

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

In the Matter of Missouri Gas Energy's)	
Application for Waiver Concerning)	
Commission Rule 4 CSR 240-3.235)	Case No. GE-2010-0030

STAFF RESPONSE TO
MISSOURI GAS ENERGY'S APPLICATION FOR WAIVER
FROM THE REQUIREMENTS OF COMMISSION RULE 4 CSR 240-3.235 OR,
IN THE ALTERNATIVE, MOTION TO DISMISS RATE CASE

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and files its Response to Missouri Gas Energy's (MGE or Company) Application for Waiver from the minimum rate case filing requirements contained in Commission rule 4 CSR 240-3.235, or in the Alternative Staff's Motion to Dismiss Case No. GR-2009-0355 pursuant to Section 386.390, RSMo (2000) and 4 CSR 240-3.235, for violation of the Commission's rules governing minimum filing requirements for Gas Utility General Rate Increase Requests, respectfully states:

1. In support of its Motion to Dismiss in Response to Missouri Gas Energy's, (MGE or Company) *Request for Waiver, Or In The Alternative, Request For Dismissal Of Application For The Reasons Stated Herein*, Staff points out that MGE filed tariff sheets designed to increase MGE's customers' rates by more than \$32,000,000 in Case No. GR-2009-0355. MGE filed for rate increase on April 2, 2009.

2. In its letter accompanying the rate case, the Company notes the minimum filing requirements for a general rate case contained in 4 CSR 240-3.030, but fails to address the minimum filing requirements of 4 CSR 240-3.235. Additionally, MGE failed to include the required depreciation study in its direct case.

3. Staff and MGE disagree concerning the correct interpretation of Commission Rule 4 CSR 240-3.235 requirement for filing depreciation studies.

4. MGE requests a waiver from the provisions of the rule or, in the alternative, urges the Commission to agree with MGE's interpretation of the rule and dismiss its *Application*. Staff opposes MGE's Request to Dismiss its Application but does not oppose the Commission granting the requested waiver, with the conditions noted below.

5. The purpose of Section 4 CSR 240-3.235, as described in the rule is: *"This rule prescribes information which must be filed by all gas utilities when filing for a general company-wide increase in rates. As noted in the rule, additional provisions pertaining to the filing requirements for general rate increase requests are found at 4 CSR 240-3.030.*

6. It is Staff's interpretation MGE is required under Commission Rule 4 CSR 240-3.235 to file a depreciation study with its general rate increase request: "(1) In addition to the requirements of 4 CSR 240-3.030, any gas utility which submits a general rate increase request shall submit the following:

- (A) Its depreciation study, database and property unit catalog. However, a gas utility need not submit a depreciation study, database or property unit catalog to the extent that the commission's staff received these items from the utility during the three (3) years prior to the utility filing for a general rate increase or before five (5) years have elapsed since the last time the commission's staff received a depreciation study, database and property unit catalog from the utility. The depreciation study, database and property unit catalog shall be compiled as follows:

7. Staff interprets this rule and its intent to require utility companies to provide current (no more than three years old) depreciation studies with its rate case filings. When there are potentially significant changes or offsetting changes in various depreciable plant accounts, it is important, if not essential, for any utility company seeking a rate increase to submit a current depreciation study so the Commission may consider these changes prior to ordering any changes in depreciation rates.

8. Notably, the Commission has interpreted the depreciation study rule, as it applies to electric utilities, in Case No. ER-2008-0318, *In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area*. Referencing the rebuttal testimony of AmerenUE's depreciation witness, Mr. Wiedmayer, the Commission made the following finding:

Not surprisingly, complete depreciation studies are expensive and time consuming. Such a study may involve site visits, interviews, data and actuarial analysis, and the production of reports and testimony. That is one of the reasons, the Commission's rules require such depreciation studies to be done only periodically, and not necessarily for every rate case. AmerenUE submitted a complete depreciation study in July 2006, as part of its last rate case, covering the period through December 31, 2005. As a result, AmerenUE's next complete depreciation study would be due in July 2011, unless it files a new rate case after July 2009, in which case a new depreciation study would have to be filed with the rate case. (*citing* Mr. Weidmayer's Rebuttal, Ex. 13, Page 5, Lines 8-14.)

9. Recently in Case No. GE-2009-0443, in its July 19 application for waiver of the same rule, Atmos Energy Corporation confirmed both the Commission's finding stated above and Staff's interpretation when Atmos pleaded:

4 CSR 240-3.235 related to the filing requirements for gas utility rate increase requests contains a provision that requires the filing of a depreciation study, database and property unit catalog by the gas utility with a rate case if [it] has not submitted a depreciation study within three (3) years of the filing date. . . .

Atmos submitted its last depreciation study, database and property unit catalog to the Commission on April 6, 2006, as a part of its 2006 Rate Case, Case No. GR-2006-0387. Pursuant to 4 CSR 240-3.235(A), Atmos believes that it would be required to file a new depreciation study in any rate case filed after April 6, 2009, absent a waiver or variance from this rule.

10. The Commission has broad discretion to interpret its own rules, and has already construed this rule to require a utility company to file a depreciation study with a rate case, if the company has not submitted the required study within three years of the rate case filing date.

11. Since MGE has failed to file the required depreciation study with its case, the Commission has at least two choices.

12. The Commission may dismiss the MGE rate case as failing to comply with the Commission's minimum filing requirements, or it may grant MGE's Request for Waiver from the requirements of the rule.

