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August 22, 2003

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Re: Case No. GX-2004-0090**

Dear Mr. Roberts:

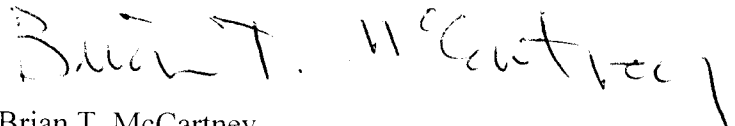
On behalf of Missouri Gas Energy, a division of Southern Union Company, I am providing herewith to the Missouri Public Service Commission ("Commission") in electronic format an Application for Rehearing.

A copy of this filing is being provided to the Commission's General Counsel and to the Office of the Public Counsel.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Very truly yours,



Brian T. McCartney

BTM/lar  
Enclosure  
cc: Dan Joyce  
John Coffman

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

In the Matter of a Proposed	)	
Rule to Establish Procedures	)	
for Natural Gas Utilities	)	Case No. GX-2004-0090
to Establish an Infrastructure System	)	
Replacement Surcharges	)	

**APPLICATION FOR RECONSIDERATION OR REHEARING**

COMES NOW Missouri Gas Energy ("MGE"), a division of Southern Union Company, pursuant to § 386.500 RSMo 2000 and 4 CSR 240-2.160, and for its Application for Rehearing respectfully states as follows to the Missouri Public Service Commission ("Commission"):

1. It is well-established that the Commission, as an administrative body and a servant of the legislature which created it, can only administer the law as given to it by the Missouri General Assembly. The Commission cannot legislate. Unfortunately, in promulgating the rule which is the subject of this matter the Commission has violated this fundamental legal principle as it has gone well beyond the scope of House Bill 208, the legislation which authorizes the involved Infrastructure System Replacement Surcharge ("ISRS").

2. The comprehensive ISRS provisions of House Bill 208 were developed by the legislature as a way to streamline the regulatory process associated with rate recovery of certain governmentally-mandated, non-revenue producing expenditures by gas utilities. In essence, this streamlining occurs by enabling gas utilities to obtain rate recovery of such expenditures, subject to a number of conditions designed to protect the interests of customers, without the necessity of filing a costly and time-consuming full-blown general rate case.

3. MGE has, over the past nine years, been able to avoid filing general rate cases more frequently than every 24 to 36 months or so, primarily as a result of its

significant efforts to control costs through the deployment of technology and improvement of processes. Absent the ISRS provisions of House Bill 208, however, for the foreseeable future, MGE would likely file a general rate proceeding every 12 to 18 months. With the ISRS provisions, on a going-forward basis, MGE will likely file a general rate proceeding only every 42 months, assuming reasonable regulatory treatment. This reduction in rate case frequency, as a result of the ISRS provisions, means lower transaction costs not only for MGE, but also for the Commission and other participants in these cases, and translates into lower rates than would otherwise be the case for MGE's customers.

4. On August 14, 2003, the Commission issued its *Order Finding Necessity for Rulemaking* ("Order Finding Necessity"), effective August 24, 2003, which authorized the Commission's Staff to proceed with drafting a rule for the Commission's consideration, said rule to address the procedure for filing an ISRS by a natural gas utility which surcharge was authorized by House Bill 208 enacted by the 92<sup>nd</sup> General Assembly and signed into law by the Governor on July 9, 2003.

5. Also on August 14, the Commission reviewed the proposed rule and authorized Staff to begin the publication process. It is MGE's understanding that the permanent rule proposed by Staff is substantially similar, if not identical, to the Emergency ISRS Rule ("the Emergency Rule") approved by the Commission in Case No. GX-2004-0083 on that same day. The Emergency Rule and the memorandum promulgating the Emergency Rule, collectively marked Appendix 1, are attached hereto and made a part hereof for all purposes.

