

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

In the Matter of the Verified Application)
and Petition of Laclede Gas Company to)
Change its Infrastructure System) Case No. GO-2015-0341
Replacement Surcharge in its Laclede Gas)
Service Territory.)

In the Matter of the Application of)
Laclede Gas Company to Change its)
Infrastructure System Replacement) Case No. GO-2015-0343
Surcharge in its Missouri Gas Energy)
Service Territory.)

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel ("Public Counsel") and in support of its Application for Rehearing of the Commission's November 12, 2015 Report and Order, states:

1. The Commission's Report and Order ("Order") resolved three issues regarding Laclede Gas Company's ("Laclede") and Missouri Gas Energy's ("MGE") petitions to increase surcharge rates through their respective Infrastructure System Replacement Surcharges (ISRS). Public Counsel seeks rehearing on one issue, which asked the Commission to determine whether it is lawful and reasonable for a gas company to "submit estimated budget ISRS investments in the petition that are later replaced with actual ISRS investments."

2. This case should be reheard because the Order unlawfully and unreasonably authorizes the Laclede and MGE ISRS's to include costs incurred for July and August 2015 that violated Mo. Rev. Stat. § 393.1015.1 (Cum. Supp. 2013), which states in relevant part:

393.1015. 1. (1) At the time that a gas corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation.

The Order violates this statute because the petitions it approves did not include supporting documentation regarding the calculation of the July and August 2015 infrastructure investment costs, and instead, included "placeholder" amounts for July and August, which could not be audited or verified because they were estimates and not actual costs. The Order unlawfully authorized the July and August costs to be recovered through the ISRS despite the fact that the costs were mostly incurred *after* the petitions were filed, and the actual costs approved by the Commission are *greater* than the original estimates provided in the petitions. Public Counsel seeks rehearing to enable the Commission to correct the error of allowing the ISRS rate increases to include July and August 2015 infrastructure costs that were not supported by the petitions.

3. This case should be reheard because the Order is unlawful and unreasonable in that it authorizes the Laclede and MGE ISRS's to include costs incurred for July and August 2015 that did not satisfy the requirements of Mo. Code Regs. Ann. tit. 4, § 240-3.265(20) (2011). This rule specifies what "supporting documentation" shall be filed with ISRS petitions, and states in part:

The subject utility's supporting documentation shall include workpapers showing the calculation of the proposed ISRS, and shall include, at a minimum, the following information...

(J) An explanation of when the infrastructure replacement projects associated with the ISRS were completed and became used and useful;

(K) For each project for which recovery is sought, the net original cost of the infrastructure system replacements (original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS), the amount of related ISRS costs that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those costs identifying which of the following project categories apply and the specific requirements being satisfied by the infrastructure replacements for each...

(L) For each project for which recovery is sought, the statute, commission order, rule, or regulation, if any, requiring the project; a description of the project; the location of the project; what portions of the project are completed, used and useful; what portions of the project are still to be completed; and the beginning and planned end date of the project.

The petitions did not provide the information required by **subsection (J)** for the July and August costs in that the petitions failed to include an explanation of when the projects were completed because they had not been completed at the time the petitions were filed, and failed to explain when the projects became used and useful because they had not become used and useful at the time the petitions were filed. The petitions also failed to provide the information required by **subsection (K)** for the July and August costs in that the petitions did not provide the net original cost of the replacement, nor could they, because at that point the net original costs were estimates only. In addition, the petitions failed to provide the amount eligible for ISRS and failed to breakdown those costs by assigning them specific project categories. Lastly, the petitions did not provide the

information required by **subsection (L)** because, for the July and August costs, the petitions failed to provide the law requiring the project, the descriptions of the projects, the locations of the projects, the completed portions of the project, the used and useful portions of the projects, and the beginning and planned end dates of the projects. Accordingly, the Order is unlawful and unreasonable in that it approves a petition that violates Mo. Code Regs. Ann. tit. 4, § 240-3.265(20) (2011).

4. This case should be reheard because the Order is unlawful and unreasonable in that it authorizes the Laclede and MGE ISRS's to include costs incurred for July and August 2015 that violated Mo. Rev. Stat. § 393.1015.2 (Cum. Supp. 2013), which states in relevant part:

(2) The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed.

