**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

**January 22, 2020**

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| **IN RE:** | ) | |
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| **PETITION OF ATMOS ENERGY CORPORATION FOR APPROVAL OF AGREEMENT WITH BROWN-FORMAN CORPORATION, d/b/a JACK DANIEL DISTILLERY** | ) ) ) ) | **DOCKET NO. 19-00072** |

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# ORDER APPROVING AGREEMENT

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This matter came before Commissioner Herbert H. Hilliard, Commissioner John Hie, and Commissioner David F. Jones of the Tennessee Public Utility Commission (the "Commission" or "TPUC"), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on December 9, 2019 for consideration of the *Petition of Atmos Energy Corporation for Approval of Agreement with Brown-Forman Corporation, d/b/a Jack Daniel Distillery* ("*Petition*") filed on August 14, 2019.

## BACKGROUND AND *PETITION*

In its *Petition*, Atmos Energy Corporation ("Atmos" or the "Company") requests approval of an Agreement for Extension of Distribution Main and Interruptible Service ("Agreement") with Brown-Forman Corporation, d/b/a Jack Daniel Distillery ("Jack Daniel"). In order to obtain necessary capacity for its increasing natural gas requirements, Jack Daniel desires that Atmos would extend its natural gas system and has negotiated the Agreement with Atmos for such extension. The Agreement calls for Atmos, upon Commission approval, to install approximately 21,000 feet of eight-inch steel natural gas pipeline in Moore County, Tennessee.

The new pipeline will connect the Jack Daniel Distillery in Lynchburg, Tennessee, with the interstate pipeline operated by Enbridge Incorporated (d/b/a East Tennessee Natural Gas).[1]

In general, the terms of the Agreement are as follows:

1. Atmos will construct the facilities;
2. Jack Daniel will make Aid-In-Construction (AIC) payments to Atmos;
3. Atmos will provide gas service to Jack Daniel in accordance with then-current rates under Atmos's Tariff 250 (Interruptible Gas Service) or if elected by Jack Daniel, under Tariff 260 (Transportation Service);
4. Jack Daniel will exclusively use Atmos for delivery of its natural gas requirements; and,
5. Jack Daniel will make a minimum level of gas purchases during the initial 15-year term of the Agreement, which includes provisions concerning corresponding margin shortfall contributions.[2]

Atmos's *Petition* states that while the pricing of the gas to be provided is in accordance with then-current tariffed rates, the provisions regarding minimum margin requirement are not specifically authorized by the Company's existing Tennessee tariffs. As a result, Atmos filed its *Petition* to obtain TPUC approval of the Agreement. In support of its *Petition*, Atmos states that approval of the Agreement will benefit Tennessee ratepayers and serve the public interest.[3] In addition, Atmos submitted the Pre-Filed Testimony of Daniel P. Bertotti.[4]

Mr. Bertotti testifies that Jack Daniel plans to increase its use of natural gas due to a conversion from burning wood and/or sawdust to burning natural gas exclusively in its ongoing

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[1] *Petition*, p. 2 (August 14, 2019).
[2] *Id.* at 2-3.
[3] *Id.* at 3.
[4] Daniel P. Bertotti, Pre-Filed Direct Testimony, p. 2 (August 14, 2019).

operations. In order to accomplish the conversion, Jack Daniel requires additional capacity that Atmos cannot provide via current facilities. Therefore, Atmos will install approximately four (4) miles of high pressure steel main to increase capacity to serve Jack Daniel. Mr. Bertotti testifies that the installation will enhance ongoing operations and allow Jack Daniel to increase production in the future.[5]

Mr. Bertotti also states that the Agreement will provide the following benefits to Atmos ratepayers: an environmental benefit from conversion to a cleaner energy source; an environmental benefit from the elimination of woodburning by Jack Daniel; a local economic benefit from increased future production at Jack Daniel; and, a cost sharing benefit to ratepayers from the increased usage, and hence, increased cost of service contribution, by Jack Daniel.[6] He also testifies that no special discounted rate is provided to Jack Daniel in the Agreement. However, the terms of the agreement do require Jack Daniel to compensate Atmos for any difference between the revenue generated by its future use and the minimum margin requirement necessary to justify the new pipeline extension installation. Mr. Bertotti states that this minimum margin requirement could potentially lead to the Company paying a price per Ccf that is higher than that listed in the approved tariff and thus requires Commission approval.[7]

