

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

In the Matter of the Application of)	
Southern Union Company d/b/a Missouri)	
Gas Energy, for Approval to Change its)	Case No. GO-2013-0391
Infrastructure System Replacement)	
Surcharge.)	

APPLICATION FOR REHEARING

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Application for Rehearing¹ states:

1. This Application requests a rehearing of the Commission’s May 1, 2013 *Order Approving Change in Infrastructure System Replacement Surcharge, Rejecting Tariff, and Approving New Tariff* (Order). The Commission’s Order approved the petition of Southern Union Company d/b/a Missouri Gas Energy (MGE) to increase rates through an increase to MGE’s Infrastructure System Replacement Surcharge (ISRS).

2. OPC asserts that the Commission’s Order unlawfully extends the Commission’s authority in violation of Section 393.1012.2 RSMo by approving an ISRS petition more than three years beyond MGE’s last rate case.² The Order interprets the Section 393.1012.2 RSMo 3-year limitation on petitions for “an ISRS” to apply only to when the Commission first establishes an ISRS, and not to subsequent changes. The

¹ OPC files this Application pursuant to Section 386.500 RSMo.

² Section 393.1012.2 RSMo states:

The commission shall not approve an ISRS for any gas corporation that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless the gas corporation has filed for or is the subject of a new general rate proceeding.

Order relies upon Section 393.1012.1 RSMo, which refers separately to “an ISRS” and “future changes thereto”, to conclude that “this language makes it clear that “an ISRS” is different than “future changes.” The Order further concludes that “Public Counsel’s argument would require the Commission to ignore these clear differences and treat “an ISRS” and subsequent changes to it as the same thing.”

3. To avoid what the Commission concludes would be “ignoring” a sentence in the statute, the Commission instead chose to ignore *multiple* sentences of the statute that do not support the Commission’s conclusion. The Order does not explain why the Commission ignored the many instances where the ISRS statutes use the term “an ISRS” to refer to both *establishing* and ISRS and *future changes* to the ISRS:

a. Section 393.1012.1 RSMo states,

The commission may not approve an ISRS to the extent it would produce total annualized ISRS revenues exceeding ten percent of the gas corporation’s base revenue level...³

This subsection uses the term “an ISRS” to refer to both establishing and making future changes to an ISRS because to interpret it to apply only to establishing an ISRS would essentially remove the cap on the size of all future ISRS changes.

b. Section 393.1012.3 RSMo states,

In no event shall a gas corporation collect an ISRS for a period exceeding three years unless the gas corporation has filed for or is the subject of a new general rate proceeding.⁴

This subsection uses the term “an ISRS” to refer to both establishing and making future changes to an ISRS because to interpret it to apply only to

³ Emphasis added.

establishing an ISRS would allow gas companies to continue collecting future ISRS changes indefinitely.

c. Section 393.1015.1(4) RSMo states

If the commission finds that a petition complies with the requirements of section 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS...⁵

This subsection gives the Commission the specific authority to approve an ISRS. This subsection uses the term “an ISRS” to refer to both establishing and making future changes to an ISRS because to interpret it to apply only to establishing an ISRS would mean that the statute does not include specific authority for the Commission to approve future changes to an ISRS. The term “petitions” as used in this subsection applies equally to establishing and changing an ISRS since Section 393.1012.1 RSMo specifically requires petitions for establishing and changing an ISRS.

d. Section 393.1015.1.5(2) RSMo states,

At the end of each twelve-month calendar period the ISRS is in effect, the gas corporation shall reconcile the difference between the revenues resulting from an ISRS and the appropriate pretax revenues...⁶

This subsection uses the term “an ISRS” to refer to both establishing and making future changes to an ISRS because to interpret it to apply only to establishing an ISRS would allow the gas company to avoid a reconciliation of any future ISRS changes.

e. Section 393.1015.6(2) RSMo states,

⁴ Emphasis added.

⁵ Emphasis added.

⁶ Emphasis added.

Upon the inclusion in a gas corporation's base rates subject to subsections 8 and 9 of this section of eligible costs previously reflected in an ISRS, the gas corporation shall immediately reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax revenues as found by the commission or that period.⁷

This subsection uses the term "an ISRS" to refer to both establishing and making future changes to an ISRS because to interpret it to apply only to establishing an ISRS would remove the requirement that the gas company reconcile future ISRS changes to ensure the ISRS revenues closely match the appropriate pretax revenues.

The Order makes no attempt to explain how its conclusion is consistent with the clear use of the term "an ISRS" in the multiple subsections quoted above where the term applies equally to establishing and changing an ISRS.

4. The only section relied upon by the Commission to support its interpretation of the statute states,

An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1009 to 393.1015.

This sentence should not be read to guide the meaning of all other uses of the term "an ISRS" since such an interpretation conflicts with multiple sections of the statute. Instead, this sentence should be read to support OPC's argument that the Legislature intended equal treatment throughout the ISRS statutes for both establishing and changing an ISRS, since the purpose of this sentence is to make clear that the entire ISRS statute, Sections 393.1009 through 393.1015, applies equally to establishing and changing an ISRS.

⁷ Emphasis added.

5. The Order's interpretation of the ISRS statute does not recognize that the purpose of the limitation in Section 393.1012.2 is to avoid *new rate increases* through an ISRS more than three years from when a rate case was decided because the ISRS changes would be based upon unreliable data that is more than three years old. This requirement is to be distinguished from the requirement in Section 393.1012.3 RSMo, which prevents the *duration* of an ISRS to last more than 3-years without reconciliation.

6. The Order's conclusion would allow gas companies to make changes to an ISRS almost seven-years from the company's last rate case. If a gas company were to establish its ISRS at the end of the three year period following the last rate cases, the gas company would be allowed to continue increasing the ISRS rate for another three years beyond the date when the ISRS was established. Moreover, if the utility filed a general rate case at the end of this six-year period, the utility would be allowed to continue increasing the ISRS rate for the duration of the gas company's rate case, which would add another eleven months to the six-year period, thus allowing ISRS increases almost seven years from the last rate case. The Legislature did not intend for a gas company to increase rates through the ISRS surcharge, while also allowing a return on the infrastructure investment to be charged through the ISRS, based upon substantially outdated data including an outdated return on equity.⁸

7. The Order grants MGE's petition to increase rates under the ISRS in violation of Section 393.1012.2 RSMo, and for this reason, OPC seeks rehearing.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing to address the errors identified above.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 9th day of May 2013:

/s/ Marc Poston

⁸ Gas utilities recover not only their infrastructure investments through the ISRS, but they also recover a return on common equity for the investment based upon the return on equity established in the company's last general rate case. Section 393.1015.4(7) RSMo.