

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

June 17, 2020

IN RE:)	
)	
PETITION OF ATMOS ENERGY)	DOCKET NO.
CORPORATION FOR APPROVAL OF)	20-00045
FRANCHISE AGREEMENT)	
WITH KINGSFORT TENNESSEE)	

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner David F. Jones of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during the regularly scheduled Commission Conference held on May 11, 2020,¹ for hearing and consideration of the *Petition for Approval of Franchise Agreement with the Kingsport, Tennessee* (“*Petition*”) filed on March 12, 2020 by Atmos Energy Corporation (“Atmos” or the “Company”).

THE PETITION

Atmos is incorporated under the laws of the state of Texas with its principal place of business in Dallas, Texas. Atmos provides natural gas service to approximately 132,000 residential, commercial, and industrial customers in Tennessee.² Among its Tennessee customers, Atmos serves the City of Kingsport, Tennessee, providing natural gas service to

¹ Due to the state of emergency declared by Governor Bill Lee relative to the Coronavirus Disease 2019 (“COVID-19”) pandemic in Tenn. Exec. Order No. 14 on March 12, 2020, (superseded by Tenn. Exec. Order No. 15 on March 19, 2020 which was extended until June 30, 2020 in Tenn. Exec. Order No. 36 on May 12, 2020), the Commission Conference was held electronically via WebEx. The public health emergency places limitations on public gatherings and meetings in order to prevent the spread of COVID-19. In convening the Commission Conference electronically, the Commission relied upon Tenn. Exec. Order No. 16 (March 20, 2020), which was extended until June 30, 2020 by Tenn. Exec. Order No. 34 (May 6, 2020), and affirmed on the record that the electronic meeting was necessary to conduct the essential business of the agency and to protect the health, safety, and welfare of Tennesseans.

² *Petition*, p. 2 (March 12, 2020).

5,057 customers within the city limits. These customers, served by approximately 179 miles of pipe within the Alcoa city limits, are approximately 79% residential and 21% in other classes, such as commercial and industrial.³ Service has been provided in Alcoa pursuant to a franchise agreement incorporated into Kingsport Ordinance No. 4742 dated March 21, 2000. Said franchise agreement expired on March 21, 2020.⁴

On March 12, 2020, Atmos filed a *Petition* requesting approval of a negotiated franchise agreement between Atmos and the City of Kingsport, Tennessee (“City” or “Kingsport”). Along with its *Petition*, Atmos submitted a copy of Kingsport Ordinance No. 6849, extending the non-exclusive franchise agreement with Atmos, initially granted in Kingsport Ordinance No. 4742, for a twenty (20) year term.⁵ Atmos also submitted the Pre-Filed Testimony of Mark A. Martin Vice President of Rates and Regulatory Affairs for the Kentucky/Mid-States Division and a twenty-five (25) year employee of Atmos.⁶ Finally, Atmos submitted a copy of the notice published by Atmos in the City of Kingsport publication, *The Kingsport Times-News*, as required by TPUC rule, found at Tenn. Comp. R. & Regs. 1220-04-01-.05.⁷

Atmos and Kingsport commenced negotiations for extension of the franchise authority during the fall of 2019. The resulting franchise agreement extension passed first reading on February 4, 2020 and passed the second and final reading on February 18, 2020. The franchise agreement extension is set forth in Kingsport Ordinance No. 6849.⁸

Mark A. Martin states in his Pre-Filed Testimony, subsequently adopted by Bernie Anderson, that the franchise agreement is necessary and proper for the public convenience and properly conserves the public interest for the following reasons:

³ Mark A. Martin, Pre-Filed Direct Testimony, pp. 2-3 (March 12, 2020).

⁴ *Petition*, p. 2, Exh. 1 (March 12, 2020).

⁵ *Id.* at Exh. 1.

⁶ Mark A. Martin, Pre-Filed Direct Testimony (March 12, 2020).

⁷ *Notice of Compliance with TPUC Rule 1220-4-1-.05* (May 7, 2020).

⁸ *Petition*, pp. 2-3, Exh. 1 (March 12, 2020).

First, the new franchise terms reflected in the new agreement will establish a long-term arrangement through which the current and future residents, business enterprises and governmental facilities located in Kingsport will be able to receive, under the supervisory jurisdiction of the Commission, the benefits of continuing natural gas service provided by Atmos Energy for an extended period. This arrangement will help ensure the continuing availability of high-quality natural gas service to Kingsport for the foreseeable future.

Second, the new franchise facilitates the provision of such natural gas service to Kingsport by an established and proven provider of that service well-known to both Kingsport and this Commission 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 Energy is able to provide both adequate and efficient service and to comply with the requirements of this Commission to ensure the safety and protection of residents and property within Kingsport.

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

Fifth, the new franchise arrangement provides an incentive for Atmos Energy to invest in infrastructure needed to provide improved and expanded service within Kingsport by ensuring that Atmos Energy will have the right to provide service within these areas for a sufficient period in order to permit Atmos Energy the opportunity to recover the capital investment in such facilities under the rates approved by the Commission.⁹

Mr. Martin also testified that there is no franchise fee set forth in the agreement with Kingsport. However, if a franchise fee should arise, Atmos will charge such fee directly to Kingsport customers as a line item on each customer's bill and in turn passed along to Kingsport, as required by statute.¹⁰

REQUIREMENT OF AND STANDARDS FOR COMMISSION APPROVAL

Tenn. Code Ann. § 65-4-107 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

⁹ Mark A. Martin, Pre-Filed Direct Testimony, pp. 4-6 (March 12, 2020).

¹⁰ *Id.* at 6.

Commission. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Commission, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.” In addition, the Commission, in considering such privilege or franchise, “shall have power, if it so approves, to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require.”¹¹

FINDINGS AND CONCLUSIONS

The Commission issued a *Notice of Hearing* on May 1, 2020. On May 11, 2020, a Hearing was held before the voting panel during a regularly scheduled Commission Conference. Appearing for Atmos were Mr. Scott Ross, Esq. and Mark A. Martin, Vice President of Rates and Regulatory Affairs for the Kentucky/Mid-States Division. During the Hearing, Mr. Martin ratified his Pre-Filed Testimony, answered questions from Mr. Ross concerning the franchise agreement, and was subject to questioning before the panel. Mr. Bart Rowlett, Assistant City Attorney for Kingsport, attended the Commission Conference telephonically, but had no questions or comments during the Hearing. No person commented or sought intervention during the Hearing.

Thereafter, based upon the testimony and the administrative record as a whole, the panel found that Atmos’s new franchise agreement with Kingsport was necessary and proper for the public convenience and properly conserves the public interest and that the terms of the franchise are fair and reasonable. Therefore, the panel voted unanimously to approve Atmos’s *Petition* for approval of its franchise agreement with Kingsport.

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Approval of Franchise Agreement with Kingsport, Tennessee* is

¹¹ Tenn. Code Ann. § 65-4-107 (Supp. 2019).

approved.

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.

Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner David F. Jones concur. None dissent.

ATTEST:



Earl R. Taylor, Executive Director