

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

In the Matter of the Application of)	
Southern Union Company d/b/a Missouri)	
Gas Energy, for Approval to Change its)	Case No. GO-2013-0391
Infrastructure System Replacement)	
Surcharge.)	

**PUBLIC COUNSEL’S REPLY TO
THE RESPONSES OF STAFF AND MGE**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Reply to the Responses filed by Staff and Missouri Gas Energy (MGE), OPC states:

1. The issue before the Commission is whether Section 393.1012.2 RSMo prohibits the Commission from approving Missouri Gas Energy’s (MGE) Infrastructure System Replacement Surcharge (ISRS) petition. The parties contest the meaning of Section 393.1012.2 RSMo, which states:

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]

The question to be answered is whether the above statute applies to all petitions to increase rates by changing an ISRS, as MGE seeks in this case, or if it applies only when approving the first ISRS petition following a rate case. Guidance on how to interpret Section 393.1012.2 RSMo can be found elsewhere in the ISRS statute.

2. Section 393.1012.2 RSMo must be interpreted within the context of the rest of Section 393.1012 RSMo, which is titled *Rate Schedules, Procedures to Establish or Change*. Starting with Section 393.1012.1 RSMo, it states:

393.1012. 1. Notwithstanding any provisions of chapter 386 and this chapter to the contrary, beginning August 28, 2003, 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 commission may not approve an ISRS to the extent it would produce total annualized ISRS revenues below the lesser of one million dollars or one-half of one percent of the gas corporation's base revenue level approved by the commission in the gas corporation's most recent general rate proceeding. The commission may not approve an ISRS to the extent it would produce total annualized ISRS revenues exceeding ten percent of the gas corporation's base revenue level approved by the commission in the gas corporation's most recent general rate proceeding.** An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1009 to 393.1015. ISRS revenues shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections 5 and 8 of section 393.1009. [emphasis added].

3. All parties agree that the first sentence of Section 393.1012.1 RSMo requires gas companies to petition the Commission to either establish an ISRS or change an ISRS. An ISRS is *established* when the Commission first approves a gas company's petition to increase rates through an infrastructure surcharge. An ISRS is *changed* when the Commission approves a gas company's subsequent petitions to increase rates through an infrastructure surcharge. There is no meaningful difference between the two. They do the same thing – raise rates to recover costs for additional infrastructure replacements.

4. The second and third sentences of Section 393.1012.1 RSMo, highlighted above, modify the petition requirement by setting the minimum and maximum allowable ISRS amounts that can be approved by the Commission, using language that is identical to language in contested Section 393.1012.2 RSMo. Whereas Section 393.1012.1 RSMo mandates that the Commission may not approve “an ISRS” under certain conditions, Section 393.1012.2 RSMo also mandates that the Commission shall not approve “an

ISRS” under other conditions. Staff and MGE argue that the Section 393.1012.2 RSMo three-year limitation on approving “an ISRS” applies only to the first infrastructure surcharge levied after a rate case, and not to any subsequent surcharges. To accept that interpretation would require the Commission to also accept that the same term used in Section 393.1012.1 RSMo also refers only to the first infrastructure surcharge following a rate case, because the language used is the same. Under the interpretation proposed by Staff and MGE, the required minimum and maximum allowable amounts would apply only to the first surcharge rate increase, and there would be no maximum amount for any future surcharges because the limitations would not apply to subsequent infrastructure surcharge rate increases. The Staff/MGE interpretation is not consistent with the purpose of setting a maximum amount, which is to place a cap on the amounts that can be recovered between rate cases through the surcharge. It does not make sense to place those caps only upon the initial surcharge while allowing unlimited amounts in subsequent surcharge petitions. This confirms that a correct interpretation of the term “shall not approve an ISRS” in Section 393.1012.2 RSMo applies to all infrastructure surcharge petitions, either establishing or changing an ISRS, just as “may not approve an ISRS” in Section 393.1012.1 RSMo also applies to all surcharge petitions.

5. The last subsection of Section 393.1012 RSMo, Subsection 3, states:

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.

The purpose of Subsection 3 is to limit the duration of a surcharge levied without an audit to three years, where the purpose of Subsection 2 is to prevent the gas company from levying any additional rate increases (surcharges) if more than three years has passed since the last rate case audit. If more than three years has passed since the last rate case audit, the Legislature has no faith that a surcharge would be warranted because the gas company could be recovering sufficient revenues to cover the costs of the investments. The purpose of the statute is to prevent single-issue rate increases if more than three years has gone by since the last audit. If the Commission approves the requested ISRS, it will do so more than three years since the last decision following an audit.

6. Throughout the ISRS statutes, the Legislature provides for equal treatment when establishing an ISRS or changing an ISRS. Section 393.1015.1(1) requires MGE to file a petition to either establish or change an ISRS, and the documentation that must be submitted by MGE is equal for both. Section 393.1015.2(4) RSMo specifically requires a petition to establish and a petition to change to comply with Sections 393.1009 RSMo through 393.1015 RSMo. Section 393.1015.1(2) requires the Commission to issue public notice under both petitions. Section 393.1015.2(1) requires the Commission to conduct an examination for petitions to establish or change an ISRS. This equal treatment indicates that the Legislature intended the petition process and the limitations on the Commission's approval of an additional ISRS rate increase to apply equally to establishing an ISRS or changing an ISRS. This includes the limitation on the Commission's authority to approve an ISRS more than three years after a rate case.

7. Approving MGE's petition to increase rates under the ISRS would be beyond the Commission's authority as determined by Section 393.1012.2 RSMo, and the petition must be denied.

WHEREFORE, the Office of the Public Counsel respectfully offers this reply and requests a Commission order denying MGE's Application because approval of an additional rate increase through the ISRS is prohibited by Section 393.1009.2 RSMo.

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 30^h day of April 2013:

/s/ Marc Poston
