

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF BRIEF

COMES NOW the Staff of the Commission and for its Brief respectfully states as follows:

1. On September 3, 2009, the Commission issued its *Order Directing Filing* (Order) directing the Staff, Atmos Energy Corporation (Atmos or Company), and any other party so desiring, to file a Brief addressing the issue of under what authority the Commission may waive 4 CSR 240-3.235.

2. The application that is the subject of the above-captioned case is a request by Atmos for the Commission to grant the Company a waiver from the provisions of Commission Rule 4 CSR 240-3.235 to allow the Company to file its next rate case without the inclusion of a new depreciation study.

Under What Authority May The Commission Waive 4 CSR 240-3.235?

3. The rule Atmos seeks a waiver from, 4 CSR 240-3.235, falls under Chapter 3 of the code of state regulations governing the “*Filing and Reporting Requirements*” of the Public Service Commission.

4. In Chapter 3, Commission rule 4 CSR 240-3.015 provides for the “*Filing Requirements for Utility Company Applications for Waivers or Variances*”:

(1) The requirements for filing applications for waivers or variances from commission rules and tariff provisions, as well as those statutory provisions that may be waived, are contained in Chapter 2 of the commission's rules in rule 4 CSR 240-2.060.

5. Rule 4 CSR 240-2.060 sets forth the requirements for "*Applications*."

Subsection (4) pertains to applications for variances or waivers and sets forth the "good cause" standard under which the Commission may grant a waiver or variance:

In addition to the requirements of section (1), applications for variances or waivers from commission rules and tariff provisions, as well as those statutory provisions which may be waived, shall contain information as follows:

- (A) Specific indication of the statute, rule or tariff from which the variance or waiver is sought;
- (B) The reasons for the proposed variance or waiver and a complete justification setting out the *good cause* for granting the variance or waiver; and
- (C) The name of any public utility affected by the variance or waiver.

6. Rule 4 CSR 240-2.015 "*Waiver of Rules*" defines when the rules in Chapter 2 may be waived. This rule also states the "good cause" standard under which the Commission may waive its own rules:

(1) A rule in this chapter may be waived by the commission for *good cause*.

7. As a matter of precedent and past practice, the Commission has exercised its discretion and waived its own rules upon proper application by a utility. In a similar application case filed by Missouri Gas Energy¹, the Commission granted MGE a waiver from the same rule (4 CSR 240-3.235) sought by Atmos in this case. In the Syllabus of its *Order Granting Waiver*, the Commission stated: "This order grants Missouri Gas Energy

¹ See Case No. GE-2010-0030, *In the Matter of Missouri Gas Energy's Application for Waiver Concerning Commission Rule 4 CSR 240-3.235, Order Granting Waiver*, issued August 12, 2009.

a waiver from Commission Rule 4 CSR 240-3.25.” On page 2 of the Syllabus of its Order, the Commission stated “Commission Rule 4 CSR 240-2.060(4) allows the Commission to grant waivers from Commission rules upon good cause shown.” Likewise, the Commission may grant Atmos a waiver.

8. Staff further notes it concurs with the *Brief of Atmos Energy Corporation In Response to Order Directing Filing* that was early filed by Atmos on September 8, 2009.

9. For the reasons stated in Staff’s verified *Recommendation In Support Of Waiver*, the Staff believes that Atmos has stated sufficient reasons for the Commission to find good cause for granting the Company a waiver from 4 CSR 240-3.235. Accordingly, Staff renews its recommendation that the Commission approve Atmos’ Application for waiver subject to the conditions recommended by Staff and accepted by Atmos:

- (1) this waiver will apply only to a rate case filed in calendar year 2009;
and
- (2) Atmos will not propose changes to its depreciation rates as a part of its 2009 rate case.

Staff has represented to Atmos and Office of Public Counsel that it is unopposed to their Stipulation and Agreement filed August 26, 2009.

WHEREFORE, Staff respectfully submits its Brief to the Commission in response to its Order.

Respectfully submitted,

/s/ Robert S. Berlin

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9th day of September 2009.

/s/ Robert S. Berlin