

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

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

APPLICATION FOR REHEARING

COMES NOW the Missouri Office of the Public Counsel (“OPC”) and for its Application for Rehearing, respectfully requests rehearing¹ of the Commission’s October 16, 2013 Report and Order (“Order”) approving the Infrastructure System Replacement Surcharge (“ISRS”) petition filed by Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities (“Liberty”), and in support of this Application, OPC states as follows:

1. The Office of the Public Counsel, in accordance with its statutory authority to represent ratepayers before the Missouri Public Service Commission,² hereby requests that the Commission rehear this case because the Commission’s findings and conclusions are unlawful and unreasonable, and could be harmful to consumers in future ISRS petitions if the practices it authorizes are followed here and in future cases.

2. Rehearing is appropriate because the Order unlawfully and unreasonably concludes, **“that the Petition and the supporting documentation provided by Liberty contained all information required by Subsections L and K in compliance with Commission Rule 4 CSR 240-3.265(20).”**³ This conclusion unlawfully misinterprets and misapplies the requirements of 4 CSR 240-3.265(20)(K) and (L). Rehearing this

¹ § 386.500 RSMo Supp. 2012. All statutory references are to RSMo Supp. 2012.

² § 386.710 RSMo.

matter will give the Commission an opportunity to, at a minimum, revise its Order to recognize that Liberty's petition did not comply with the rule, which the Commission can do and still allow for a one-time rule waiver under 4 CSR 240-2.015. This will ensure that all future ISRS petitions file this required information with each petition, thus giving Staff and OPC the full 120 days to review and seek discovery.

3. Subsection K requires ISRS petitions to provide a breakdown of costs identifying which category of gas utility plant project under Section 393.1009(5) RSMo qualifies the project for an ISRS, and the specific requirement being satisfied (statute, rule, order, etc) by the infrastructure replacement for each project. The Order concluded that Liberty satisfied these requirements. This conclusion is not supportable because the documents filed with the petition only identified projects qualifying under Section 393.1009(5)(a) and did not identify a single investment under the category of expenses found in Section 393.1009(5)(b) or (c) RSMo, yet Liberty's testimony shows multiple projects that Liberty claimed qualified under Section 393.1009(5)(b) and (c), and the Commission's Order also concluded that projects qualified under Section 393.1009(5)(b) and (c) RSMo.⁴ The Order states that "supporting documentation" provided the missing material, but the Order references documents that were not filed with the Petition. Furthermore, the petition did not identify "the specific requirements being satisfied by the infrastructure replacement for each" project, as required by 4 CSR 240-3.265(K).

4. Subsection L requires ISRS petitions to provide, "[f]or each project for which recovery is sought, the statute, commission order, rule, or regulation, if any, requiring the project..." (Emphasis added). The Commission concluded that not all

³ Order, pp. 11-12.

⁴ Order, p. 8.

eligible projects are specifically required to be completed by a particular statute, order or rule, and therefore “a citation to a statute, order or rule must be provided only in those situations where a particular project is specifically mandated by law.”⁵ If Liberty was required to identify only those projects specifically mandated by law, as the Order concludes, then the Order should have also concluded that Liberty’s petition was required to identify the requirement for *all* projects. This is because the testimony evidence of Liberty’s witness shows that Liberty claimed *every* investment was mandated by a Commission rule. Interpreting the term “if any” is irrelevant to this case. The Commission’s misinterpretation of Subsection K is unlawful and unreasonable.

5. Rehearing is also appropriate because the Order unlawfully and unreasonably concludes, **“A pipe damaged by a third party is in a deteriorated condition and, therefore, an eligible project because it has been lowered in quality, character, or value, although that deterioration has occurred quicker than what happens normally through the passage of time.”**⁶ This conclusion is unlawful in that it authorizes amounts to be included in the ISRS that are not authorized by Section 393.1009(5) RSMo. The Order recognizes that a destroyed or damaged pipe is different than a deteriorated pipe when the Order states that the “deterioration has occurred quicker than what happens normally through the passage of time.” But the Order takes an unreasonable and unlawful leap when it concludes that the term “deteriorated” includes pipe that has been damaged. These are different terms with different meanings. A deteriorated pipe is one where the quality of the pipe has been gradually lowered; it is not

⁵ Order, p. 11. The Order repeats this conclusion on Page 13, where it states that “such citations must be provided only in those situations where a particular project is specifically mandated by law.”

