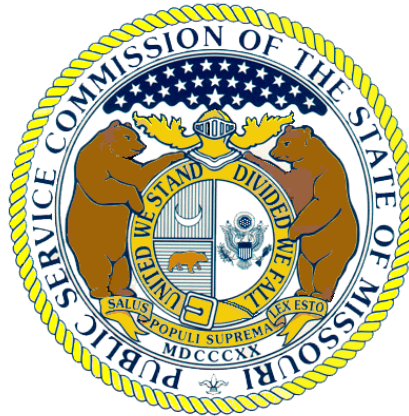


**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of May, 2016.



In the Matter of the Application of Laclede)
Gas Company to Change Its Infrastructure)
System Replacement Surcharge in Its)
Laclede Gas Service Territory.)

File No. GO-2016-0196
Tariff No. YG-2016-0193

In the Matter of the Application of Laclede)
Gas Company to Change Its Infrastructure)
System Replacement Surcharge in Its)
Missouri Gas Energy Service Territory.)

File No. GO-2016-0197
Tariff No. YG-2016-0194

REPORT AND ORDER

Issue Date: May 19, 2016

Effective Date: May 31, 2016

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

In the Matter of the Application of Laclede)
Gas Company to Change Its Infrastructure) **File No. GO-2016-0196**
System Replacement Surcharge in Its) Tariff No. YG-2016-0193
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Gas Company to Change Its Infrastructure) **File No. GO-2016-0197**
System Replacement Surcharge in Its) Tariff No. YG-2016-0194
Missouri Gas Energy Service Territory.)

REPORT AND ORDER

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REGULATORY LAW JUDGE: Kim S. Burton

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

In the Matter of the Application of Laclede)	
Gas Company to Change Its Infrastructure)	<u>File No. GO-2016-0196</u>
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Missouri Gas Energy Service Territory.)	

REPORT AND ORDER

Issue Date: May 19, 2016

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PROCEDURAL HISTORY

Laclede

Laclede Gas Company (“Laclede”) filed a verified application and petition, **docketed as File No. GO-2016-0196**, to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Laclede Gas Service Territory (“Laclede’s Petition”) on February 1, 2016.¹ With Laclede’s Petition, Laclede filed a tariff to modify the surcharge² with a proposed effective date of March 2, 2016.³ The Commission issued an order on February 3 directing notice be provided of Laclede’s Petition, setting an intervention deadline, suspending the tariff until May 31, and directing the Commission’s

¹ Exhibit 1; *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory and Request for Waiver of Commission Rule 4.020(2)*.

² Tariff No. YG-2016-0193.

³ All calendar references are to 2016, unless indicated otherwise.

Staff (“Staff”) to file a recommendation on Laclede’s Petition by April 1. No applications to intervene were received.

As part of Laclede’s Petition, the company requested a waiver of the Commission’s rule requiring notice be filed at least sixty days before an anticipated contested case.⁴ The Office of the Public Counsel (“OPC”) filed a response requesting the Commission deny the motion, arguing that since OPC is currently appealing the Commission’s prior order granting Laclede’s previous ISRS petition, Laclede should have known Laclede’s Petition would be a contested case. On March 2, the Commission issued an order granting Laclede’s request for waiver of the sixty-day notice requirement.⁵

On April 1, Staff filed a recommendation to approve Laclede’s Petition. On April 11, OPC filed a response opposing Staff’s recommendation and requesting an evidentiary hearing. The Commission issued an order on April 12 setting a joint evidentiary hearing on Laclede’s Petition and MGE’s Petition.⁶ A joint evidentiary hearing was held on April 26. The parties filed post-hearing briefs on May 4.

MGE

Missouri Gas Energy (“MGE”), an operating unit of Laclede Gas Company, filed a verified application and petition (“MGE’s Petition”), docketed as File No. GO-2016-0197, to change its ISRS on February 1.⁷ With its petition, MGE filed a tariff implementing the

⁴ 4 CSR 240-4.020(2).

⁵ File No. GO-2016-0196, EFIS Item No. 9.

