

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF ATMOS)
ENERGY CORPORATION FOR AN)
ORDER AUTHORIZING THE) CASE NO. 2009-00046
IMPLEMENTATION OF A \$900,000,000)
UNIVERSAL SHELF REGISTRATION)

O R D E R

On February 4, 2009, Atmos Energy Corporation ("Atmos") submitted its application seeking Commission approval to implement a \$900,000,000 universal shelf registration for debt and equity financing. This universal shelf registration will include the unused authority of approximately \$450,000,000 under the universal shelf approved by the Commission in Case No. 2006-00387,¹ together with authority for additional issuances of up to approximately \$450,000,000 for a total of \$900,000,000. The universal shelf registration will allow Atmos to offer, from time to time, senior debt securities, hybrid securities and/or shares of its common stock, without par value, at prices and terms to be determined at the time of sale. The proposed debt securities and/or common stock may be issued in one or more series. The universal shelf registration will provide Atmos with greater flexibility in its financing options.

¹ Case No. 2006-00387, The Application of Atmos Energy Corporation for an Order Authorizing the Implementation of a \$900,000,000 Universal Shelf Registration (Ky. PSC Nov. 1, 2006).

The net proceeds will be expended for one or more of the following purposes: (1) for the refinancing of approximately \$400 million of the Applicant's 4-percent notes due 2009 and/or approximately \$350 million of its 7 3/8-percent notes due 2011, plus prepayment premiums; (2) for additional debt refunding as the market allows; (3) for the purchase, acquisition and construction of properties and improvements to existing facilities; and (4) general corporate purposes.

On February 10, 2009, Atmos moved the Commission to expedite its review of the application. In support of its motion, Atmos states that it has obtained state agency approval for the new shelf registration in other states and that, as a result, it is unable to utilize any of the remaining authority under the registration approved in Case No. 2006-00387. Therefore, while favorable credit market conditions are emerging, Atmos will be unable to take advantage of them until the Commission approves its application.

Hybrid securities are a broad class of financial instruments that combine features of corporate debt and equity securities. Hybrid securities have most often been issued by financial institutions and have existed for many years in various forms. Currently, hybrid securities are generally in the form of trust preferred securities or junior subordinated debt. The type of hybrid securities Atmos anticipates issuing under the proposed shelf registration would be the junior subordinated debt.² These hybrid securities typically are junior in repayment priority to all other debt a company may have in its capital structure, but are senior in repayment priority to common stock and most types of preferred stock. The typical maturity is 60 years, which is longer than long-term

² Response to the Commission Staff's First Data Request dated February 9, 2009.

senior debt. Because of the longer maturity period, credit rating agencies treat junior subordinated debt as if it was 50 percent common equity. The interest rate for an initial term of 5 or 10 years is fixed, with the interest rate resetting to a floating rate based on a spread over the London Interbank Offered Rate. The interest paid on junior subordinated debt is tax-deductible and interest payments can be deferred up to 10 years without triggering any covenant violations or other penalties. Junior subordinated debt carries a higher interest rate than senior secured debt but has a lower interest rate than preferred dividends and the return on equity generally required by common shareholders.³

Atmos cannot currently state exactly what mix of debt financing, hybrid securities, and equity securities will be utilized. Atmos has stated that its goal is to continue to maintain its debt-to-capitalization ratio within its 50-55 percent target range. Atmos does not plan to implement the universal shelf registration in a manner that would materially impact this target range. It believes the use of the proposed universal shelf registration will allow it to utilize the most favorable financing option available at a particular time.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the approval of the universal shelf registration and the associated creation and issuance of related securities is for lawful objects within the corporate purposes of Atmos, is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public and will not impair its ability

³ Response to the Commission Staff's First Data Request, dated February 19, 2009.

to perform that service, and is reasonably necessary and appropriate for such purposes. Therefore, the universal shelf registration proposed by Atmos should be approved.

Upon the issuance of these securities, Atmos should notify the Commission of the interest rate alternative selected for the issue. It should explain how the alternative chosen represents the most reasonable interest rate available at the time of issuance. Atmos should also file copies of any interest rate management agreements executed in conjunction with the issuance. In addition, in the event Atmos issues a form of hybrid securities other than junior subordinated debt, it should notify the Commission of this action, provide the terms and conditions of the alternative hybrid securities, and explain in detail why the alternative hybrid securities were a more appropriate financial instrument than junior subordinated debt.

IT IS THEREFORE ORDERED that:

1. Atmos is authorized to implement a \$900,000,000 universal shelf registration for equity and debt financing, subject to the provisions and terms contained within its application.
2. The proceeds from the transaction authorized herein shall be used only for the lawful purposes set out in the application.
3. For any issuance of securities under the universal shelf registration, Atmos shall include with its monthly financial report to the Commission a supplemental report detailing the terms and conditions of such equity financing. The supplemental report shall be included with the financial report covering the month of issuance.
4. Atmos shall, within 10 days after each issuance of the securities referred to herein, 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, involved in the issuance. In addition, Atmos shall include an explanation as to how the interest rate alternative chosen represents the most reasonable interest rate available at the time of issuance, as well as copies of any executed interest rate management agreements.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

Done at Frankfort, Kentucky, this 2nd day of March, 2009.

By the Commission

ATTEST:



Executive Director

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