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Witness: Mark D. Caudill
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Sponsoring Party: Liberty Energy (Midstates) Corp.
d/b/a Liberty Utilities
Case No.: GR-2014-0006
Date Testimony Prepared: September 20, 2013

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: GR-2014-0006

DIRECT TESTIMONY

OF

MARK D. CAUDILL

ON BEHALF OF

**LIBERTY ENERGY (MIDSTATES) CORP.
D/B/A LIBERTY UTILITIES**

**Jackson, Missouri
September 2013**

Liberty Exhibit No. 2
Date 9-26-13 Reporter KF
File No. G-0-2014-0006

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

In the Matter of the Verified Application and)
Petition of Liberty Energy (Midstates) Corp.) Case No. GO-2014-0006
d/b/a Liberty Utilities to Change its Infrastructure) Tracking No. YG-2014-004
System Replacement Surcharge)

Direct Testimony of Mark D. Caudill

1 **Q. Please state your name, position and business address.**

2 A. My name is Mark Caudill. I am Vice President of MCR Performance Solutions, a
3 consulting group that provides services related to regulated industries. Our firm is
4 headquartered in the Chicago area at 155 N. Pfingsten Road, Suite 155, Deerfield, Illinois
5 60015, and has offices and employees across the country. My business address is in the
6 Atlanta area at 3290 Commons Gate Bend, Berkeley Lake, Georgia 30092-4946.

7
8 **Q. Please briefly describe your educational and professional background, and current**
9 **responsibilities.**

10 A. I earned a Bachelor of Arts degree from Samford University in Birmingham, Alabama,
11 and a Doctor of Jurisprudence from the Cumberland School of Law at Samford. In
12 addition to the private practice of law, my work experience has included service to the
13 U.S. Department of the Interior in Washington, D.C, where I served as an
14 attorney/advisor for energy matters and environmental enforcement. My primary
15 responsibilities at the Department of the Interior were to write and implement regulations
16 to implement the laws that the Office of Surface Mining was charged with implementing,

1 and to supervise professionals charged with the responsibility of enforcing those
2 regulations.

3 My federal service also includes having worked for the Federal Energy
4 Regulatory Commission ("FERC") as an attorney, as the Special Assistant to the Deputy
5 General Counsel, and as Deputy Associate General Counsel for Enforcement. At the
6 FERC, I was often directly involved in writing and enforcing regulations to implement
7 various federal statutes that FERC was responsible for implementing. I personally
8 provided issue briefings for Commissioners, orientations for new Commissioners,
9 advised Commissioners on policy and regulatory matters. I was the attorney assigned to
10 all interlocutory appeals to the Commission, and I established the initial operating
11 directives for the FERC's enforcement office.

12 After leaving the FERC, I directed the state regulatory department for Sonat Inc.
13 and its subsidiaries (including interstate natural gas pipeline companies and exploration
14 and production companies). I also served as a member of the Alabama Legislature's
15 Permanent Study Committee on Oil and Gas. I was subsequently employed for
16 approximately 10 years at AGL Resources, where I held the positions of Corporate
17 Secretary, Vice President of Energy Competition, and Vice President of Rates and
18 Regulatory Affairs for AGL Resources and its affiliate, Atlanta Gas Light Company.

19 After leaving AGL in 2001, I became a partner in the law firm of Steiner, Crum
20 and Byers, and I was the President of the associated consulting firm known as SC&B
21 Solutions. Both the law firm and the associated consulting firm specialized in serving
22 regulated industries. Since 2005, I had led the natural gas regulatory practice for MCR.

23

1 Q. You indicated that you received a Doctor of Jurisprudence and your previous legal
2 experience. Are you admitted to practice law?

3 A. Yes. During my tenure with the federal government I was designated as an Assistant
4 United States Attorney in a number of Districts. Today I remain admitted to practice law
5 in Alabama and Georgia. My current legal practice is limited to rate and regulatory
6 work. Nonetheless, the majority of my time is spent as a consultant to energy utilities.

