

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

In the Matter of the Application of)	
Missouri Gas Energy, a division of)	
Laclede Gas Company, for Approval to)	Case No. GO-2014-0179
Change its Infrastructure System)	
Replacement Surcharge)	

**REPLY TO STAFF AND MGE RESPONSES TO
PUBLIC COUNSEL’S MOTION TO REJECT APPLICATION**

COMES NOW the Missouri Office of the Public Counsel (“OPC” or “Public Counsel”) and for its Reply to the Staff and Missouri Gas Energy (MGE) responses to OPC’s Motion to Reject Application states:

1. OPC filed its Motion to Reject Application because MGE’s Application does not provide the category that qualifies each project for the Infrastructure System Replacement Surcharge (ISRS), or the state or federal law or order requiring the project, both of which are required for ISRS eligibility. MGE responded by stating that this basic information is available if OPC requests and reviews all MGE work orders in Kansas City. This is not the process envisioned by the Commission when it adopted its ISRS rules. The ISRS process envisioned by the Commission is the process clearly spelled out in 4 CSR 240-3.265, which requires sufficient detail in the application so that the category of expense that qualifies the expense for ISRS and the law or order mandating the investment can be easily determined for each ISRS project. But it is *impossible* to look at each individual project listed in MGE’s Appendix B to its Application and understand what qualifying category of ISRS expense is being claimed and what state or federal requirement mandated the investment.

2. MGE’s response asserts that the category for each ISRS-eligible expense was provided on Page 1 of Appendix A to MGE’s Application, which provides a list of five (5) categories of expense: (1) Public Improvements; (2) SLRP; (3) Blanket Workorders – Service Line Replacement; (4) Blanket Workorders – Encapsulation & Services; and (5) Blanket Workorders – Meter & Regulator Settings. MGE’s category list, however, does not follow the eight (8) categories as required by 4 CSR 240-3.265(20)(K)(1) through (8). The table below includes the eight (8) categories that the rules require MGE to identify for “each project”:

Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with...	(1) ...state safety requirements
	(2) ...federal safety requirements
Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with...	(3) ...state safety requirements
	(4) ...federal safety requirements
Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of...	(5) ...the United States
	(6) ...this state
	(7) ...a political subdivision of this state
	(8) ...an entity other than the United States, this state, or a political subdivision, having the power of eminent domain.

3. The above level of detail is required under subsection (20)(K) as one of the “minimum” filing requirements for any petition “seeking to establish, change or reconcile an ISRS.” The rule states, “The subject utility’s supporting documentation...shall include, at a minimum, the following information” including the identification of the qualifying category for each project. 4 CSR 240-3.265(20)(K) and (L).¹ The level of detail required by these *minimum* filing requirements demonstrates the importance placed by the Commission on having supporting documentation submitted up front that demonstrates compliance with the ISRS rule. By not following the required category list, MGE’s Application is not in compliance with the ISRS rule.

4. Another defect in MGE’s Application is that nowhere in Appendix B do any of the MGE categories appear as a description for any project except for those labeled “Public Improvements”.² Appendix B simply categorizes each project as “Mains,” “Services” or “M&R Station General” regardless of whether the project was a complete replacement under § 393.1009(5)(a) RSMo, or whether the project was a insertion type of project that extended the useful life of the existing facility under § 393.1009(5)(b) RSMo. OPC encourages the Commission to look through Appendix B and attempt to determine the category for each project and the law or order mandating the investment. It cannot be done for any expense qualifying under § 393.1009(5)(a) or (b). The only category that can be identified in Appendix B is facility relocations under § 393.1009(5)(c) which MGE labels as “Public Improvements,” but even then the information is limited because it does not categorize relocations by the entity mandating the relocation as required by 4 CSR 240-3.265(20)(K)(5) through (8).

¹ Emphasis added.

² According to MGE, Public Improvements are facility relocations under § 393.1009(5)(c) RSMo.

5. A potential red flag was raised regarding MGE's categorization of its ISRS expenses when MGE claimed that its "Service Line Replacement Program [SLRP] work [was] performed in compliance with the Commission Order in Case No. GO-2002-0048."³ MGE's reliance on this case is in error because the issues in Case No. GO-2002-0048 were limited to Farm Tap Service Lines⁴ and Master Meter Trailer Parks.⁵ MGE appears to be basing its entire SLRP authority on an order that does not apply to the vast majority of MGE's safety line replacements. In addition, despite MGE's claim on Page 1 of its Appendix A that it's proposed ISRS in the present case includes over \$5 million in SLRP expenses, MGE's Appendix B does not identify any project as a SLRP expense, making it impossible to identify any project as a SLRP replacement.

6. MGE argues that 4 CSR 240-3.265(20)(K) does not require MGE to identify the category of qualifying ISRS expense "for each project" because the "for each" term refers to each category, not each project. The paragraph in question requires ISRS applicants to provide "at a minimum":

(K) For each project for which recovery is sought, the net original cost of the infrastructure system replacements..., 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. [Emphasis added].

MGE's interpretation does not follow the plain and ordinary meaning of the language used in this paragraph. It is clear from the beginning phrase of the paragraph, "For each

³ MGE's Response to OPC's Motion to Reject Application, p. 3, January 3, 2014.

