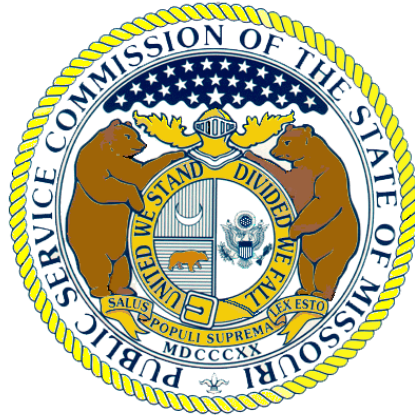


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Verified Application and)
Petition of Liberty Energy (Midstates) Corp.)
d/b/a Liberty Utilities to Change Its Infrastructure)
System Replacement Surcharge.)

File No. GO-2014-0006

REPORT AND ORDER

Issue Date: October 16, 2013

Effective Date: October 30, 2013

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

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

APPEARANCES

Appearing for **LIBERTY ENERGY (MIDSTATES) CORP. d/b/a LIBERTY UTILITIES:**

Larry W. Dority, Fischer & Dority, 101 Madison, Ste. 400, Jefferson City, Missouri, 65101.

Appearing for **OFFICE OF THE PUBLIC COUNSEL:**

Marc D. Poston, Senior Public Counsel, Post Office Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri, 65102-2230.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

John D. Borgmeyer, Deputy Legal Counsel, and **Jeffrey A. Keevil**, Senior Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On July 2, 2013, Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities (“Liberty”) filed an application and petition with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”). Liberty requests an adjustment to its ISRS rate schedule to recover costs incurred in connection with eligible infrastructure system replacements made during the period June 1, 2012 through May 31, 2013. The Commission issued notice of the application and provided an opportunity for interested persons to intervene, but no intervention requests were submitted. The Commission also suspended the filed tariff until October 30, 2013.

On September 3, 2013, the Staff of the Commission filed its report finding a number of corrections and adjustments to Liberty’s calculations. Staff recommended that the Commission reject the original tariff sheet and approve an ISRS adjustment for Liberty based on Staff’s determination of the appropriate amount of ISRS revenues. Staff updated its report on September 20, 2013 and September 26, 2013, providing amended revenue figures and rates by customer class based on new information from Liberty.

On September 9, 2013, the Office of the Public Counsel filed a motion requesting that the Commission reject the petition or schedule an evidentiary hearing. The Commission held an evidentiary hearing on September 26, 2013 in response to the OPC request for hearing.¹

¹ Transcript, Volume1. In total, the Commission admitted the testimony of six witnesses and six exhibits into evidence. Post-hearing briefs were filed on October 4, 2013, and the case was deemed submitted for the Commission’s decision on that date when the Commission closed the record. “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Commission Rule 4 CSR 240-2.150(1).

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Liberty is a Missouri corporation and a wholly-owned subsidiary of Liberty Energy Utilities Company, which is a wholly-owned subsidiary of Liberty Utilities Company.²

2. Liberty is a “gas corporation” and a “public utility”, as each of those phrases is defined in Section 386.020, RSMo Supp. 2012.³

3. The Office of the Public Counsel (“OPC” or “Public Counsel”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”⁴ Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”⁵ Public Counsel did participate in this matter.

4. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁶

5. By its *Order Approving Unanimous Stipulation and Agreement* issued March 14, 2012 in File No. GM-2012-0037, the Commission authorized Atmos Energy

² *Order Approving Unanimous Stipulation and Agreement*, In the Matter of the Joint Application of Atmos Energy Corporation and Liberty Energy (Midstates) Corp. for Authority to Sell Certain Missouri Assets to Liberty Energy (Midstates) and, in Connection Therewith, Certain Other Related Transactions, issued March 14, 2012, File No. GM-2012-0037, 2012 WL 988071 (Mo.P.S.C.), 1.

³ *Verified Application and Petition of Liberty Utilities to Change its Infrastructure System Replacement Surcharge*, Liberty Ex. 1, Swain Direct, Schedule DS-1.