7
8 Q. What is the nature of your consulting practice?

9 A. MCR is exclusively focused on regulated utilities. We have deep experience in energy
10 efficiency, nuclear asset optimization, transmission and generation, financial
11 management, and rate and regulatory practices. As a regulatory practice leader, I am
12 often involved in the regulatory aspects of each of the firm's other practice areas. My
13 primary focus is on rates and regulatory compliance, serving companies such as Liberty
14 Utilities, Atmos Energy, AGL Resources, Atlanta Gas Light Company, Southern LNG,
15 NiSource, Columbia Gas Companies, Public Service Company of New Mexico,
16 Piedmont Natural Gas, Oklahoma Natural Gas, and the Southern Gas Association, among
17 others.

18 Specific rate and regulatory services include, but are not limited to forecasting,
19 strategic planning, cost of service, rate base determination, cost allocation, rate design,
20 rate case preparation and presentation, capacity planning, supply contracting, and
21 litigation support. I have conducted regulatory compliance audits on behalf of
22 management teams and boards of directors. Additionally, a substantial portion of my

1 time is spent writing and teaching classes on regulated topics, including ratemaking and
2 regulatory accounting.

3
4 **Q. For whom do you teach ratemaking and regulatory accounting classes?**

5 A. I write and teach ratemaking and regulatory accounting courses for the Southern Gas
6 Association (SGA) as part of the professional development services SGA provides to its
7 member companies. SGA typically holds training weeks at least twice each year, and the
8 ratemaking and regulatory accounting classes, each of which are multiple day courses,
9 are part of the standing curriculum. Additionally, I teach similar classes for clients and
10 occasionally for regulators' staffs, as continuing professional education and in-house
11 training. Recently, Enbridge, NIPSCO, Duke Energy, Liberty Utilities, NiSource,
12 Columbia Gas of Ohio, Columbia Gas of Pennsylvania, Columbia Gas of Maryland,
13 Columbia Gas of Massachusetts, CenterPoint Energy, Piedmont Natural Gas, and the
14 Columbia Pipeline Group have hosted such in-house sessions. These in-house sessions
15 are typically customized to present topics that are of immediate concern to the hosting
16 company.

17
18 **Q. Have you previously testified before this Commission?**

19 A. No. Although I have previously testified before other legislative and regulatory bodies,
20 this is my first testimony before the Missouri Public Service Commission.

21
22 **Q. What is the purpose of your testimony?**

1 A. I am providing testimony at the request of Liberty Energy (Midstates) Corp. d/b/a Liberty
2 Utilities (“Liberty Utilities” or the “Company”) regarding the Company’s Petition to
3 Change its Infrastructure System Replacement Surcharge (“ISRS”), to address the
4 primary issue of whether the ISRS Petition filed by the Company should be granted, and
5 to address certain issues raised by the Office of the Public Counsel (“OPC”) in its
6 September 9th Motion for Order Rejecting or Denying Petition, or Order Setting an
7 Evidentiary Hearing (“OPC’s Motion”). Specifically, I address whether the Commission
8 has sufficient information to approve the Company’s Petition, and I address the OPC’s
9 allegation that Liberty Utilities’ is seeking recovery of expenses through the ISRS that
10 are not authorized by law.

11
12 **Q. What, if any, experience have you had with infrastructure replacement rate**
13 **mechanisms?**

14 A. During the time I was employed by Atlanta Gas Light Company (AGL), my rates and
15 regulatory team and I designed and implemented what I believe to be the first pipeline
16 replacement program for a natural gas local distribution company. My experience with
17 AGL’s mechanism included all phases of the process, from conceiving the mechanism as
18 an appropriate policy solution and rate mechanism, to drafting tariff provisions, to
19 negotiating a stipulated resolution to the case, to providing expert testimony in support of
20 the mechanism, to developing reporting and adjustment mechanisms, to synchronizing
21 the mechanism’s impacts on subsequent rate case revenue requirements.

