

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
May, 2012.

In the Matter of the Application of Southern Union)	
Company d/b/a Missouri Gas Energy, for Approval)	<u>File No. GO-2013-0391</u>
to Change its Infrastructure System Replacement)	Tariff No. JG-2013-0355
Surcharge)	Tariff No. YG-2013-0450

**ORDER APPROVING CHANGE IN INFRASTRUCTURE SYSTEM
REPLACEMENT SURCHARGE, REJECTING TARIFF,
AND APPROVING NEW TARIFF**

Issue Date: May 1, 2013

Effective Date: May 15, 2013

On February 8, 2013, Southern Union Company d/b/a Missouri Gas Energy (“MGE”) filed an application with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) rate schedule to recover ISRS-eligible costs.¹ MGE filed a tariff (Tariff Tracking No. JG-2013-0355) to implement its ISRS rate adjustment along with its application, and the Commission has suspended that tariff until June 8, 2013. The proposed increase in ISRS rates would allow MGE to recover annual revenue in the amount of \$1,741,862 for qualifying plant placed in service from June 1, 2012 through December 31, 2012. The Commission directed notice and established February 22, 2013 as the date by which interested parties should apply to intervene. No person or entity applied to intervene by that date. The Commission also requested that the parties address a legal issue regarding the Commission’s statutory authority to grant MGE’s application, which is more fully discussed below.

¹ The application also includes a request for waiver of Commission Rule 4 CSR 240-4.020(2), which requires 60 days notice for likely contested cases. Staff recommends approving the waiver, and the Commission will grant the request.

The Commission's Staff filed its recommendation regarding MGE's ISRS application on April 9, 2013. Staff reports it has reviewed that application and has examined the supporting documentation that the company submitted along with its application. Staff recalculated the amount MGE should be allowed to recover through its ISRS and concluded that MGE should be allowed to recover annual ISRS surcharge revenues of \$1,741,740.

MGE responded to Staff's recommendation on April 15, 2013, indicating that it agrees with Staff's recalculation and does not object to the rates recommended by Staff. MGE also filed a new tariff (Tariff Tracking No. YG-2013-0450) in compliance with Staff's recommendation bearing an effective date of May 15, 2013. MGE has requested that this new tariff be given expedited approval on less than thirty days notice. On April 24, 2013, Staff filed a recommendation regarding the new tariff and advised that it be approved.

No other party responded to Staff's recommendation regarding the initial tariff, and no party requested a hearing. No hearing is required before approving the application,² so this action is not a contested case. Since this is a non-contested case, the Commission acts on evidence that is not formally adduced and preserved.³ There is no evidentiary record.⁴ Consequently, the Commission bases its decision on the parties' verified filings.

Commission's Statutory Authority

The Commission has asked the parties to address the question of the Commission's statutory authority to issue an order approving MGE's application. The statute that governs

² Section 393.1015.2(3), RSMo Supp. 2012. See, *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

³ *State ex rel. Public Counsel v. Public Service Comm'n*, 210 S.W.3d 344, 353-355 (Mo. App. 2006).

⁴ *Id.* The competent and substantial evidence standard of Article V, Section 18, does not apply to administrative cases in which a hearing is not required by law." *Id.*

establishing or changing rate schedules for infrastructure system replacement surcharges,

Section 393.1012, RSMo Supp. 2012, states as follows:

1. Notwithstanding any provisions of chapter 386, RSMo, and this chapter to the contrary, beginning August 28, 2003, a gas corporation providing gas service may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the gas corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. The commission may not approve an ISRS to the extent it would produce total annualized ISRS revenues below the lesser of one million dollars or one-half of one percent of the gas corporation's base revenue level approved by the commission in the gas corporation's most recent general rate proceeding. 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 approved by the commission in the gas corporation's most recent general rate proceeding. An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1009 to 393.1015. ISRS revenues shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections 5 and 8 of section 393.1009.
2. 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.
3. 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; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established. (emphasis added)

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 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.

“[T]he Public Service Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the statutes and powers reasonably incidental thereto.”⁵ As the Commission is an administrative agency with limited jurisdiction, “the lawfulness of its actions depends directly on whether it has statutory power and authority to act.”⁶ Accordingly, the Commission “has no power to adopt a rule, or follow a practice, which results in nullifying the expressed will of the Legislature.”⁷ In particular, the Commission “cannot, under the theory of ‘construction’ of a statute, proceed in a manner contrary to the plain terms of the statute[.]”⁸ The Commission has jurisdiction over the general subject matter of approving or rejecting ISRS requests⁹ and jurisdiction over the

⁵ *State ex rel. Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. 1943); *State ex rel. City of West Plains v. Pub. Serv. Comm'n*, 310 S.W.2d 925, 928 (Mo. banc 1958).

