

**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 STAFF’S RECOMMENDATION**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Reply to the Staff’s Recommendation, OPC asserts that the Commission lacks the statutory authority to approve the Application, and further states:

1. Southern Union Company d/b/a Missouri Gas Energy (MGE) initiated this case on February 8, 2013, when it filed an Application with the Commission seeking approval of a new Infrastructure System Replacement Surcharge (ISRS) amount to allow for the immediate recovery of newly incurred infrastructure replacement costs.

2. On April 9, 2013, the Staff recommended to the Commission that the Commission grant the application in part and issue an order “authorizing MGE to file a tariff to impose an Infrastructure System Replacement Surcharge that is appropriate to recover appropriate pre-tax revenues in the amount of \$1,741,740.”

3. On April 10, 2013, the Commission issued its Order Establishing Time to Respond to Staff’s Recommendation and Directing Filing (“Order”). In its Order, the Commission questioned whether the Commission has the statutory authority to approve the Application in light of the statutory restriction limiting the period of time the Commission may approve an ISRS. Section 393.1012.2 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 or is the subject of a new general rate proceeding. [emphasis added].

Under this statute, no ISRS may be *approved* by the Commission if the gas company has not filed for a general rate proceeding within the last three years. In this case, MGE seeks *approval* of an ISRS. The only way the Commission has the authority to approve MGE's Application under Section 393.1012.2 RSMo, is if MGE has had a general rate proceeding within the last three years. As of the date of this pleading, MGE has not had a general rate proceeding held or filed within the last three years. The Commission issued its Report and Order resolving MGE's last rate case on February 10, 2010, which was greater than three years ago. Although MGE filed this Application on February 8, 2013, two days before the expiration of the three-year limitation, the only way the Commission could have approved the ISRS and satisfied Section 393.1012.2 RSMo was to approve the request within two days, which the Commission did not do. For this reason, the Commission lacks the authority to approve MGE's ISRS Application.

4. The Staff argues that the question to ask is whether the Commission approved an ISRS within the past three years following its February 10, 2010 Report and Order in the last rate case. The Staff essentially argues that MGE is not truly seeking "approval" of an ISRS in this case, and is instead only seeking an extension of the approval it received on September 14, 2010 when the Commission first established an ISRS for MGE in the amount of \$1,224,824 following the last rate case. OPC disagrees with the Staff's interpretation of Section 393.1012.2 RSMo because the question to ask is whether MGE is seeking approval of a new ISRS surcharge, which it is. The \$1.7 million that MGE wishes to add to the ISRS has never before been approved by the Commission,

and would therefore need Commission approval under Section 393.1012 RSMo, which specifically prohibits such approval if the gas company has not been in for a rate case within three years. The Staff's interpretation of the ISRS statute is contrary to the plain language of the statute. There should be no question that MGE is seeking approval to charge new ISRS amounts, and the Staff's Recommendation asserts the same when it recommends that the Commission authorize MGE "to impose an [ISRS] that is sufficient to recover appropriate annual pre-tax revenues in the amount of \$1,741,740."<sup>1</sup>

5. The Staff's argument focuses on the difference between *establishing* and *changing* an ISRS. OPC agrees that the statute recognizes a distinction between the two. Section 393.1012.1 RSMo indicates that a petition must be filed to either "establish or change ISRS rate schedules." The very next sentence states that, "the commission may not approve an ISRS to the extent it would produce revenues" exceeding \$1 million. Clearly the Legislature intended Commission approval to be a prerequisite for applying the surcharge when either establishing or changing an ISRS. And because the Legislature recognized a distinction between establishing and changing an ISRS, it is telling that Section 393.1012.2 RSMo does not limit the three year limitation to "establishing" an ISRS, and instead uses the word "approve" which applies equally to both establishing and changing an ISRS. In other words, had the Legislature intended to limit the three year limitation to the initial establishment of an ISRS, it would have used that term instead of the word "approve." It would have stated that that "the commission shall not *establish* 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." By using the word "approve" instead of "establish," the Legislature intended the three-year limitation

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<sup>1</sup> Staff Recommendation cover pleading, Page 3. Emphasis added.

to apply equally to applications to establish or change an ISRS since either petition requires Commission approval.

6. The purpose of the prohibition against approving additional surcharges when a rate case has not been filed within three years is to protect ratepayers from a bill increase via the surcharge when no audit of the company's books has been performed within a reasonable period of time. Such is the case here.

7. For these reasons, the Commission lacks the statutory authority to approve MGE's Application and therefore must deny the relief requested.

WHEREFORE, the Office of the Public Counsel respectfully offers this reply and requests a Commission order denying MGE's Application.

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](mailto: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 19<sup>th</sup> day of April 2013:

**/s/ Marc Poston**

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