⁴ Section 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁵ Section 386.710(3), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁶ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

Corporation (“Atmos”) to sell, and Liberty to purchase, substantially all of the assets of Atmos used to provide natural gas and transportation services in Missouri. The Commission issued new certificates of convenience and necessity to Liberty for the service areas formerly served by Atmos and approved Liberty’s adoption of Atmos’ tariffs.⁷

6. The last general rate case applicable to Liberty is the most recent Atmos rate case, File No. GR-2010-0192, which was decided by the Commission by order issued on August 18, 2010 and effective on August 27, 2010, with new rates effective on September 1, 2010.⁸

7. As part of that general rate case, the existing ISRS was reset to zero on September 1, 2010. Atmos requested a new ISRS on November 22, 2010, which was established by Commission order effective February 14, 2011 in File No. GO-2011-0149.⁹ Liberty adopted that Atmos ISRS, which was subsequently changed at Liberty’s request by Commission order effective October 28, 2012 in File No. GO-2013-0048 with new adjusted rates effective on November 2, 2012.¹⁰

8. Liberty filed a *Verified Application and Petition of Liberty Utilities to Change its Infrastructure System Replacement Surcharge* (“Petition”) with the Commission in this case on July 2, 2013, requesting a second change to its ISRS to adjust its ISRS rate schedule to recover eligible costs incurred with infrastructure system replacements made during the period beginning June 1, 2012 through May 31, 2013.¹¹

9. Sections 393.1009 through 393.1015, RSMo Supp. 2012, permit gas corporations to recover certain infrastructure system replacement costs outside of a formal

⁷ Liberty Ex. 1, Swain Direct, p. 3-4; Staff Ex. 1, Staff Updated Report on ISRS, p. 1.

⁸ Liberty Ex. 1, Swain Direct, p. 4.

⁹ Liberty Ex. 1, Swain Direct, p. 5.

¹⁰ Liberty Ex. 1, Swain Direct, p. 8.

¹¹ Liberty Ex. 1, Swain Direct, p. 8 and Schedules DS-1 and DS-2.

rate case through a surcharge on its customers' bills. In conjunction with its Petition, Liberty filed a tariff sheet that would generate a total annual revenue requirement of \$650,670.¹²

10. Liberty is unique among Missouri natural gas local distribution companies in that it has specific ISRS rates for each of its three districts. Liberty needs district-specific revenue requirements in order to calculate those district-specific ISRS rates.¹³

11. The ISRS request in the Petition exceeds one-half of one percent of Liberty's base revenue level approved by the Commission in Liberty's most recent general rate case proceeding.¹⁴

12. As part of the Petition, Liberty provided detailed information through headings and project descriptions to demonstrate that the projects were eligible for ISRS recovery.¹⁵

13. The Petition as originally filed did not include a citation to a statute or Commission rule that mandated each individual project.¹⁶

14. The Petition and supporting documentation filed in this matter are substantially the same in form, content and scope to previous ISRS filings by Atmos, Liberty and other gas companies since 2007. In those previous cases, Public Counsel did not raise the objections it has asserted against Liberty in this matter.¹⁷

15. In response to Public Counsel's comments, Liberty subsequently prepared and submitted to the parties an additional document that assigned a statute or Commission rule to each project description.¹⁸

¹² *Id.*; Staff Ex. 1, Staff Updated Report on ISRS, p. 2.

¹³ *Id.*

¹⁴ Staff Ex. 1, Staff Updated Report on ISRS, p. 3.

¹⁵ Liberty Ex. 1, Swain Direct, Schedule DS-2, Appendix A.

¹⁶ Liberty Ex. 1, Swain Direct, Schedule DS-2, Appendix A.

¹⁷ Liberty Ex. 1, Swain Direct, p. 15-16; Liberty Ex. 2, Caudill Direct, p. 11-12.

¹⁸ Liberty Ex. 1, Swain Direct, p. 16; Schedule DS-3.

16. Staff from the Commission's Auditing and Energy units conducted an investigation of Liberty's ISRS request.¹⁹ The Commission finds Staff's witnesses to be more credible than Public Counsel's witness regarding evaluation of the Liberty ISRS request because the testimony of Staff's witnesses was more detailed and precise.

