

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

In the Matter of an Investigation into the	)	
Eligibility of Expenses Recovered	)	
Through the Infrastructure System	)	Case No. GO-2017-_____
Replacement Surcharge	)	

**MOTION FOR ORDER OPENING DOCKET TO
INVESTIGATE THE INFRASTRUCTURE SYSTEM
REPLACEMENT SURCHARGE**

COMES NOW the Office of the Public Counsel (“OPC”) and for its Motion for Order Opening Docket to Investigate the Infrastructure System Replacement Surcharge, states as follows:

1. The Infrastructure System Replacement Surcharge (“ISRS”) is a special surcharge levied by gas companies for certain infrastructure replacements, enhancements and relocations. Section 393.1009-1015 RSMo. It provides gas companies a more contemporaneous recovery of costs incurred complying with qualifying government-mandated safety-related investments in infrastructure or expenses due to unreimbursed government-mandated infrastructure relocations. *Id.*

2. The ISRS is a departure from traditional regulatory ratemaking. Traditional regulatory ratemaking in Missouri requires that changes in a customer’s rates occur only after a general rate case wherein the Public Service Commission (“Commission”) can investigate and consider all relevant factors to set just and reasonable rates. Section 393.270 RSMo. To examine one expense or revenue item and set rates based upon an increase or decrease in that item only is considered *single-issue ratemaking* and is generally prohibited because it fails to consider all relevant factors that

impact whether all rates charged by the company are just and reasonable. *State ex rel. Utility Consumers Council of Missouri, Inc. v. P.S.C.*, 585 S.W.2d 41, 56 (Mo. banc 1979). Accordingly, single-issue rate increases such as an increase to the ISRS surcharge, run the risk the customer is over-paying for service because other relevant factors are not considered that could impact earnings and whether the rate increase is necessary.

3. Not all infrastructure-related expenses qualify for recovery through the ISRS. Eligible projects do not include infrastructure connecting new customers, infrastructure already included in base rates, or infrastructure not in service. Section 393.1009(3) RSMo. In addition, all eligible projects must replace or extend the life of an existing infrastructure. *Id.* These requirements apply to all ISRS-eligible expenses and a thorough review of ISRS petitions should first ensure each claimed project is eligible under these criteria.

4. In addition to the general requirements for eligible projects, the ISRS statutes also provide for three categories of eligible projects: replacements, enhancements, and relocations. Each category has its own eligibility criteria. For infrastructure *replacements*, eligible projects are limited to pipeline system components installed to comply with a safety-related law mandating the replacement. Section 393.1009(5)(a) RSMo. Furthermore, the facility being replaced must be worn out or be in a deteriorated condition. *Id.* A thorough review of an ISRS petition should ensure each claimed replacement project was mandated by a state or federal safety law and should verify the infrastructure being removed was worn out or deteriorated.

5. For infrastructure *enhancements*, eligible projects are also limited to pipeline system components installed to comply with a safety-related law mandating the project. Section 393.1009(5)(b). Furthermore, eligible projects are limited to “[m]ain relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components.” *Id.* A thorough review of an ISRS petition should ensure each claimed repair project was mandated by a state or federal safety law and should verify the project extends the life or enhances the integrity of a pipeline system component.

6. The last category of eligible projects are *relocations*, which are limited to facility relocations required by the federal government, state government, or a political subdivision of the state such as a county, city, or other entity with the power of eminent domain. Section 393.1009(5)(c). Eligible projects under this category must be “required due to construction or improvement of a highway, road, street, public way, or other public work” and must not have been reimbursed to the gas company. *Id.* A thorough review of an ISRS petition should ensure each relocation was required by an entity with the power of eminent domain and that the gas company was not reimbursed for the expense of the relocation.

