

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

In the Matter of Liberty Utilities)
(Midstates Natural Gas) Corp. d/b/a)
Liberty Utilities' Tariff Revisions Designed)
To Implement a General Rate Increase for)
Natural Gas Service in the Missouri)
Service Areas of the Company)

Case No. GR-2014-0152

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel (“Public Counsel”) and for its Application for Rehearing respectfully requests rehearing¹ of the Public Service Commission’s (“Commission”) December 3, 2014 Report and Order (“Order”) granting a rate increase for Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty”), and in support of this Application, Public Counsel states as follows:

A. Rate Case Expense

1. Public Counsel first seeks rehearing of the Commission's decision to approve a final rate case expense amount of \$609,679. This amount is not based on competent and substantial evidence on the whole record, and the Order is arbitrary, capricious, unreasonable, and constitutes an abuse of the Commission’s discretion. Furthermore, this decision is not based on sufficient findings of fact and conclusions of law in that the Commission made no findings or conclusions regarding this rate case expense and instead, simply “approves as reasonable” the proposed rate case expense amount in a section of the Order titled “Procedural History.” Accordingly, the Commission’s decision on rate case expense is not just and reasonable, and is therefore in

¹ § 386.500 RSMo Supp. 2013. All statutory references are to RSMo Supp. 2013.

violation of §§ 393.130, 393.140, 393.150, and 393.270, RSMo. Rate increases must be supported by competent and substantial evidence with Liberty carrying the burden of proving that the rate case expense is just and reasonable. § 393.150.2; *Friendship Village of South County v. Public Service Commission*, 907 S.W.2d 339 (Mo. App. 1995). “However difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse or expediency can be substituted for the requirement that rates be “authorized by law” and “supported by competent and substantial evidence upon the whole record.” *State ex rel. Sprint Spectrum L.P. v. P.S.C.*, 112 S.W.3d 20 (Mo. App. W.D. 2003). Commission orders that fail to consider an important aspect or factor of the issue before it may be reversed as arbitrary and capricious. *State ex rel. GS Techs. Operating Co. v. P.S.C.*, 116 S.W.3d 680, 692 (Mo. App. W.D. 2003).

2. The Commission’s Order regarding rate case expenses should also be reheard because it incorrectly and unreasonably concludes that Public Counsel did not object to Exhibit No. 63. Public Counsel objected to Exhibit 63 in Public Counsel’s November 24, 2014 filing titled, “Public Counsel’s Response in Opposition to Proposed Rate Case Expense.” Public Counsel’s opposition argued that the exhibit lacked proper foundation and did not constitute competent and substantial evidence.

3. Lastly, the Commission should rehear the rate case expense issue because the Order is unlawful and unreasonable in that it does not apply a burden of proof requirement that is consistent with the requirements of § 393.150.2, RSMo. Instead, the Order allows Liberty to provide its “proof” to the Commission’s Staff, and not the

Commission itself, which is an improper application of the burden of proof required by the statute, and is an abdication of the Commission's ratemaking authority.

B. Depreciation Rates

4. Public Counsel also seeks rehearing of the Order's findings, conclusions, and decision regarding depreciation rates for Liberty's corporate computer hardware and software. The Order did not conclude that the rates proposed by Liberty, and those presumably ordered by the Commission, are just and reasonable. Instead, the Order simply concluded that "depreciation rates of 21 years for computer hardware and software are unreasonably long." This finding does not in any way conclude that the depreciation rates proposed by Liberty *are* just and reasonable, nor does it provide findings of fact and conclusions of law that support such a finding and conclusion. Instead, the Order simply concludes that the rates proposed by the Staff and Public Counsel are unreasonable, which is not the same as finding that the ordered rates are reasonable. All rates charged by a public utility must be just and reasonable, and by not reaching such a conclusion, the Order is unlawful and unreasonable under §§ 393.130, 393.140, 393.150, and 393.270, RSMo. Furthermore, the Order is unreasonable in that it orders changes to previously ordered depreciation rates without a depreciation study, and is, therefore, not based on competent and substantial evidence to support the change.

C. Infrastructure System Replacement Surcharge (ISRS)

5. The last issue on which Public Counsel seeks rehearing is in regard to Liberty's ISRS. In reviewing the prudence of Liberty's ISRS costs under § 393.1015.8, RSMo, the order failed to make any adjustments to reflect that Liberty included amounts in its ISRS that are ineligible for ISRS recovery under §§ 393.1009, 393.1012 and

393.1015, RSMo. Public Counsel is currently appealing these issues in its appeal of Commission Case No. GO-2014-0006. That case is now pending before the Missouri Supreme Court as Case No. SC94470. Public Counsel seeks rehearing because the Order in the present case did not make any and all adjustments necessary to account for the over-collections that resulted from the inclusion of ineligible projects in the prior cases that established and changed Liberty's ISRS.

6. For the reasons identified above, the Order is unreasonable, arbitrary, capricious, unauthorized by law, an abuse of discretion, not based upon competent and substantial evidence, and is based on insufficient findings and conclusions. The Order is also contrary to the public interest and in violation of §§ 393.130, 393.140, 393.150 and 393.270, RSMo, requiring just and reasonable rates.

WHEREFORE, the Office of the Public Counsel respectfully requests a rehearing of the issues identified herein.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Chief Deputy 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 30th day of December 2014:

Missouri Public Service Commission

Jeff Keevil
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jeff.keevil@psc.mo.gov

Missouri Public Service Commission

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

Noranda Aluminum, Inc.

Diana M Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

Liberty Utilities (MNG)

James M Fischer
101 Madison Street, Suite 400
Jefferson City, MO 35101
jfisherpc@aol.com

Liberty Utilities (MNG)

Larry W Dority
101 Madison, Suite 400
Jefferson City, MO 65101
lwdority@sprintmail.com

Missouri Division of Energy

Jeremy D Knee
301 West High Street
P.O. Box 1157
Jefferson City, MO 65102
jeremy.knee@ded.mo.gov

/s/ Marc Poston