⁴ The Farm Tap Service issue was limited to 600 interstate pipeline customers that received retail service directly off the interstate pipeline system. In the Matter of Missouri Gas Energy's Application for a Determination of Certain Matters Pertaining to its Safety Line Replacement Program, Order Approving Amended Application, May 16, 2002.

project for which recovery is sought,” that the information sought is information as it applies to each project. *For each project* the rule requires: (1) the qualifying ISRS cost; (2) a breakdown of costs by category; and (3) the law or order being satisfied. The second use of the term “for each” appearing at the end of the paragraph refers to the requirement that the utility identify the state or federal requirements mandating the infrastructure replacement, and reaffirms that the requirement is for each project.

7. In response to OPC’s point that MGE failed to identify the law or order mandating each project, MGE states:

The Commission considered a similar issue in its Liberty Utilities ISRS Order. In that order, the Commission found that a utility must provide “a citation to a statute, order or rule...only in those situations where a particular project is specifically mandated by law.” (p. 11, emphasis added). The Commission further noted that OPC’s concerns were rendered moot because Liberty updated its petition by adding references, noting that “assuming for the sake of argument that the Petition was deficient when originally filed, that deficiency was cured by Liberty.”

Even if MGE were correct and a cite to an order or law is required only where a particular project is mandated by law, disclosure is therefore mandatory for all ISRS expenses since § 393.1009(5)(a) and (b) require that all investments qualifying under these subsections *must* be installed or undertaken to comply with a state or federal requirement. Accordingly, MGE must identify the state or federal safety requirement mandating each project. 4 CSR 240-3.265(20)(K) and (L).

8. MGE argues that OPC has presented no policy reason for requiring compliance with the Commission’s rules. The ISRS rule requires the petitioner to demonstrate that each project complies with the ISRS statute because the Commission understood the significance of exempting an expense from the long-standing prohibition

⁵ The Master Meter Trailer Park issue involved sixteen trailer parks where a master meter was on

against single-issue ratemaking.⁶ Changing rates outside of a general rate case, where all relevant factors are considered, runs the risk of increasing rates when the company could be over-earning.⁷ MGE has not alleged that any harm would come from interpreting the ISRS rules as OPC interprets the rules, but there is an obvious *benefit* to customers because requiring the information adds further assurances that each project properly qualifies under the ISRS statute, and it aids the Commission, Staff and OPC in verifying compliance with the ISRS statute.

9. If the Commission follows the interpretation taken by MGE, Public Counsel will need to request and review every work order for every project before it can determine how MGE claims each project qualifies as an ISRS. Public Counsel does not have the resources to perform such a detailed review for every ISRS petition to understand something that should be the first piece of information provided by MGE since it seeks the most basic information regarding ISRS statute compliance. It should also be the easiest piece of information to provide, especially if MGE is properly ensuring that each project is truly a qualifying expense. OPC is not aware of any reason why MGE would oppose providing this information, information it has available, unless MGE is unable to find statutory support for all projects it claims as ISRS.

10. MGE argues that it provided descriptions of its ISRS projects in the same manner since 2004. Past violations of the ISRS rule should be no excuse for failure to comply with the rule presently. Each Commission rule serves a unique public protection purpose and must be followed regardless of whether or not past violations had been

the property and service was provided to individual premises through MGE-owned meters. *Id.*

⁶ *Midwest Gas Users Ass'n . Public Service Commission*, 976 S.W.2d 470 (Mo.App. W.D. 1998).

⁷ *Id.*

challenged. To hold otherwise will undermine all Commission rules and the Commission's authority in general.

11. In the Staff's response to OPC's Motion to Reject Application, the Staff agrees that MGE's Application does not contain a breakdown of ISRS costs identifying which of the project categories applies and the specific requirements being satisfied for each project.⁸ The Staff's response recognizes that the rule was not complied with by MGE in its Application. The only reason stated by the Staff as to why it does not support OPC's Motion to Reject the Application is because Liberty Utilities was allowed to file an ISRS application with documentation that was equally lacking. The Staff does not explain why the Commission should not enforce its consumer protection rules.

12. Compliance with the Commission's ISRS rule is required by law, it provides important consumer protections, and it is not burdensome for the utility. For these reasons, OPC urges the Commission to reject the Application, but allow MGE to re-file an ISRS application with the required information.

WHEREFORE, the Office of the Public Counsel respectfully submits this reply to the responses to OPC's Motion to Reject Application.

⁸ Staff Response to the Office of the Public Counsel's Motion to Reject Application, p. 4, ¶ 13, January 3, 2014.

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 14th day of January 2014:

Missouri Public Service Commission

John Borgmeyer
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
john.borgmeyer@psc.mo.gov

Missouri Public Service Commission

Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounservice@psc.mo.gov

Midwest Gas Users Association

Stuart Conrad
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Missouri Gas Energy (Laclede)

Todd J Jacobs
3420 Broadway
Kansas City, MO 64111
todd.jacobs@thelacledegroup.com

/s/ Marc Poston
