town are benefited and not economically harmed by the activities of Atmos; and
5. The franchise agreement provides an incentive for Atmos to invest in infrastructure needed to improve and expand service within the Town.⁷

⁶ *Id.*

⁷ *Id.* at 5-6.

REQUIREMENT OF AND STANDARDS FOR AUTHORITY APPROVAL

Tenn. Code Ann. § 65-4-107 (2015) 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 under Tenn. Code Ann. § 65-4-107 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 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.”

FINDINGS AND CONCLUSIONS

The Authority issued a *Notice of Hearing* on September 30, 2016. On October 7, 2016, Atmos filed an Affidavit of Publication and tear sheet demonstrating that the Company had published notice of the Hearing in the *Franklin-Williamson Herald* newspaper on October 6, 2016.

On October 10, 2016, during the regularly scheduled Authority Conference, a Hearing was held before the voting panel. Appearing for the Company were Mr. A. Scott Ross, Esq., and Mr. James Robbins, Operations Supervisor. During the Hearing, Mr. Robbins ratified and summarized his pre-filed testimony and was subject to questioning before the panel. Mr. Robert Notestine, Esq., attorney for Nolensville, was also available for questions. No person sought intervention in the proceedings. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

Thereafter, based upon the testimony and the administrative record as a whole, the panel found that Atmos' new franchise agreement with Nolensville was necessary and proper for the public convenience and conserves the public interest. In addition, the panel found that the three percent (3%) franchise fee was fair and reasonable. Therefore, the panel voted unanimously to approve Atmos' *Petition*.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Atmos Energy Corporation for Approval of Negotiated Franchise Agreement with the Town of Nolensville, Tennessee* filed on September 8, 2016, is approved.
2. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.
3. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chairman David F. Jones, Director Herbert H. Hilliard, and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director