

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

December 2, 2021

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| IN RE: |) | |
| |) | |
| PETITION OF ATMOS ENERGY |) | DOCKET NO. |
| CORPORATION FOR APPROVAL OF |) | 21-00103 |
| FRANCHISE AGREEMENT |) | |
| WITH BRENTWOOD, TENNESSEE |) | |

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, 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 the regularly scheduled Commission Conference held on November 1, 2021 for hearing and consideration of the *Petition for Approval of Franchise Agreement with Brentwood, Tennessee* (“*Petition*”) filed on August 31, 2021 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 152,000 residential, commercial, and industrial customers in Tennessee.¹ Among its Tennessee customers, Atmos serves the City of Brentwood, Tennessee, providing natural gas service to 2,388 customers within the city limits. These customers, served by approximately 43 miles of pipe within the Brentwood city limits, are made up of approximately 96% residential and 4% in other classes, such

¹ *Petition*, p. 2 (August 31, 2021).

as commercial and industrial.² Atmos currently provides natural gas service to the City of Brentwood pursuant to a franchise agreement incorporated into Ordinance No. 96-21. This franchise agreement expired on July 8, 2021.³

On August 31, 2021, Atmos filed a *Petition* requesting approval of a negotiated franchise agreement between Atmos and the City of Brentwood, Tennessee (“City” or “Brentwood”). Along with its *Petition*, Atmos submitted a copy of 2021-18, extending the non-exclusive franchise agreement with Atmos, for a twenty (20) year term.⁴ Atmos also submitted the Pre-Filed Testimony of Brannon C. Taylor, Vice President of Rates and Regulatory Affairs for the Kentucky/Mid-States Division.⁵ Finally, Atmos submitted a copy of the notice published in the City of Nashville publication, *The Tennessean*, as required by TPUC rule, found at Tenn. Comp. R. & Regs. 1220-04-01-.05.⁶

Atmos and Brentwood commenced negotiations for renewal of the franchise authority during the fall of 2020. The resulting franchise agreement extension passed first reading on July 26, 2021 and passed the second and final reading on August 9, 2021. The franchise agreement extension is set forth in Ordinance No. 2021-18.⁷

Brannon C. Taylor states in his Pre-Filed Testimony, that the franchise agreement is necessary and proper for the public convenience and properly conserves the public interest for the following reasons:

² Brannon C. Taylor, Pre-Filed Direct Testimony, pp. 2-3 (August 31, 2021).

³ *Petition*, p. 2.

⁴ *Id.* at Exh. 1.

⁵ Brannon C. Taylor, Pre-Filed Direct Testimony, p.1.

⁶ *Notice of Compliance with TPUC Rule 1220-04-01-.05* (October 27, 2021).

⁷ *Petition*, pp. 2-3, Exh. 1 .

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 Brentwood 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 Brentwood for the foreseeable future.

Second, the new franchise facilitates the provision of such natural gas service to Brentwood by an established and proven provider of that service well-known to both Brentwood 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 Brentwood.

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

Fifth, the new franchise arrangement provides an incentive for Atmos Energy to invest in infrastructure needed to provide improved and expanded service within Brentwood 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.⁸

Mr. Taylor also testified that there is no franchise fee set forth in the agreement with the City of Brentwood. However, if a franchise fee should arise, Atmos will charge such fee directly to Brentwood customers as a line item on each customer's bill and in turn passed along to Brentwood as required by statute.⁹

REQUIREMENT OF AND STANDARDS FOR COMMISSION APPROVAL

Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the

⁸ Brannon C. Taylor, Pre-Filed Direct Testimony, pp. 4-6.

⁹ *Id.* at 6.

State or a political subdivision of the State to a public utility shall be valid until approved by the 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.”¹⁰

FINDINGS AND CONCLUSIONS

The Commission issued a *Notice of Hearing* on October 22, 2021. On November 1, 2021, a Hearing was held before the voting panel during a regularly scheduled Commission Conference. Appearing for Atmos were:

Neal & Harwell, PLC - Mr. Eric Lybeck, Esq., 1201 Demonbreun Street, Suite 1000, Nashville, Tennessee 37203 and Brannon C. Taylor, Vice President of Rates and Regulatory Affairs for the Kentucky/Mid-States Division.

During the Hearing, Mr. Taylor ratified his Pre-Filed Testimony, answered questions from Mr. Lybeck concerning the franchise agreement and was subject to questioning before the panel. Mrs. Kristen Corn, City Attorney for Brentwood, 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 the City of Brentwood was necessary and proper for the public convenience, 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 the City of Brentwood.

¹⁰ Tenn. Code Ann. § 65-4-107 (Supp. 2019).

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Approval of Franchise Agreement with Brentwood, Tennessee* is 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 (15) 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 (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill,
Vice Chair Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner John Hie, and
Commissioner David F. Jones concurring.**

None dissenting

ATTEST:



Earl R. Taylor, Executive Director