6. The Commission's actions surrounding its *Order Finding Necessity*, are unlawful, unjust, unreasonable, arbitrary, capricious, involve an abuse of discretion, are unsupported by competent and substantial evidence upon the whole record, are in excess of statutory authority, and are unconstitutional in all material matters of fact and

law, individually or cumulatively, or both, in the particulars hereinafter stated for the following reasons and in the following respect:

- a. The Commission does not have authority to promulgate the ISRS Rule. The Commission's only authority to promulgate rules concerning ISRS comes from House Bill 208. As House Bill 208 does not become effective until August 28, 2003, the Commission does not now have such authority, nor did it have such authority at the time it issued the Order Finding Necessity for Rulemaking and authorized its Staff to begin the publication process.

7. Furthermore, to the extent the ISRS rule is identical or similar to the Emergency Rule, the following provisions are unlawful, unjust, unreasonable, arbitrary, capricious, involve abuse of discretion, are unsupported by competent and substantial evidence upon the whole record, are in excess of statutory authority, and are unconstitutional in all material matters of fact and law, individually or cumulatively, or both, in the particulars hereinafter stated for the following reasons and in the following respects:

- a. Sections (1) through (6), (10) through (13) and (15) through (17) of the Rule unnecessarily re-state certain of the ISRS provisions contained in House Bill 208.
- b. Section (8) of the Rule imposes notice requirements not found in the ISRS provisions of House Bill 208. While separate line-item billing of the ISRS would have been required under an earlier version of the ISRS bill legislation, this provision was removed prior to final passage of House Bill 208. The line-item billing requirement in the Rule is inconsistent with House Bill 208 and, therefore, in violation of section 393.1015(11). MGE estimates that the line-item billing requirement will cause additional costs amounting to approximately \$50,000 per year primarily related to additional billing stock costs that would be necessary due to the creation of more multi-page bills than would otherwise be required in

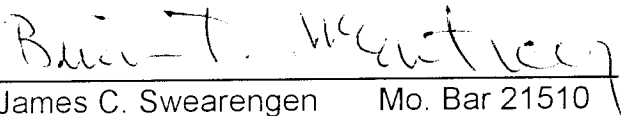
the absence of an ISRS line-item. The separate line-item billing requirement in the Rule may also result an increase in customer inquiries with a corresponding increase in costs to deal with these inquiries. Also, MGE would note that its ongoing Experimental Low-Income Rate was funded by means of a monthly surcharge on the bills of its residential customers and the Commission did NOT require this surcharge to be identified on the bills by means of a separate line-item. Furthermore, MGE presently does not have the capability through its billing system to accomplish line-item billing as contemplated by the proposed rule. While MGE expects to have such capability in the near future, according to section 393.1015(11), no rules promulgated regarding the ISRS provisions may delay the implementation of sections 393.1009 to 393.1015. In addition, the requirement in the Emergency Rule to provide customers an initial notice, and annual notices thereafter, regarding ISRS filings is not found anywhere in the ISRS provisions of House Bill 208 and this is contrary to the provisions of section 393.1015(11). MGE estimates that these notice requirements will cause additional costs to be borne by customers amounting to approximately \$3,000 per year assuming one notice to be provided per year to all of MGE's approximately 500,000 customers by way of a one-panel, one-color bill insert.

- c. Subsections (G), (K), (M) and (P) of section (18) of the Rule introduce additional items to be reviewed during the ISRS process beyond those provided for in the ISRS provisions of House Bill 208. These provisions of the proposed rule are inconsistent with section 393.1015(2)2 of House Bill 208 and therefore in violation of section 393.1015(11). Additional costs would result from these additional requirements.
- d. Subsection (O) of section (18) of the Rule changes the meaning of "net original cost of eligible infrastructure system replacements" as used in section 393.1009(1)(a) and therefore violates section 393.1015(11). In addition, several

provisions of this subsection—(O)3 and (O)6—appear to have no place in the rule and may have been inadvertently lifted from the water utility ISRS provisions. While similar language is found in section 393.1000(8)(a) applicable to water utilities, corresponding language is not found in the gas utility ISRS provisions of House Bill 208. Furthermore, breaking things out in this kind of exhaustive detail does not appear to be necessary, and since it is not a requirement of the statute, is in violation of section 393.1015(11). In addition, this approach will increase costs.