Here the ISRS statutes create a process whereby the initial review of an ISRS petition is to occur within a sixty (60) day window of time, beginning when the petition is filed. The Order, however, unlawfully and unreasonably limits this 60-day review for the Commission's Staff and for Public Counsel. By allowing Laclede and MGE to include costs incurred after the petitions were filed, the Staff and Public Counsel never realized this 60-day review process for the July and August costs. The July costs, which were never filed with the Commission, were not provided to Staff and Public Counsel until 11-days after the petitions were filed, effectively reducing the 60-day review window to 49

days. The August costs, which were also never filed with the Commission, were not provided to Public Counsel and Staff until 43-days after the petitions were filed, effectively reducing the 60-day review window to 17-days for the August costs. Accordingly, the Order's approval of the petition and the post-petition submission process violates Mo. Rev. Stat. § 393.1015.2 (Cum. Supp. 2013) and violates the public's right to due process under Mo. Const. Art 1, § 10.

5. This case should be reheard because the Order is unlawful and unreasonable in that the petitions do not comply with Mo. Rev. Stat. § 393.1009(2)(b) and § 393.1012.1 (Cum. Supp. 2013). Section 393.1012.1 states in part that “a gas corporation providing gas service may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the gas corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements.” The petitions filed by Laclede and MGE sought to recover costs that had not been incurred at the time of the petitions and/or were not in service at the time the petitions were filed, and were, therefore, ineligible under § 393.1009(2)(b), which requires infrastructure replacements to be “in service and used and useful.”

6. This case should be reheard because the Order is unlawful and unreasonable in that it is not based upon competent and substantial evidence in the record because the July and August costs were never filed with the Commission and never made a part of the evidentiary record. Commission orders must be based on competent and substantial evidence. *Friendship Village v. Public Serv. Comm'n*, 907 S.W.2d 339 (Mo. Ct. App. 1995). The evidence upon which the Commission based its Order does not

include any documentation or details of the actual July and August costs, as required by Mo. Rev. Stat. § 393.1015.1 (Cum. Supp. 2013) and Mo. Code Regs. Ann. tit. 4, § 240-3.265 (2011). Accordingly, the Order is not based on competent and substantial evidence, it includes insufficient findings of fact, and the case should be reheard to enable the required documentation to be filed and reviewed by the Commission.

7. This case should be reheard because the Order is unlawful and unreasonable in that it violates Mo. Rev. Stat. § 386.710 (Cum. Supp. 2013) and Mo. Rev. Stat. § 393.1015 (Cum. Supp. 2013) because the Order fails to recognize Public Counsel's statutory right and obligation to represent ratepayers in this matter. Section §386.710 states that Public Counsel “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.” To enable Public Counsel to properly represent the interests of the public, the ISRS statutes provide that when an ISRS petition is filed, the gas company “shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation” (§ 393.1015). The Order, however, states that the budgeted project information meets the statutory requirements, “So long as Staff has sufficient time to perform an effective review of ISRS eligibility,” which fails to recognize and provide Public Counsel with a meaningful review of the petitions and data as contemplated by the legislature. An analysis by the Staff, a party with no financial interest in the surcharge, is no substitute for an analysis conducted by the customers forced to pay the single-issue surcharge.¹

¹ If the Commission had relied solely upon the Staff’s analysis in this case for the March through June costs, as it has for the July and August costs, the Commission would have *allowed* the unlawful telemetry equipment in the ISRS. This exemplifies the importance of

8. This case should also be reheard because the Order violates the Commission's order granting Laclede the authority to acquire MGE, which was conditioned upon the stipulated term that the "transaction shall not have any detrimental effect on Laclede Gas or MGE Division utility customers, including, but not limited to: increased rates..." Case No. GM-2013-0254, *Order Approving Stipulation and Agreement*, Attachment: Stipulation and Agreement, July 17, 2013, p.35. MGE's adoption of Laclede's budgeted ISRS practice, which MGE did not practice before acquisition, is a rate increase that is a result of the acquisition, and which is detrimental to MGE customers.

9. The Commission correctly concluded in its Order that "the Commission should evaluate the eligibility of plant projects narrowly in order to ensure compliance with the legislature's intent." While the Commission made this conclusion in reference to the separate issue involving telemetric equipment, such analysis should apply to the procedural requirements established by the legislature, and the protections specifically included in the statute that require gas companies to serve Public Counsel with the supporting documentation with the petitions. In interpreting the ISRS statute, and its purpose, Public Counsel urges the Commission to interpret the statute in a manner that is in the public interest and affords Public Counsel with a meaningful opportunity to review all costs before such costs are included in rates.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing of the matters addressed above.

providing Public Counsel with the meaningful opportunity to review the costs as contemplated by the ISRS statutes and the Commission's rules.

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 all counsel of record this 30th day of November 2015.

/s/ Marc Poston
