

**MATT BLUNT**

**Secretary of State  
Administrative Rules Division  
RULE TRANSMITTAL**

\*Administrative Rules Stamp

**RECEIVED**

**MAR 03 2004**

**SECRETARY OF STATE  
ADMINISTRATIVE RULES**

**COPY**

A "SEPARATE" rule transmittal sheet **MUST** be used for **EACH** individual rulemaking.

A. Rule Number 4 CSR 240-3.265

Diskette File Name Rule 3.265 FOR

Name of person to call with questions about this rule:

Content Tim Schwarz Phone 573-751-5239 FAX 573-751-9285

Data entry Sharon Wiles Phone 573-751-4873 FAX Same as above

Email address tim.schwarz@psc.mo.gov

Interagency mailing address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO

Statutory Authority Sections 386.250, 393.140 and 393.1006.1 Current RSMo date 2003

Date filed with the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter               | <input type="checkbox"/> Authority with history of the rule           |
| <input type="checkbox"/> Affidavit                             | <input type="checkbox"/> Public cost                                  |
| <input type="checkbox"/> Forms, number of pages <u>    </u>    | <input type="checkbox"/> Private cost                                 |
| <input type="checkbox"/> Fiscal notes                          | <input type="checkbox"/> Hearing and comment period                   |

C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination  
**MUST** include effective date
- ☐ Proposed Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission
- ☒ Order of Rulemaking (check one) ☒ rule ☐ amendment ☐ rescission ☐ termination  
**MUST** complete page 2 of this transmittal
- ☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency
- ☐ Rule action notice
- ☐ In addition
- ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).  
 Please Publish in the next available issue of the  
Missouri Register.

JCAR Stamp

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-3.265

1a. Effective Date for the Order

☒ Statutory 30 days  
Specific date \_\_\_\_\_

1b. Does the Order of Rulemaking contain changes to the rule text?

☒ YES ☐ NO

If the answer is YES, please complete section F. If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer text. DO NOT delete the header, however.)

Subsection (1) (E) is changed by inserting the word "annual" in the first line and adding a long phrase at the end of the subsection.

Section (8) is changed by adding a long phrase at the end of the introductory paragraph.

Subsection (8) (A) is changed by deleting the words "explaining how it will calculate its ISRS."

Subsection (8) (C) is changed by deleting the words "line item" in the first line and by deleting the words "will identify" and substituting therefor the words "informs the customers of."

Section (9) is changed by inserting the word "items" after "following," and by adding the words "or rejection" and an additional long clause at the end of the introductory paragraph.

Subsection (9) (A) is changed by deleting the words "initial, one (1) time."

Subsection (9) (B) is changed by deleting the word "annual."

Subsection (9) (C) is changed by deleting the words "separately identified" and substituting the word "described."

Section (10) is changed by adding "and sections 393.1009 to 393.1015, RSMo" near the middle of the sentence.

Section (11) is changed by inserting the word "the" after the word "examine", by inserting a phrase after "natural gas utility," by deleting a phrase after "the underlying costs," by deleting the word "that" after the word "confirm", and by making related grammatical changes.

Section (13) is changed by deleting "this rule and."

An entirely new Section (14) is inserted after Section (13).

An entirely new Section (15) is inserted after Section (14).

The former Section (14) is renumbered as Section (16), and the words "section (16)" therein are changed to "section (18)."

The former Section (15) is renumbered as Section (17).

The former Section (16) is renumbered as Section (18), and an additional sentence is added at the end of the section.

The former Section (17) is renumbered as Section (19), and an additional phrase is added.

The former Section (18) is renumbered as Section (20).

The former Subsection (18) (G) is struck.

The former Subsection (18) (H), is now designated as Section (20) (G).

The former Subsection (18) (I) is now designated as Subsection (20) (H)

The former Subsection (18) (J) is deleted.

The former Subsection (18) (K) is deleted

The former Subsection (18) (L) is deleted.

The former Subsection (18) (M) is now designated Subsection (20) (I), and a phrase added and a phrase deleted.

The former Subsection (18) (N) is now designated Subsection (20) (J).

The former Subsection (18) (O) is now designated Subsection (20)(K), and the parenthetical phrase rewritten.

The former subdivision (18) (O) .3 has been deleted, and the following subdivisions renumbered accordingly.

The former subdivision (18) (O) .6 has been deleted, and the following subdivisions renumbered accordingly.

The former Subsection (18) (P) is now designated as Subsection (20) (L), and the words “statute”, “rule or regulation” have been added.

A new Section (21) has been added.

The former Section (19) is now designated Section (22).



**Commissioners**

**STEVE GAW**  
Chair

**CONNIE MURRAY**

**ROBERT M. CLAYTON III**

***Missouri Public Service Commission***

**POST OFFICE BOX 360  
JEFFERSON CITY MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.state.mo.us>**

**ROBERT J. QUINN, JR.**  
Executive Director

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DONNA M. PRENGER**  
Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

March 3, 2004

Matt Blunt  
Secretary of State  
Administrative Rules Division  
600 West Main  
Jefferson City, Missouri

**HAND DELIVER**

Dear Secretary Blunt,

Re: 4 CSR 240-3.265 Natural Gas Utility Petitions for Infrastructure System  
Replacement Surcharges

**CERTIFICATION OF ADMINISTRATIVE RULE**

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission on this 3rd day of March 2004.