Further, Mr. Bertotti provides testimony concerning the capital investment for the extension project. A portion of the funding will come from AIC payments to Atmos from Jack Daniel, occurring in three up-front installments. The remaining portion of the funding will be provided by Atmos, but will be covered by Jack Daniel's estimated usage as set forth in the Agreement.[8] Finally, Mr. Bertotti states that the terms of the Agreement comply with Section 7.1

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[5] *Id.*
[6] *Id.*
[7] *Id.* at 3, 5.
[8] *Id.* at 4.

of Atmos's General Rules and Regulations concerning extension policy, as Jack Daniel is required to submit AIC to the Company only to make up the difference between actual and allowable rate of return based on a feasibility study performed by the Company.[9]

The Hearing Officer assigned to this docket issued a *Protective Order* concerning certain confidential information on September 24, 2019. Following requests for data by Commission Staff and respective responses by the Company, the Hearing Officer issued a Notice of Hearing. No other party requested intervention in this docket.

**<u>STANDARD FOR AUTHORITY APPROVAL</u>**

TPUC Rule 1220-04-01-.07, states:

> Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the Commission. A copy of such special agreements shall be filed, subject to review and approval.

In general, a special contract providing for discounted transportation rates in order to avoid a potential customer bypass of the utility's system is subject to additional scrutiny, in which the Commission must find:

1. Customer bypass is imminent;
2. Customer bypass would be uneconomic;
3. Special contract rates and terms are just and reasonable and such terms are not unjustly preferential or unduly discriminatory; and,
4. The special contract rates are the highest that could be negotiated.

However, these general criteria are not directly applicable to this matter, as Jack Daniel is a current customer of the Company, there is no intent to bypass Atmos's system, and the Agreement requires Jack Daniel to exclusively use Atmos for delivery of its natural gas requirements. Therefore, the Commission reviews the special contract to determine whether the

[9] *Id.* at 5-6.

contract rates and terms are reasonable, whether departure from the utility's tariff is justified, and whether the special contract arrangement is in the public interest.

**THE HEARING**

The Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on December 9, 2019, as noticed by the Commission on November 27, 2019. Participating in the Hearing were:

> Atmos Energy Corporation – A. Scott Ross, Esq., Neal & Harwell, PLC, 1201 Demonbreun St., Ste. 1000, Nashville, TN 37203; and Daniel P. Bertotti, Vice President of Marketing, Kentucky/Mid-States Region, Atmos Energy Corporation, 810 Crescent Centre Drive, Suite 600, Franklin TN 37067.

During the Hearing, Mr. Bertotti ratified, then summarized his Pre-Filed Testimony, and was subject to questioning before the panel. The Commission then invited members of the public to offer comments on this docket, but no one sought recognition to offer comment.

**SUMMARY OF AGREEMENT**

Atmos provided a copy of the Agreement as Exhibit A to its *Petition*. The significant provisions of the Agreement are summarized as follows:

1. Atmos is supplying interruptible natural gas service to Jack Daniel only, but Jack Daniel may elect to convert to interruptible transportation service with notice.[10]

2. The Maximum Daily Quantity ("MDQ") is defined as 425 Mcf per hour, and 10,200 Mcf per day.[11]

3. The price for interruptible natural gas service is that which is set forth in then-current Rate Schedule 250, or in the case of election to interruptible transportation service, then-current Rate Schedule 260.[12]

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[10] *Petition*, Exh. A, p. 1 (August 14, 2019).
[11] *Id.*
[12] *Id.* at Exh. A, p. 2, 6-7.

