

The Law Offices of

CASE NO: 2008-00152

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April 23, 2008

Honorable Stephanie Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
PO Box 615
Frankfort, Kentucky 40602

RECEIVED

APR 24 2008

PUBLIC SERVICE
COMMISSION

RE: Application of Atmos Energy Corporation for a Certificate
of Public Convenience and Necessity Authorizing it to bid
on Franchise Established by the City of Madisonville, Kentucky

Dear Ms. Stumbo:

I enclose herewith an original, plus eleven (11) copies, of an Application of Atmos Energy Corporation for a Certificate of Public Convenience and Necessity Authorizing it to Bid on Franchise Established by the City of Madisonville, Kentucky, for filing in your office.

The City has established May 16, 2008 as the deadline for submitting bids. We would therefore appreciate entry of an order prior to that date.

Very truly yours,



Mark R. Hutchinson

c: Kevin Dobbs
Mark Martin

BEFORE THE

PUBLIC SERVICE COMMISSION OF KENTUCKY

RECEIVED

APR 24 2008

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

APPLICATION OF ATMOS ENERGY
CORPORATION, OWENSBORO
KENTUCKY FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
AUTHORIZING IT TO BID ON A FRANCHISE
ESTABLISHED BY THE CITY OF MADISONVILLE,
KENTUCKY

CASE
NO. 2008-00152

APPLICATION

1

Applicant, Atmos Energy Corporation, a corporation duly qualified under the laws of the Commonwealth of Kentucky to carry on its business in the Commonwealth.

The Company is an operating public utility engaged in the business of supplying natural gas to the public in numerous cities, towns, and communities in Western and South Central Kentucky.

2

A certified copy of Applicant's Amended and Restated Articles of Incorporation is already on file with the Commission in the Matter of: The Application of Atmos Enemy Corporation for An Order Authorizing a \$900,000,000 Universal Shelf Registration, Case No. 2006-00387.

1

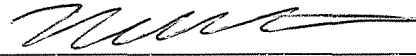
The City of Madisonville (sometimes hereinafter called the "City") is a municipal corporation situated in Hopkins County, Kentucky and is in an area presently served by Applicant. Applicant has been the owner of a franchise operation of the natural gas system within the City immediately prior to the sale of a new franchise. Applicant is at the present time serving the City and owns and maintains a gas distribution system in such City.

The City Commission of the City has established a natural gas franchise for the City and has directed that bids for the sale thereof be received on or before 10:30 a.m. on May 16, 2008. A copy of the resolution establishing such franchise, directing its sale, and setting forth the type and provisions of such franchise is filed herewith as a part hereof.

There is a demand and need for continued natural gas service for the City.

WHEREFORE, Applicant respectfully requests the Commission to enter a certificate of public convenience and necessity authorizing Applicant to bid on the aforesaid natural gas franchise and, if it is awarded such franchise, to operate the natural gas distribution system pursuant to such franchise. A copy of the franchise, if awarded to Applicant, will be filed with the Commission.

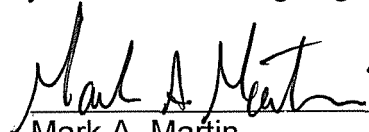
Respectfully submitted,




Mark R. Hutchinson
611 Frederica Street
Owensboro, Kentucky 42301
Attorney for Applicant

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The undersigned Affiant, Mark A. Martin, being first duly sworn, deposes and says that he is Vice President-Marketing and Regulatory Affairs of Atmos Energy Corporation, Kentucky/Mid-States Division having its principal office in Owensboro, Kentucky, which is the Applicant in this proceeding; that he has read the foregoing application and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and that as to those matters he believes them to be true; and that he is duly authorized to sign, execute, verify and file the foregoing application on behalf of Applicant.


Mark A. Martin

SUBSCRIBED AND SWORN to before me by Mark A. Martin as Vice President – Marketing and Regulatory Affairs of Atmos Energy Corporation, Kentucky/Mid-States Division, on this the 23 day of April, 2008.