⁶ Discussed *infra*.

⁷ Exhibit 2; *Verified Application and Petition of Missouri Gas Energy, an Operating Unit of Laclede Gas Company, to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and Request for Waiver of Commission Rule 4.020(2)*.

surcharge,⁸ effective on May 31. The Commission issued an order on February 3 directing notice be provided of MGE's Petition, setting an intervention deadline, suspending the tariff until May 31, and directing the Commission's Staff ("Staff") to file a recommendation on MGE's Petition by April 1. No applications to intervene were received.

As part of MGE's Petition, the company requested a waiver of the Commission's rule requiring notice be filed at least sixty days before an anticipated contested case.⁹ OPC requested the Commission deny MGE's motion. On March 2, the Commission issued an order granting MGE's request for waiver of the sixty-day notice requirement.

On April 1, Staff filed a recommendation to approve MGE's Petition. On April 11, OPC filed a response opposing Staff's recommendation and requesting an evidentiary hearing. The Commission issued an order on April 12 setting a joint evidentiary hearing on Laclede's Petition and MGE's Petition. A joint evidentiary hearing was held on April 26. The parties filed post-hearing briefs on May 4.

JOINT FINDINGS OF FACT

1. Laclede is a public utility and gas corporation incorporated under the laws of the State of Missouri. Laclede distributes and transports natural gas to customers in the City of St. Louis and the counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler.¹⁰

⁸ Tariff No. YG-2016-0194.

⁹ 4 CSR 240-4.020(2).

¹⁰ Exhibit 1; pg. 2, ¶ 3-4.

2. MGE is an operating unit of Laclede that conducts business in its MGE service territory under the fictitious name of Missouri Gas Energy. MGE is engaged in the business of distributing and transporting natural gas to approximately 500,000 customers in the western Missouri counties of: Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, DeKalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Newton, Pettis, Platte, Ray, Saline, Stone, and Vernon.¹¹

3. An ISRS is a statutorily authorized rate adjustment mechanism tool utilized by eligible gas corporations to recover the cost of certain infrastructure replacements by establishing and updating a surcharge on a customer's bill.¹² A qualifying gas corporation files an ISRS petition with the Commission seeking authority to recover the depreciation expense and return associated with eligible net plant additions, as well as amounts associated with property taxes for those additions.¹³

4. Once an ISRS is established, a gas corporation can submit to the Commission a proposed rate schedule changing the ISRS to recover the expense of Infrastructure System Replacements outside of a formal rate case.¹⁴ The cumulative revenue requirement for all Commission-approved ISRS updates is then placed on customers' bills before being zeroed out at the next general rate case.¹⁵

¹¹ Exhibit 2; pg. 2, ¶ 4-5.

¹² Exhibit 9; Mark Oligschlaeger Rebuttal Testimony, pg. 3, ln. 5-12.

¹³ Exhibit 9; Mark Oligschlaeger Rebuttal Testimony, pg. 3, ln. 13-15.

¹⁴ Exhibit 1; pg. 1, ¶1; Ex. 5, Appendix A, pg. 1.

¹⁵ Exhibit 5, Schedule BW-d2 pg. 3-4.

5. The Staff performs an ISRS audit when a gas corporation files a petition to change its ISRS.¹⁶ By statute, Staff has sixty days from the time an ISRS petition is filed in which to perform an audit, review the ISRS rate request and file a recommendation with the Commission.¹⁷

6. In contrast to the type of audit performed in a general rate case, an ISRS audit is limited in scope to a determination whether the included projects are ISRS-eligible and whether the calculations were done correctly. While costs of an ISRS project may be included in rates, those costs are still subject to a prudence review in a subsequent rate case. If the costs are found to be imprudent, the amount of ISRS funds collected for the project can be refunded to customers.¹⁸

7. Staff does not perform a review of the prudence of a project during an ISRS audit.¹⁹ A review of the prudence of a project approved for ISRS inclusion may occur at a later time, typically during a general rate case. Staff's standard practice for an ISRS review is not to go out into the field and verify ISRS additions.²⁰ A member of Staff may "red flag" a particular ISRS work order to be reviewed for prudence at some point. Typical red flags are for things like very high costs.²¹

8. When conducting an ISRS audit, Staff will sometimes use what may be described as a "true-up" procedure as part of its review of an ISRS petition.²² A true-up is an auditing procedure involving review of financial information not available at the

¹⁶ Exhibit 6, Schedule DMS-d2, pg.3 of David Sommerer's Direct Testimony.

