

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY)	
CORPORATION FOR APPROVAL AND)	
CONFIDENTIAL TREATMENT OF A SPECIAL)	CASE NO.
CONTRACT AND COST ANALYSIS)	2020-00023
INFORMATION SUBMITTED TO THE)	
KENTUCKY PUBLIC SERVICE COMMISSION)	

ORDER

On January 23, 2020, Atmos Energy Corporation (Atmos) filed with the Commission an application to approve a special contract with one of its industrial customers (Application).¹ Atmos asserts in the Application that the proposed contract will replace an existing contract that the Commission previously approved.² By Order dated February 7, 2020, the Commission found further proceedings were necessary to determine the reasonableness of the proposed contract, and established a procedural schedule to facilitate the review. The procedural schedule provided for, among other things, that Atmos or any Intervenor could request either a hearing or file a statement that this case should be submitted for a decision based on the existing record no later than June 12, 2020. On January 31, 2020, the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) filed a motion to intervene in the pending case, and by Order dated February 12, 2020, the Commission granted the motion. Atmos responded to two rounds of discovery. On May 26, 2020, the

¹ Application at 1.

² *Id.*

Attorney General filed a statement indicating no objection to this case being decided on the record without a hearing. Atmos has not requested a hearing, the record in this case is complete, and the matter stands ready for a decision.

The contract that is the subject of this proceeding is a Large Volume Natural Gas Service Agreement (Service Agreement) wherein Atmos agrees to provide large-volume natural gas service for a certain industrial customer at a specified rate. Atmos and its predecessors have been providing service to the industrial customer in some capacity since 1956.³ This Service Agreement replaces an existing agreement that has been in effect since November 1, 2016.⁴ Consistent with prior orders of the Commission relating to special contracts,⁵ Atmos submitted with its Application a cost analysis related to the Service Agreement. In the Application, Atmos also seeks confidential protection for an indefinite period for the customer name, customer identifiable information, and monetary terms contained in the Service Agreement and the supporting cost analysis, pursuant to 807 KAR 5:001, Section 13, KRS 278.160(3), and KRS 61.878.⁶ Additionally, pursuant to the same regulatory and statutory provisions, Atmos filed a petition for confidential protection for an indefinite period (Petition) on March 13, 2020, for Items 1a, 1c, 1d, 5a, 6, and 7 of its Response to Staff's First Request.⁷

³ Atmos's Response to Commission Staff's First Request for Information (Response to Staff's First Request), Item 1.e.

⁴ *Id.*, Item 1.b.

⁵ See Case No. 2013-00148, *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC Apr. 22, 2014).

⁶ Application at 2.

⁷ Petition for Confidentiality (filed Mar. 13, 2020).

CONFIDENTIAL PROTECTION

In support of its petitions for confidential protection, Atmos states that the Commission has consistently granted confidential protection under the provisions of 807 KAR 5:001, Section 13, and KRS 61.878 to the terms of special contracts filed by Atmos.⁸ Atmos maintains that the information contained in the Service Agreement and supporting cost analysis is not publicly available and that if this commercial information is publicly disclosed, it could cause substantial competitive harm to Atmos.⁹ Atmos asserts that the public disclosure of the customer name, customer identifiable information, and monetary terms negotiated with the customer would permit an unfair advantage to Atmos's competitors. Atmos claims its competitors, if armed with this information, would have inside information with which to target this customer and would thereby cause Atmos significant or irreparable competitive harm.¹⁰

Having considered the motion and the material at issue, the Commission finds that the Service Agreement, supporting cost analysis, and the information contained in Atmos's Response to Staff's First Request, Items 1a, 1c, 1d, 5a, 6, and 7 is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

⁸ Application at 2.

⁹ *Id.*

¹⁰ *Id.* at 3, Petition at 3.

SERVICE AGREEMENT

Atmos is providing service to the industrial customer at an existing facility and will not have to install any new facilities¹¹ nor make upgrades to any of its existing facilities to accommodate the industrial customer.¹² If the industrial customer decided to bypass Atmos's distribution system and contract directly with [REDACTED] [REDACTED] it would only need to construct approximately [REDACTED] of pipeline with a payback period at Atmos's tariffed rates of [REDACTED] based on current construction and pipeline tap costs.¹³ Atmos estimates its annual variable expenses and revenues associated with serving the customer to be \$19,900 and \$280,020, respectively.¹⁴ Therefore, the Service Agreement as proposed will provide an annual estimated contribution of \$260,120 toward Atmos's fixed costs.¹⁵ The Commission notes that, while it cannot divulge the terms of the Service Agreement submitted by Atmos, it is satisfied that Atmos has demonstrated through the terms of the Service Agreement, its cost analysis, and in its various filings submitted in this proceeding that (1) physical bypass of its system remains a viable option for this customer; (2) the terms of the Service Agreement cover the variable costs to serve the customer; and (3) the terms also make a contribution to the fixed cost of Atmos's system.

¹¹ Atmos's Response to Staff's First Request, Item 1f.

¹² *Id.* Item 1g.

¹³ Atmos's Response to Staff's First Request, Items 6 and 7.

¹⁴ Atmos's Response to Commission Staff's Second Request for Information, Item 1.

¹⁵ *Id.* \$280,020 (estimated revenue) - \$19,900 (estimated costs) = \$260,120 (estimated contribution to fixed costs).

The Commission finds that Atmos has provided substantial evidence to support our determination that physical bypass of its system remains a viable option for this special contract customer and that the Service Agreement terms reflect necessary discounts to prevent loss of revenues and shifting fixed cost recovery to Atmos's other customers. The Commission further finds, after reviewing the Service Agreement and supporting cost analysis, that the Service Agreement will cover Atmos's variable costs and contribute to fixed costs, is reasonable, and should be approved as filed.

IT IS THEREFORE ORDERED that:

1. Atmos's motion for confidential protection for the customer name, customer identifiable information, and monetary terms contained in the Service Agreement and the supporting cost analysis is granted.

2. The designated information contained in the Service Agreement, the supporting cost analysis, and in Items 1a, 1c, 1d, 5a, 6, and 7 of Atmos's Response to Commission Staff's First Request for Information shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

3. Use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

4. Atmos shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Atmos shall have 30 days from receipt of

written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Atmos is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Atmos to seek a remedy afforded by law.

7. The Service Agreement is approved as filed for service rendered beginning September 1, 2020.

8. Within 20 days of the date of entry of this Order, Atmos shall file with the Commission, using the Commission's electronic Tariff Filing System, the Service Agreement as approved herein.

9. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED
AUG 19 2020 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Acting Executive Director

Case No. 2020-00023

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