

## COMMONWEALTH OF VIRGINIA

## STATE CORPORATION COMMISSION

2004 AUG -6 A 10:38

AT RICHMOND AUGUST 6, 2004

APPLICATION OF

ATMOS ENERGY CORPORATION

CASE NO. PUE-2004-00075

For authority to incur  
short-term debtORDER GRANTING AUTHORITY

On June 18, 2004, Atmos Energy Corporation ("Atmos" or "Applicant" or the "Company") filed with the State Corporation Commission ("Commission") an application for authority to issue up to \$2.318 billion from September 1, 2004, through December 31, 2005, pursuant to Chapter 3 of Title 56 of the Code of Virginia ("Code"). This level of short-term debt is in excess of 12% of total capitalization as defined in Section 56-65.1 of the Code. Applicant has paid the requisite fee of \$250.

By Order dated December 24, 2003, in Case No. PUE-2003-00541, the Commission authorized Atmos to borrow up to \$393 million in short-term debt. The \$393 million in short term debt consists of three credit facilities that carry interest rates ranging from LIBOR plus 75 basis points, to the Fed Funds rate plus 50 basis points. The proceeds were to be used to maintain its construction budget, to acquire additional assets, to redeem maturing long-term securities, to provide working capital to provide for maximum peak day gas purchases, and for other general corporate purposes. According to the Company's June 18<sup>th</sup> application, the increase of \$1.925 billion in its short term debt limit is intended to allow it to acquire TXU Gas, a wholly owned subsidiary of TXU Corporation.

Atmos intends to acquire TXU Gas for a cash purchase price of \$1.925 billion. The Company anticipates that the purchase of TXU Gas will be funded through the issuance of \$1.68 billion in short-term debt and the issuance of \$245 million in common equity. According to the application, if the Company is unable to complete the planned equity issuance prior to closing, the purchase of TXU Gas will be funded 100% with short-term debt<sup>1</sup>.

The short-term debt is expected to be borrowed under a 364-day credit facility through a private placement with a syndicate of financial institutions that will include, among others Merrill Lynch Capital Corporation. Merrill Lynch has already provided a financing commitment for the entire amount of the facility. The interest rate on the short-term debt is expected to range from 2.75% to 3.25%, based on LIBOR plus 1.0% to 1.5%. Interest will be paid monthly, or in the case of commercial paper issuances, interest will be paid in accordance with the terms of the commercial paper issued.

The Company states in its application that approval of the application is in the public interest because the TXU Gas purchase will result in a combination of two companies that have complementary strengths. The combined company with its increased size will have improved operating efficiencies and enhanced financial strength. Further, the Company states that Atmos' gas distribution system in Virginia will not be directly impacted by the TXU Gas purchase, although Atmos' improved efficiencies and enhanced franchised strength should inure to the benefit of its Virginia customers after the completion of the transaction and the integration of TXU Gas into the Company.

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<sup>1</sup> Our Staff has advised us in its Action Brief filed contemporaneously with this Order, that Atmos announced on July 19, 2004, that it had issued 9,939,393 shares of common stock, at a price of \$24.75, to raise approximately \$236.2 million in net proceeds before legal, accounting and other offering costs.

On July 27, 2004, Atmos filed a response to a draft Action Brief that the Staff had previously sent to the Company. The draft Action Brief set forth Staff's concerns regarding the potential for the proposed acquisition to harm the Company's Virginia ratepayers and provided the Company an opportunity to address Staff's concerns. The Company's response to Staff's draft Action Brief set forth three proposed conditions to the approval of the authority requested in this Application. Subsequent to the Company's response, Staff and Atmos have agreed to a fourth condition. These four conditions appear in Staff's contemporaneously filed Action Brief. These conditions are designed to mitigate any negative impact that may otherwise affect the Company's Virginia ratepayers.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest. We believe that the four conditions agreed to by the Staff and the Company reasonably insulate the Company's Virginia ratepayers from potential harmful impacts that may result from the Company's acquisition of TXU Gas.

**ACCORDINGLY, IT IS ORDERED THAT:**

- 1) Applicant is hereby authorized to issue up to \$2.318 billion in short-term debt from September 1, 2004, through December 31, 2005 under the terms and conditions and for the purposes set forth in the application.
- 2) For all ratemaking purposes in any proceeding in which an historic test year ends prior to January 1, 2007, Atmos shall use the capital structure component weightings as they actually exist as of June 30, 2004, a date that precedes any

effect on Atmos' capital structure as a result of its acquisition of TXU Gas Company.

- 3) The cost of short-term and long-term debt to be utilized for ratemaking purposes in any proceeding in which an historic test year is utilized that ends prior to January 1, 2007 shall be the lesser of the actual average interest rate of short-term and long-term debt, respectively, in that test year or the 13-month actual average interest rate of short-term or long-term debt in the test year ended June 30, 2004.
- 4) The return on equity to be utilized for ratemaking purposes in a proceeding in which an historic test year is utilized that ends prior to January 1, 2007 shall include the financial risk and component weighting based on the capital structure used in that proceeding pursuant to the conditions approved herein and any increased debt leverage in Atmos' actual capital structure for that test year shall not be considered in determining such return allowed on common equity.
- 5) The Company will take all necessary steps to ensure that its acquisition of TXU Gas will not have any negative effects on the Company's Virginia customers' rates or service or the costs allocated to Virginia. Any increases in allocated costs to Virginia after the acquisition of TXU Gas shall be fully explained in subsequent Annual Informational Filings or other rate proceedings.
- 6) Applicant shall file within 60 days of the end of each calendar quarter commencing on December 31, 2004, a report regarding short-term debt financing to include the date, amount, interest rate of each draw-down, interest coverage ratios calculated in accordance with Applicant's indenture agreement, the use of the proceeds, the average monthly balances, the monthly maximum amount

outstanding, the associated costs, and a balance sheet reflecting actions taken as well as a report describing the source, amount, date, interest rate, and the schedule of repayment for each affiliate loan/borrowing.

- 7) The authority granted herein shall not preclude the Commission from applying the provisions of § 56-78 and § 56-80 of the Code of Virginia hereafter.
- 8) The Commission reserves the right pursuant to § 56-79 of the Code of Virginia to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- 9) The authority granted herein shall have no implications for ratemaking purposes except as set forth in this Order in Paragraphs 2 through 5.
- 10) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Bryd Street, Richmond, Virginia 23294; and to the Division of Economics and Finance of the Commission.

A True Copy  
Teste:

  
Clerk of the  
State Corporation Commission