

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

In the Matter of the Verified Application and	)
Petition of Liberty Energy (Midstates) Corp.	) <b>Case No. GO-2014-0006</b>
d/b/a Liberty Utilities to Change its Infrastructure	) Tracking No. YG-2014-0004
System Replacement Surcharge.	)

**LIBERTY UTILITIES' RESPONSE IN OPPOSITION  
TO OFFICE OF THE PUBLIC COUNSEL'S  
MOTION FOR ORDER REJECTING OR DENYING PETITION, OR ORDER  
SETTING AN EVIDENTIARY HEARING**

**COMES NOW** Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities ("Liberty Utilities" or "Company"), pursuant to Commission Rule 4 CSR 240-2.080(13), and submits its Response in Opposition to Office of the Public Counsel's Motion for Order Rejecting or Denying Petition, or Order Setting An Evidentiary Hearing. In support thereof, Liberty Utilities respectfully states as follows:

1. In accordance with the provisions of Sections 393.1009-1015 of the Missouri Revised Statutes and Commission Rule 4 CSR 240-3.265, Liberty Utilities filed its Verified Application and Petition and supporting documentation initiating this matter on July 2, 2013 (collectively the "Petition"), requesting an incremental increase to its existing Infrastructure System Replacement Surcharge ("ISRS") in the amount of \$650,670.

2. On September 3, 2013, the Commission Staff ("Staff") filed a Staff Recommendation that described Staff's examination and investigation of Liberty Utilities' Petition, responsive to the Commission's July 30, 2013 *Order Directing Filing*

of Staff Report, and Commission Rule 4 CSR 240-3.265(11) which states in part that “[t]he staff of the commission may examine the information of the natural gas utility provided pursuant to this rule and sections 393.1009 to 393.1015, RSMo, to confirm the underlying costs and proper calculation of the proposed ISRS, and may submit a report regarding its examination to the commission not later than sixty (60) days after the natural gas utility files its petition.”

3. Based upon its investigation, the Staff recommends that the Commission issue an Order that:

1. Rejects the ISRS tariff sheet (YG-2014-0004) filed by Liberty on July 2, 2013;
2. Approves Staff’s determination of the incremental ISRS surcharge revenues in the amount of annual pre-tax revenues of \$606,978, consisting of \$31,863 for the WEMO district, \$188,304 for the SEMO District, and \$386,811 for the NEMO District;
3. Authorizes Liberty to file an ISRS rate for each customer class as reflected in Appendix B (of the Staff Recommendation); and
4. Approves Liberty’s request for waiver of 4 CSR 240-4.020(2).

4. At Paragraph 8 of its Recommendation, Staff states:

Staff would note that Staff is currently awaiting further documentation from Liberty regarding the eligibility of certain of the infrastructure replacement costs included in Liberty’s Application. At this time, Staff has not made any adjustments based on eligibility of the infrastructure replacements costs for this ISRS Application. However, should Staff’s review of the forthcoming documentation reveal new information which would preclude some of the costs from being included in Staff’s calculations, an additional filing by Staff in this case may be made to address those items.

5. Liberty Utilities has provided the above-referenced documentation requested by Staff and has subsequently filed its Notice of Agreement With Staff Recommendation in this matter, notifying the Commission that, subject to reservation regarding any additional filing by Staff as described above, it is in agreement with the rates recommended therein.

6. On September 9, 2013, the Office of the Public Counsel (“OPC”) filed a “Motion for Order Rejecting or Denying Petition, or Order Setting An Evidentiary Hearing” (“Motion”) in this matter, requesting “that the Commission reject or deny Liberty’s Application to increase its ISRS rate, or in the alternative, set this matter for an evidentiary hearing.” (Motion, p. 8). Prior to any responsive pleading being filed by Liberty Utilities or Staff, the Commission issued its *Order Scheduling Evidentiary Hearing and Directing Filing of Joint Proposed Procedural Schedule* the next day, September 10, 2013. Lest silence be deemed acquiescence, Liberty Utilities files this Response to OPC’s Motion and denies the various allegations regarding purported infirmities of Liberty Utilities’ ISRS Petition. While OPC’s arguments are primarily legal in nature, which Liberty Utilities will fully address in its brief to be filed herein, the Company provides the following response in opposition to the relief OPC has requested.

7. As the Commission’s own records will reflect, Liberty Utilities’ ISRS Petition and supporting documentation filed in this matter is virtually identical in form and scope to the four (4) previous ISRS filings submitted by Liberty Utilities or Atmos Energy Corporation (“Atmos”), dating back to August of 2008. Each of those cases was resolved by the company filing a notice of agreement with the staff recommendation and

a Commission order approving a revised tariff filed in conformance therewith. Liberty Utilities' actions in this case are completely consistent with the filings and procedures that the Company (and its predecessor) has followed in previous ISRS cases – without any objection by OPC.

8. In its Motion, the OPC now suggests, for the first time, that Liberty Utilities' Petition does not comply with Section 393.1009(5), alleging that investments made to comply with state safety requirements such as 4 CSR 240-40.030(13) are not eligible ISRS projects. The OPC claims that only investments made “to comply with a law or order that requires the utility to replace certain facilities” are ISRS eligible. It is difficult to even understand the OPC's argument given that the plain language of 4 CSR 240-40.030(13)(B)(2) states “Each segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service.”