22 Since developing and implementing the AGL program, such programs have
23 become fairly common. Today, about half of U.S. jurisdictions permit some form of an

1 infrastructure replacement revenue adjustment between regular rate cases. I have worked
2 with a number of clients in regulatory and legislative forums to obtain approval for
3 similar mechanisms and/or to implement and administer such mechanisms.
4

5 **Q. How do the provisions for filing and processing petitions pertaining to an**
6 **infrastructure system replacement surcharge in Missouri compare with similar**
7 **infrastructure replacement provisions in other jurisdictions?**

8 A. The fundamentals of the Missouri provisions compare favorably with some of the better
9 provisions in other jurisdictions. Because safe and reliable natural gas pipeline and
10 distribution systems are essential to public health, safety and welfare, it is good public
11 policy to eliminate disincentives that would inhibit natural gas system operators from
12 making timely system repairs, modifications and replacements. It is virtually impossible
13 to forecast accurately the revenue requirements associated with such fundamental safety
14 obligations and establish sustainable revenue requirements through traditional ratemaking
15 forecasts. Moreover, the nature and timing of most relocation, safety, and system
16 integrity investments and expenditures are not within the control of system operators.
17 Consequently, consumers and the general public are well served by establishing revenue
18 mechanisms that recover associated revenue requirements not otherwise provided for in
19 base rates. The Missouri ISRS code provisions allow the Commission to authorize that
20 type of revenue mechanism for the natural gas companies it regulates.
21

22 **Q. Have you reviewed the infrastructure system replacement surcharge filing that**
23 **Liberty Utilities made in this docket?**

1 A. Yes.

2

3 **Q. Did you assist the Company in preparing and submitting the initial Petition to**
4 **change its ISRS charges?**

5 A. No. I was not involved with the initial preparation and filing of the Petition. I was asked
6 to review the filed Petition and related docket documents after OPC filed its September
7 9th motion to deny the requested relief, or in the alternative, for an evidentiary hearing.
8 Specifically, the Company asked me to review what it had done, and to provide them
9 with an opinion regarding its filing in this docket, as well as to provide recommendations
10 regarding how future filings should be approached.

11

12 **Q. What did you review in preparation for this testimony?**

13 A. I initially reviewed information that is publically available in this docket. More
14 specifically, I reviewed the initial petition and the schedules thereto, the discovery, the
15 responses to the discovery, the Staff Recommendation (“Report”), OPC’s motion, and the
16 Company’s responses to Staff’s recommendation and OPC’s motion. My initial views
17 regarding the adequacy of the initial petition and the associated process were based on
18 those initial reviews. Subsequently, I also reviewed Liberty Utilities’ internal process of
19 assigning and tracking costs to projects that ultimately are included or excluded from
20 ISRS recovery petitions, as well as conducted numerous interviews of Company
21 employees involved in the process of administering and accounting for those projects. In
22 the course of those interviews, I also reviewed the list of projects that ultimately became
23 Schedule DS-3 to David Swain’s testimony, the process that produced that schedule, as

1 well as internal accounting tools and documents. I also reviewed a sample of ISRS
2 petitions filed by other regulated service providers in Missouri.

3
4 **Q. What, if any, observations and recommendations did you share with the Company**
5 **based on your reviews?**

6 A. I reached a primary conclusion: the Staff had sufficient information to make an informed
7 report (pursuant to Section 393.1015.2(2)) regarding the Company's ISRS Petition, and
8 the Commission has sufficient information upon which to enter an order (pursuant to
9 393.105.2(4)) authorizing an incremental ISRS revenue requirement increase to the
10 Company in this case.