4. The term of the Agreement is fifteen (15) years, which may be automatically renewed for up to three (3) consecutive five (5) year terms.[13]

5. The Agreement provides a breakdown of Annual Gross Margin Requirements and specifies volumetric pricing in Appendix A.[14]

6. Jack Daniel agrees to promptly pay any shortfall, plus applicable taxes, if Jack Daniel fails to meet the established Annual Gross Margin Requirement.[15]

7. With regard to calculation of gross margin, each year is calculated individually, with no carryover from prior year(s), if the Annual Gross Margin Requirement is exceeded.[16]

8. Jack Daniel will pay Aid-in-Construction in three installments at the dates and in the amounts set forth in the Agreement.[17]

9. Atmos will construct the extension pipeline, as mapped in the Agreement, commencing by June 1, 2020 and to be completed on or before January 1, 2021.[18]

10. Facilities constructed by Atmos remain the property of Atmos.[19]

11. The Agreement is subject to approval by the Commission.[20]

12. Jack Daniel agrees to exclusively use Atmos for the delivery of its natural gas requirements.[21]

## FINDINGS AND CONCLUSIONS

In its *Petition*, Atmos has requested that the Commission approve a special contract pursuant to TPUC Rule 1220-04-01-.07. According to the testimony of the Company witness.

[13] *Id.* at Exh. A, p. 2.
[14] *Id.* at Exh. A, App. A.
[15] *Id.* at Exh. A, p. 3-4.
[16] *Id.*
[17] *Id.* at Exh. A, p. 3.
[18] *Id.* at Exh. A., p. 2, 4.
[19] *Id.* at Exh. A, p. 4.
[20] *Id.*
[21] *Id.* at Exh. A, p.7

approval is required only because the annual minimum threshold gas consumption requirement could result in a margin recovery payment that would cause a price per Ccf that is higher than that allowed in the Company's tariff. Based on a review and consideration of the *Petition* and its exhibits, the Pre-Filed Testimony and the entire administrative record, the panel made the following findings:

The panel found that Atmos has followed the requirements of the Company's main extension policy set forth in Section 7.1 of the Company's General Rules and Regulations. Specifically, Atmos will bill Jack Daniel's usage based upon the tariff rate providing no discounted rate to Jack Daniel. Further, Atmos conducted a feasibility study to determine the minimum gross margin that would be needed from Jack Daniel on an annual basis during the initial term of the Agreement. Based upon the amounts calculated in the feasibility study, Atmos properly determined that the difference between the margin contributions and the total cost of the project must be recovered by the AIC payments to Atmos established in the Agreement in order to ensure that the Company's other ratepayers are not subsidizing the pipeline extension to Jack Daniel.

In addition, the panel found that the Agreement serves the public interest and provides substantial benefits to Atmos, its ratepayers, and the citizens of Tennessee. The panel determined that the Agreement provides an environmental benefit through Jack Daniel's replacement of woodburning processes with clean natural gas burning processes; a local economic benefit through Jack Daniel's ability to increase future production due to increased efficiency in the distilling process from conversion to natural gas burning processes; and an economic benefit to Atmos ratepayers through potential lower costs to be recovered in future rates due to the increased potential usage by Jack Daniel which offsets more of Atmos's cost of service.

Based upon these findings, the panel concluded that the rates and terms of the Agreement are reasonable. Further, the panel concluded that departure from application of tariff rates is justified under the specific circumstances wherein a non-tariffed rate could be applied. Finally, the panel concluded that the Agreement will benefit Tennessee ratepayers and otherwise serve the public interest. Therefore, the panel unanimously voted to approve the Agreement between Atmos and Jack Daniel to extend the distribution main and provide interruptible service to Jack Daniel.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Atmos Energy Corporation for Approval of Agreement with Brown-Forman Corporation, d/b/a Jack Daniel* filed on August 14, 2019 is granted.

2. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.

3. Any person who is aggrieved by the Commission'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.

**Commissioner Herbert H. Hilliard, Commissioner John Hie, and Commissioner David F. Jones concur. None dissent.**

**ATTEST:**

Earl Taylor

**Earl R. Taylor, Executive Director**