

**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-     )  
3.235.   )

Case No. GE-2009-0443

**PUBLIC COUNSEL’S RESPONSE TO APPLICATION**

**COMES NOW** the Missouri Office of the Public Counsel (OPC) and for its response to Atmos Energy Corporation’s Application for Variance and Waiver states:

1.       On June 19, 2009, Atmos filed its Application for Variance and Waiver (“Application”) from the provisions of 4 CSR 240-3.235 requiring Atmos to file a new depreciation study in its next general rate case. Atmos states:

The Company is currently working on vintaging the asset retirements. Until this process is completed, Atmos believes it would be reasonable and prudent to delay the filing of a new depreciation study, database and property unit catalog. The process will not be completed in time to be included in the 2009 rate case. Atmos respectfully requests it be allowed to file its next 2009 rate case without the inclusion of a new deprecation study.

2.       Atmos has not established good cause for waiving the requirement that Atmos file a depreciation study with its rate case. Atmos provides no explanation as to *why* Atmos has not finished vintaging the asset retirements, which is an essential element of a depreciation study. Atmos should have completed this study within the three years since Atmos’ last rate case, especially considering the deficiencies of the controversial depreciation study used in the last rate case as discussed below. On behalf of Atmos’ customers, OPC opposes granting Atmos a variance and waiver from 4 CSR 240-3.235.

3. In Atmos last rate case, GR-2006-0387, Atmos' depreciation records were not kept in compliance with Commission rules,<sup>1</sup> and for that reason, Atmos filed the rate case with a depreciation study that was clearly insufficient. Staff witness Mr. Guy Gilbert stated that Atmos "failed to maintain sufficient plant data to enable the Staff to perform a detailed depreciation study."<sup>2</sup> Mr. Guy Gilbert identified data missing from 17 FERC accounts and testified in regards to the 2006 depreciation study that "[a] disproportionate amount of the data entries appear to have been made during 2005."<sup>3</sup> This is the same depreciation study, severely lacking in data, that Atmos now wants the Commission to approve for a rate case that has not been filed. Mr. Gilbert specifically identified the missing asset retirement data as being a crucial piece missing from Atmos' depreciation study when he testified that "the major thing that I was seeking in the continuing property record was the retirement data."<sup>4</sup> Despite this clear statement identifying the importance of the asset retirement data, Atmos chose not to begin the process of vintaging the asset retirements until recently.

4. The insufficiency of the depreciation study from Atmos' last rate case increases the importance of basing any 2010 general rate adjustments on the most accurate depreciation data available. Atmos has not provided the Commission with a sufficient explanation or basis for granting Atmos a waiver of the important requirements provided in 4 CSR 240-3.235. A waiver would allow Atmos to undergo two back-to-back rate cases with an insufficient depreciation study, which is not in the public interest.

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<sup>1</sup> By failing to vintage the asset retirements, Atmos continues to be in violation of 4 CSR 240-40.040 requiring Atmos to maintain asset retirement data.

<sup>2</sup> Case No. GR-2006-0387, Direct Testimony of Guy Gilbert, pp. 1-6.

<sup>3</sup> *Id.*

<sup>4</sup> Case No. GR-2006-0387, Evidentiary Hearing Transcript, Volume 7, p. 187.

5. OPC asks that the Commission reject the waiver request. Atmos decision to wait three years before it begins vintaging the asset retirements is unacceptable given the agreement in the last rate case wherein Atmos agreed it would update the vintage portion of its depreciation records.<sup>5</sup>

6. Atmos has not identified any specific harm that will occur if the Commission were to deny Atmos' waiver request and require Atmos to finish vintaging its asset retirements and to incorporate the vintage data in a new depreciation study. Atmos only says that it would delay Atmos' filing of a rate case. However, the delay caused by performing the work required of all gas companies when filing a general rate case under the Commission's rules is by itself an insufficient reason for waiving an important consumer protection rule.

7. OPC also asks that the Commission deny Atmos' request for expedited consideration. The only reason cited by Atmos for granting expedited treatment is Atmos' desire to file a rate case by the end of 2009. This is an arbitrary and insufficient basis for granting a waiver of an important consumer protection rule. Any delay in Atmos' filing of a rate case will have been caused primarily by Atmos' decision to wait until now to file this request for a waiver and Atmos' failure to properly maintain depreciation data. OPC, interested parties, and the Commission should not be rushed by Atmos' decisions that lead to this late request and Atmos' claimed need to rush the Commission's consideration of the waiver request.

WHEREFORE, the Office of the Public Counsel respectfully offers this response to Atmos Energy Corporations Application for Variance and Waiver.

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<sup>5</sup> *Partial Non-Unanimous Stipulation and Agreement*, Case No. GR-2006-0387, p.5.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 13<sup>th</sup> day of July 2009:

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