

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

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

**BRIEF OF AMICUS CURIAE MISSOURI ENERGY DEVELOPMENT ASSOCIATION**

**I. Overview – A Success Story**

A great deal is at stake in this case. The Infrastructure System Replacement Surcharge (“ISRS”) surcharge mechanism has been an unqualified success. It has permitted and encouraged natural gas companies to replace aging, critical natural gas infrastructure in many areas of the State of Missouri at a much faster pace, and at a much lower cost, than otherwise would have been the case. In doing so, the ISRS has enhanced both service reliability and public safety while effectively managing costs to consumers. Without question, the ISRS rule, as applied, has been one of the Missouri Public Service Commission’s (“Commission”) most effective public safety initiatives in recent history. As successful as these programs have been, more remains to be done.

Nevertheless, on September 9, 2013, the Office of the Public Counsel (“OPC”) filed a motion (“Motion”) asking the Commission to reject or deny the ISRS petition filed by Liberty Utilities (“Liberty”) in this case. If the Commission were to do so after having held a hearing on the request, that action would upset a well-established and effective regulatory mechanism that has for over ten (10) years facilitated the upgrade and improvement of gas utility distribution systems. If the purpose of the rule as stated by the Commission’s Staff in Case No. GX-2004-0090 “is to address the single issue of relief for natural gas utilities from regulatory lag

attributable to safety related infrastructure investments,” then granting the Motion would only serve to frustrate that objective.

MEDA urges the Commission to deny OPC’s request to reject Liberty’s ISRS petition because the issues identified by OPC do not provide a sufficient, let alone compelling, reason to do so. Moreover, restricting the availability of the ISRS for safety-related infrastructure replacement will impede the ability of gas utilities to continue to finance and efficiently make needed system improvements.

## **II. Liberty’s ISRS Petition meets the requirements of Rule 4 CSR 240-3.265**

OPC contends that Liberty’s ISRS petition did not include documents or information required by Commission rule 4 CSR 240-3.265 in that it did not include a statement of specific safety requirements being met by the replacements. (Motion, pp. 2-4) OPC fails to acknowledge, however, that Liberty’s ISRS petition does not differ in any material respect from the over thirty (30) previous gas utility petitions filed by Liberty’s predecessor, Atmos Energy Corporation and other Missouri local distribution companies (“LDCs”), all of which have been approved by the Commission. Notably, all of these approvals have occurred, without challenge, in a process layered with multiple ratepayer protections. Specifically, OPC, like the Staff, has been afforded an opportunity to review the propriety of each and every ISRS petition both at the time it was submitted and then again at the time the associated ISRS costs were sought to be included in base rates in a subsequent rate case proceeding. Given how closely Liberty’s current petition follows this long-standing practice, it should be viewed as having been validated by past Commission orders and by OPC’s acquiescence. In any event, no compelling policy or other reason is offered by OPC to justify a rejection or denial of Liberty’s ISRS petition in this particular instance.

The absence of any justification for rejection or denial of the petition is undoubtedly explained by the simple fact that Staff has reviewed the multitude of ISRS petitions filed by LDCs over many years and has in each case had sufficient information available to it to confirm that the replacements identified qualify for the ISRS. It is apparent that the rule's filing requirements are intended to give Staff the data it needs to perform its audit function, to confirm that the underlying costs are in accordance with §§393.1009 through .1015 RSMo, and to ascertain whether the charges proposed by an LDC are correct. So long as Staff can carry out its audit and prepare a report for the Commission such that the Commission can enter an order, the sufficiency of an ISRS petition is established. In this case, as well as in all the similar cases that preceded it, Staff has been able to carry out its statutory obligations. This predominant fact serves to substantiate that current industry practice (including Liberty's ISRS petition in this case) fully satisfies the objectives of the filing requirements set forth in 4 CSR 240-3.265.

**III. ISRS-Eligible Projects Include those Projects Undertaken to Comply with State or Federal Safety Requirements**

In its Motion, OPC opines that only special “replacement programs” are eligible for ISRS recovery. (Motion, pp. 5-6) OPC states that “the rules regarding gas leaks and maintenance expenses do not mandate the type of replacement programs that the [ISRS] rule was meant to address, and instead provide general safety guidelines regarding routine business practices of a gas utility.” (*Id.*, p. 6) OPC is incorrect because its interpretation conflicts with the plain language of the ISRS statute (§393.1009(5) RSMo). Nothing in the statute limits ISRS-eligible replacement projects to only those that are part of a Commission-mandated safety replacement program. Rather, as accurately cited by OPC, the statute authorizes ISRS eligibility for, among other things, pipeline components “installed to comply with state or federal safety requirements

as replacements for existing facilities that have worn out or are in deteriorating condition.” (Motion, p. 5, citing §393.1009(5)(a))<sup>1</sup> Thus, ISRS eligibility is not narrowly restricted, as OPC argues, but rather broadly applies to those projects that comply with any state or federal safety requirement.