Statutory Authority: sections 386.250 and 393.140, and 393.1015.11

If there are any questions regarding the content of this order of rulemaking, please contact:

Tim Schwarz  
200 Madison  
Jefferson City, MO 65102  
Phone (573) 751-5239  
Email: [tim.schwarz@psc.mo.gov](mailto:tim.schwarz@psc.mo.gov)

Sincerely yours,

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission

# MEMORANDUM

Dale Hardy Roberts, Secretary

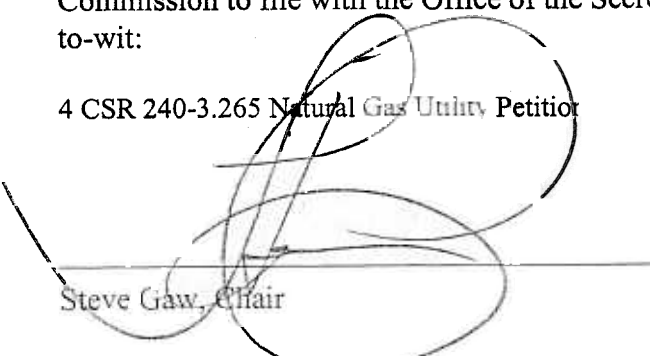
**DATE:** February 24, 2004

Authorization to File Order of Rulemaking 4 CSR 240-3.265 with the Office of  
the Secretary of State

**CASE NO.:** GX-2004-0090

The undersigned commissioners hereby authorize the Secretary of the Missouri Public Service  
Commission to file with the Office of the Secretary of State the following order of rulemaking,  
to-wit:

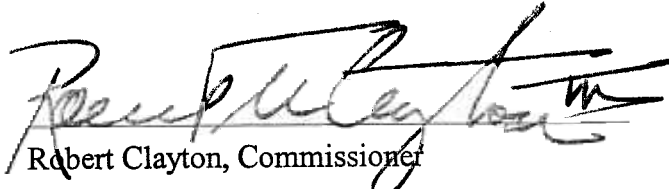
4 CSR 240-3.265 Natural Gas Utility Petition



Steve Gaw, Chair



Connie Murray, Commissioner



Robert Clayton, Commissioner

## **Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT**

### **Division 240 – Public Service Commission Chapter 3 – Filing and Reporting Requirements**

#### **ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission (Commission or PSC) under sections 386.250 and 393.140, RSMo 2000, and 393.1015.11, RSMo Supp. 2003, the Commission adopts a rule as follows:

4 CSR 240-3.265 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 3, 2003 (*Missouri Register*, Vol. 28, No. 21). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on this proposed rule was held on December 10, 2003, and the public comment period ended December 4, 2003. At the public hearing, Warren Wood, Manager of the Energy Department of the Commission, explained the development of the proposed rule and presented Commission Staff's (Staff) responses to all the comments received by the filing deadline regarding the proposed rule through an exhibit that was marked as Exhibit No. 1 and entered into the record. Staff also suggested changes to the rule in its comments filed on December 4, 2003. Brian T. McCartney, attorney on behalf of Atmos Energy Corporation, Laclede Gas Company and Missouri Gas Energy (Missouri Gas Utilities), Thomas M. Byrne, attorney for AmerenUE, Diana M. Vuylsteke, attorney on behalf of Missouri Industrial Energy Consumers (MIEC) and John B. Coffman, Public Counsel (OPC) also submitted written comments on the proposed rule on or before December 4, 2003. Warren Wood and Tim Schwarz of Staff, John Coffman of OPC, Brian McCartney on behalf of Missouri Gas Energy, Mike Pendergast and Glen Buck of Laclede Gas Company, Jim Fischer on behalf of Atmos Energy and AmerenUE, Dean Cooper on behalf of Aquila and Diana Vuylsteke on behalf of Missouri Industrial Energy Consumers testified at the public hearing on December 10, 2003.

**COMMENT:** Staff proposed that subsection (1)(E) of the proposed rule be changed to reflect the additional language in their December 4, 2003 comments.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission has reviewed the changes to subsection (1)(E) that the Staff provided in their December 4, 2003 comments and finds that

these suggested changes provide clarification without deviating from the intent of the governing statutes. The Commission will incorporate this language into the rule.

COMMENT: Brian T. McCartney, Attorney with Brydon, Swearingen & England on Behalf of Missouri Gas Utilities commented that “For all of these reasons, the Missouri Gas Utilities respectfully request that the Commission modify both sections (8) and (9) of the Proposed Rule so as to eliminate the separate line-item billing requirement.” Brian T. McCartney, on behalf of Missouri Gas Energy, further testified during the public hearing that Staff’s proposed removal of “line-item” in section (8)(C) of the proposed rule does not remove the line item requirement from the rule since the rule still requires that each bill identify the existence and the amounts of the ISRS. At the public hearing, Mike Pendergast of Laclede Gas Company echoed Mr. McCartney’s comments. At the public hearing, Jim Fisher, attorney on behalf of Atmos Energy and AmerenUE, also echoed the comments of Mr. McCartney and those of Laclede Gas Company.