7. It is clear from the language of the ISRS statutes that the Missouri Legislature did not intend to allow all infrastructure replacements, improvements, and relocations to be recovered through the surcharge. Following the Missouri Supreme Court’s concern that single-issue ratemaking mechanisms require “statutory checks” and “safeguards,” the Missouri Legislature built checks and safeguards into the ISRS statutes by providing a petition review process to ensure only eligible projects are included in the

surcharge. *See UCCM*, 585 S.W.2d at 58. Only a portion of infrastructure projects are eligible and determining eligibility is the Commission’s primary duty when reviewing an ISRS petition. The Commission has recognized the importance of its review of ISRS petitions for eligibility when it stated in an ISRS petition report and order that the Commission is to “evaluate the eligibility of gas utility plant projects narrowly in order to ensure compliance with the legislature’s intent.”¹

8. Recent testimony before the Commission by its Staff raised questions regarding the thoroughness of the Staff’s ISRS petition reviews. During the evidentiary hearing in Case Nos. GO-2016-0196 and GO-2016-0197, the most recent ISRS petitions filed by Laclede Gas Company (“Laclede”) and Missouri Gas Energy (“MGE”), Staff’s ISRS auditor testified that the Staff did not review a single work order and did very little to verify eligibility other than review a handful of select invoices and work authorization sheets - a one-page sheet signed by company management authorizing the work to be performed.² While the ISRS statutes provide Staff with a 60-day period to review an ISRS petition, the Staff testified that it did not *begin* its audit until two weeks before the audit was due.³ These facts are very concerning to ratepayers that expect a thorough review for ISRS eligibility.

9. The concerns OPC has with ISRS petition reviews is heightened by the magnitude of the revenues being recovered through the surcharge. Laclede currently recovers \$25,022,756 annually from its customers through its ISRS. MGE recovers \$10,253,423 annually from its customers. Union Electric Company d/b/a Ameren

¹ *Report and Order*, Case No. GO-2015-0341, November 12, 2015, p. 16, emphasis added.

² Case No. GO-2016-0196 and GO-2016-0197, Hearing Transcript, p. 88.

³ *Id.*, pp. 85, 121.

Missouri currently recovers \$1,318,513 annually from its customers. Lastly, Liberty Utilities (Midstates Natural Gas) Corp d/b/a Liberty Utilities currently recovers \$470,184 annually from its customers through its ISRS. Combined, Missouri ratepayers are paying over \$37 million annually to gas companies for expenses that have received little, if any, audit for eligibility.

10. Due to the above concerns, OPC seeks to investigate the eligibility of projects claimed by Missouri's gas companies for recovery through the ISRS. It is OPC's intention to begin this investigation by sending personnel to select project sites to verify compliance with certain eligibility criteria discussed above. To that end, on July 18, 2016, OPC issued data requests to Laclede and MGE requesting a list of upcoming ISRS-eligible projects for the next three months, including the date and time scheduled to perform the projects, the locations of the projects, the work order numbers, and brief descriptions of the projects. OPC issued the data requests under Case Nos. GO-2016-0332 and 0333, which are the case numbers for the ISRS petition cases opened by the Commission when Laclede and MGE filed their 60-day notice of a likely contested case filing. Laclede did not respond to the data request, nor did Laclede object. Consequently, OPC requested a discovery conference, which is a prerequisite to filing a motion to compel a utility to comply with a discovery request. The Commission's regulatory law judge held an informal discovery conference on August 25, 2016, where he advised counsel for OPC, Laclede, and Staff that he would not order Laclede to answer the discovery until after Laclede filed its petitions but OPC could request a separate docket be opened to enable OPC to perform its investigation and seek discovery.

Accordingly, OPC respectfully requests the Commission open an investigatory docket in which OPC may investigate the ISRS practices of Missouri's gas companies.⁴

11. OPC intends to begin its investigation with a review of Laclede's and MGE's practices since Laclede and MGE have by far the most claims of ISRS eligibility. To assist OPC in this endeavor, OPC further requests that the Commission order Laclede and MGE to provide within twenty days of a Commission order opening an investigation docket, an answer to the following data request, consistent with the Commission's authority under Section 386.450 RSMo:

DR No. 1 - Please identify all scheduled ISRS-eligible projects where the project work is to be done within the next three months, by providing the following: (1) a brief description of the nature of the work project; (2) the location of the projects by street name and address; (3) the work orders for each project; and (4) the dates and approximate times each project will be performed.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission open an investigatory docket and order Laclede and MGE to answer OPC's data request No. 1 within twenty days.

⁴ While OPC does not agree that the Commission cannot or should not order a utility to respond to discovery issued in a case opened following a 60-day notice but before the company files the petition, OPC concurs with the regulatory law judge that a separate investigatory docket is a good avenue for obtaining discovery in this instance.

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 12th day of September 2016.

/s/ **Marc Poston**