¹⁷ Exhibit 9, Mark Oligschlaeger Rebuttal, pg. 4, ln. 1-4. Section 393.1015.2(2).

¹⁸ Exhibit 4, Glenn Buck Rebuttal Testimony, pg. 7, ln. 14- pg. 8, ln. 18.

¹⁹ Transcript, pg. 147, ln. 8-23; Ex. 4, Glenn Buck Rebuttal Testimony, pg. 7-8, ln. 14-16.

²⁰ Transcript, pg. 145, ln. 1-10.

²¹ Id. at pg. 148, ln. 7-21.

²² Id. at pg. 4, ln. 14-17.

time of the initial utility rate petition. With a true-up, updated information is submitted during the course of an audit and reviewed by the auditor.²³

9. Since at least 2009, Staff has conducted true-up reviews of Laclede's ISRS petitions.²⁴ Since late 2014 – after Laclede purchased MGE – Staff has also conducted true-up reviews of MGE's ISRS petitions.²⁵ Laclede and MGE (jointly, "Company") have worked with Staff to establish strict guidelines for the submission of updated information so that Staff has sufficient time to conduct an audit in a responsible and appropriate manner before the statutory deadline to file a recommendation with the Commission.²⁶

A. Laclede

10. Laclede's most recent general rate increase was approved by the Commission in File No. GR-2013-0171. The Commission approved Laclede's current ISRS to go into effect on April 12, 2014.²⁷ Since then, Laclede has routinely sought approval to revise its ISRS to include the costs of additional Infrastructure System Replacements. Since Laclede's last rate case, the Commission approved four petitions to change Laclede's ISRS, with the last order approving a change to the ISRS going into effect on December 1, 2015.²⁸ The cumulative Commission-approved ISRS amounts are included in Laclede's current ISRS rates.²⁹

²³ Id. at pg. 4, ln. 5-9.

²⁴ Id. At pg. 4, ln. 17-19.

²⁵ Transcript, pg. 64, ln. 5-9.

²⁶ Ex. 4, Glenn Buck Rebuttal Testimony, pg. 3, ln. 18-21.

²⁷ The Commission approved Laclede's ISRS in File No. GO-2014-0212.

²⁸ See Commission File No. GO-2015-0341.

²⁹ Exhibit 5, Appendix A, pg. 2.

11. Laclede filed a petition to change its ISRS on February 1, 2016.³⁰ This is the company's fifth ISRS petition since Laclede's last general rate case and seeks to recover costs for ISRS eligible projects from September 1, 2015 through February 29, 2016.³¹

12. With the filing of Laclede's Petition, the company attached supporting documentation for the plant additions completed in the months of September, October, November, and December 2015. This included supporting documentation identifying the type of addition, the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.³² The company also provided estimates of capital expenditures for projects completed in January and February 2016.³³

13. Laclede provided Staff and OPC updated actual cost information for the January plant additions on February 9 and for the February plant additions on March 9.³⁴ Laclede updated the information for approximately seven work orders completed in January and sixteen in February. The total costs for the January and February work orders were approximately sixteen and a half million dollars, for an additional revenue requirement of \$1,472,634.³⁵

14. On February 12, Laclede provided Staff with a sample of work orders related to costs incurred between September 1, 2015 and December 31, 2015. Laclede provided a sample of work orders related to costs incurred between January 1 and

³⁰ Exhibit 1.

³¹ File No. GR-2013-0171. Ex. 5; Appendix A, pg. 2-3.

³² Exhibit 1, Appendix A and B.

³³ Exhibit 1.