17. Of Liberty's 275 distinct projects, Staff's investigation included review of 36 Liberty work orders totaling approximately \$2.2 million, which is about 58% of the amount requested by Liberty in the Petition.²⁰ Staff would be able to examine significantly more project work orders during a general rate case.²¹

18. The work orders examined by Staff provided sufficient detail to demonstrate that those projects involved replacement of either steel pipe or polyethylene pipe, and included some installation of either gas safety valves or excess flow valves. The work orders noted the age of the pipe being replaced and any corrosion or other defects.²²

19. Staff reviewed the work orders to determine if they met Liberty's threshold for capitalization and whether they improved the integrity and safety of the gas system. Staff determined that the work orders involved pipe replacements that improved system integrity rather than a maintenance expense such as wrapping a pipe.²³

20. Staff reviewed Liberty's project sub-ledger, which designated whether a project included material, supplies, overhead or labor, and whether the project was performed for the integrity of the system or for growth. The costs included in the project

¹⁹ Staff Ex. 1, Staff Updated Report on ISRS, p. 3.

²⁰ Transcript, p. 74-75.

²¹ Transcript, p. 86-87.

²² Transcript, p. 79.

²³ Transcript. P. 80.

sub-ledger are detailed enough to understand the activities and costs incurred for each job.²⁴

21. Liberty failed to remove some growth projects from its calculations, but Staff removed those projects when it performed its own ISRS calculations.²⁵

22. Leak repairs were capitalized by Atmos in its last general rate case, and Liberty continues to book those expenses in a similar manner at the present time.²⁶

23. Some expenses Liberty included in the Petition resulted from damage to Liberty's facilities caused by a contractor or other third parties.²⁷

24. During its review, Staff identified several errors and omissions in the data provided by Liberty, which related to summation errors, ineligible projects, accumulated depreciation, deferred income taxes, property taxes, depreciation rates, conversion factors, and formula errors.²⁸

25. Staff made appropriate adjustments to Liberty's ISRS request based on the identified errors and omissions and calculated a revised cumulative ISRS revenue requirement²⁹ and updated rate design³⁰ (the "Adjusted ISRS").

26. Liberty agrees with Staff's updated calculations in the Adjusted ISRS.³¹

27. Public Counsel did not present any evidence that Staff's ISRS calculations were incorrect or provide evidence of an ISRS revenue requirement or rates based on Public Counsel's own calculations.³²

²⁴ Transcript, p. 81-82.

²⁵ Transcript, p. 82.

²⁶ Transcript, p. 48.

²⁷ Transcript, p. 42.

²⁸ Staff Ex. 1, Staff Updated Report on ISRS, p. 4-11; Transcript, p. 75-78.

²⁹ Staff Ex. 2.

³⁰ Staff Ex. 3.

³¹ Transcript, p. 36-37.

³² OPC Ex. 1, Robertson Direct, p. 3-13.

28. The ISRS projects remaining after Staff's calculation of the Adjusted ISRS consist of:

- (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;
- (b) Main 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 undertaken to comply with state or federal safety requirements; or
- (c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent.³³

29. The ISRS projects remaining after Staff's calculation of the Adjusted ISRS are gas utility plant projects that:

- (a) Did not increase revenues by directly connecting to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in rate base in the most recent general rate case; and
- (d) Replaced or extended the useful life of an existing infrastructure.³⁴

30. After Staff's calculation of the Adjusted ISRS, the correct incremental ISRS revenue requirement for Liberty is annual pre-tax revenues of \$579,662, consisting of \$30,432 for the WEMO district, \$178,799 for the SEMO district, and \$370,430 for the NEMO district.³⁵

31. After Staff's calculation of the Adjusted ISRS, the correct composite/cumulative ISRS rates Liberty is authorized to file for each customer class by district are those identified in Staff Ex. 3.

³³ Liberty Ex. 1, Swain Direct, p. 9.

³⁴ Liberty Ex. 1, Swain Direct, p. 10.

³⁵ Staff Ex. 2.

III. Conclusions of Law

Liberty is a “gas corporation” and “public utility” as those terms are defined by Section 386.020, RSMo. Supp. 2012. Liberty is subject to the Commission’s jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo Supp. 2012, to consider and approve ISRS requests such as the one proposed in the Petition.

Since Liberty brought the Petition, it bears the burden of proof.³⁶ The burden of proof is the preponderance of the evidence standard.³⁷ In order to meet this standard, Liberty must convince the Commission it is “more likely than not” that its allegations are true.³⁸ Section 393.1015.2(4), RSMo Supp. 2012, states that “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015”.