⁶ Order, p. 13.

a pipe that has been destroyed or damaged immediately. The Order weakens the protections provided by the rule because it opens up the door for infrastructure investments that are not the type contemplated by the statute.

6. Rehearing is also appropriate because the Order unlawfully and unreasonably concludes that, **“leak repairs performed by Liberty also qualify as eligible projects because they are “similar projects extending the useful life or enhancing the integrity of pipeline system components.”**”⁷ This conclusion is unlawful and unreasonable in that general maintenance leak repairs are not the type of expense authorized by Section 393.1009(5) RSMo. A general leak repair is not similar to a “main relining project, service line insertion project, or joint encapsulation project” because Section 393.1009(5)(b) RSMo allows projects that significantly enhance the integrity of the system, not routine leak repairs.

7. In regards to the destroyed pipe and leaking pipe issues discussed in Paragraph 5 and 6 above, OPC asks the Commission to consider the interpretation of the ISRS statutes in light of the interpretation provided in Kansas, which adopted a statute that is nearly identical to the Missouri ISRS statute. K.S.A. § 66-2202 is the definition section of the Kansas Gas System Reliability Surcharge (GSRS), and it mirrors the Missouri ISRS statute’s definition section with regard to the definition of gas utility plant projects. K.S.A. § 66-2202(f) states that eligible plant projects may include the following (language that is identical to the Missouri ISRS statute is underlined, and language unique to the Missouri ISRS statute is in italics):

⁷ *Id.*

(1) Mains, valves, service lines, regulator stations, vaults and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities [that have worn out or are in deteriorated condition];

(2) Main relining projects, service line insertion projects, joint encapsulation projects and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(3) Facility relocations required due to construction or improvement of a highway, road, street, public way or other public work by or on behalf of the United States, this state, a political subdivision of this state or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the natural gas public utility.

Qualifying projects under the Kansas GSRS are nearly identical to qualifying projects under the Missouri ISRS. The Kansas Corporation Commission (KCC) recently interpreted this language in a GSRS application filed by Midwest Energy, Inc.:

Many of the projects in Midwest's application deal with routine repairs that occur when a pipeline is damaged by an excavator or when a leak is found and repaired. However, the GSRS statute was designed to encourage public utilities to make capital investments that will improve or enhance the reliability of their natural gas delivery system. In order to prevent a utility from recovering daily operations and maintenance costs as a surcharge, the statute limited the types of projects that can be considered for GSRS recovery to public works relocations or those required by pipeline safety code. It was not the intent of the GSRS to allow recovery through a surcharge for routine leak repairs – even though leak repair is a pipeline safety code requirement. In its application, Midwest has 15 projects in which some footage of main or transmission line was replaced. While various sections of pipeline safety code are cited for each project as reasons for inclusion in the GSRS application, GSRS recovery should not apply to routine pipeline repairs that do not significantly enhance the integrity of the gas pipeline infrastructure.⁸

⁸ *In the Matter of the Application of Midwest Energy, Inc. for Approval of a Gas System Reliability Surcharge Based on 2010 Costs and Pursuant to K.S.A 2008 Supp. 66-2201, et seq.*, Docket No. 11-MDWG-862-TAR, Order Approving Tariff Revisions, September 23, 2011.

The KCC concluded, “It seems reasonable to consider any replacement of less than 40 feet in length to be a routine leak repair.”⁹ The KCC Order is attached to this Application for Rehearing as “Appendix A.” OPC urges the Commission to reconsider its conclusions in light of the fact that the KCC interpreted the same language but reached conclusions that are directly opposite the Missouri Commission’s conclusions.

8. Lastly, OPC urges the Commission to rehear this case because the Order is unlawful and unreasonable in that it violates § 393.1012.2 RSMo, which prohibits the Commission from approving an ISRS rate increase for any gas corporation that has not had a general rate case proceeding decided or dismissed within the last three years.

9. For the reasons identified above, the Order is unreasonable, arbitrary, capricious, unauthorized by law, an abuse of discretion, and not based upon competent and substantial evidence. The Order is also contrary to the public interest and in violation of Section 393.130 RSMo requiring just and reasonable rates.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission grant this Application for Rehearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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⁹ *Id.* at p. 7.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 25th day of October 2013:

/s/ Marc Poston
