

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|-------------------------------------|---|------------|
| ELECTRONIC APPLICATION OF ATMOS |) | |
| ENERGY CORPORATION FOR AN ORDER |) | CASE NO. |
| AUTHORIZING THE IMPLEMENTATION OF A |) | 2023-00001 |
| \$5,000,000,000 UNIVERSAL SHELF |) | |
| REGISTRATION |) | |

ORDER

On January 9, 2023, Atmos Energy Corporation’s (Atmos) application seeking Commission approval to implement a \$5,000,000,000 universal shelf registration for senior debt and equity securities was deemed filed.¹ This proposed universal shelf registration will not include any unused universal shelf approved by the Commission in Case No. 2021-00193.² Atmos states that three years is the current term of a Securities and Exchange Commission (SEC) shelf filing. Atmos stated that the universal shelf registration will allow it to offer, from time to time, senior debt 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 common stock may be issued in one or more series. According to Atmos, the universal shelf registration will provide it with greater flexibility in its financing options.³

¹ Atmos tendered its application on January 4, 2023. The Commission notified Atmos by letter on January 9, 2023, that the application was rejected for filing due to certain filing deficiencies. Atmos subsequently cured the deficiency and the application was deemed filed on January 9, 2023.

² Case No. 2021-00193, *Electronic Application of Atmos Energy Corporation for an Order Authorizing the Implementation of \$5,000,000,000 Universal Shelf Registration* (Ky. PSC May. 7, 2021).

³ Application at 1.

Atmos is a Virginia and Texas corporation in good standing with the Kentucky Secretary of State and is duly qualified under the laws of Kentucky to carry on its business in the Commonwealth. Atmos operates as a public utility in the business of purchasing, transmitting and distributing natural gas to residential, commercial and industrial users in both western and south central Kentucky.

Atmos stated in its application that the net proceeds from the universal shelf registration may be expended for one or more of the following purposes: (1) for the refunding of debt as market conditions permit; (2) for the purchase, acquisition, and/or construction of additional properties and facilities; (3) for improvements to existing facilities; and (4) for general corporate purposes.⁴ Further, Atmos requested that the remaining shelf authority granted in Case No. 2021-00193 be terminated, contingent on the approval of the \$5,000,000,000 shelf proposed in its application.⁵

Atmos stated that it has not yet determined how the proposed shelf registration will be divided between senior debt and equity securities, but that its goal is to continue to maintain its historic debt-to-capitalization ratio.⁶ Atmos stated that it plans to issue up to \$2,250,000,000 in common stock and up to \$2,750,000,000 in long-term debt securities.⁷ As of March 31, 2021, the value of Atmos shareholders' equity and long-term debt was \$9,419,091,000 and \$5,760,647,000 respectively.⁸ Atmos asserted that it does not plan

⁴ Application at 2.

⁵ Case No. 2021-00193, *Electronic Application of Atmos Energy Corporation for an Order Authorizing the Implementation of \$5,000,000,000 Universal Shelf Registration* (Ky. PSC May. 7, 2021).

⁶ Application at 1–2.

⁷ Application, Exhibit A at 6.

⁸ Application, Exhibit A at 5.

to implement the universal shelf registration in a manner that would materially impact its capitalization. Atmos maintained the use of the proposed universal shelf registration will allow the utility to utilize the most favorable financing option available at a particular time.⁹

Historically, Atmos has issued stock in large “follow-on” offerings and filed the required reports with the Commission within ten days. More recently, Atmos has been utilizing an “at the market” (ATM) program in which stock is issued in increments smaller than those of large follow-on offerings.¹⁰ Atmos noted that ATMs maximize the price it receives for stock rather than having to accept a discounted price in the larger, follow-on block offerings. Atmos stated that it will continue issuing stock pursuant to the ATM program.¹¹ Atmos requested that the Commission allow the required reports related to the ATM issuances to be filed within ten days following the date each stock issuance is publicly disclosed in its 10Q or 10K reports filed with the SEC.¹²

LEGAL STANDARD

When an applicant seeks approval for the issuance of securities, KRS 278.300(3) requires “that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.” In addition, under KRS 278.300(4), “[t]he commission may grant or deny the application in whole or

⁹ Application at 1–2.

¹⁰ Case No. 2021-00193, *Electronic Application of Atmos Energy Corporation for an Order Authorizing the Implementation of \$5,000,000,000 Universal Shelf Registration* (Ky. PSC May. 7, 2021).

¹¹ Application at 4.

¹² Application at 5.

in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate.”