The OPC appears to be trying to apply a standard for ISRS eligibility that is not supported by either the statutes or the rule. The plain language of both the statutes and rule define ISRS eligible projects as investments installed or undertaken “to comply with state or federal safety requirements.” 4 CSR 240-3.265(1)(G). The language says nothing about eligibility being based on having a replacement program. The OPC's unsubstantiated claim that the rule was meant to limit eligibility to investments mandated by a replacement program is just that -- an unsubstantiated claim that is in fact belied by the ISRS rulemaking. An examination of the record in the ISRS rulemaking proceeding, GX-2004-0090, reveals that such a limited interpretation was rejected in the formulation of what is now 4 CSR 240-3.265(20)(L). The initial language of the proposed ISRS rule

contained only the following language: “For each project for which recovery is sought, **the commission order, 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.”

However, certain parties objected and stated that to be consistent with the ISRS provisions of HB 208, **that subsection should also be modified to provide that the source of any regulatory or other commission requirement to install facilities may also be a statute, rule or regulation, as well as a Commission Order.** The Staff agreed to this modification, as did the Commission in its Order of Rulemaking: “The Commission has considered these suggested changes to subsection (18)(P) and agrees that these changes are appropriate and will incorporate them into the rule. Due to other additions this change now appears as subsection (20)(L).”

9. As noted in the Missouri Public Service Commission “Annual Report”:

The Commission continues to take a proactive approach to pipeline safety in Missouri with pipeline safety rules, which are in many cases, more stringent than current federal regulations. This approach includes looking at and extensively evaluating various pipeline replacement programs, leak survey inspections, leak investigations and classifications, corrosion control of steel pipelines, and other pipeline safety programs. (Annual Report at 16).

Clearly, one of the primary purposes of the ISRS statutes and rule was to encourage the gas utilities to replace and maintain their infrastructure to protect against threats to public safety. As reflected in the Commission’s ISRS Rulemaking proceeding: “It appears

from the language and structure of Sections 393.1009 through 393.1015, that the purpose of the legislation is to address the single issue of relief for natural gas utilities from regulatory lag attributable to safety-related infrastructure investments.” (Staff Exhibit No. 1 admitted in December 10, 2003 Public Hearing in Case No. GX-2004-0090, page 3). The OPC’s position is antithetical to this purpose.

10. OPC argues that “the Commission lacks the statutory authority to grant the relief requested in Liberty’s ISRS Petition because more than three years has passed since Liberty’s last rate case.” (Motion, p. 6). OPC acknowledges that the last rate case was decided in August 2010, with new rates effective September 1, 2010. The Commission’s records reflect that the existing ISRS that is being changed in the instant proceeding was filed in November 2010, and became effective February 14, 2011 (File No. GO-2011-0149), clearly within the statutory three-year period of Section 393.1012.2. This Commission recently addressed this very issue in File No. GO-2013-0391, *In the Matter of the Application of Southern Union Company d/b/a Missouri Gas Energy, for Approval to Change its Infrastructure System Replacement Surcharge*, and the Commission unanimously rejected the argument that OPC’s advances herein. As stated in the May 1, 2013 Order Approving Change In Infrastructure System Replacement Surcharge, Rejecting Tariff, and Approving New Tariff:

The Commission concludes that the Commission established and approved an ISRS when that surcharge went into effect on September 18, 2010 in File No. GO-2011-0003, which was within the three years of the decision in MGE’s most recent general rate proceeding. The Commission is not prohibited by law from approving subsequent changes to that ISRS. Therefore, the Commission determines that it has the statutory authority to issue an order approving MGE’s application in this case. (Order, page 6).

11. No further evidence is needed for ISRS approval. The Petition complies with the requirements of Sections 393.1009 to 1015 of the Missouri Revised Statutes, and provides sufficient factual support for the Staff's Report, which has been duly filed and may be updated as discussed above. Additionally, the Petition, Staff's Report, and the Company's response to that Report, provide the Commission sufficient information to authorize ISRS changes. The additional testimony and other evidence made available in the evidentiary hearing will also support the Commission's authorization of changes to the ISRS.

WHEREFORE, Liberty Utilities respectfully submits its Response in Opposition to the Office of the Public Counsel's Motion for Order Rejecting or Denying Petition, or Order Setting An Evidentiary Hearing.

Respectfully submitted,

**/s/ Larry W. Dority**

James M. Fischer, MBN 27543  
email: [jfischerpc@aol.com](mailto:jfischerpc@aol.com)  
Larry W. Dority, MBN 25617  
email: [lwdority@sprintmail.com](mailto:lwdority@sprintmail.com)  
Fischer & Dority, P.C.  
101 Madison Street, Suite 400  
Jefferson City, MO 65101  
Telephone: (573) 636-6758  
Facsimile: (573) 636-0383

Attorneys for Liberty Energy (Midstates)  
Corp. d/b/a Liberty Utilities

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing Response was served on all counsel of record on this 19<sup>th</sup> day of September, 2013 by hand-delivery, fax, electronic or regular mail.

/s/ Larry W. Dority  
Larry W. Dority