WHEREFORE, MGE respectfully requests the Commission to hold a hearing and/or grant a rehearing herein with respect to its Order Finding Necessity and its decision to authorize Staff to begin the publication process for its ISRS rule.

Respectfully submitted,

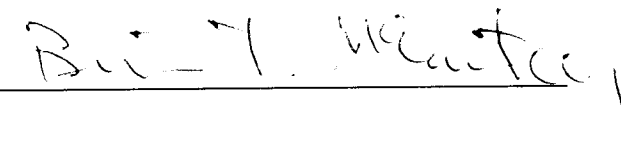


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Email:lrackers@brydonlaw.com

Attorneys for Missouri Gas Energy

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 22d day of August, 2003, to the Commission's General Counsel and the Office of the Public Counsel.



## MEMORANDUM

Dale Hardy Roberts, Secretary

**DATE:** August 14, 2003


Authorization to file emergency rule for 4 CSR 240-3.265 with the Office of the Secretary of State and the Joint Committee on Administrative Rules

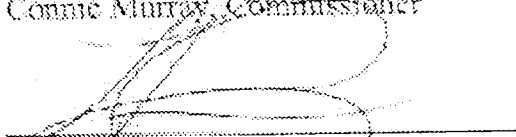
**CASE NO:** GX-2004-0083

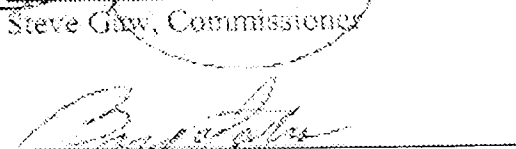
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Emergency Rule with the Office of Secretary of State, to wit:

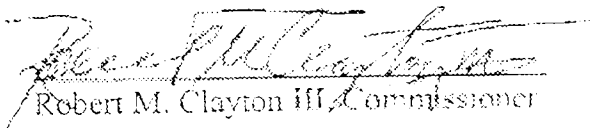
**4 CSR 240-3.265 Natural Gas utility Petitions for Infrastructure System Replacement Surcharges**

  
Kelvin L. Simmons, Chair

  
Connie Murray, Commissioner

  
Steve Graw, Commissioner

  
Bryan Forbis, Commissioner

  
Robert M. Clayton III, Commissioner

RECEIVED

**COPY**

4 - DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 240 - Public Service Commission  
Chapter 3 - Filing and Reporting Requirements

JOINT COMMITTEE ON

AUG 15 2003

ADMINISTRATIVE RULES

SECRETARY OF STATE  
ADMINISTRATIVE RULES

EMERGENCY RULE

4 CSR 240-3.265 Natural Gas Utility Petitions for Infrastructure System Replacement Surcharges

*PURPOSE: The commission regulates the rates and charges of all investor-owned natural gas utilities in the State of Missouri, which provide essential services to the citizens of Missouri. This rule establishes the definitions, parameters and procedures relevant to the filing and processing of petitions pertaining to an infrastructure system replacement surcharge (ISRS).*

*EMERGENCY STATEMENT: This emergency rule establishes the definitions, parameters and procedures relevant to the filing and processing of petitions pertaining to an infrastructure system replacement surcharge (ISRS), including the information that a natural gas utility must provide when it files a petition to establish, change or reconcile an ISRS. This rulemaking was authorized by the 92<sup>nd</sup> General Assembly in House Bill 208, which Governor Holden signed on July 16, 2003 and which becomes effective August 28, 2003. In order to permit the commission to fulfill its statutory duties within the 120-day timeframe set out in the law, the commission finds a compelling governmental interest exists to immediately implement the rule on the law's effective date. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Commission believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 15, 2003, effective August 28, 2003 and expires February 24, 2004.*