11
12 **Q. You described your previous answer as your "primary" conclusion; did you reach**
13 **other conclusions?**

14 A. Yes, I reached a number of secondary conclusions as follows: (1) the Company's filing
15 complied with the statutory requirements of Missouri's code sections regarding
16 infrastructure system replacement surcharges (Sections 393.1009-1015 of the Missouri
17 Revised Statutes); (2) the Company's petition in this docket is consistent with ISRS
18 petitions filed by other regulated companies and approved by this Commission; (3) the
19 Company's filing is in compliance with Commission Rule 4 CSR 240-3.265; (4) the
20 Company's current methodology of tracking and reporting ISRS projects is
21 fundamentally sound; and (5) in the event that the Commission determines that changes
22 should be made to the practices and procedures for ISRS filings those changes should be

1 set forth on an industry-wide prospective basis. I will discuss each of these conclusions
2 within this pre-filed testimony.

3
4 **Q. Please explain your primary conclusion that Staff had sufficient information to**
5 **make an informed report regarding the Company's ISRS Petition, and that the**
6 **Commission has sufficient information upon which to enter an order.**

7 **A.** Pursuant to 393.1015.2, when a petition to establish or change an ISRS is filed, the
8 Commission is required to conduct an examination of the proposed ISRS. In connection
9 with the Commission's examination, the Staff may examine information to confirm that
10 the underlying costs are in accordance with the ISRS code provisions (sections 393-1009
11 to 393.1015) and to confirm that the proposed charges are appropriately calculated. The
12 findings and determinations of Staff's examination may be submitted to the Commission
13 as a report (previously identified as the "Report"). In this docket, the Company filed a
14 petition to change its authorized ISRS, and the Staff undertook an examination as
15 described above, and the Staff submitted its Report to the Commission. On September 10,
16 2013, the Commission set an evidentiary hearing in this docket following OPC's
17 September 9th Motion for an Order Rejecting or Denying Petition, or Setting an
18 Evidentiary Hearing. Threshold issues that should determine whether the Company's
19 Petition is granted or denied are (a) whether Staff had sufficient information to develop
20 and submit an informed Report, and (b) whether the Commission now has sufficient
21 information to enter an order authorizing changes to the ISRS.

22 The Petition and supporting documentation comply with the requirements of
23 Sections 393.1009 to 1015 of the Missouri Revised Statutes, and provide sufficient

1 factual support for the Staff's Report. Additionally, the Petition and supporting
2 Schedules, Staff's Report, and the Company's response to that Report, provide the
3 Commission sufficient information to authorize ISRS changes. In addition to the
4 information included within the Company's initial filing, additional evidence has been
5 provided by the testimony and exhibits offered by the Company in this hearing. The
6 Commission should grant the relief requested by the Company, as modified by the Report
7 with which the Company has agreed.

8
9 **Q. What is the basis for your opinion that the Company's filing complies with the**
10 **statutory requirements of Missouri's code sections regarding infrastructure system**
11 **replacement surcharges (Sections 393.1009-1015 of the Missouri Revised Statutes)?**

12 **A.** Section 393.1015 of the Missouri Revised Statutes is the code provision that specifies the
13 documents that a gas company must submit to support an ISRS petition. The Company's
14 Petition fully complies with the statute. The Company's Petition presents eligible gas
15 utility plant projects that are: a) mains, valves, service lines, regulator stations, vaults, and
16 other pipeline system components installed to comply with state or federal safety
17 requirements as replacements for existing facilities that have worn out or are in
18 deteriorated condition; or b) main relining projects, service line insertion projects, joint
19 encapsulation projects, and other similar projects extending the useful life, or enhancing
20 the integrity of pipeline system components undertaken to comply with state or federal
21 safety requirements; or c) unreimbursed infrastructure facility relocations due to the
22 construction or improvement of a highway, road, street, public way or other public work
23 required by or on behalf of the United States, the State of Missouri, a political

1 subdivision of the State of Missouri, or another entity having the power of eminent
2 domain. Moreover, these infrastructure system replacements are also eligible for ISRS
3 treatment because they: a) did not increase revenues by directly connecting to new
4 customers; b) are currently in service and used and useful; c) were not included in rate
5 base in the most recently completed general rate case, and d) replaced and/or extended
6 the useful life of existing infrastructure. Staff's Report concludes that the ISRS should be
7 increased, with some modifications from the changes proposed in the initial Petition.
8