RESPONSE: The Commission has reviewed the suggested changes of the Missouri Gas Utilities on this issue and will not incorporate these suggested changes into the rule. The public notice requirements of sections (8) and (9) of the proposed rule are permitted under the statutes and are necessary if the public is to be informed of these surcharges on their bills.

COMMENT: Staff recommended in its Exhibit No. 1 “...that the changes detailed in its comments filed on December 4, 2003 be implemented to subsections (8)(A) and (8)(C). Staff’s recommended change to subsection (8)(A) simplifies the notice requirement somewhat while retaining information that the customer should be provided with. Staff’s recommended change to subsection (8)(C) removes the “line-item” requirement since it is not Staff’s intent to prescribe a format for the surcharge description on customer bills.”

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered Staff’s comments on subsections (8)(A) and (8)(C) and agrees that these changes to the proposed rule will simplify the notice requirement while still preserving the needed information for customers to better understand these surcharges on their bills. The commission has further modified sections (8) and (9) of the rule to clarify that the commission shall approve these notices before they are sent to customers.

COMMENT: John B. Coffman, OPC commented that “Paragraph (9) of 4 CSR 240-3.265 as proposed, sets out the timetable for a gas utility to provide examples of customer notifications and billings for Commission approval. This proposed requirement is consistent with Commission practice in other rate cases and is essential to ensure accurate information is conveyed to customers who have no alternative provider from whom to receive utility service.

Public Counsel would recommend that this paragraph also permit Public Counsel to submit comments on the proposed notice submitted to the Commission.”

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission has considered this suggested change to the proposed rule and has added a provision to section (9) of the rule that specifies that OPC may submit comments regarding these notices to the Commission.

**COMMENT:** John B. Coffman, OPC, testified at the public hearing that OPC disagrees that providing line item billing information regarding the surcharge would be in violation of the statute. Mr. Coffman further testified that this may be a matter of Commission discretion but the use of the word “surcharge” is, in the opinion of OPC, intended to be a separate line item.

**RESPONSE AND EXPLANATION OF CHANGE:** As previously noted, the Commission will require that this surcharge be identified on customer bills so that they will be provided with the needed information to better understand these charges.

**COMMENT:** The Staff proposed that additional language be added to section (9) of the proposed rule to provide for OPC’s comments regarding the public notices required by sections (8) and (9) of the proposed rule in its Exhibit No. 1.

**RESPONSE AND EXPLANATION OF CHANGE:** As noted in a previous response, the Commission has added a provision to section (9) of the rule that specifies that OPC may submit comments regarding these notices to the Commission

**COMMENT:** Staff proposed that section (10) be changed to reflect the additional language in their December 4, 2003 comments.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission has considered the change to section (10) proposed by the Staff and finds that this change is consistent with the statute and will implement this additional language into the rule.

**COMMENT:** Staff recommended that a number of changes be made to section (11) of the proposed rule in its Exhibit No. 1.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission has considered the section (11) changes that Staff proposed in its Exhibit No. 1 and finds that these changes provide clarification to the rule without deviating from the language of the governing statutes.



COMMENT: Brian T. McCartney, Attorney w/Brydon, Swearengen & England on Behalf of Missouri Gas Utilities commented that “The words ‘the provisions of this rule and’ should accordingly be eliminated from section (11) of the Proposed Rule.”

RESPONSE: The Commission has considered the changes to section (11) that the Missouri Gas Utilities submitted in their December 4, 2003 filing with the comments that Staff made in its Exhibit No. 1. The Commission has adopted the revised language proposed by Staff to section (11) of the rule. The language in section (11) of the proposed rule that states “...provided pursuant to this rule...” does not conflict with the statute. The proposed rule provides clarification as to what information the parties will require in order to review the ISRS. The data requirements contained in the rule are consistent with the statute. The statute clearly states that parties may review the supporting documentation of the utility in order to develop their recommendations regarding the ISRS petition of the utility. Stating that the utility shall provide data “pursuant to this rule” if the rule is asking for data necessary for compliance with the review provisions of the statute is not in conflict with the statute.

COMMENT: Brian T. McCartney, Attorney w/Brydon, Swearengen & England on Behalf of Missouri Gas Utilities commented that “Accordingly, the words ‘this rule and’ should be eliminated from section (13) of the Proposed Rule.”

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the proposed change to section (13) of the proposed rule and agrees that removal of this language is consistent with the governing statute’s provisions and will be deleted.