(1) As used in this rule, the following terms mean:

(A) Appropriate pretax revenues - the revenues necessary to:

1. Produce net operating income equal to the natural gas utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements that are included in a currently effective ISRS;

2. Recover state, federal, and local income or excise taxes applicable to such income; and

3. Recover all other ISRS costs;

(B) Eligible infrastructure system replacements - natural gas utility plant projects that:

1. Replace or extend the useful life of existing infrastructure;

2. Are in service and used and useful;

3. Do not increase revenues by directly connecting the infrastructure replacement to new customers; and

4. Were not included in the natural gas utility's rate base in its most recent general rate case.

(C) Natural gas utility - a gas corporation as defined in section 386.020, RSMo;

(D) ISRS - infrastructure system replacement surcharge;

(E) ISRS costs - depreciation expenses, and property taxes that will be due within twelve months of the ISRS filing;

(F) ISRS revenues - revenues produced through an ISRS, exclusive of revenues from all other rates and charges;

(G) Natural gas utility plant projects - projects that consist only of the following:

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. Facilities 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 utility.



(2) Pursuant to the provisions of this rule and sections 393.1009 to 393.1015, RSMo, a natural gas utility 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 its rates and charges to provide for the recovery of costs for eligible infrastructure system replacements; provided that the ISRS, on an annualized basis, must produce ISRS revenues of at least the lesser of one half of one percent of the natural gas utility's base revenue level approved by the commission in the natural gas utility's most recent general rate case proceeding or one million dollars (\$1,000,000), but not in excess of ten (10) percent of the subject utility's base revenue level approved by the commission in the utility's most recent general rate proceeding.

(3) An ISRS, and any future changes thereto, shall be calculated and implemented in accordance with the provisions of this rule and sections 393.1009 to 393.1015, RSMo.

(4) ISRS revenues shall be subject to refund based upon a finding and order of the commission, to the extent provided in subsections 5 and 8 of section 393.1015, RSMo.

(5) The commission shall not approve an ISRS for a natural gas utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three (3) years, unless that utility has filed for or is the subject of a new general rate proceeding.

(6) In no event shall a natural gas utility collect an ISRS for a period exceeding three (3) years unless it 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.

(7) Upon the filing of a petition seeking to establish or change an ISRS, the commission will provide notice of the filing.

(8) The natural gas utility shall provide the following notices to its customers:

(A) An initial, one-time notice to all potentially affected customers, such notice being sent to customers no later than when customers will receive their first bill that includes an ISRS, explaining the subject utility's infrastructure system replacement program, explaining how it will calculate its ISRS, explaining how its ISRS will be applied to its various customer classes and identifying the statutory authority under which it is implementing its ISRS;

(B) An annual notice to affected customers each year that an ISRS is in effect explaining the continuation of its infrastructure system replacement program and the resulting ISRS; and

(C) A line-item surcharge description on all affected customer bills, which will identify the existence and amount of the ISRS on the bills.

(9) Within twenty (20) days of the natural gas utility's filing of a petition to establish an ISRS, the subject utility shall submit the following to the commission for approval:

(A) An example of the initial, one-time notice required by subsection (8)(A) of this rule;

(B) An example of the annual notice required by subsection (8)(B) of this rule; and

(C) An example customer bill showing how the ISRS will be separately identified on affected customers' bills in accordance with subsection (8)(C) of this rule.

(10) When a natural gas utility files a petition pursuant to the provisions of this rule, the commission shall conduct an examination of the proposed ISRS.

(11) The staff of the commission may examine information of the natural gas utility to confirm that the underlying costs are in accordance with the provisions of this rule and sections 393.1009 to 393.1015, RSMo, and to confirm proper calculation of the proposed ISRS, and may submit a report regarding its examination to the commission not later than sixty (60) days after the natural gas utility files its petition. The staff shall not examine any other revenue requirement or ratemaking issues in its consideration of the petition or associated proposed rate schedules.