³⁴ Ex. 4, Glenn Buck Rebuttal Testimony, pg. 5, ln. 14-23.

³⁵ Transcript, pg. 64-65, ln. 21-13.

February 29 on March 9. Staff performed an ISRS true-up audit of the information relating to plant additions made by Laclede during the months of January and February 2016.³⁶ Staff had adequate time to review the true-up information and communicate with Laclede's personnel before filing its recommendation on April 1.³⁷

15. As part of its audit, Staff received a sampling of work order authorizations for all projects of \$50,000 or more. This constituted approximately seventy-five percent of the total dollars in Laclede's Petition.³⁸ Staff had sufficient time to perform an effective ISRS audit, including a review of the information for January and February 2016 projects. Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.³⁹

16. After performing its audit, Staff filed a recommendation that the Commission approve Laclede's Petition for ISRS plant additions from September 1, 2015, through February 29, 2016. Staff recommended the Commission approve the inclusion of accumulated depreciation and deferred taxes through April 15. By updating the accumulated depreciation and deferred taxes, the amount of Laclede's ISRS revenues requirement is decreased, thereby reducing the amount to be included in the ISRS surcharge.⁴⁰

17. Based on its review and calculations, Staff recommended Laclede receive ISRS revenue of \$5,389,900, with a cumulative amount to be included in rates of \$25,022,756. Staff also submitted a proposed rate schedule, which is consistent with

³⁶ Ex. 5, Schedule BW-d2, pg. 2-3.

³⁷ Ex. 5, Brian Wells Direct Testimony, pg. 2, ln. 19- pg. 3, ln. 3.

³⁸ Transcript, pg. 140, ln. 1-25.

³⁹ Ex. 5, Schedule BW-d2, pg. 2-3.

⁴⁰ Ex. 4, Glenn Buck Rebuttal Testimony, pg. 6, ln. 18-23.

the methodology used to establish Laclede's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.⁴¹

18. The January utility plant additions submitted for ISRS classification were in service and used and useful before Laclede's Petition was filed. The February plant additions were in service and used and useful at least a month before Staff filed its Recommendation on April 1.⁴²

19. OPC never objected to the inclusion of accumulated depreciation and deferred taxes after February 1, the date Laclede's Petition was filed.⁴³ OPC did not object to the plant additions included in Laclede's Petition for the months of September, October, November, or December 2015.⁴⁴

20. OPC did not perform an audit of the plant addition's Laclede submitted for ISRS approval that were completed in January and February 2016.⁴⁵

B. MGE

21. MGE's most recent general rate increase was approved by the Commission in File No. GR-2014-0007. MGE's current ISRS was established to go into effect on October 18, 2014.⁴⁶ Since then, MGE has routinely sought approval to revise its ISRS to include the costs of additional Infrastructure System Replacements. Since

⁴¹ Ex. 5, Schedule BW-d2, pg. 3-4.

⁴² Ex. 4, Glenn Buck Rebuttal Testimony, pg. 3, ln. 3-9.

⁴³ Exhibit 5, DMS-d1, Staff's Recommendation. Exhibit 4, Glenn Buck Redirect Testimony, pg. 2, ln. 14-21.

⁴⁴ File No. GO-2016-0196, Item No. 52, Brief of the Office of the Public Counsel.

⁴⁵ Transcript pg. 174, ln. 4-10.

⁴⁶ See File No. GR-2015-0270. Exhibit 2.

MGE's last rate case, the Commission has approved two petitions to change MGE's ISRS, with the last order going into effect on December 1, 2015.⁴⁷

22. MGE's Petition to change its ISRS and recover costs for eligible ISRS projects was filed on February 1, 2016.⁴⁸ In MGE's Petition, the company requested approval of \$3,597,838 in ISRS revenues for its ISR investments for the period September 1, 2015, through December 31, 2015, and estimated ISRS costs updated through February 29, 2016.⁴⁹

23. With the filing of MGE's Petition, the company attached supporting documentation for the plant additions completed in the months of September, October, November, and December 2015. This included supporting documentation identifying the type of addition, the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense. In its supporting documentation, MGE used estimates of capital expenditures for projects completed in January and February 2016.⁵⁰

