

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ATMOS ENERGY CORPORATION'S)	
MOTION TO MODIFY COMMISSION'S)	
ORDER OF DECEMBER 16, 2015 IN CASE)	CASE NO.
NO. 2015-00346)	2017-00037

ORDER

On January 9, 2017, Atmos Energy Corporation (“Atmos”), pursuant to KRS 278-390, filed a motion to reopen and modify the Commission’s December 16, 2015 final Order in Case No. 2015-00346.¹ Due to circumstances which have developed since the issuance of that Order, Atmos seeks a modification relating to the reporting provisions contained in the Order. This docket was subsequently opened to address Atmos’s motion.

In Case No 2015-00346, Atmos received Commission approval to implement a \$2,500,000,000 universal shelf registration for debt and equity financing. In the final Order, the Commission directed Atmos to file within ten days after each security issuance a statement setting forth the date or dates of issuance, the price paid, the interest rate, the purchasers, and all fees and expenses involved.² Historically, Atmos issued stock in large “follow-on” offerings, primarily to institutional investors and filed the required reports with the Commission within ten days. Atmos recently began issuing stock pursuant to a program known as “at the market” (“ATM”) in which shares are

¹ Case No. 2015-00346, *Application of Atmos Energy Corporation for an Order Authorizing the Implementation of \$2,500,000,000 Universal Shelf Registration*, (Ky. PSC Dec. 16, 2015).

² *Id.*, ordering paragraph 4.

issued in increments smaller than those of follow-on offerings. Atmos states that ATM issuances optimize the price received for the stock because the current market price is paid, versus a discounted price that typically occurs with large block issuances.³ Atmos asserts that this practice was not anticipated in the filing of Case No. 2015-00346, and Atmos seeks to modify the Order to allow for a different reporting date for stock issuance under the ATM program.

Currently, information concerning ATM issuances, including the price paid, is included in Atmos's quarterly 10-Q filings, which normally occur outside the ten-day window for reporting a stock issuance, per the Commission's Order. Atmos states that it prefers not to publicly disclose the price it receives for the stock in the small issuances between the 10-Q filings. It is concerned that if the stock issuance prices become public knowledge prior to its subsequent 10-Q filing, stock price can become vulnerable to manipulations.⁴

From November 17, 2016, through December 7, 2016, Atmos states that it was active in the ATM market. During this 12-day window, it reports that stock issuances ranged from 25,000 shares to 120,000 shares, or an average of 50,500 shares per day.⁵ Atmos states that, based on its request for modified reporting requirements, the report for these recent issuances would be filed within ten days from the Company's next 10-Q filing.

Atmos acknowledges that, due to the unexpected utilization of ATM offerings, it has failed to comply with the reporting requirements of the Commission's Order. Atmos

³ Application at 2.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

asserts the failure to report the stock issuances was not willful or intentional, but the result of a new financial strategy. Atmos states that a modification of the Order will provide a mechanism for future compliance for stock issuance under the ATM program.

The Commission finds that, based on Atmos's showing of good cause for a revision of the reporting requirements in paragraph 4 of the final Order in Case No. 2015-00346, Atmos's motion for modification of that Order should be approved. However, the Commission further finds that Atmos's failure to file a written report within ten days of issuing stock by ATM offerings caused it to be non-compliant with the requirements of a Commission Order, as Atmos has acknowledged. Any future failure to follow the Commission's directives regarding actions that impact Atmos's Kentucky operations could subject Atmos to investigation and possible penalties.

IT IS THEREFORE ORDERED that:

1. Atmos's motion for modification of reporting requirements for security issuances pursuant to its \$2,500,000,000 Universal Shelf Registration is granted.
2. Ordering paragraph 4 of the December 16, 2015 Order in Case No. 2015-00346 is modified to the limited extent that for stock issued under the ATM program, Atmos shall file with the Commission a statement setting forth the date or dates of issuance, the price paid, the interest rate, the purchasers, and all fees and expenses, including underwriting discounts or commission or other compensation, within ten days following the date each such stock issuance was publicly disclosed in Atmos's 10-Q report filed with the Security and Exchange Commission.
3. All other provisions of the December 16, 2015 Order in Case No. 2015-00346 shall remain in full force and effect.

By The Commission

ENTERED
FEB 08 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2017-00037

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