The first issue for determination is whether the Commission should approve an incremental ISRS revenue requirement increase for Liberty in this case. Public Counsel argues that the Commission should reject the ISRS petition because the petition lacks

³⁶ “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

³⁷ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

³⁸ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

required information; the petition seeks to recover ineligible expenses not authorized by law; and the Commission lacks statutory authority to approve the petition.

Sufficiency of the Petition

Public Counsel argues that the Liberty Petition was fatally defective because it failed to include a citation to a specific statute, commission order, rule or regulation that required the completion of each project, which it alleges is required by Commission Rule 4 CSR 240-3.265(20)(L) (“Subsection L”), and failed to provide adequate project descriptions demonstrating that the particular project was eligible under Commission Rule 4 CSR 240-3.265(20)(K) (“Subsection K”).³⁹

³⁹ Commission Rule 4 CSR 240-3.265(20) provides, in part, as follows:

At the time that a natural gas utility files a petition with the commission seeking to establish, change or reconcile an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation. The subject utility’s supporting documentation shall include workpapers showing the calculation of the proposed ISRS, and shall include, at a minimum, the following information:

(K) For each project for which recovery is sought, the net original cost of the infrastructure system replacements (original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS), the amount of related ISRS costs that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those costs identifying which of the following project categories apply and the specific requirements being satisfied by the infrastructure replacements for each:

1. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state safety requirements;
2. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with federal safety requirements;
3. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with state safety requirements;
4. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with federal safety requirements;

(L) For each project for which recovery is sought, the statute, commission order, rule, or regulation, 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. (emphasis added)

Subsection K requires applicants bringing an ISRS request to the Commission to provide information sufficient to identify project categories and their specific costs and requirements. The evidence showed that the Petition provided detailed information through headings and project descriptions to demonstrate that the projects were eligible for ISRS recovery. Staff witness Grissum testified credibly that supporting documentation provided by Liberty showed that project descriptions in the work orders and costs included in the project sub-ledger were detailed enough to understand the activities and costs incurred for each job as required by Subsection K.

Subsection L states that an applicant must provide “[f]or each project for which recovery is sought, the statute, commission order, rule, or regulation, if any, requiring the project...” (emphasis added) Public Counsel argues that the Petition should be rejected because the original filing did not include a citation to a statute or rule for each project. However, inclusion of the words “if any” in Subsection L plainly recognizes that not all eligible projects are specifically required to be completed by a particular statute, order or rule. Accepting Public Counsel’s argument would require ignoring the words “if any”, which would violate the rules of statutory construction.⁴⁰ Therefore, a citation to a statute, order or rule must be provided only in those situations where a particular project is specifically mandated by law.

In addition, Liberty updated its Petition by subsequently preparing and submitting to the parties an additional document that assigned a statute or Commission rule to each project description. Even assuming for the sake of argument that the Petition was deficient when originally filed, that deficiency was cured by Liberty. The Commission concludes that

⁴⁰ “[E]ach word, clause, sentence and section of a statute should be given meaning. Courts will reject an interpretation of a statute that requires ignoring the very words of the statute.” *State ex rel. Womack v. Rolf*, 173 S.W.3d 634, 638 (Mo. 2005).

the Petition and the supporting documentation provided by Liberty contained all information required by Subsections L and K in compliance with Commission Rule 4 CSR 240-3.265(20).

Eligible Expenses

Section 393.1012.1, RSMo Supp. 2012, provides that a gas corporation may petition the Commission to change its ISRS rate schedule to recover costs for “eligible infrastructure system replacements”, which is defined in Section 393.1009(3), RSMo Supp. 2012.⁴¹ In order to be eligible, the project must meet the definition of a “gas utility plant project” in Section 393.1009(5), RSMo Supp. 2012.⁴²

Public Counsel argues that some of the Liberty projects do not meet the definition of an eligible project because:

- they were caused by damage from a third party rather than having worn out or resulted from deterioration,
- leak patches or fittings are not eligible replacements,
- some of the projects categories are not properly described,
- project documentation providing justification because of gas safety rules was not sufficient,
- allegedly all non-growth expenses were included, and
- witness Robertson raised additional accounting concerns.

⁴¹ “Eligible infrastructure system replacements”, gas utility plant projects that:

- (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in the gas corporation's rate base in its most recent general rate case; and
- (d) Replace or extend the useful life of an existing infrastructure.