COMMENT: John B. Coffman, OPC commented that “Paragraph (13) of 4 CSR 240-3.265 as proposed, is consistent with RSMo. 393.1015.2 (4), with minor wording changes that Public Counsel does not believe changes the intent or directive of the statute. However, Public Counsel recommends insertion of the phrase from the statute ‘pursuant to the provisions of sections 393.1009 to 393.1015’ after the word ‘commission’ at the end of the proposed paragraph for clarification.

RESPONSE: As noted in a previous response, the Commission has removed the reference to “this rule and” in front of “sections 393.1009 and 393.1015, RSMo.” This revision clarifies that the provisions of section (13) are specific to the provisions of the governing statutes. The Commission does not believe that the additional language suggested by OPC is needed in this section in addition to the changes to this section the Commission has already made.

COMMENT: In its Exhibit No. 1 and December 4, 2003 comments the Staff suggested that “this rule and” be removed from section (13) of the proposed rule for consistency with the statutes. In

its Exhibit No. 1, Staff did not believe that additional changes were needed in section (13) of the proposed rule to address OPC's comment.

RESPONSE AND EXPLANATION OF CHANGE: As previously noted, the Commission agrees with this comment and has incorporated the language revision proposed by Staff.

COMMENT: Diana M. Vuylsteke, Attorney w/Bryan Cave, LLP on Behalf MIEC commented that "The MIEC recommends that the Commission's rules expressly provide the following:

*The Monthly ISRS shall vary according to customer class and shall be calculated based on customer numbers as determined during the most recent general rate proceeding of the gas corporation so long as the monthly ISRS for each customer class maintains a proportional relationship equivalent to the proportional relationship of the monthly customer charge for each customer class."*

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this recommended addition to the proposed rule and agrees with the comment. A new section (14) has been added to the rule that incorporates the language from section 393.1015.5(1).

COMMENT: The Staff proposed in its Exhibit No. that the language suggested by MIEC be added to the proposed rule.

RESPONSE AND EXPLANATION OF CHANGE: As noted in a previous response, the Commission has added a new section (14) to the rule that incorporates the language from section 393.1015.5(1).

COMMENT: John B. Coffman, OPC commented that "Paragraph (16) of 4 CSR 240-3.265 as proposed, repeats significant portions of Subsection 393.1015.6 (1) RSMo, however the proposed rule does not reference the consumer protections provisions of Sections 393.1015.8 and 393.1015.9 RSMo. These two statutory sections provide that ISRS charges for plant subsequently found by the Commission to be imprudently incurred or constructed are to be excluded during a general rate proceeding. The proposed rule is unclear as to what happens to ISRS charges associated with imprudent plant. The proposed rule as currently drafted does not recognize this possibility. The statutes anticipate that prudence reviews would occur during general rate cases within three years. Public Counsel believes that these statutory references to rate case reviews of prudence are vital to protect the consumer and as such should be included in the final rule approved by this Commission." In the public hearing, Mr. Coffman further testified that the proposed rule needs to provide clarification on how surcharges associated with imprudent plant will be addressed in future ISRS filings.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this suggested change and notes that the focus of the proposed rule is on the provisions under which the Commission will address the filing and processing of ISRS petitions. The Commission is not however opposed to reproducing this statutory provision in the proposed rule. A new section (15) has been added to the proposed rule to address this suggested change.

COMMENT: The Staff proposed in its Exhibit No. 1 that a new section (15) be added to the rule to address the comments of the OPC by reproducing RSMo sections 393.1015.8 and 393.1015.9 in the rule.

RESPONSE AND EXPLANATION OF CHANGE: As noted in a previous response, the Commission has added a new section (15) to the rule to address this comment.

COMMENT: John B. Coffman, OPC commented that "Paragraph (17) of 4 CSR 240-3.265 as proposed contains significant portions of Subsection 393.1015.6 (2) RSMo, however the proposed rule does not reference the consumer protections provisions of Sections 393.1015.8 and 393.1015.9 RSMo. These two sections provide that ISRS charges for plant subsequently found by the Commission to be imprudently incurred or constructed may be excluded during a general rate proceeding."

RESPONSE AND EXPLANATION OF CHANGE: As noted in a previous response, the Commission has added a new section (15) to the rule to specifically incorporate RSMo sections 393.1015.8 and 393.1015.9 into the rule.

COMMENT: John B. Coffman, OPC commented that "The new statute does not address how any reconciled amount (either over recovery or under recovery) that exists after the ISRS has been rebased to zero should be reflected on customer bills. Public Counsel would suggest that language be included to explain how the un-reconciled amount could be handled in a manner consistent with the intent of these statutory provisions. If the reconciled amount does not meet the monetary threshold for implementation of an ISRS, the reconciled monies could be held so that future ISRS filings would be modified by the reconciled amount. If the reconciled amount achieves the monetary threshold was achieved, a new ISRS could be filed to refund or collect monies from the ratepayer as appropriate." At the public hearing, Mr. Coffman further testified of the need for this clarification in the proposed rule.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this comment and agrees that the proposed rule does not provide sufficient guidance on how unreconciled ISRS amounts will be addressed after general rate case proceedings. The

Commission has added language to sections (18) and (19) of the rule that is consistent with the filing threshold limits of the statute to address this deficiency.

