

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF T. ROWE)	
ASSOCIATES, INC. FOR A DECLARATORY)	CASE NO.
ORDER REGARDING THE ACQUISITION OF)	2020-00256
COMMON STOCK)	

ORDER

On July 30, 2020, T. Rowe Price Associates, Inc. and its investment affiliates (collectively, TRP Associates) filed an application requesting an Order declaring that prior Commission approval is not required under KRS 278.020(7) if TRP Associates increases its beneficial ownership¹ to no more than 20 percent of the outstanding shares of voting securities of Atmos Energy Corporation (Atmos), a Kentucky jurisdictional utility.

There are no intervenors in this matter. Pursuant to 807 KAR 5:001, Section 19(7), this matter is submitted for a decision based on the written record.

LEGAL STANDARD

In its application, TRP Associates requests a declaratory order regarding the applicability of KRS 278.020(7) to the acquisition of publicly traded voting securities in Atmos under a specific set of facts. KRS 278.020(7) provides, in relevant part, that:

No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any

¹ As defined in 17 C.F.R. § 240.13d-3, a beneficial owner owns a security through a contract or agreement, and has the power to vote, and/or power to trade or influence trading decisions regarding the security, although the legal title to the security is held by another person.

acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. **Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control.**

Emphasis added.

Also relevant to this proceeding, the Commission issued a declaratory Order in a previous case² finding that T. Rowe Price Associates, Inc. raised a rebuttable presumption of control when an increase to less than 20 percent of the beneficial ownership of outstanding voting securities of a Kentucky jurisdictional utility did not in fact confer actual control under a specific set of facts, including the entity’s passive investment policies and practices, compliance with Securities and Exchange Commission (SEC) rules regarding beneficial ownership, and commitments made to the Federal Energy Regulatory Commission (FERC).

BACKGROUND

TRP Associates, a Maryland corporation, is registered with the SEC as an investment advisor to mutual funds, offshore funds, separate account clients, and common trust funds (Advisory Clients).³ TRP Associates explained that its Advisory Clients own Atmos voting securities, but that neither TRP Associates nor any of its

² Case No. 2015-00389, *Application of T. Rowe Price Associates, Inc. for a Declaratory Order Regarding the Acquisition of Common Stock* (Ky. PSC Mar. 14, 2016).

³ Application at paragraph 1.

affiliates directly own or hold any voting securities of Atmos.⁴ TRP Associates stated that it has trading authority and/or voting power over Atmos voting securities held by Advisory Clients pursuant to investment management contracts with the Advisory Clients.⁵

TRP Associates stated that no single Advisory Client currently owns more than 5 percent of the total outstanding voting securities of Atmos and that, in the aggregate, TRP Associates currently beneficially owns less than 10 percent of the total outstanding voting securities of Atmos.⁶ TRP Associates explained that the Atmos voting securities are held by approximately 250 Advisory clients and managed by 14 different portfolio managers who make independent decisions that are consistent with the respective Advisory Clients' investment objectives.⁷ As set forth in documents filed with the application, TRP Associates have committed to be non-controlling, passive investors in Atmos's voting securities.⁸

PROPOSED TRANSACTION

TRP Associates proposed to increase its beneficial ownership of the outstanding voting securities of Atmos, subject to the following conditions:⁹

1. TRP Associates, on behalf of its Advisory Clients, will not acquire beneficial ownership, in the aggregate, of equal to or more than 20 percent of the outstanding voting securities of Atmos.

⁴ *Id.*

⁵ *Id.* paragraph 2.

⁶ *Id.* paragraph 4.

⁷ *Id.*

⁸ *Id.* Attachments 3–7.

⁹ *Id.* paragraph 9(a)-(c).

2. TRP Associates will not acquire beneficial ownership of more than 10 percent of the outstanding voting securities of Atmos on behalf of any single Advisory Client.

3. TRP Associates will have beneficial ownership of the outstanding voting securities of Atmos in the ordinary course of business for investment purposes only without the purpose of changing or influencing control of Atmos.

DISCUSSION

TRP Associates asserted that it can rebut the presumption in KRS 278.020(7) that control exists from ownership of 10 percent or more of a utility's voting securities on the basis of external and internal limitations that prevent TRP Associates from exercising control over Atmos. TRP Associates points to SEC rules and orders from the Federal Energy Regulatory Commission (FERC) as external limitations, and the general investment policy adopted by TRP Associates and each Advisory Client as the internal limitations that demonstrate the proposed increase in beneficial ownership does not in fact confer control over the management and policies of Atmos.