OPC is certainly correct that projects undertaken in connection with safety replacement programs under Commission Rule 4 CSR 240-40.030(15) are ISRS-eligible. But so are projects undertaken to comply with requirements of other sections of the Commission’s gas safety rules.<sup>2</sup> For example, subsection (B)2 of Rule 40.030(13) entitled “Maintenance” states that “[e]ach segment of pipeline that becomes unsafe must be replaced, repaired or removed from service. Section 40.030(14), entitled “Gas Leaks” requires the repair of leaks identified as Class 1, 2 or 3. A project would be ISRS-eligible as a facility installed to comply with a state or federal safety requirement if a repair is made through a complete replacement or in some other capitalized manner.

The ISRS statute does not state, as OPC suggests, that ISRS projects exclude those projects that are routine business practices of a gas utility. To the contrary, §393.130.1 RSMo provides a very clear Missouri state safety requirement by mandating that every gas corporation “shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate...” (emphasis added) There are many undertakings by utilities that may be necessary to satisfy this overarching requirement to provide safe service, including activities that go beyond the minimum standards specified in the Commission’s safety rules. In fact, OPC itself

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<sup>1</sup> Additional ISRS-eligible gas utility plant projects are set forth in §393.1009(5)(b) and (c).

<sup>2</sup> 4 CSR 240-40.030, referred to herein as Rule 40.030, is entitled “Safety Standards-Transportation of Gas by Pipeline.” It is derived from the federal safety standards in 49 CFR part 192, and prescribes minimum safety standards for the design, fabrication, installation, construction, metering, corrosion control, operation, maintenance, leak detection, repair and replacement of pipelines.

has previously argued (in the context of a tariff proposal that would limit a utility's liability for certain incidents) that the Commission's safety rules are only "minimum" standards and that activities in excess of those standards may be necessary to satisfy this overall safety requirement.<sup>3</sup>

OPC also fails to recognize that the "specific requirements" that make a project ISRS-eligible under the rule and statute are not exclusively limited to safety requirements. In fact, these "specific requirements" can also be construed as referring to the requirements that a project (i) not increase revenues by directly connecting to new customers; (ii) have already been placed in service as used and useful; (iii) have not been previously included in a rate case; and/or (iv) have been undertaken pursuant to a public improvement initiative. Projects that meet these requirements for ISRS-eligibility and were undertaken for the purposes stated in §393.1009(5) are gas utility plant projects that may be recovered by an ISRS, regardless of whether there is a specific Commission mandate.

#### **IV. Conclusion**

For the reasons aforesaid, the Commission should deny OPC's request that Liberty's ISRS petition be rejected or denied. No good reason has been given for rejection or denial. As noted above, Liberty's filing in this case does not differ in any material respect from over 30 previous ISRS filings over nearly a decade. All of these were reviewed by Staff and approved by

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<sup>3</sup> See OPC's Brief in Case No. GT-2009-0056, in which OPC said the following regarding a utility's obligation to go beyond the minimum safety standards established by the Commission:

OPC asserts that the proposed tariff revisions would alter the scope of minimum federal and state safety regulations by essentially concluding that compliance with minimum standards should be automatically deemed to be the maximum standard by which Laclede must operate. The "purpose" provisions of 4 CSR 240-40.030 and 49 CFR Part 192.1 Subparts A through M (thirteen total subparts) each clearly indicate that such rules are meant to be the minimum standards, implying that Laclede's obligations towards consumer safety go beyond these minimum standards. (Ex. 10). The rules establishing the minimum safety standards impose an inherent obligation upon Laclede to go beyond these standards if necessary to ensure the safe distribution of gas. The tariff proposed by Laclede would consider compliance with these minimum standards to end Laclede's obligations towards safety. Not only is this change in conflict with these regulations, but it could lessen Laclede's attentiveness towards ensuring consumer safety.

the Commission without objection from the part of OPC. Moreover, OPC is wrong in its assertion that Liberty's filing reflects investments not eligible for ISRS as outlined above.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 4th day of October, 2013, to the following:

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