COMMENT: The Staff suggested in its Exhibit No. 1 that sections (2) and (17) of the proposed rule provide sufficient guidance as to how unreconciled amounts of ISRS should be addressed after a rate case.

RESPONSE AND EXPLANATION OF CHANGE: As noted in a previous response, the Commission does not agree that the rule is clear in this area and has added language to sections (18) and (19) of the rule to clarify how unreconciled ISRS amounts will be addressed after a general rate proceeding.

COMMENT: Staff proposed that subsection (18)(M) of the proposed rule be changed to reflect the language proposed in its December 4, 2003 comments and its Exhibit No. 1.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the proposed changes to subsection (18)(M) of the proposed rule and finds that these changes make this provision of the rule consistent with the statute and will implement these changes into the rule. Due to other sections being added to the rule this change now appears in subsection (20)(I) of the rule.

COMMENT: Brian T. McCartney, Attorney w/Brydon, Swearengen & England on Behalf of Missouri Gas Utilities commented that "As a result, the Proposed Rule's attempt to alter the meaning of net original cost must be rejected for what it is -- a transparent effort to interject into the ISRS process the very kind of extraneous revenue requirement and ratemaking issues that are expressly forbidden by the clear language of HB 208. To that end, Appendix 1 reflects the revisions to subsection (18)(O) of the Proposed Rule that must be made to correct this deficiency." At the public hearing, Mr. McCartney, on behalf of Missouri Gas Energy, testified that although Staff has suggested another rewrite to subsection (18)(O) of the proposed rule in its Exhibit No. 1, this latest version is no more consistent with the legislative intent apparent from the statutory language itself than the earlier version. Mr. McCartney further testified that Staff's most recent rewrite of the definition of the net original cost of eligible infrastructure replacement is simply not capable of being done, in addition to being contrary to the plain language of the statute. Finally, Mr. McCartney testified that Staff's proposed rewrite appears to be premised on the notion that depreciation expense is intended to provide for the replacement of facilities, which is clearly not the case as stated in section 6.03 of *Accounting for Public Utilities*. At the public hearing, Mike Pendergast of Laclede Gas Company echoed Mr. McCartney's comments. At the public hearing, Glen Buck of Laclede Gas Company testified that Staff's proposed revisions to subsection (18)(O) of the proposed rule go entirely in the wrong direction in that it

would be even more financially detrimental to the utilities and less consistent with what Mr. Buck believed HB 208 requires. At the public hearing, Mr. Buck also echoed some of the comments of Mr. McCartney on this issue. At the public hearing, Jim Fisher, attorney on behalf of Atmos Energy and AmerenUE, also echoed the comments of Mr. McCartney and those of Laclede Gas Company.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission has carefully considered the changes to subsection (18)(O) proposed by the Missouri Gas Utilities and has, based on the statutes' language, changed the rule to reflect the suggested changes. Due to other sections that have been added to this rule this change now appears in subsection (20)(K).

**COMMENT:** Staff proposed that subsection (18)(O) should be modified to reflect the net original cost clarification language submitted in its December 4, 2003 comments and its Exhibit No. 1. At the public hearing, Tim Schwarz, attorney for Staff testified in support of the language revisions Staff recommended in its December 4, 2003 comments and its Exhibit No. 1.

**RESPONSE:** The Commission has considered the statutory language associated with net original cost and cannot support the clarification language proposed by Staff. The rule has not been changed to reflect this proposed language.

**COMMENT:** John B. Coffman, OPC commented that "Public Counsel believes that additional information which is required under the new statutes are not set out in paragraph 18. Specifically, Section 393.1009 (1)(a) RSMo requires that accumulated depreciation expense and accumulated deferred income taxes associated with eligible infrastructure system replacements which are included in a currently effective ISRS be recognized in the determination of the ISRS charge. It is not readily apparent to Public Counsel where the proposed rule incorporates this required information in the list of information the utility is supposed to submit. Therefore, Public Counsel would respectfully recommend that the Commission modify the rule to require that the accumulated depreciation expense and accumulated deferred income taxes associated with each ISRS eligible property be provided as part of the data requirements to be filed with an ISRS application."

**RESPONSE AND EXPLANATION OF CHANGE:** This comment relates to how net original cost will be addressed by the parties when an ISRS is calculated. The Commission has considered this comment and it is addressed by the changes the Commission made to section (18)(O) of the proposed rule. Due to other sections being added to the rule this change now appears in section (20)(K) of the rule.

COMMENT: Brian T. McCartney, Attorney w/Brydon, Swearngen & England on Behalf of Atmos Energy Corporation, Laclede Gas Company and Missouri Gas Energy “Missouri Gas Utilities” commented that “There are also several provisions of subsection (O) – specifically subsections (O)3 and (O)6 – that appear to have no place in the rule and may have been inadvertently lifted from the water utility ISRS provisions.”

RESPONSE AND EXPLANATION OF CHANGE: As noted in the next response, the Commission has removed items (O)3 and (O)6 from the rule.