TRP Associates explained that, pursuant to SEC rules, any person who beneficially owns 5 percent or more of voting securities must file either a Schedule 13G or Schedule 13D with the SEC, based in part on whether the party intends to act as a passive investor or whether the party intends to exercise control over the target company.¹⁰ The Schedule 13G filer acquires beneficial ownership of 5 percent or more of the outstanding securities in the ordinary course of business and not with the purpose

¹⁰ *Id.* footnote 5 and 17 C.F.R. § 240.13d-1.

or effect of changing or influencing control.¹¹ A Schedule 13D filer acquires securities with the intention or purpose of controlling or influencing the target company's business.¹²

In this case, TRP Associates stated that it has been eligible to file a Schedule 13G, as it is a passive investor in Atmos, and that it will continue to be a beneficial owner eligible to file a Schedule 13G annually with the SEC because it will remain a passive investor in Atmos.¹³ TRP Associates argued that the proposed transaction is for investment purposes only and that SEC regulations and enforcement effectively prevent TRP Associates from investing for the purpose of exercising control over Atmos without public disclosure.¹⁴

Similarly, TRP Associates asserted that commitments set forth in an order entered by FERC prevents TRP Associates from exercising control over Atmos. On June 5, 2019, FERC issued an order (FERC Order) extending a blanket authorization for TRP Associates to acquire voting securities of publicly traded utilities and utility holding companies, such as Atmos.¹⁵ FERC incorporated certain commitments made by TRP Associates into the FERC Order, including a commitment that TRP Associates will maintain its status as a beneficial owner eligible to file Schedule 13G. TRP Associates argued that, as applied to this case, this commitment precludes it from taking actions that indicate intent to exercise control over Atmos. Because the FERC Order requires TRP

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* paragraphs 3, 9(c).

¹⁴ *Id.* paragraphs 13, 19, and footnote 5.

¹⁵ *Id.* Attachments 3–7. FERC first granted the authorization in 2007 in 119 FERC ¶ 62,048 (April 17, 2007). The FERC Order was extended for three years in 2010, 2013, 2016, and 2019.

Associates to maintain its eligibility as a Schedule 13G filer, and thus requires that TRP Associates act as a passive investor, TRP Associates argued the FERC Order prevented TRS Associates from taking any actions with the intent or purpose of controlling Atmos.¹⁶

Lastly, TRP Associates asserts that the general investment policy adopted by TRP Associates and Advisory Clients prohibits investing in companies for the purpose of exercising management or control.¹⁷ According to the general investment policy and procedures governing its beneficial ownership of securities, TRP Associates does not invest with the purpose or effect of exercising control over entities whose securities TRP Associates owns or hold.¹⁸

In addition to the external and internal controls that limit TRP Associates' ability to exercise control over Atmos, TRP Associates committed that, if its investment policy changes and it seeks to acquire control or influence control of Atmos, TRP Associates will provide notice to the Commission before taking action and will file an application for approval pursuant to KRS 278.020(7).¹⁹

FINDINGS

The Commission, having considered the record and being otherwise sufficiently advised, finds that, based upon compliance with SEC rules, commitments made in the FERC Order, TRP Associates' general investment policies and practices, and the commitments made to the Commission, TRS Associates' beneficial ownership of 20 percent or less of the beneficial ownership of Atmos's outstanding voting securities meets

¹⁶ *Id.* paragraphs 13, 19.

¹⁷ *Id.* paragraph 3.

¹⁸ *Id.* paragraph 3 and Attachments 2–7.

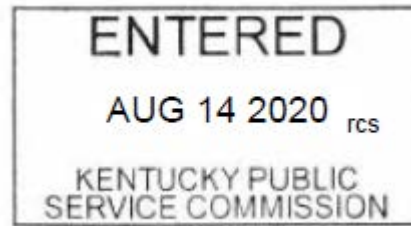
¹⁹ *Id.* paragraph 15.

the statutory definition in KRS 278.020(7) of a rebuttable presumption that control exists by acquiring 10 percent or more of the voting securities of a utility. Because TRS Associates provided substantial evidence that rebutted the presumption of control, which is permitted under KRS 278.020(7), TRS Associates' beneficial ownership of 20 percent or less of the outstanding voting securities of Atmos does not in fact confer control. Therefore, TRS Associates may acquire and hold up to 20 percent or less beneficial ownership of Atmos's voting securities without resulting in a change in utility control requiring Commission approval pursuant to KRS 278.020(7).

IT IS THEREFORE ORDERED that:

1. TRP Associates request for a declaratory Order, as set forth in its application, is granted.
2. If there are changes to TRP Associates' investment policy and it seeks to acquire control or influence control of Atmos, TRP Associates shall provide notice to the Commission before taking action and shall file an application for approval of the acquisition pursuant to KRS 278.020(7).
3. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Acting Executive Director

Case No. 2020-00256

*Honorable Lindsey W Ingram, III
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Mary Ellen Wimberly
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Monica Braun
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801