DISCUSSION AND FINDINGS

The Commission has previously expressed concern about Atmos assigning company-wide consolidated losses to Kentucky operations, stating:

Atmos Kentucky must now track the generation and utilization of NOL ADIT for Kentucky in each fiscal year on a standalone basis based on the expenses incurred and revenue generated from regulated operations in Kentucky, including any revenue from Atmos Kentucky’s performance-based rates, without regard to losses incurred by other jurisdictions. In future applications to increase base rates, Atmos Kentucky must file a report showing the generation and utilization of NOL ADIT for Kentucky since this Order based on the expenses incurred and revenue generated from Kentucky operations.¹³

Likewise, the Commission questions whether any costs of this issuance of securities should be allocated to Kentucky for the purposes stated by Atmos in its application. Kentucky ratepayers should only bear the cost of debt that is related to the operation of Kentucky facilities. This may include debt used for (1) purchase, acquisition, construction, or improvement of additional properties and facilities that directly benefit Kentucky operations, with a reasonable allocation to Kentucky operations, supported by sufficient evidence, for purchase, acquisition, or construction of facilities that benefit customers in multiple states; (2) a reasonable allocation to Kentucky operations for general corporate

¹³ Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 19, 2022), Order at 14.

administration;¹⁴ and (3) repayment of debt that can be allocated to Kentucky operations for the purposes stated above.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Atmos satisfied the legal standards established in KRS 278.300 to implement the \$5,000,000,000 universal shelf registration and related securities, subject to conditions discussed below. First, the shelf registration is for lawful objects within the corporate purposes of Atmos. The lawful object of the utility's purposes is to provide adequate, efficient and reasonable service at fair, just and reasonable rates. The shelf registration meets the lawful object of the utility's purposes because it will be used to strengthen Atmos's financial position through savings from favorable financing options as market conditions permit and to construct new facilities and improve existing facilities. Second, the shelf registration is necessary and appropriate for, and consistent with, the proper performance by the utility of its service to the public and will not impair Atmos's ability to perform that service. This is because the shelf registration will provide Atmos with greater flexibility in financing options to refund existing debt as market conditions permit and to purchase or construct new facilities and improve Atmos's existing utility plant. Third, the shelf registration is reasonably necessary and appropriate for Atmos to meet its statutory duty to provide adequate, efficient and reasonable service because it provides for savings through flexible financing options as market conditions permit and to construct new and improve existing facilities. Therefore, the Commission concludes that the universal shelf registration proposed by Atmos should be approved

¹⁴ Atmos estimated that 4% of the proceeds of this issuance are likely to be allocated to Kentucky operations. See Atmos's Response to Commission Staff's First Request for Information (filed Feb. 9, 2023), Item 1(c).

with the condition that any costs resulting from this issuance of securities shall not be recovered in rates unless Atmos provides evidence sufficient to establish that proceeds were used for Kentucky operations, or some portion of the proceeds may be reasonably allocated to Kentucky operations.

Upon the issuance of these securities 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 is publicly disclosed in Atmos's 10Q or 10K report filed with the SEC. Atmos should notify the Commission of the interest rate alternative selected for the issue. Atmos should explain how the selected alternative 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. The Commission further finds the request by Atmos regarding the termination of the universal shelf registration authority that was approved in Case No. 2021-00193 should be granted.

Additionally, the Commission remains concerned over the size of Atmos's common equity ratio compared to its peers as it expressed in the final Order of Case No. 2021-00214.¹⁵ This results in an increase in the cost of capital and base revenue requirement. The Commission reiterates its position that Atmos's current equity levels in relation to its debt is too high and should take steps to reduce this level in future rate cases. The Commission has placed Atmos on notice that in a future rate filing, the Commission may

¹⁵ Case No. 2021-00214, May 19, 2022 final Order at 37.

make adjustments to Atmos's common equity ratio, for ratemaking purposes, to be comparable to its peers.¹⁶

IT IS THEREFORE ORDERED that:

1. Atmos is authorized to implement a \$5,000,000,000 universal shelf registration for equity and debt financing, subject to the provisions and terms contained within its application, superseding the previous universal shelf authority granted in Case No. 2021-00193.

2. The proceeds from the transaction authorized herein shall be used only for the lawful purposes set out in the application.

3. No costs resulting from this issuance of securities shall be recovered in rates unless Atmos provides evidence sufficient to establish that proceeds were used for Kentucky operations, or some portion of the proceeds may be reasonably allocated to Kentucky operations.

4. Atmos, within ten days after filing its 10Q or 10K filing with the SEC, shall file the information with the Commission, including information regarding the issuance of the securities referenced herein, a statement setting forth the date or dates of issuance, the price paid, the interest rate if any, the purchasers, and all fees and expenses, including underwriting discounts or commission or other compensation, involved in the issuance. In addition, if debt securities were issued, Atmos shall include an explanation as to how the selected interest rate alternative represents the most reasonable interest rate available at the time of issuance, and copies of any executed interest rate management agreements.

¹⁶ Case No. 2021-00214, May 19, 2022 final Order at 38.

5. Any documents filed pursuant to ordering paragraph 4 of this Order shall reference the number of this case and shall be retained in the post-case correspondence file.

6. The remaining universal shelf registration authority granted to Atmos in Case No. 2021-00193 shall be terminated with the registration of the universal shelf registration that has been approved in this case.

7. This case is closed and removed from the Commission's Docket.

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.

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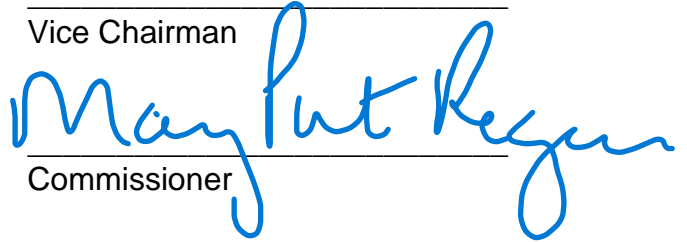
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ATTEST:



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