13. Staff does not take lightly its suggestion that one of the Commission's options is to dismiss the rate case. The Company and Staff have expended a considerable amount of effort in this case. In the course of Staff's audit in Case No. GR-2009-0355, however, Staff determined MGE had failed to include the required depreciation study. Staff contacted MGE with its concerns.

14. Staff Engineer, Rosella Schad, of the Engineering & Management Services Department, brought this matter to the attention of MGE on June 11, 2009.

15. In a conference call Staff Engineer, Guy Gilbert, and Staff Counsel, Lera Shemwell, brought the matter to the attention of MGE on July 7, 2009.

16. MGE filed its July 16, 2009 pleading as a result of these discussions.

17. The other option for the Commission to consider is granting MGE the requested waiver from the rule. Staff recommends this option, with the following conditions:

a. The Company shall retain the current depreciation rates, as shown in attached Schedule A. These rates were agreed to in the Partial Nonunanimous Stipulation and Agreement in Case No. GR-2006-0422.

b. The one exception is that the Company will add a new depreciation rate for a transportation subaccount, which was not part of MGE's last rate case as shown in attached Schedule A.

- c. The Company shall submit a depreciation study no later than June 30, 2010, which conforms to, among other things, Commission Rule 4 CSR 240-3.275 and include actuarial analysis for all accounts inclusive, identifying those specific accounts that lack sufficient data to perform an actuarial analysis.
- d. The Company shall use the currently authorized Missouri depreciation rates for General Plant Accounts for the respective functional accounts of the Company's Corporate Plant accounts.
- e. The Company shall maintain mortality records in compliance with Commission Rule 4 CSR 240-40.040 Uniform System of Accounts-Gas Corporations and 4 CSR 240-3.275 Submission Requirements for Gas Utility Depreciation Studies.
- f. The Company shall account for all payments from other parties when the Company is required to remove, relocate, rearrange, reroute, or otherwise make changes in utility property, other than for purposes of rendering utility service, as credits to the depreciation reserve in compliance with Commission Rule 4 CSR 240-040 Uniform System of Accounts-Gas Corporations and appropriately identify amounts in their Annual Reports.
- g. The Company shall establish and adopt accounting policies or procedures for separating/allocating removal costs of plant that is being retired from costs to install new plant.
- h. The Company shall continue to keep a separate accounting of their amounts accrued for recovery of their initial investment in plant from the amounts

accrued for the cost of removal, consistent with the Commission's Third Report and Order in Laclede Case No. GR-99-315.

WHEREFORE, Staff respectfully requests that the Commission either dismiss MGE's rate case for failure to include the minimum filing requirements to support its case and establish a case to consider the correct interpretation of Commission Rule 4 CSR 240-3.235 or, in the alternative, approve Staff's recommendation to grant MGE a waiver subject to the conditions noted above.

Respectfully submitted,

/s/ Lera L. Shemwell

Lera L. Shemwell
Deputy Chief Counsel

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 31st day of July 2009.

/s/ Lera L. Shemwell

**Missouri Gas Energy
Case No. GR-2009-0355
Depreciation Rate Schedule**

Account Number	Description	Depreciation Rate	ASL (Years)	Net Salvage (%)	Life Only Rate	Net Salvage Rate
<u>Distribution</u>						
375.00	Structures and Improvements	1.49%	60.5	10.00%	1.65%	-0.16%
376.00	Mains	2.16%	44.0	5.00%	2.27%	-0.11%
378.00	Measuring and Regulating Eq.	2.86%	35.0	0.00%	2.86%	0.00%
379.00	Measuring and Regulating Eq.-City Gate	2.13%	47.0	0.00%	2.13%	0.00%
380.00	Services	3.13%	40.0	-25.00%	2.50%	0.63%
381.00	Meters	2.89%	35.0	-1.00%	2.86%	0.03%
382.00	Meter Installation	2.86%	35.0	0.00%	2.86%	0.00%
383.00	House Regulators	2.44%	41.0	0.00%	2.44%	0.00%
385.00	Measuring and Regulating Eq.-Industrial	3.33%	30.0	0.00%	3.33%	0.00%
<u>General (Including Corporate)</u>						
390.00	Structures and Improvements	2.00%	50.0	0.00%	2.00%	0.00%
391.00	Office Furniture and Eq.	8.06%	12.4	0.00%	8.06%	0.00%
392.10	Transportation Eq. [Cars & Small Trucks]	13.33%	6.0	20.00%	16.67%	-3.34%
392.20	Transportation Eq. [Large Trucks]	7.83%	11.5	10.00%	8.70%	-0.87%
393.00	Stores Eq.	2.70%	37.0	0.00%	2.70%	0.00%
394.00	Tool, Shop, and Garage Eq.	5.30%	18.9	0.00%	5.30%	0.00%
396.00	Power Operated Eq.	6.25%	12.0	25.00%	8.33%	-2.08%
397.10	Electronic Reading - ERT	5.00%	20.0	0.00%	5.00%	0.00%
397.20	Communication Eq.	6.25%	16.0	0.00%	6.25%	0.00%
398.00	Miscellaneous Eq.	3.85%	26.0	0.00%	3.85%	0.00%

MGE is required to keep separate accounting of its amounts accrued for its initial investment in plant from the amounts accrued for net cost of removal/net salvage.

Schedule A