

**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 |) | |

**MOTION FOR ORDER REJECTING OR DENYING PETITION,
OR ORDER SETTING AN EVIDENTIARY HEARING**

COMES NOW the Missouri Office of the Public Counsel and for its Motion for Order Rejecting or Denying Petition, or Order Setting an Evidentiary Hearing, states:

1. The Office of the Public Counsel (OPC), in accordance with its statutory authority to represent ratepayers before the Missouri Public Service Commission,¹ hereby requests that the Commission issue an order: (1) Rejecting the Infrastructure System Replacement Surcharge (ISRS) Petition filed by Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities (Liberty) because it does not comply with 4 CSR 240-3.265(20) in that it does not include all required documentation; (2) Rejecting the ISRS Petition because § 393.1012.2 RSMo 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; (3) Denying the relief requested in the Petition because Liberty failed to meet its burden of proving that the proposed ISRS rate increase would include only expenses authorized by statute for recovery through the ISRS; and/or (4) Setting this matter for an evidentiary hearing and directing the parties to file a proposed procedural schedule.

¹ § 386.710 RSMo 2010. All statutory references are to RSMo 2010 unless otherwise noted.

2. On July 2, 2013, Liberty filed an Application with the Commission seeking to increase its ISRS rate. ISRS rates are authorized by §§ 393.1009, 393.1012, 393.1015 RSMo, and 4 CSR 240-3.265, and allow gas corporations to increase rates between general rate cases to recover certain government-mandated investments in infrastructure system replacements.

3. Liberty is limited in the type of infrastructure investment that can be recovered through the ISRS to the following gas utility projects:

a. 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;

b. 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

c. Facilities relocation 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 gas corporation.²

A. Petition Did Not Include Documents Required by Law

4. The Commission's ISRS rule, 4 CSR 240-3.265, includes additional requirements for Liberty to follow when requesting an ISRS rate increase. Subsection 4 CSR 240-3.265(20) requires Liberty to submit "at a minimum" a number of supporting documents and calculations, including the following:

(20) At the time that a natural gas utility files a petition with the commission seeking to establish, change or reconcile 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

² Section 393.1009(5) RSMo.

of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation. 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:

...

(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:

1. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state safety requirements;
2. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with federal safety requirements;
3. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with state safety requirements;
4. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with federal safety requirements;

...

(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.³

5. Liberty's Application includes a list of projects that Liberty claims are eligible for the ISRS. Each project is listed in Liberty's Appendix A, Schedule 1, and separated into the following categories: Main Replacements, Service Replacements, Meter and House Regulator Replacements, and Measurement and Regulator Station Equipment Replacements. Liberty's Application does not include, as required for each project, "the specific requirements being satisfied by the infrastructure replacement" as

³ Emphasis added.

required by 4 CSR 240-3.265(20)(K), or “the statute, commission order, rule, or regulation, if any, requiring the project” as required by 4 CSR 240-3.265(20)(L). Accordingly, Liberty’s Application does not comply with 4 CSR 240-3.265(20). Since Liberty did not identify the requirement it was complying with for each project, Liberty’s Petition is not in compliance with 4 CSR 240-3.265 and should be rejected without prejudice. All rates charged must be just and reasonable and no more than allowed by law. § 393.130 RSMo. If rejected, Liberty would have the option of refiling the Petition with the required documentation.

B. Petition Seeks ISRS Recovery of Non-Eligible Expenses

6. On July 17, 2013 OPC sent Data Request No. 1 to Liberty to better understand the basis used by Liberty for determining whether the investments meet the statutory ISRS criteria. OPC selected fifty (50) projects from the project list Liberty provided with its Application and asked Liberty to provide all work orders and to “identify the safety requirement or relocation being complied with and explain how the expenditure was made to comply with the safety requirement or relocation.”

7. On July 29, 2013, Liberty notified OPC that it needed more than twenty (20) days to respond to OPC’s request. On August 16, 2013, Liberty responded to OPC’s Data Request, but Liberty did not identify the specific safety requirement being complied with and it did not explain how each selected project was undertaken to comply with that requirement. Liberty’s response stated:

(3) All installation, replacements and infrastructure expenditures are in accordance with state and federal safety guidelines. Liberty utilities is audited (every operations area) by the Pipeline Safety Group of the Missouri Public Service Commission to ensure compliance.

8. On August 30, 2013, in response to feedback from OPC, Liberty supplemented its data request response with a list that assigned a specific PSC rule to each entry, with a few exceptions. Liberty's response identified the following subsections of 4 CSR 240-40.030 as the requirements that caused the expenditures to be eligible for ISRS:

| | |
|----------------------|--|
| 4 CSR 240-40.030(7) | General Construction Requirements for Transmission Lines and Mains |
| 4 CSR 240-40.030(9) | Requirements for Corrosion Control |
| 4 CSR 240-40.030(13) | Maintenance |
| 4 CSR 240-40.030(14) | Gas Leaks |
| 4 CSR 240-40.030(15) | Replacement Programs |

Most of Liberty's responses listed 4 CSR 240-40.030(13) (Maintenance) and 4 CSR 240-40.030 (Gas Leaks) as the requirement that made the fifty (50) expenses identified by OPC eligible for ISRS.