⁶ *State ex rel. Gulf Transp. Co. v. Pub. Serv. Comm'n*, 658 S.W.2d 448, 452 (Mo. App. 1983).

⁷ *State ex rel. Springfield Warehouse & Transfer Co. v. Pub. Serv. Comm'n*, 225 S.W.2d 792, 794 (Mo. App. 1949).

⁸ *Id.*

⁹ Sections 393.1009 to 393.1015, RSMo Supp. 2012.

parties¹⁰, but the issue is whether the Commission has the statutory authority to render a particular decision in this case.¹¹

Resolution of this issue is a matter of first impression for the Commission, and involves the interpretation of the relevant language in the statute. Subsection 2 of Section 393.1012, RSMo Supp. 2012, prohibits the Commission from approving “an ISRS” for a gas corporation that has not had a general rate proceeding decided or dismissed within the last three years. ISRS is defined in Section 393.1009(6), RSMo Supp. 2012, as “infrastructure system replacement surcharge”. While the term “ISRS” is defined, that definition is ambiguous on the issue of whether the term means the initial infrastructure system replacement surcharge and each subsequent change to the surcharge, as Public Counsel argues, or only the initial infrastructure system replacement surcharge established by the Commission, as Staff and MGE argue.

The primary rule of statutory construction requires courts to ascertain the intent of the legislature by considering the plain and ordinary meaning of the words used in the statute.¹² “[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.”¹³ Subsection 1 of Section 393.1012 makes a distinction between establishing and changing ISRS rate schedules, and states that “[a]n ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1009 to 393.1015.” (emphasis added). This language makes it clear that “an ISRS” is different than “future changes”. Public Counsel’s argument would require the Commission to ignore these clear differences and treat “an ISRS” and subsequent changes

¹⁰ Section 386.020 (18) and (43), RSMo Supp. 2012.

¹¹ See, *Mo. Soybean Ass'n v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 21 (Mo. banc 2003).

¹² *Jones v. Dir. of Revenue*, 832 S.W.2d 516, 517 (Mo. 1992).

¹³ *State ex rel. Womack v. Rolf*, 173 S.W.3d 634, 638 (Mo. 2005).

to it as the same thing. Public Counsel's interpretation would have the Commission violate the rules of statutory construction, so that interpretation must be rejected.

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.

MGE's Application

Based on the Commission's impartial and independent review of MGE's application and Staff's recommendations, the Commission finds that MGE's application complies with Sections 393.1009 to 393.1015, RSMo. The Commission concludes that MGE shall be permitted to change its ISRS to recover ISRS surcharge revenues of \$1,741,740. 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 grant MGE's motions for expedited treatment and waiver of 4 CSR 240-4.020(2) and will approve the new tariff submitted in compliance with Staff's recommendation.

THE COMMISSION ORDERS THAT:

1. Southern Union Company d/b/a Missouri Gas Energy is authorized to change its Infrastructure System Replacement Surcharge sufficient to recover ISRS revenues of \$1,741,740.
2. The tariff sheet filed by Southern Union Company d/b/a Missouri Gas Energy on February 8, 2013, and assigned Tariff Tracking No. JG-2013-0355, is rejected:

P.S.C. MO No. 1

Fifteenth Revised Sheet No. 10, Canceling Fourteenth Revised Sheet No. 10

3. The tariff sheet filed by Southern Union Company d/b/a Missouri Gas Energy on April 15, 2013, and assigned Tariff Tracking No. YG-2013-0450, is approved to become effective on May 15, 2013:

P.S.C. MO No. 1

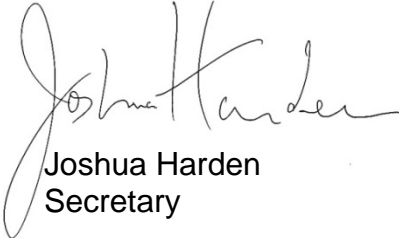
Fifteenth Revised Sheet No. 10, Canceling Fourteenth Revised Sheet No. 10

4. Southern Union Company d/b/a Missouri Gas Energy's motion for expedited treatment is granted.

5. Southern Union Company d/b/a Missouri Gas Energy's motion for waiver of Commission Rule 4 CSR 240-4.020(2) is granted.

6. This order shall become effective on May 15, 2013.

BY THE COMMISSION



Joshua Harden
Secretary

R. Kenney, Chm., Jarrett, Stoll,
and W. Kenney, CC., concur.

Bushmann, Regulatory Law Judge