24. On February 2, a day after MGE's Petition was filed, the company provided Staff with a sample of work orders related to infrastructure replacement costs MGE incurred between September 1, 2015, and December 31, 2015.⁵¹ Updated actual cost information and a sample of work orders for January 2016 infrastructure replacements were provided to Staff and OPC on February 9, and updated actual cost information for February 2016 plant additions and a sample of the work orders were

⁴⁷ File No. GO-2015-0343. Exhibit 2, ¶ 2-3. Exhibit 6, Schedule DMS-d2, pg. 3.

⁴⁸ Exhibit 2.

⁴⁹ Exhibit 2 and Exhibit 6, Schedule DMS-d2, pg. 1-2.

⁵⁰ Exhibit 2, Appendices A,B,C and D.

⁵¹ Exhibit 2 and Exhibit 6, Schedule DMS-d2, pg. 2-3.

provided to Staff and OPC on March 9.⁵² Also on March 9, MGE updated the amount of revenue requirement it was seeking to \$3,570,050.⁵³ The total cost for the January and February projects was approximately \$12.004 million, with a revenue requirement of \$1,237,278.⁵⁴ MGE updated the information for approximately thirty-two work orders in January and thirty for February.⁵⁵

25. As part of its ISRS audit, Staff reviewed supporting workpapers, a representative sample of work orders, and other applicable documentation and communicated with MGE's personnel to clarify MGE's petition, when necessary.⁵⁶ Staff received a sampling of work order authorizations for all projects of \$50,000 or more. This constituted approximately seventy-five percent of the total dollars in MGE's Petition.⁵⁷

26. Staff had an adequate opportunity to perform an effective ISRS audit, including a review of the information for the January and February 2016 projects included for pro-forma approval in MGE's Petition.⁵⁸ Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.⁵⁹

27. After performing its audit, Staff filed a recommendation that the Commission approve MGE's Petition for ISRS plant additions from September 1, 2015, through February 29, 2016. Staff recommended the Commission approve the inclusion

⁵² Exhibit 6, Schedule DMS-d2, pg 3 of David Sommerer's Direct Testimony. Ex. 4, Glenn Buck Rebuttal Testimony, pg. 5, ln. 14-23.

⁵³ ⁵³ Exhibit 6, Schedule DMS-d2, pg. 2.

⁵⁴ Transcript, pg. 64, ln 21 to pg. 65, ln 13.

⁵⁵ Transcript, pg. 64, ln 21 to pg. 65, ln 13.

⁵⁶ Exhibit 6, Schedule DMS-d2, pg. 3 of David Sommerer's Direct Testimony.

⁵⁷ Transcript, pg. 140, ln. 1-25.

⁵⁸ Exhibit 7; Jennifer Grisham Direct Testimony, pg. 2, ln. 19-23.

⁵⁹ Exhibit 6, Schedule DMS-d2, pg 3 of David S Sommerer's Direct Testimony. Ex. 4, Glenn Buck Rebuttal Testimony, pg. 5, ln. 14-23.

of accumulated depreciation and deferred taxes through April 15. By updating the accumulated depreciation and deferred taxes, the amount of the company's ISRS revenue requirement is decreased, thereby reducing the amount to be included in the ISRS surcharge.⁶⁰

28. Based on its review and calculations, Staff recommended MGE receive ISRS revenues of \$3,570,050, with a cumulative amount to be included in rates of \$10,253,423. Staff also submitted a proposed rate schedule, which is consistent with the methodology used to establish MGE's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.⁶¹

29. The January utility plant additions included for ISRS classification were in service and used and useful before MGE's Petition was filed. The February plant additions were in service and used and useful at least a month before Staff filed its Recommendation on April 1.⁶²

30. OPC never objected to the inclusion of accumulated depreciation and deferred taxes after February 1, the date MGE's Petition was filed.⁶³ OPC did not object to the plant additions included in MGE's Petition for the months of September, October, November, or December 2015.⁶⁴

31. OPC did not perform an audit of the plant additions MGE submitted for ISRS approval that were completed in January and February 2016.⁶⁵

⁶⁰ Id. Exhibit 4, Glenn Buck Rebuttal Testimony, pg. 6, ln. 18-23.