⁴² “Gas utility plant projects” may consist only of the following:

- (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;
- (b) Main 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 undertaken to comply with state or federal safety requirements; and
- (c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.

While an unspecified number of Liberty's projects may have resulted from the actions of a third party, that fact does not necessarily make them ineligible. Public Counsel argues that to repair or replace such damage does not constitute replacing a facility that has worn out or is in a deteriorated condition. "Deteriorated" is not defined in the statute, but has been defined commonly as "to lower in quality, character, or value".⁴³ A pipe damaged by a third party is in a deteriorated condition and, therefore, an eligible project because it has been lowered in quality, character, or value, although that deterioration has occurred quicker than what happens normally through the passage of time. In addition, these projects and the capitalized leak repairs performed by Liberty also qualify as eligible projects because they are "similar projects extending the useful life or enhancing the integrity of pipeline system components..."⁴⁴

Public Counsel objects to Liberty witness David Swain having included citations to both Section 393.1009(5)(a) and (5)(b) to some projects listed in Schedule DS-3, stating that both cannot apply at the same time. However, the two subsections are not mutually exclusive, since a project may be a replacement that also extends the useful life or enhances the integrity of the pipeline system. The Commission also disagrees with Public Counsel's argument that the gas safety rules cited by Liberty in Schedule DS-3 do not establish project eligibility. The Commission concludes that the phrase "to comply with state or federal safety requirements" in Section 393.1009(5)(a) and (5)(b) should be read more broadly than what Public Counsel suggests and does include general gas safety rules. Moreover, as discussed above such citations must be provided only in those situations where a particular project is specifically mandated by law.

⁴³ *The American Heritage Dictionary*, Second College Edition, p. 387.

⁴⁴ Section 393.1009(5)(b), RSMo Supp. 2012.

There was insufficient evidence in support of Public Counsel's allegation that Liberty considers all infrastructure investments to be eligible projects unless that investment is tied to growth. With regard to Public Counsel witness Robertson's concerns regarding Liberty's accounting practices, it is more appropriate to consider those concerns during Liberty's next general rate case, rather than during this ISRS proceeding. The ISRS law specifically gives the Commission the authority to review the prudence of such costs in a general rate proceeding.⁴⁵

The Commission concludes that the ISRS projects in Liberty's Petition remaining after Staff's calculation of the Adjusted ISRS are "eligible infrastructure system replacements" within the meaning of Section 393.1009, RSMo Supp. 2012.

Commission's Statutory Authority

Public Counsel argues that the Commission lacks statutory authority to approve the Petition under Section 393.1012.2, RSMo Supp. 2012⁴⁶, because Liberty has not had a general rate case decided within the last three years. Liberty acquired the assets of its predecessor, Atmos Energy Corporation, in 2012 and adopted all the Atmos tariffs. Consequently, the last rate case applicable to Liberty is the Atmos rate case, GR-2010-0192, which was decided by the Commission on August 18, 2010. This current

⁴⁵ Section 393.1015, RSMo Supp. 2012, states, in part, as follows:

8. Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an ISRS, the gas corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections.

9. Nothing in this section shall be construed as limiting the authority of the commission to review and consider infrastructure system replacement costs along with other costs during any general rate proceeding of any gas corporation. (emphasis added)

⁴⁶ "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."

ISRS case is the second ISRS filing since acquiring the Atmos assets. The Commission order in the Atmos case establishing the ISRS, effective on February 14, 2011, and Liberty's previous ISRS case, with rates effective on November 2, 2012, were within three years of the last rate case.

This issue is identical to one recently decided by the Commission on May 1, 2013 in File No. GO-2013-0391, which was an ISRS request by Missouri Gas Energy. The Commission order in that case stated, in part, as follows:

The Office of Public Counsel ("Public Counsel") takes the position that the Commission does not have the statutory authority to approve the application because it has been more than three years since [the] date of the most recent general rate case decision, which was February 10, 2010. Public Counsel argues that MGE's request in this case constitutes a new ISRS and, therefore, the Commission is prohibited from approving it because that approval would occur more than three years since that rate case decision.