Notary Public

My Commission Expires: 7/30/08

ATMOSCITY OF
MADISONVILLE\APPLICATION

ORDINANCE 08-02

AN ORDINANCE OF THE CITY OF MADISONVILLE, KENTUCKY, PROVIDING FOR THE CREATION AND SALE OF A FRANCHISE FOR THE PRIVILEGE OF CONSTRUCTING, TRANSPORTING, OPERATING, MAINTAINING AND DISTRIBUTING NATURAL GAS ALONG AND UNDER PUBLIC RIGHT OF WAY WITHIN THE CITY OF MADISONVILLE, KENTUCKY, FOR A TERM OF FIVE (5) YEARS IN CONSIDERATION FOR WHICH, THE SUCCESSFUL FRANCHISEE SHALL PAY TO THE CITY AN ANNUAL SUM EQUAL TO 1% OF GROSS REVENUES FOR KENTUCKY PUBLIC SERVICE COMMISSION REGULATED NATURAL GAS DISTRIBUTION SERVICES FOR DOMESTIC, COMMERCIAL OR INDUSTRIAL CONSUMPTION WITHIN THE CORPORATE LIMITS OF THE CITY; AND FURTHER ESTABLISHING A BID PROCEDURE FOR THE AWARD OF SAID FRANCHISE TO THE SUCCESSFUL BIDDER.

WHEREAS, the existing natural gas franchise agreement between the City of Madisonville, Kentucky and Atmos Energy Corporation expires on June 9, 2008; and,

WHEREAS, the City has determined that it is in the best interest of its citizens to create and offer for sale a new natural gas franchise.

BE IT ORDAINED BY THE CITY OF MADISONVILLE, KENTUCKY (hereinafter referred to as the "City") that the Mayor of the City, or such other person as the Mayor may designate, shall offer for sale, to the highest and best bidder, a five (5) year franchise to enter upon, acquire, construct, operate, maintain and repairs in the public right of way of the City, a gas distribution system with the corporate boundaries of the City, subject to the provisions of the Franchise Agreement attached hereto and incorporated herein by reference.

The Mayor, or such other person as the Mayor may designate, shall, as soon as practicable after passage of this Ordinance, offer for sale, under sealed public bids, the franchise and privileges created herein. Such bids shall be in writing and shall be delivered to the Mayor or his designee, at City Hall, Madisonville, Kentucky, by 10:30 a.m. on May 16, 2008 (the "Bid Deadline"). Advertisements for such bids shall be published in accordance with the requirements of KRS Chapter 424. All costs for such advertisements shall be borne by the successful Franchisee.

Sealed bids offered for the purchase of this franchise shall be publicly opened and read at 10:30 a.m. C.S.T. on May 16, 2008. All bids shall state the bidder's acceptance of the terms and provisions set forth in the attached franchise agreement.

The Mayor shall present all written bids to the City of Madisonville at its first meeting scheduled after the Bid Deadline for the City's consideration and approval. The City reserves the right to accept any bid, to reject any and all bids received, to waive any irregularities or informalities in awarding the franchise and to accept what, in its opinion, is the best responsive and responsible bid. In the event all bids are rejected, the City reserves the right to direct by resolution or ordinance that the franchise created hereunder be offered again for sale until a satisfactory bid is received and approved.

The franchise created by this ordinance shall become effective when the franchise agreement is signed by the successful bidder and the City.

INTRODUCED AND PUBLICLY READ ON FIRST READING, this the 7th day of April, 2008.

PUBLICLY READ AND FINALLY APPROVED ON SECOND READING, this the 21st day of April, 2008.

CITY OF MADISONVILLE, KENTUCKY

By: 
Mayor William M. Cox, Jr.

ATTEST:


Gina Munger, City Clerk

FRANCHISE AGREEMENT

THIS **FRANCHISE AGREEMENT** is made and executed this _____ day of _____ 2008 by and between the City of Madisonville, Kentucky (sometimes referred to herein as the "City") and _____ (referred to herein as "Franchisee").