9 **Q. What is the significance of finding that the Company's filing complies with the**
10 **statutory requirements governing ISRS?**

11 A. Section 393.1015.2(4) provides that "if the commission finds that a petition complies
12 with the requirements of sections 393.1009 to 393.1015, the commission shall enter an
13 order authorizing the corporation to impose an ISRS"

14
15 **Q. Will you explain your observation that the Company's petition in this docket is**
16 **consistent with ISRS petitions filed by other regulated companies and approved by**
17 **this Commission?**

18 A. Yes. Although I did not review every ISRS petition that has been filed since sections
19 393.1009 to 393.1015 were enacted, I did review the petitions filed since 2007. The
20 petitions I reviewed were all consistent with the form of the Company's Petition in this
21 docket and contained a comparable level of information as is contained in the Company's
22 Petition. In other words, if the same standard that OPC is asking this Commission to
23 impose on the Company's Petition in this docket had been applied to the other petitions

1 that I have reviewed, none of those other petitions would have met such standard.
2 Indeed, the prevailing practice before this Commission does not comport with OPC
3 assertions regarding the level of detail required in supporting documentation.
4 Nonetheless, it is relatively easy to determine from the Company's Petition that the
5 projects qualify given the descriptive nature of the "project description" as found in
6 Appendix A.

7
8 **Q. Does Commission Rule 4 CSR 240-3.265(L) specifically require that petitions for**
9 **ISRS rate changes specify the specific order, rule, regulation, etc. that is being**
10 **satisfied by the ISRS project and specifically enumerate the statute, commission**
11 **order, rule, or regulation, if any, requiring the project?**

12 **A.** Reading subsection (L) of Rule 4 CSR 240-3.265(20) in isolation could lead one to that
13 conclusion. However, one could also reach the opposite conclusion. Subsection (L)
14 states as follows "the statute, commission order, rule, or regulation, if any requiring the
15 project;" (emphasis added). The "if any" language suggests that a project may not have a
16 citation to a particular statute, commission order, rule or regulation. Indeed in reviewing
17 previous applications, I did not find one that included citations to a statute, commission
18 order, rule or regulation, which supports the conclusion that subsection (L) is at best
19 ambiguous as to what it requires. That said, even if subsection (L) requires citations, that
20 information has been provided in Schedule DS-3 to David Swain's
21 testimony. Accordingly, the Commission has before it all of the information it needs to
22 make a determination on the incremental ISRS increase being sought in this proceeding.

23

1 **Q. Has the Company adequately and appropriately addressed the requirements in**
2 **Commission Rule 4 CSR 240-3.265(20)(K)?**

3 A. As a former regulator, I wrote, defended and enforced regulations to implement statutory
4 provisions. As a regulatory compliance professional, I frequently assess whether a
5 particular course of action does, or does not, comply with statutory and regulatory
6 requirements. My experience is that when determining whether regulatory compliance
7 has, or has not, been achieved, regulators and regulatory professionals must look at the
8 totality of the circumstances. In situations such as this, the question is whether the
9 particular process has provided sufficient information to determine if the statutory
10 requirements have been met.

11 The Company's Petition attests that all of the replacements set forth in Appendix
12 A are projects undertaken to comply with subsection (K) parts 1 through 4. Petition at P
13 6. The Company further classified the eligible projects into the following headings on
14 Appendix A: Main Replacements, Service Replacements, Meter and House Regulator
15 Replacements, and Measurement and Regulator Station Equipment Replacements. The
16 combination of these two facts demonstrates to me that the Company is in compliance
17 with subsection (K).