⁶¹ Exhibit 6, Schedule DMS-d2, pg. 3-4.

⁶² Ex. 4, Glenn Buck Rebuttal Testimony, pg. 3, ln. 3-9.

⁶³ Exhibit 5, DMS-d1, Staff's Recommendation. Exhibit 4, Glenn Buck Redirect Testimony, pg. 2, ln. 14-21.

⁶⁴ File No. GO-2016-0196, Item No. 52, Brief of the Office of the Public Counsel.

⁶⁵ Transcript pg. 174, ln. 4-10.

CONCLUSIONS OF LAW

Laclede and MGE are both considered a “gas corporation” and “public utility”, as those terms are defined in section 382.020 RSMo.⁶⁶ Therefore, both Laclede and MGE are subject to the jurisdiction of the Commission as provided in Chapters 386 and 393, RSMo. The Commission’s authority is limited to that specifically granted by statute or warranted by clear implication as necessary to effectively render a specifically granted power.⁶⁷ Sections 393.1009 through 393.1015 RSMo (“ISRS Statutes”) authorize a gas corporation to establish or change an ISRS rate schedule outside of a general rate case after approval by the Commission. An ISRS is a statutorily permitted form of rate adjustment mechanism that allows a public utility to change rates based on the consideration of a single issue.⁶⁸

No party disputes that the projects submitted for Commission approval in Laclede’s and MGE’s Petitions for the months of September, October, November, and December 2015 are eligible infrastructure system replacements under the ISRS Statutes.⁶⁹ However, OPC objects to the approval of January and February 2016 projects because only budgeted estimates of expenses were provided for those projects with the filing of the petitions on February 1, rather than actual costs. OPC argues that at the time a gas corporation files its petition to change an ISRS, it must provide all supporting documentation with records of actual expenses – not estimates – for all cost to be included in the surcharge.⁷⁰ OPC also asserts that the ISRS statutes requiring

⁶⁶ Statutory references are to the 2000 Missouri Revised Statutes, as cumulatively supplemented.

⁶⁷ *State ex rel. Int’l Telecharge, Inc. v. Mo. Pub. Serv. Comm’n*, 806 S.W.2d 680, 686 (Mo. App. W.D. 1991).

⁶⁸ *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).

⁶⁹ See File No. GO-2016-0196 EFIS Item No. 52; Brief of the Office of the Public Counsel.

⁷⁰ Transcript, pg. 34-35, ln. 17-17.

“supporting documentation” is further narrowed by the Commission’s rule regarding what supporting documentation must be submitted at the time of filing.

The Commission must therefore determine if the use of estimates that are later updated is consistent with the ISRS Statutes and the applicable Commission rules. The Commission determined in December 2015 that it was and sees no reason to change that determination.

Section 393.1015.1(1) states:

At the time that a gas corporation files a petition with the commission seeking to establish or change 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 (emphasis added).

The legislative intent behind the ISRS Statutes was to allow for more timely cost recovery for gas safety improvements. “The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language.”⁷¹ As used in the ISRS Statutes, the word “supporting” means “to serve as verification, corroboration, or substantiation of.”⁷² Based on that definition, cost estimates can be seen as “supporting documentation” for the calculated proposed ISRS submitted with the petitions. The estimates for expenditures in January and February 2016 were used to corroborate the calculations used by the Company for its proposed ISRS rate schedules. The general rule is that where more accurate information is

⁷¹ *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015). Every word, sentence or clause is presumed to have an effect and not be superfluous language.

⁷² WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2297 (1986).

unavailable, estimates should be considered. *State ex rel. Martigney Creek Sewer Co. v. Public Service Commission*, 537 S.W.2d 388, 396 (Mo. banc 1976).