WITNESSETH:

WHEREAS, the existing natural gas franchise between the City of Madisonville, Kentucky, and Atmos Energy Corporation expires June 9, 2008; and

WHEREAS, the Constitution of the Commonwealth of Kentucky, Sections 163 and 164, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities, including providers of natural gas within their boundaries, to operate under franchise agreements and to grant utilities the right to use public right-of-way on such terms and conditions as are deemed reasonable and necessary; and further KRS 82.082 authorizes the City to exercise any and all powers within its boundaries that are not in conflict with the Kentucky Constitution or state statutes; and

WHEREAS, in order to protect the health, safety and welfare of the citizens of the City, to protect and preserve the City's public right-of-way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the Franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth hereinbelow; and,

WHEREAS, the City duly advertised, in accordance with all applicable law, a public notice of the sale of this franchise and solicited sealed bids therefore; and,

WHEREAS, the City has determined that _____ bid was the highest and best bid and pursuant to City Ordinance _____ is granting this franchise to _____.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION,
THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE
PARTIES AGREE AS FOLLOWS:

Section 1. DEFINITIONS:

As used in this Agreement, the following words and phrases shall have the following meanings:

(A) "*Franchise*" shall mean the rights and privileges granted by the City to Franchisee under the terms and provisions of this Agreement.

(B) "*Franchisee*" shall mean _____.

(C) "*Public Right-of-Way*" shall mean the surface, the airspace above the surface and area below the surface of any street, highway, alley, avenue, boulevard, sidewalk, pedestrian/bicycle lane or trail, driveway, bridge, utility easement or any other public ways owned, dedicated by plat, occupied or used by the public for vehicular or pedestrian transportation or access.

(D) "*Gross Revenues*" shall mean all gross cash receipts for Kentucky Public Service Commission Regulated Natural Gas Distribution Services for domestic, commercial or industrial consumption within the corporate limits of the City.

(E) "*Gas Distribution System*" shall mean the system of works, pipes, pipelines, facilities, fixtures, apparatus, lines, machinery, equipment, structures, appliances, appurtenances or other infrastructure reasonably necessary for the storage, transportation, distribution or sale of natural, artificial or mixed gas to residential and commercial customers and the public generally, within the corporate boundaries of the City.

(F) "*Force Majeure*" shall mean any and all causes beyond the control and without the fault or negligence of Franchisee. Such causes shall include but not be limited to acts of God, acts of the public enemy, insurrections, terrorism, riots, labor disputes, boycotts, labor and material shortages, fires, explosions, flood, breakdowns of or damage to equipment of facilities,

interruptions to transportation, embargoes, acts of military authorities, or other causes of a similar nature whether or not foreseen or foreseeable which wholly or partly prevent Franchisee from performing one or more of its obligations hereunder.

Section 2. CREATION OF FRANCHISE:

(A) There is hereby created and granted unto Franchisee a non-exclusive franchise to enter upon, acquire, construct, operate, maintain and repair in the public right-of-way of the City, a gas distribution system within the corporate boundaries of the City, subject to the provisions of this Agreement. The franchise granted hereunder shall be extended to territories that are annexed within the City upon the same terms and conditions herein, subject to the approval of the state regulatory authorities, if any such approval is required.

(B) The franchise granted to Franchisee by the City shall not be exclusive and the City reserves the right to grant a similar franchise to any other person or entity at any time. In the event the City shall grant to another person or entity during the term hereof a franchise for a gas distribution system within the corporate boundaries of the City similar to the one herein granted to Franchisee, it is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional Franchisee than those terms contained in this Agreement. Additionally, it is agreed that any such new/additional Franchisee shall have no right to use any portion of the gas distribution system of this Franchisee without this Franchisee's written consent.

Section 3. TERM OF FRANCHISE:

The franchise created herein shall be for a term of Five (5) years from the date of this Agreement.

Section 4. FRANCHISEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-WAY:

The Franchisee shall have the right and privilege of constructing, erecting, laying, operating, maintaining, replacing, removing and/or repairing a gas distribution system through, along, across and under the public right-of-way within the corporate boundaries of the City as it now

exists or may hereafter be constructed or extended, subject to the inherent police powers conferred upon or reserved unto the City and the provisions of this Agreement.

Section 5. OPERATION OF FRANCHISE SYSTEM; EXCAVATION OF PUBLIC RIGHT-OF-WAY:

(A) The gas distribution system of the Franchisee shall, at all times, be installed, operated and maintained in good working condition as will enable the Franchisee to furnish adequate and continuous service to all of its residential, commercial and industrial customers. The distribution system shall be designed, installed, constructed and replaced in locations and at depths which comply with all applicable federal and state laws and regulations regarding minimum safety standards for design, construction, maintenance and operation of gas distribution systems.

(B) The Franchisee shall have the right to disturb, break, and excavate in the public right-of-way of the City as may be reasonable and necessary to provide the service authorized by this franchise.

