

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

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.)	

**BRIEF OF ATMOS ENERGY CORPORATION
IN RESPONSE TO
ORDER DIRECTING FILING**

COMES NOW Atmos Energy Corporation (“Atmos” or "Company"), by and through undersigned counsel, and respectfully submits its Brief in response to the Missouri Public Service Commission’s (“Commission”) *Order Directing Filing* entered in this matter on September 3, 2009.

In its *Order Directing Filing*, the Commission orders Atmos and the Staff of the Commission to file a brief regarding the Commission’s authority to grant a waiver of 4 CSR 240-3.235 no later than September 14, 2009. Reciting that Atmos has requested a waiver or variance from the above-referenced rule, the Commission states that “[i]t is not clear, however, under what authority the Commission may waive that particular rule.” (*Order*, page 1).

UNCONTROVERTED FACTS

1. On June 19, 2009, Atmos filed its verified 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 requested expedited treatment regarding the waiver and specifically requested a decision by July 31, 2009.

2. On July 8, 2009, the Commission Staff filed its verified Staff Recommendation In Support Of Waiver which expressed Staff's support for the grant of the waiver, as requested by the Company, with conditions¹.

3. On July 13, 2009, Atmos filed its Response to the Staff Recommendation In Support Of Waiver, in which Atmos accepted the proposed conditions of Staff.

4. Also on July 13, 2009, the Office of the Public Counsel ("Public Counsel") filed its Response To Application which opposed the grant of the Company's Application.

5. On July 23, 2009, Atmos filed its Reply to Public Counsel's Response to Application.

6. On August 19, 2009, Atmos and Public Counsel filed their Joint Motion to Suspend Procedural Schedule, which was granted by Commission Order dated August 20, 2009.

7. As a result of settlement negotiations, Atmos and Public Counsel filed their Stipulation and Agreement on August 26, 2009, setting forth their stipulations and agreements to resolve any outstanding issues in this matter,² which included Public Counsel's withdrawal of its opposition to the granting of the subject waiver in this

¹ Staff suggested in its Memorandum that the Commission grant the waiver subject to the following conditions: (1) the 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.

² As set forth in Paragraph 9 of said Stipulation and Agreement:

a. Atmos agrees to remove the negative amortization of the depreciation reserve from the cost of service in its next rate case filed in 2009.

b. Atmos will not offer testimony in said rate case supporting a negative amortization of the depreciation reserve.

c. Public Counsel hereby withdraws its opposition to the granting of the subject waiver in this proceeding.

d. Atmos and Public Counsel agree that the Commission's approval of the requested waiver is subject to the following conditions recommended by the Staff: (1) the 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.

proceeding. Atmos and Public Counsel further stated it was their understanding that neither the Staff nor Noranda Aluminum, Inc. opposed the nonunanimous stipulation and agreement.

8. The Commission subsequently ordered that, no later than September 2, 2009, parties could file a response to said nonunanimous stipulation and agreement. No party filed a response.

ARGUMENT

As this Commission has previously stated on numerous occasions and most recently on August 12, 2009,³ Commission Rule 4 CSR 240-2.060(4) allows the Commission to grant waivers from Commission rules upon good cause shown.⁴ In its August 12, 2009, *Order Granting Waiver* (*Order* attached hereto) issued in the MGE Depreciation Waiver, this very rule -- 4 CSR 240-3.235 -- was the subject of the waiver proceeding.

As the Commission stated:

Commission Rule 4 CSR 240-2.060(4) allows the Commission to grant waivers from Commission rules upon good cause shown. Upon review of MGE's verified application, the Commission's rules, Staff's recommendation, and OPC's concurrence in Staff's recommendation, the Commission finds that MGE has shown good cause in its request for a waiver. (*Order*, page 2).

Given the record in the instant proceeding -- Atmos' verified application, the Commission's rules, Staff's verified positive recommendation with conditions (coupled with Atmos' agreement thereto), and the unopposed Nonunanimous Stipulation and

³ *In the Matter of Missouri Gas Energy's Application for Waiver Concerning Commission Rule 4 CSR 240-3.235, Order Granting Waiver*, August 12, 2009 (hereafter referred to as "MGE Depreciation Waiver"). The Syllabus for the Order recites: "This order grants Missouri Gas Energy a waiver from Commission Rule 4 CSR 240-3.235."

⁴ Commission Rule 4 CSR 240-3.015 (Filing Requirements for Utility Company Applications for Waivers or Variances) references Chapter 2 of the Commission's Rules, specifically 4 CSR 240-2.060.

Agreement submitted by Public Counsel and Atmos (which, pursuant to 4 CSR 240-2.115(2)(C), may be treated by the Commission as a unanimous stipulation and agreement) – the Commission clearly can make a similar finding that Atmos has shown good cause in its request for a waiver.

Atmos respectfully submits that in accordance with Commission Rules 4 CSR 240-3.015, 4 CSR 240-2.060(4) and recent precedent, the Commission has authority to waive Commission Rule 4 CSR 240-3.235, and that Atmos has shown good cause in its request for a waiver herein.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the above and foregoing document was sent by electronic mail, or hand delivered, on this 8th day of September, 2009 to counsel of record.

/s/ Larry W. Dority

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