In addition, nothing in the ISRS Statutes specifically prohibits the updating process, which is allowed in other types of cases before the Commission, such as purchased gas adjustments. The estimates submitted by the Company were replaced with actual cost expenditures when that data became available. Section 393.1015.2(2), RSMo, allows Staff to examine the company's information to confirm ISRS eligibility. However, it does not limit that examination to information provided with an ISRS petition. Staff is allowed to review additional information and question the Company after the petitions are filed. That occurred during Staff's audit in this case.

The Commission's rules identify with more particularity the type of supporting documentation a gas corporation must file with its ISRS petition.⁷³ OPC argues that to the extent that documentation may not have been provided at the time the Company filed the petitions, the lack of documentation is fatal to the ISRS petitions for those January and February 2016 projects. To interpret Commission Rule 4 CSR 240-

⁷³ 4 CSR 240-3.265(20) states:

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.... 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...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 replacement for each:

...

(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.

3.265(20) as strictly and narrowly as OPC suggests would significantly expand on the statutory requirements placed on Company.⁷⁴ The Commission's duty is to determine whether the ISRS petitions comply with the ISRS Statutes.⁷⁵ It is inconsistent with the ISRS Statutes to state that a gas corporation may not attach to its petition estimates as supporting documentation or that failing to provide a document identified in the Commission's rule when filing the petition is reason alone to deny the petition.⁷⁶ The Commission's rule specifies the supporting documentation to be provided with the petition to ensure Staff is not hindered from performing an adequate review within the sixty days allowed by statute. The use of a true-up procedure where estimates are initially provided does not by itself prevent that review.

That is not to say that there are no limits to the use of the estimate submittal-updating process. As the Commission determined in its Report and Order in File Nos. GO-2015-0341 and GO-2015-0343, so long as Staff has sufficient time to perform an effective review of ISRS eligibility within the sixty days allowed under Section 393.1015.2(2), RSMo, the inclusion of estimates for January and February, along with the actual expense records provided after the filing of the petitions, are acceptable.⁷⁷

Staff had twenty-three days to perform an ISRS audit of the updated information for the February 2016 plant additions, and even more time for the January projects. Staff worked with the Company to get a sampling of the work order authorizations for all

⁷⁴ *Union Elect. Co. v. Dir. Of Revenue*, 425 S.W.3d 119 at 125 (Mo. 2014). A court will not apply a regulation in a manner that is inconsistent with the governing statute.

⁷⁵ Section 393.1015.2(4) and 4 CSR 240-3.265(13). If the Commission finds that a petition complies with the requirements of the ISRS Statute, the Commission shall enter an order authorizing the corporation to impose an ISRS.

⁷⁶ *Id.* at 125 (Mo. 2014) (internal citations omitted). "If a regulation is inconsistent with the statute, it is the statute, not the regulation, that this Court will apply."

⁷⁷ Commission File Nos. GO-2015-0341 and GO-2015-0343, Report and Order, p. 18 (filed November 12, 2015).

projects of \$50,000 or more. This constituted approximately seventy-five percent of the total dollar amounts for both companies. When discussing the statutorily required Staff review, the Missouri Supreme Court stated, “The examination may scrutinize the petitioning gas corporation’s information to confirm the costs are in accordance with the ISRS code provisions and confirm the proposed charges are calculated properly.”⁷⁸ The process Staff has in place is consistent with the purpose of the ISRS Statutes – to incentivize capital investments in safety upgrades while allowing for a limited review. OPC’s position – that a more intensive and thorough audit is mandated – is inconsistent with the intent of the ISRS Statutes and the time constraints contained therein.

Staff’s witnesses testified that they had sufficient time to perform an effective audit of Company’s petitions. After performing those audits, Staff determined that all projects submitted by Laclede and MGE were eligible under the ISRS Statute. OPC did not attempt to conduct an audit of either Laclede or MGE’s Petition. No evidence was presented that any project included in either Laclede’s Petition or MGE’s Petition was not ISRS eligible.