Section 6. DEGRADATION/RESTORATION OF PUBLIC RIGHT-OF-WAY:

(A) Public Improvement Projects: Franchisee shall, upon request by the City, remove, move, modify, relocate, reconstruct or adjust any of its gas distribution system located within public right-of-way, at its own expense, if the City, in its sole discretion, constructs, reconstructs, widens, alters, excavates, repairs, changes or improves any public right-of-way as part of any public improvement project.

(B) If the City requires the Franchisee to adapt or conform its gas distribution system or to in any way construct, reconstruct, remove, alter, relocate, adjust or change its system to enable any other person, firm, corporation or entity, whether public or private, other than the City, to utilize public right-of-way, Franchisee shall be reimbursed for all costs incurred by the Franchisee from the person, firm, Franchisee, corporation or entity requesting or required by the City to perform such change, construction, removal, repair, maintenance, alteration or

relocation.

Section 7. COMPENSATION FOR USE OF PUBLIC RIGHT-OF-WAY AND CONSIDERATION FOR FRANCHISE:

In consideration for the granting and exercise of the rights and privileges created under this franchise, and in further consideration of the grant to the Franchisee of the right to make use of public right-of-way within the City, Franchisee shall pay to the City annually, during the entire life of the franchise, a sum equal to:

1. One percent (1%) of its Gross Revenues as defined above. The Franchisee fee prescribed herein shall be paid to the City quarterly on or before the 30th day after the end of each calendar quarter after the effective date of the franchise, and the Franchisee shall furnish to the City quarterly a certified copy of Franchisee's gross revenues received, subject however, to the following conditions:

(a) Franchisee may add a line-item surcharge to the monthly bills of each of its customer located within the City, which surcharge may be designated as a city franchise fee, in an amount that is sufficient to recover the portion of the franchise fee paid by the Franchisee to the City that is attributable to the gross revenue derived by Franchisee from such customer.

(b) Franchisee may also retain as a one-time charge during the term of the Franchise Agreement an amount equal to \$2.00 per each customer served by Franchisee in order to recover Franchisee's costs and expenses for preparing such customers' accounts to be handled in the manner required to calculate and surcharge each customer's portion of the total franchise fee that becomes due pursuant to this Agreement. Such \$2.00 per customer charge may be deducted from the first quarterly franchise fee payment and each subsequent quarterly payment thereof until the total amount that may be retained by Franchisee has been collected.

The franchise fee provided herein, together with any charges of the City for electric, water, sewage and garbage services provided by the City to Franchisee, and any occupational license fees payable to the city by the Franchisee, shall constitute the only amounts for which Franchisee shall be obligated to pay to the City and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that the City, currently or in the future, may charge Franchisee or assess against Franchisee's property during the term of the franchise.

Section 8. ADDITIONAL REQUIREMENTS; INSURANCE AND INDEMNIFICATION:

(A) Insurance: During the term of this Agreement, Franchisee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance. A certificate of insurance, evidencing said coverage, shall be provided to the City prior to commencement of the performance of this Agreement. Such policies or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000.00) for bodily injury or death to one person, and Two Million Dollars (\$2,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, Two Million Dollars (\$2,000,000.00) for property damage resulting from one accident, Two Million Dollars (\$2,000,000.00) for excess commercial liability, and Two Million Dollars (\$2,000,000.00) for workers' compensation employer liability. Franchisee shall provide any additional workers' compensation coverage in accordance with applicable law.

(B) Indemnification: Franchisee shall at all times indemnify and hold harmless the City from and against any and all lawful claims for injury to any person or property by reason of Franchisee's or its employees' failure to exercise reasonable care in installing, maintaining and operating Franchisee's natural gas system within the City. Provided, none of the provisions of this paragraph shall be applicable to the extent the City, its officials, officers, employees, contractors, or agents, were negligent and such negligence was the sole or contributing factor in bringing about the damages sued upon. That is to say, any judgment and all of the costs of defense, including attorney fees, provided for above shall be apportioned between the City and

the Franchisee based upon the percentage of fault assigned to each by a court of competent jurisdiction.

Section 9. TRANSFER OR ASSIGNMENT OF FRANCHISE:

Franchisee may transfer or assign the franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation without the consent of the City, upon approval of the Kentucky Public Service Commission.