9. Section 393.1009(5) RSMo authorizes ISRS eligibility for pipeline components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition. This type of investment must have been made to comply with a law or order that requires the utility to replace certain facilities, such as the Commission's Cast Iron Main and Unprotected Steel Main Replacement Program requirements found in 4 CSR 240-40.030(15). Liberty's data request response identified only one such program expense as being the reason for an infrastructure investment. Liberty's response did not explain how the other rule subsections cited by Liberty mandated the type of expenditure that would make the expenditure eligible for ISRS recovery. For example, the expenditures where Liberty

identified the reason as 4 CSR 240-40.030(14), “Gas Leaks”, do not identify any requirement within Subsection (14) that mandates replacement in the manner contemplated by the statute. Likewise, Liberty’s responses that identified 4 CSR 240-40.030(13), “Maintenance,” as the reason that the expense is eligible for ISRS, are also not based on a law that compelled Liberty to incur the expenses. The rules regarding gas leaks and maintenance expenses do not mandate the type of replacement programs that the rule was meant to address, and instead provide general safety guidelines regarding routine business practices of a gas utility. Because Liberty seeks recovery of these expenses through the ISRS, Liberty’s Petition should be denied because it seeks to recovery expenses not authorized by law. All rates charged must be just and reasonable and no more than allowed by law. § 393.130 RSMo.

C. **No Authority to Approve ISRS More Than 3 Years From Last Rate Case**

10. OPC also urges the Commission to reject the ISRS Petition because § 393.1012.2 RSMo 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. Liberty’s last rate case was decided by the Commission on August 18, 2010, and the tariffs implementing the rate increase became effective on September 1, 2010.⁴ Therefore the Commission lacks the statutory authority to grant the relief requested in Liberty’s ISRS Petition because more than three years has passed since Liberty’s last rate case.

⁴ *In the Matter of Atmos Energy Corporation's Tariff Revision Designed to Implement a General Rate Increase for Natural Gas Service in the Missouri Service Area of the Company*, Case No.

D. Further Evidence Needed Before ISRS Approval

11. OPC also opposes Liberty's Petition because it seeks to recover expenditures that it may have already recovered through insurance providers or other third parties. For example, Liberty's Petition seeks to recover expenditures incurred when independent third-party contractors accidentally damaged distribution mains. Not only are these expenditures that were not caused by any state or federal requirement, but it is likely that Liberty was already compensated for the cost of replacement by the responsible party or through Liberty's insurance policy. More evidence is needed to determine whether Liberty was already compensated for these expenditures.

12. In Liberty's response to OPC's Data Request, Liberty excluded three (3) of the fifty (50) expenses because Liberty discovered while answering the data request that the three expenditures were not eligible for ISRS. The three expenses totaled \$34,368.98. This suggests that there are more expenses included in this Petition that are also not eligible, but have not been identified because Liberty has not analyzed the other expenses in the same manner that it analyzed the fifty identified by OPC.

13. In addition, OPC requested work orders and other expense information from Liberty to verify the amounts for certain Liberty projects for which ISRS recovery is sought. Liberty provided additional documents, but not the type of information to allow OPC to confirm that the amounts requested were accurate. More information is needed from Liberty to verify the expenses.

14. OPC urges the Commission to deny Liberty's request to increase its ISRS rate, or in the alternative, direct the parties to propose a procedural schedule that includes

GR-2010-0192, Order Approving Stipulation and Agreement, issued August 18, 2010, and Order Approving Tariff Filings in Compliance with Commission Order, issued August 20, 2010.

dates for an evidentiary hearing to address the matters raised herein and any other issues that may arise as the merits of Liberty's Application are further evaluated.

15. Section 393.1015.2(3) RSMo authorizes the Commission to hold a hearing on the petition and associated rate schedules, and requires that the Commission shall issue an order to become effective no later than one hundred twenty days after the petition is filed. Liberty filed its Application on July 2, 2013, thereby requiring a Commission order to be effective no later than October 30, 2013.

16. Liberty has the burden of proving that the expenditures it seeks to recover through the ISRS comply with the law. § 393.150.2 RSMo.

17. By the authority granted to the OPC in §386.710 RSMo, OPC seeks an order rejecting or denying the relief requested by Liberty, or in the alternative, an order scheduling an evidentiary hearing to address these matters.

18. OPC initially planned to file this Motion on August 21, 2013. On August 19, 2013, OPC shared its concerns with the Staff, and on August 20, 2013, OPC shared its concerns with Liberty. On August 21, 2013, counsel for Liberty requested that OPC delay its filing to give Liberty additional time to submit a more thorough response to OPC's Data Request Number 1. For this reason, OPC delayed this filing. On September 4 and 5, 2013, Liberty further supplemented its responses with additional data. However, the responses did not resolve OPC's concerns.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission reject or deny Liberty's Application to increase its ISRS rate, or in the alternative, set this matter for an evidentiary hearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Deputy Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 9th day of September 2013:

/s/ Marc Poston