COMMENT: Staff commented in its Exhibit No. 1 that “Subsections (O)3 and (O)6 of the proposed rule were not lifted from the water utility ISRS provisions. These subsections were provided in this list of possible qualifying project categories to be a ‘catch all’ for projects that may have been appropriate but were not specifically required by a rule, regulation, statute or Commission Order. Staff does not object to removal of these subsections. Staff suggested that these subsections be removed in its comments to the rule filed on December 4, 2003...”

RESPONSE AND EXPLANATION OF CHANGE: The Commission has reviewed the governing statutes’ language and has removed subsections (O)3 and (O)6 from the rule. The statute provides clear guidance on what gas utility plant projects are eligible for ISRS consideration and the types of projects listed in the proposed rule under these subsections would not qualify for treatment.

COMMENT: Brian T. McCartney, Attorney w/Brydon, Swearngen & England on Behalf of Missouri Gas Utilities commented that “Finally, to be consistent with the ISRS provisions of HB 208, subsection (P) of Section 18 should also be modified to provide that the source of any regulatory or other requirement to install facilities may also be a statute, rule or regulation, as well as a Commission Order.”

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered these suggested changes to subsection (18)(P) and agrees that these changes are appropriate and will incorporate them into the rule. Due to other section additions this change now appears as subsection (20)(L).

COMMENT: Staff proposed that clarifying language be added to subsection (18)(P) of the proposed rule in its December 4, 2003 comments and its Exhibit No. 1.

RESPONSE AND EXPLANATION OF CHANGE: As noted in a previous response, the Commission agrees with this additional language and it will be added to the rule. Due to other section additions this change now appears in subsection (20)(L).

COMMENT: Brian T. McCartney, Attorney w/Brydon, Swearngen & England on Behalf of Missouri Gas Utilities commented that “Subsection (G), (J), (K), (L), and (M) of section (18) of the Proposed Rule also introduce additional items to be reviewed during the ISRS process that go well beyond those provided for in the ISRS provisions of HB 208.” At the public hearing, Mr. McCartney testified that these additional data requirements are only necessary to assess prudence, something that can only occur in the course of a general rate case proceeding. At the public hearing, Mike Pendergast of Laclede Gas Company echoed Mr. McCartney’s comments. At the public hearing, Jim Fisher, attorney on behalf of Atmos Energy and AmerenUE, also echoed the comments of Mr. McCartney and those of Laclede Gas Company.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully reviewed the comments of the Missouri Gas Utilities and the governing statute’s provisions related to the information that these subsections of the rule require that utilities provide to the Staff and OPC when they file an ISRS petition. The Commission will not require that the information requested in subsections (18)(G), (18)(J), (18)(K) and (18)(L) be provided each time an ISRS petition is filed. The statute does not permit the Commission to require this information be submitted with each ISRS petition. Subsections 1015.2(2), 1015.8 and 1015.10, RSMo provide guidance as to what factors may be considered when an ISRS petition is filed, and when the underlying cost that result in these surcharges may be examined by the Staff for prudence. The Staff is clearly permitted by subsection 1015.10, RSMo to file a complaint case, pursuant to the provisions of section 386.390, RSMo and audit a utility if conditions warrant this review. The Commission will, however, require that this data be provided to the Staff and OPC either when a utility files their proposed ISRS rate schedules or when they file their next general rate case after an ISRS goes into effect. These subsections will be placed in a new section (21) of the rule as subsections (21)(A), (21)(B), (21)(C) and (21)(D). Furthermore, the language in the new subsection (21)(C) will be changed to clarify that to the degree that particular projects have financing associated with them the information required in subsection (21)(C) shall be provided. Subsection (18)(M) in the proposed rule, which is now subsection (20)(I), has been changed to reflect the revised language suggested by the Missouri Gas Utilities. These change to subsection (20)(I) of the rule are consistent with the language in the governing statute.

COMMENT: Staff proposed that subsection (18)(J) be changed to reflect the language proposed in its December 4, 2003 comments.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the suggested change to (18)(J) and will incorporate this change into the rule. Due to other section additions this data requirement now appears in subsection (21)(B).

COMMENT: Staff proposed that subsections (18)(G), (18)(J), (18)(K) and (18)(L) should remain in the proposed rule in its Exhibit No. 1. Staff states, “the information requested in these subsections is needed to fulfill the overall statutory obligations of the Commission related to the eligible infrastructure replacement and these surcharges.”

RESPONSE AND EXPLANATION OF CHANGE: The Commission considered Staff’s comments in its decision to retain this information in the data requirements of the rule but not make submittal of this information a requirement each time an ISRS petition is filed. As previously noted, the Commission has changed the rule to require that this data be provided to the Staff and OPC either when a utility files their proposed ISRS rate schedules or when they file their next general rate case after an ISRS goes into effect. These subsections will be placed in a new section (21) of the rule as subsections (21)(A), (21)(B), (21)(C) and (21)(D).