To be eligible for inclusion in an ISRS, a gas utility plant project must not: increase revenues by directly connecting to new customers; be included in rate base in the last general rate case; replace or extend the useful life of an existing infrastructure. In addition, the plant project must be used and useful.⁷⁹ No evidence was presented that any of the projects were not gas utility plant projects⁸⁰ considered eligible infrastructure system replacements, as those terms are defined in the ISRS Statutes.

⁷⁸ *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).

⁷⁹ Section 393.1009(3).

⁸⁰ Section 393.1009(5).

The Company provided supporting documentation showing the plant additions from September 2015 through February 2016 were ISRS eligible.

Decision

A. Laclede

In making this decision, the Commission has considered the positions and arguments of all of the parties. Applying law to the facts in reaching its conclusion, the Commission finds that based on competent and substantial evidence, Laclede met its burden of proof in establishing that the projects submitted for approval in Laclede's Petition for the period beginning September 1, 2015 through February 29, 2016, are ISRS eligible. Laclede submitted the supporting documentation required by Section 393.1015.1(1) RSMo and Commission Rule 4 CSR 240-3.265(20).

Since no party opposed the inclusion of updated reserves for depreciation and accumulated deferred income taxes related to actual ISRS investments, Laclede's ISRS rates will recognize both through April 15, 2016.

Staff proposed a rate design for each customer class to allow Laclede to generate the surcharge amount approved by the Commission. No objections were made to Staff's rate design method. The Commission will direct Laclede to utilize Staff's rate design method. The Commission will reject the tariff filed by Laclede on February 1 and direct the company to submit a tariff that is consistent with this order.

B. MGE

In making this decision, the Commission has considered the positions and arguments of all of the parties. Applying law to the facts in reaching its conclusion, the Commission finds that based on competent and substantial evidence, MGE met its burden of proof in establishing that the projects submitted for approval in MGE's Petition for the period beginning September 1, 2015 through February 29, 2016, are ISRS eligible. MGE submitted the supporting documentation required by Section 393.1015.1(1) RSMo and Commission Rule 4 CSR 240-3.265(20). Since no party opposed the inclusion of updated reserves for depreciation and accumulated deferred income taxes related to actual ISRS investments, MGE's ISRS rates will recognize both through April 15, 2016.

Staff proposed a rate design for each customer class to allow MGE to generate the surcharge amount approved by the Commission. No objections were made to Staff's rate design method. The Commission will direct MGE to utilize Staff's rate design method. The Commission will reject the tariff filed by MGE on February 1, and direct the company to submit a tariff that is consistent with this order.

THE COMMISSION ORDERS THAT:

1. The tariff sheet filed by Laclede Gas Company on February 1, 2016, and assigned Tariff No. YG-2016-0193 is rejected.
2. Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge in an amount sufficient to recover ISRS revenue of \$5,389,900 for File No. GO-2016-0196.

3. Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design.

4. Laclede Gas Company shall file a tariff sheet in compliance with this order no later than May 20, 2016.

5. Staff shall review the tariff sheet required by Ordered Paragraph 4 above after it is filed by Laclede Gas Company and file a recommendation as to whether the tariff sheet is in compliance with this order no later than May 23, 2016.

6. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph 4 above shall file its response no later than May 23, 2016.

7. The tariff sheet filed by Missouri Gas Energy, an Operating Unit of Laclede Gas Company on February 1, 2016, and assigned Tariff No. YG-2016-0194 is rejected.

8. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge sufficient to recover revenues of \$3,570,050 for File No. GO-2016-0197.

9. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design method.

10. Missouri Gas Energy, an Operating Unit of Laclede Gas Company shall file a tariff sheet in compliance with this order no later than May 20, 2016.

11. Staff shall review the tariff sheet required by Ordered Paragraph 10 above once it is filed and file a recommendation as to whether the tariff sheet is in compliance with this order no later than May 23, 2016.

12. Any party wishing to respond or comment on the tariff sheet required by Ordered Paragraph 10 above shall file its response no later than May 23, 2016.

13. This order shall go into effect on May 31, 2016.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Burton, Senior Regulatory Law Judge.