(12) The commission may hold a hearing on the petition and the associated proposed rate schedules and shall issue an order to become effective not later than one hundred twenty (120) days after the natural gas utility files the petition.

(13) If the commission finds that a petition complies with the requirements of this rule and sections 393.1009 to 393.1015, RSMo, the commission shall enter an order authorizing the natural gas utility to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission.

(14) A natural gas utility may effectuate a change in an ISRS no more often than two (2) times during every twelve-month period, with the first such period beginning on the effective date of the rate schedules that establish an initial ISRS. For the purposes of this section, an initial ISRS is the first ISRS granted to the subject utility or an ISRS established after an ISRS is reset to zero pursuant to the provisions of section (16) of this rule.

(15) At the end of each twelve-month period that an ISRS is in effect, the natural gas utility shall reconcile the differences between the revenues resulting from the ISRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and proposed ISRS rate schedule revisions to the commission for approval to recover or refund the difference, as appropriate.

(16) A natural gas utility that has implemented an ISRS shall file revised ISRS rate schedules to reset the ISRS to zero when new base rates and charges become effective following a commission order establishing customer rates in a general rate proceeding that incorporates eligible costs previously reflected in an ISRS into the subject utility's base rates.

(17) Upon the inclusion of eligible costs previously reflected in an ISRS into a natural gas utility's base rates, the subject utility shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match, as closely as possible, the appropriate pretax revenues as found by the commission for that period.

(18) 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 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:

(A) The state, federal, and local income or excise tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(B) The regulatory capital structure used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that capital structure;

(C) The cost rates for debt and preferred stock used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those cost rates;

(D) The cost of common equity used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that equity cost;

(E) The property tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(F) The depreciation rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those depreciation rates;

(G) An explanation of how long any infrastructure that was replaced associated with the ISRS had been installed when it was removed or abandoned;

(H) The applicable customer class billing units used in calculating the proposed ISRS, and an explanation of source of and the basis for using those billing units;

(I) An explanation of how the proposed ISRS is being proportioned between affected customer classes, if applicable;

(J) An explanation of the efforts of the natural gas utility to quantify and to seek reimbursement of any costs incurred for 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, which could offset the requested ISRS revenues;

(K) An explanation of how the infrastructure replacement projects associated with the ISRS are being funded, including the amount of any debt and the interest rate on that debt;

(L) An explanation of the request for proposal (RFP) process, or the reasons for not using an RFP process, used to establish what entity performed the infrastructure replacement projects associated with the proposed ISRS;

(M) An explanation of how the infrastructure replacement projects associated with the ISRS do not increase revenues by increasing pipeline capacity for service of, or interconnection of, new customers;

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

(O) For each project for which recovery is sought, the net original cost of the infrastructure system replacements (total cost less net book value of any related facility retirements), 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. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to replace existing facilities that have worn out or are in deteriorated condition;

4. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with state safety requirements;

5. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with federal safety requirements;

6. 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;

7. Facilities 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;

8. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of this state;

9. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of a political subdivision of this state; and

10. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of an entity other than the United States, this state, or a political subdivision of this state, having the power of eminent domain;

(P) For each project for which recovery is sought, the commission order, 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 ending date of the project.

(19) In addition to the information required by section (18) of this rule, the natural gas utility shall also provide the following information when it files a petition with the commission seeking to establish, change or reconcile an ISRS:

(A) A description of all information posted on the subject utility's website regarding the infrastructure system replacement surcharge and related infrastructure system replacement projects; and

(B) A description of all instructions provided to personnel at the subject utility's call center regarding how those personnel should respond to calls pertaining to the ISRS.

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and section 393.1015.11, HB208, effective August 28, 2003. Emergency rule filed August 15, 2003, effective August 28, 2003, expires February 24, 2004. A proposed rule covering the same subject matter will be published in the Missouri Register.*