



changes to it in Case No.'s GO-2011-0269, GO-2012-0144, and GO-2013-0015. The Commission approved changes to the ISRS based on Staff's recommendations in those cases. In this case, MGE again seeks approval to change its ISRS rate schedules.

2. Subsection 393.1012.2 limits only the Commission approval of an ISRS and not the changing of an established ISRS:

The commission shall not approve an ISRS for any gas corporation that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless the gas corporation has filed for or is the subject of a new general rate proceeding. (emphasis added)

Public Counsel contends that the Commission cannot approve MGE's petition to change its ISRS because, in Public Counsel's view, the change that MGE seeks to its ISRS is "an ISRS". Staff disagrees. MGE already has an ISRS established by the Commission and has been collecting an ISRS since September 18, 2010.

3. Subsection 393.1012.2 imposes only one express prohibition - prohibiting the Commission *from approving an ISRS* if the company has not had a rate case decided or has not filed for a rate case within three (3) years. There is *no* express language prohibiting the Commission from *changing* an ISRS in Subsection 393.1012.2. If the legislature had wanted to prohibit the Commission from *approving a change to an ISRS* in this subsection, then it certainly could have included a prohibition limiting the changing of an ISRS, which it did not.

4. To discern the intent of the legislature it is helpful to look at the clear language of 393.1012.1. The legislature expressed a distinction between *establishing an ISRS* and *making future changes to an ISRS*. Furthermore, 393.1012.1 addresses *changing* an ISRS on two separate occasions in the statute, further evidencing the legislature's express intent to provide authority for the Commission to either *establish* an ISRS or to *change* an ISRS. Because the

next subsection 393.1012.2 only limits the Commission to approving an ISRS and remains silent on changing an ISRS, 393.1012.2 cannot be construed, as Public Counsel does, as prohibiting the Commission from approving a change to an already existing ISRS. When 393.1012.2 is read *in pari materia* with 393.1012.1, it is clear the legislature intended as the language reads in 393.1012.2 – to limit the establishment of an ISRS and nothing else. Public Counsel misreads into 393.1012.2 a legislative intent to also prohibit the Commission from approving a change to an existing ISRS - that is simply not supported by a plain reading of the statute. If the legislature had intended 393.1012.2 to also prohibit the Commission from “changing” an ISRS, then it would be reasonable to expect the legislature to have used the same explicit language of 393.1012.1 in 393.1012.2, which it did not. Therefore, the Commission may grant MGE’s petition to change the ISRS made effective in rates on September 18, 2010.

5. Where Subsection 393.1012.2, discussed above, limits the Commission in approving an ISRS, the following subsection 393.1012.3 limits the utility to collecting an ISRS to a period of three years and does not limit the Commission from granting the utility a change to its ISRS :

*In no event shall a gas corporation collect an ISRS for a period exceeding three years unless the gas corporation has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established. [emphasis added]*

The requirement that the utility either file for or be the subject of a general rate case proceeding also imposes the requirement that the ISRS be fully accounted for and considered in any new rates that are set by the Commission as a result of the rate case – in effect zeroing out the ISRS, allowing the utility to petition for establishing a new ISRS after rates are set in the rate case.

6. In summary, an *in pari materia* reading of 393.1012.1, 393.1012.2, and 393.1012.3, when construed together using the plain language expressed by the legislature in those sections permit MGE to change its ISRS and to continue collecting an ISRS through September 18, 2013, three years to the date MGE began collecting an ISRS.

**WHEREFORE** Staff prays the Commission will accept its reply to the Office of Public Counsel.

Respectfully submitted,

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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 23rd day of April 2013.

**/s/ Robert S. Berlin**