18
19 **Q. What factors led you to conclude that the Company's current methodology of**
20 **tracking and reporting ISRS projects is fundamentally sound?**

21 A. I reviewed the accounting procedures and tools that the Company uses to track and report
22 projects, including those projects that may be eligible for inclusion in the ISRS filings.
23 Essentially, the process, procedures and tools are the same as Atmos Energy had used in

1 Missouri, as well as in its other regulated operations. These processes, procedures, and
2 tools are well understood by the people within the organization who have responsibilities
3 to track and account for the relevant information and are an effective way to track and
4 report projects. The project totals as well as project details can be viewed and reconciled
5 with all other projects. Moreover, the costs and investments of ISRS projects are easily
6 identified, creating a high level of transparency when costs and revenues are segregated
7 and presented in subsequent rate case proceedings.

8 **Q. Do the issues identified in David Swain's testimony change your opinion of the**
9 **appropriateness of the project tracking methodology?**

10 A. No they do not. Those errors are more accurately attributed to the transition than to the
11 accounting processes and procedures.

12
13 **Q. Why did you conclude that changes, if any, to be made for future ISRS petitions**
14 **should be made on a prospective industry-wide basis?**

15 A. After more than thirty filings under the current statutory and regulatory structure, the
16 practices and procedures followed by this Commission, the Staff, and the regulated
17 companies are fairly well established. Applying the Commission's Rules in the manner
18 suggested by OPC in its September 9th Motion would be a significant departure from
19 well-established practices and procedures. Customers, utilities, investors and regulators
20 all benefit from increased regulatory certainty. Consequently, every regulator should be
21 concerned if asked to make a ruling that is likely to introduce higher levels of regulatory
22 uncertainty.

1 It is common for regulations that are drafted to implement statutes to provide
2 more details than the underlying statute – I have certainly drafted numerous regulations
3 for which that observation could be made. If the Commission were to consider adopting
4 an interpretation of its implementing regulations that departs from well-established
5 practices and procedures, I do not believe that this docket is necessarily the best place to
6 make such a decision. Such a departure would have industry-wide implications. I
7 respectfully submit that if the Commission is inclined to consider adopting such an
8 interpretation, comments and recommendations should be solicited from of all parties that
9 would be affected by a potential change.

10
11 **Q. Do you have any concluding remarks?**

12 **A.** In the immediate case before this Commission, the Company's filing complies with the
13 provisions of Sections 393.1009-1015 of the Missouri Revised Statutes and Commission
14 Rule 4 CSR 240-3.265 governing ISRS petitions and ISRS eligible projects. The
15 Commission has all of the information needed to authorize an incremental ISRS revenue
16 requirement increase to Liberty Utilities in this case. Both the prevailing regulatory
17 standard and public policy are well served by implementing the ISRS changes that result
18 from the Staff Report agreed to by the Company.

19 For the reasons I have previously stated, the relevant information detailed in
20 subparagraphs (K) and (L) was included within the Company's initial filing, and more
21 information should be required from petitioners only if that information is not otherwise
22 readily apparent or available in the petition. The current practice as established in more
23 than 30 filings before this Commission has fleshed out of the requirements of

1 Commission Rule 4 CSR 240-3.265. A decision to change those practices would be more
2 appropriately made after opening a workshop proceeding that would allow all interested
3 stakeholders to address the proposed changes.

4 **Q. Does this complete your testimony?**

5 **A. Yes. This concludes my testimony at this time.**

6

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AFFIDAVIT OF MARK D. CAUDILL

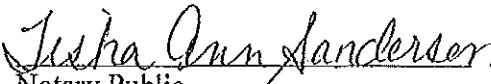
State of Missouri)
County of Cape Girardeau) ss

Mark D. Caudill, being first duly sworn on his oath, states:

1. My name is Mark D. Caudill. I am employed by MCR Performance Solutions as Vice President. My business address is 3290 Commons Gate Bend, Berkeley Lake, Georgia 30092-4946.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony on behalf of Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities, consisting of sixteen (16) pages, all of which having been prepared in written form for introduction into evidence in the above-captioned docket.
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and correct to the best of my knowledge, information and belief.


Mark D. Caudill

Subscribed and sworn before me this 20th day of September, 2013


Notary Public

My commission expires: 4-28-14