COMMENT: Thomas M. Byrne, Associate General Counsel, Ameren Services Company on Behalf of Union Electric Company d/b/a AmerenUE commented that “However, AmerenUE does want to separately express its concern to the Commission that great care must be taken when attempting to develop a rule to implement statutory provisions as detailed as those found in H.B. 208. In fact, given the level of detail provided in the statute, there is a good argument that there is no need for any rule at all.”

RESPONSE: The Commission has thoroughly considered AmerenUE’s suggestion that no rule is necessary to implement this rule. The Commission’s purpose in developing this rule is to implement the governing statutes in a manner that is consistent with the statutes and that provides for the timely processing of the ISRS petitions, cost true-ups and prudence reviews permitted by the statutes. The rule does ask for a significant amount of information, all of this information is either directly required for the ISRS petition review itself or for the prudence reviews that are specifically authorized by the statutes. The statutory timeframes for Staff and OPC analysis of the petitions and developing recommendations and the Commission’s issuance of an Order require the level of detail outlined in this rule. The statute does not permit sufficient time to allow for a thorough review of the petition, development of data requests, a twenty (20) day turn around on responses, analysis of these initial data requests responses, a potential second round of data requests, another twenty (20) day turn around on responses, a staff recommendation, testimony rounds, hearings and a Commission decision. The data requirements outlined in the rule will significantly simplify this process by notifying the natural gas utility what information will be required in the petition when it is filed. This up front submittal requirement will significantly reduce the number of data requests sent to the natural gas utilities with a twenty (20) day turn around and hopefully reduce confusion between the parties regarding what information is needed. Outlining these requirements in the rule will also result in each of



the natural gas utilities being notified up front as to what information will be required when they file their petition.

COMMENT: In response to the comments of AmerenUE regarding the need for a rule the Staff, its Exhibit No. 1, commented that, "...the statute specifies that any Staff report regarding its examination shall be completed not later than 60 days after the petition is filed and that any Commission Order shall be issued such that it becomes effective no later than 120 days after the petition is filed. The statute does not appear to provide for an ability to suspend the utility filing, even if the information provided by the utility is poorly organized and determined to be incomplete after the petition has been accepted. These time lines and a weakened capability to suspend the filing mandate that Staff develop a rule that is explicit in terms of what information will be needed by the Staff. Staff does not have sufficient time to review the filing of the utility, develop data requests (DR), send out DRs, wait 20 days, review DR responses, develop additional DRs where the responses received were incomplete or brought up additional questions, wait another 20 days and write a Staff report regarding the amount of the ISRS that is appropriate given the information examined by the Staff. The proposed rule basically incorporates Staff's first round of DRs in an effort to shorten the number of steps Staff will need to go through to complete the necessary reviews of the data provided by the utility. The proposed rule also provides notice to the natural gas utilities on what information they should be maintaining for submittal associated with their ISRS filings."

RESPONSE: As previously noted, the Commission will adopt this rule and believes that this rule is necessary to implement the governing statutes in a manner that is consistent with the statutes and that provides for the timely processing of the ISRS petitions, cost true-ups and prudence reviews permitted by the statutes.

#### **4 CSR 240-3.265 Natural Gas Utility Petitions for Infrastructure System Replacement Surcharges**

(1) As used in this rule, the following terms mean:

(E) ISRS costs—annual depreciation expenses, and property taxes that will be due within twelve (12) months of the ISRS filing on the total cost of eligible infrastructure system replacements less annual depreciation expenses and property taxes on any related facility retirements;

(F) ISRS revenues—revenues produced through an ISRS, exclusive of revenues from all other rates and charges;

(G) Natural gas utility plant projects—projects that consist only of the following:

1. 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;

2. 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

3. 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 natural gas utility.

(8) The natural gas utility shall provide the following notices to its customers, with such notices to be approved by the commission in accordance with section (9) of this rule before they are sent to the customers:

(A) An initial, one (1)-time notice to all potentially affected customers, such notice being sent to customers no later than when customers will receive their first bill that includes an ISRS, explaining the subject utility's infrastructure system replacement program, explaining how its ISRS will be applied to its various customer classes and identifying the statutory authority under which it is implementing its ISRS;

(B) An annual notice to affected customers each year that an ISRS is in effect explaining the continuation of its infrastructure system replacement program and the resulting ISRS; and

(C) A surcharge description on all affected customer bills, which informs the customers of the existence and amount of the ISRS on the bills.

(9) Within twenty (20) days of the natural gas utility's filing of a petition to establish an ISRS, the subject utility shall submit the following items to the commission for approval or rejection, and the office of the public counsel may, within ten (10) days of the gas utility's filing of this information, submit comments regarding these notices to the commission:

(A) An example of the notice required by subsection (8)(A) of this rule;

(B) An example of the notice required by subsection (8)(B) of this rule; and

(C) An example customer bill showing how the ISRS will be described on affected customers' bills in accordance with subsection (8)(C) of this rule.

(10) When a natural gas utility files a petition pursuant to the provisions of this rule and sections 393.1009 to 393.1015, RSMo, the commission shall conduct an examination of the proposed ISRS.

