

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Atmos )	
Energy Corporation for a Variance and )	
Waiver from the Provisions of 4 CSR 240- )	Case No. GE-2009-0443
3.235. )	

**MOTION TO RESCHEDULE  
THE EVIDENTIARY HEARING**

**COMES NOW** the Missouri Office of the Public Counsel (OPC) and for its Motion to Reschedule the Evidentiary Hearing states:

1. The Commission's July 24, 2009 *Order Setting Hearing* set a hearing for August 4-5, 2009. OPC requests that the Commission reschedule the evidentiary hearing to allow additional time for discovery, hearing preparation, and settlement discussions.

2. Atmos holds all of the evidence regarding Atmos' depreciation records and efforts to correct its depreciation records. OPC will need sufficient time to conduct discovery and gather the evidence OPC will need to adequately represent the ratepayers' position on whether Atmos has justified the granting of a waiver from the important consumer protections of 4 CSR 240-3.235. OPC believes two rounds of discovery with either a 10-day or 20-day turnaround should be sufficient.<sup>1</sup>

3. Preparation for an evidentiary hearing on the issue of whether to waive the requirement that Atmos file a new depreciation study will require an analysis of the adequacy of the last depreciation study filed by Atmos. The analysis of a depreciation study used in a rate case typically follows a procedural schedule that affords the parties considerably more time to review the study and to seek discovery.

---

<sup>1</sup> On July 15, 2009, OPC sent the attached data request to Atmos. As of the date of this motion, Atmos has not provided responses.

4. No apparent harm will be caused by delaying the hearing to give the parties more time to prepare. Atmos has not claimed that its desire to file a rate case in 2009 is anything other than an arbitrary deadline. This should not carry more weight than the importance of allowing consumers a sufficient opportunity to investigate and present evidence to the Commission on a request to waive an important consumer protection rule. The purpose of the rule is to ensure that the depreciation expense included in rates is based upon the most accurate information available at the time, and waiving this requirement should not be considered lightly or on an expedited schedule if doing so would compromise the ratepayers' ability to analyze and challenge the utility's request.

5. On July 28, 2009 OPC contacted the other parties and requested that the parties agree upon new dates for an evidentiary hearing. At this time no agreement has been reached. OPC requests that the Commission follow the customary procedure of directing the parties to agree upon a procedural schedule and to file the proposal with the Commission. OPC believes this is the best process for ensuring that the schedule is acceptable to all parties.

6. Atmos, Staff and OPC have met and discussed the issues involved with this case on several occasions, and OPC is hopeful that continued discussions may result in an agreement or a narrowing of the issues to be considered by the Commission. A delay in the evidentiary hearing will afford the parties an opportunity to continue these discussions.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission cancel the evidentiary hearing scheduled for August 4-5, 2009, and direct

the parties to agree upon and file a procedural schedule that includes dates for an evidentiary hearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ **Marc D. Poston**

Marc D. Poston (#45722)

Senior Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

[marc.poston@ded.mo.gov](mailto:marc.poston@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 29<sup>th</sup> day of July 2009:

General Counsel Office  
Missouri Public Service  
Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
GenCounsel@psc.mo.gov

Reid Scott  
Noranda Aluminum, Inc.  
135 East Main St.  
P.O. 151  
Fredericktown, MO  
63645  
reid-scott@sbcglobal.net

Berlin Bob  
Missouri Public Service  
Commission  
200 Madison Street, Suite  
800  
P.O. Box 360  
Jefferson City, MO 65102  
Bob.Berlin@psc.mo.gov

Walther C Douglas  
Atmos Energy Corporation  
Three Lincoln Centre, Ste. 1800  
5340 LBJ Freeway  
Dallas, TX 75240  
douglas.walther@atmosenergy.com

Fischer M James  
Atmos Energy  
Corporation  
101 Madison Street, Suite  
400  
Jefferson City, MO 65101  
jfisherpc@aol.com

Dority W Larry  
Atmos Energy  
Corporation  
101 Madison, Suite 400  
Jefferson City, MO 65101  
lwdority@sprintmail.com

/s/ **Marc Poston**

---