Staff and MGE argue that the Commission does have statutory authority because the first ISRS was established within three years of that general rate case decision, and the Commission has the authority to subsequently change the ISRS, subject to the limitation that MGE is only permitted to collect an ISRS for three years unless it files a new general rate case. They argue that Public Counsel's position, that the statute allows a gas utility to have multiple infrastructure system replacement surcharges between rate cases, is not supported by the language of the statute.

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 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 statutory authority to issue an order approving MGE's application in this case.

Following the analysis in the above-cited order, the Commission concludes that Liberty's current ISRS request is not a new ISRS, but rather a change to the Atmos case establishing the ISRS, effective on February 14, 2011, and Liberty's previous ISRS case,

with rates effective on November 2, 2012. Since those previous cases were approved by the Commission within three years of the last general rate case, the Commission has the statutory authority to issue an order approving the ISRS request in this case.

Having concluded that the Commission should approve an incremental ISRS revenue requirement increase for Liberty, the final issue for determination is what amount of incremental ISRS revenue requirement increase should the Commission approve (total and by district), and what composite/cumulative ISRS rate should Liberty be authorized to file for each customer class by district based on such increase. The only credible evidence concerning this issue was presented by Staff, with which Liberty agrees. Staff's evidence indicates that the Commission should approve an incremental ISRS revenue requirement of \$579,662 in total for this case, consisting of \$30,432 for the WEMO district, \$178,799 for the SEMO district, and \$370,430 for the NEMO district. The Commission also concludes that the appropriate rate design is that provided by Staff in its updated rate design in Staff Ex. 3.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that that Liberty has met, by a preponderance of the evidence, its burden of proof to demonstrate that the Petition and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo Supp. 2012. The Commission concludes that Liberty shall be permitted to establish an ISRS to recover ISRS surcharge revenues of \$579,662 in total for this case, consisting of \$30,432 for the WEMO district,

\$178,799 for the SEMO district, and \$370,430 for the NEMO district. Since the revenues and rates authorized in this order differ from those contained in the tariff the company first submitted, the Commission will reject that tariff. The Commission will allow Liberty an opportunity to submit a new tariff consistent with this order. The filing of a new tariff and staff recommendation will be expedited to provide for at least ten days between the issuance of a Commission order regarding the compliance tariff and its effective date.⁴⁷

Liberty also requested in its Petition that the requirement for a 60-day notice of filing in Commission Rule 4 CSR 240-4.020(2) be waived. Liberty asserts that good cause exists for the waiver, because it did not know it would be filing the Petition 60 days prior to the filing and did not believe that filing the Petition would result in a contested case. Since the Petition filed in this matter is substantially the same in form, content and scope to previous ISRS filings by Atmos, Liberty and other gas companies since 2007 which did not result in contested cases, the Commission concludes that good cause exists for the waiver.

THE COMMISSION ORDERS THAT:

1. Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities' request for waiver of Commission Rule 4 CSR 240-4.020(2) is granted.
2. The Office of Public Counsel's motion to deny or reject the application and petition filed on July 2, 2013 by Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities is denied.
3. Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities is authorized to establish an Infrastructure System Replacement Surcharge sufficient to recover ISRS

⁴⁷ See, State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n of State, WD76079, 2013 WL 4805765 (Mo. Ct. App. Sept. 10, 2013).

revenues of \$579,662 in total for this case, consisting of \$30,432 for the WEMO district, \$178,799 for the SEMO district, and \$370,430 for the NEMO district.

4. Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities is authorized to file a composite/cumulative ISRS rate for each customer class by district as reflected in Staff Exhibit 3.

5. The tariff sheet filed by Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities on July 2, 2013, and assigned Tariff Tracking No. YG-2014-0004, is rejected.

6. Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities shall file a new tariff to recover the revenue authorized in this order no later than 12:00 p.m. (noon) on October 17, 2013.

7. No later than October 17, 2013, Staff shall review the tariff sheet required by Ordered Paragraph 6 above to be filed by Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities and file a recommendation as to whether the tariff sheet is in compliance with this order.

8. Any party wishing to respond or comment on the tariff sheet required by Ordered Paragraph 6 above to be filed by Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities shall file its response no later than October 17, 2013.

9. This order shall become effective on October 30, 2013, except for Ordered Paragraphs 6, 7 and 8 above, which shall become effective upon issuance.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
and Hall, CC., concur and certify compliance
with the provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 16th day of October, 2013.