Section 10. CITY'S RIGHT OF INSPECTION AND ACCESS TO FACILITIES OF FRANCHISEE:

The City, through its City Commission, City Manager, City Engineer, City Attorney, or such other assistants as it may employ or designate, at all times reasonable, shall have access to, and the right to inspect, Franchisee's gas distribution system under this franchise and may inspect, examine or verify all or any of Franchisee's non-confidential (as determined from time to time by the Kentucky Public Service Commission) books and records that are necessary to confirm the accuracy of the amount of franchise fee being paid to the City.

Section 11. BREACH OF FRANCHISE; REMEDIES:

In the event of a substantial breach by Franchisee of any material provision of this agreement, the City may terminate the franchise and rights granted to Franchisee hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(A) The City must deliver to Franchisee, by certified or registered mail, a written notice signed by the Mayor, attested by the Secretary, and sealed with the official seal of the City. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Franchisee that the City contends constitutes a substantial breach of any material provision hereof, (ii) designate which of the terms and conditions hereof the City contends Franchisee breached, and (iii) specify the date, time, and place at which a public hearing will be held by the governing body of the City for the purpose of determining whether the allegations contained in

the notice did in fact occur, provided, however, that the date of such hearing may not be less than thirty (30) days after the date of such notice.

(B) Within ten (10) days following the adjournment of the public hearing described in Subsection 11(A) above, the City must deliver to Franchisee, by certified or registered mail, a written notice signed by the Mayor, attested by the Secretary, and sealed with the official seal of the City, setting forth (i) the acts and omissions of Franchisee described in the first notice that the governing body of the City determines to have in fact occurred and (ii) the specific terms and conditions of this agreement listed in the first notice that the governing body of the City determines to have in fact been breached by such acts or omissions of Franchisee.

(C) The City must permit Franchisee the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection 11(B) above within sixty (60) days after Franchisee's receipt of such notice.

Section 12. FORCE MAJEURE:

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Franchisee is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Franchisee is so prevented shall not be counted against it for any reason. The term "force majeure", as used herein, shall mean any cause not reasonably within Franchisee's control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Agreement.

Section 13. SEVERABILITY:

If any section, subsection or provision of this ordinance or any part thereof is for any reason found unconstitutional or held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of any such section, subsection or provision shall not affect any or all other remaining sections and provisions of this ordinance, which shall remain in full force and effect.

Section 14. EFFECTIVE DATE OF Franchise; MUTUAL CANCELLATION OF PRIOR FRANCHISE:

The franchise created by this Agreement shall become effective on _____, 2008. The existing franchise between the City and Atmos Energy Corporation which is scheduled to expire by its terms on June 9, 2008, is hereby mutually terminated by the parties effective as of _____, 2008.

Section 15: GENERAL PROVISIONS

- A. Franchisee will repair any damage caused solely by Franchisee to any of the Public Rights-of-Way and will restore, as nearly as practicable, such property to substantially its condition immediately prior to the incident causing such damage.
- B. Franchisee shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.
- C. Franchisee shall, when reasonably practicable, install all pipelines underground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, underground wires or cables or water or sewer pipes owned or controlled by the City.
- D. Franchisee may remove all or any part of its Gas Distribution System upon the expiration or termination of the franchise and rights granted hereby.

- E. This Agreement shall extend to, be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns.
- F. Any Ordinances of the City or portions thereof that are in conflict or inconsistent with any of the terms or provisions of this Agreement are hereby repealed to the extent of such conflict or inconsistency.
- G. The City, by granting of this franchise, does not surrender or to any extent, lose, waive, imperil, or lessen the lawful powers and rights now or hereinafter vested in the City under the constitution and statutes of the Commonwealth of Kentucky and under the Charter of the City; provided, however, that no ordinance, law, regulation or rule adopted or enacted by the City shall in any way impair, alter, lessen, modify or restrict the rights of the Franchisee under and established by this Agreement including, but not limited to, the use of the Public Rights-of-Way in connection with Franchisee's acquisition, construction, ownership, installation, laying, operation, maintenance, repair or removal of the Gas Distribution System.

IN TESTIMONY WHEREOF, witness the signatures of the parties on this the day and date first above written.

CITY OF MADISONVILLE, KENTUCKY

BY: _____
WILLIAM M. COX, JR., MAYOR

ATTEST:

Gina Munger, City Clerk

BY: _____
President