(11) The staff of the commission may examine the information of the natural gas utility provided pursuant to this rule and sections 393.1009 to 393.1015, RSMo, to confirm the underlying costs and proper calculation of the proposed ISRS, and may submit a report regarding its examination to the commission not later than sixty (60) days after the natural gas utility files its petition. The staff shall not examine any other revenue requirement or ratemaking issues in its consideration of the petition or associated proposed rate schedules.

(13) If the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, RSMo, the commission shall enter an order authorizing the natural gas utility to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission.

(14) The monthly ISRS shall vary according to customer class and shall be calculated based on the customer numbers reported in the most recent annual report of the natural gas utility so long as the monthly ISRS for each customer class maintains a proportional relationship equivalent to the proportional relationship of the monthly customer charge for each customer class.

(15) Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to sections 393.1009 to 393.1015, RSMo, 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 in an ISRS, the natural gas utility shall offset its ISRS in the future as necessary to recognize and account for any such overcollections. Nothing in this rule or section 393.1015, RSMo, 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 natural gas utility.

(16) A natural gas utility may effectuate a change in an ISRS no more often than two (2) times during every twelve (12)-month period, with the first such period beginning on the effective date of the rate schedules that establish an initial ISRS. For the purposes of this section, an initial ISRS is the first ISRS granted to the subject utility or an ISRS established after an ISRS is reset to zero pursuant to the provisions of section (18) of this rule.

(17) At the end of each twelve (12)-month period that an ISRS is in effect, the natural gas utility shall reconcile the differences between the revenues resulting from the ISRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and proposed ISRS rate schedule revisions to the commission for approval to recover or refund the difference, as appropriate.

(18) A natural gas utility that has implemented an ISRS shall file revised ISRS rate schedules to reset the ISRS to zero when new base rates and charges become effective following a commission order establishing customer rates in a general rate proceeding that incorporates eligible costs previously reflected in an ISRS into the subject utility's base rates. If an over or under recovery of ISRS revenues, including any Commission ordered refunds, exists after the ISRS has been reset to zero, that amount of over or under recovery shall be tracked in an account and considered in the next ISRS filing of the natural gas utility. The Commission shall reject an ISRS petition after a commission order in a general rate proceeding unless the ISRS revenues requested in the petition, on an annualized basis, will produce ISRS revenues of at least the lesser of one-half of one percent (1/2%) of the natural gas utility's base revenue level approved by the commission in the natural gas utility's most recent general rate case proceeding or one (1) million dollars, but not in excess of ten percent (10%) of the subject utility's base revenue level approved by the commission in the utility's most recent general rate proceeding.

(19) Upon the inclusion of eligible costs previously reflected in an ISRS into a natural gas utility's base rates, the subject utility shall immediately thereafter reconcile any previously unreconciled ISRS revenues, and track them per section (18) of this rule, as necessary to ensure that revenues resulting from the ISRS match, as closely as possible, the appropriate pretax revenues as found by the commission for that period.

(20) 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:

(A) The state, federal, and local income or excise tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(B) The regulatory capital structure used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that capital structure;

(C) The cost rates for debt and preferred stock used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those cost rates;

(D) The cost of common equity used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that equity cost;

(E) The property tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(F) The depreciation rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those depreciation rates;

(G) The applicable customer class billing units used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those billing units;

(H) An explanation of how the proposed ISRS is being proportioned between affected customer classes, if applicable;

(I) An explanation of how the infrastructure replacement projects associated with the ISRS do not increase revenues by directly connecting the infrastructure replacement to new customers;

(J) An explanation of when the infrastructure replacement projects associated with the ISRS were completed and became used and useful;

(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;

5. 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;

6. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of this state;

7. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of a political subdivision of this state; and

8. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of an entity other than the United States, this state, or a political subdivision of this state, having the power of eminent domain;

(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.

(21) In addition to the information required by section (20) of this rule, natural gas utilities shall, either when they file their proposed ISRS rate schedules or when they file their next general rate case after an ISRS goes into effect, submit, at a minimum, the following supporting documentation to staff and the office of the public counsel, for each ISR filed since the utility's last general rate case:

(A) An explanation of how long any infrastructure that was replaced associated with the ISRS had been installed when it was removed or abandoned;

(B) An explanation of the efforts of the natural gas utility to quantify and to seek reimbursement of any costs associated with 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, which could offset the requested ISRS revenues;

(C) If any infrastructure replacement projects associated with the ISRS were funded through financing arrangements directed toward these projects, an explanation of how the infrastructure replacement projects were funded, including the amount of any debt and the interest rate on that debt; and

(D) An explanation of the request for proposal (RFP) process, or the reasons for not using an RFP process, used to establish what entity performed the infrastructure replacement projects associated with the proposed ISRS.

(22) In addition to the information required by section (20) of this rule, the natural gas utility shall also provide the following information when it files a petition with the commission seeking to establish, change or reconcile an ISRS:

(A) A description of all information posted on the subject utility's website regarding the infrastructure system replacement surcharge and related infrastructure system replacement projects; and

(B) A description of all instructions provided to personnel at the subject utility's call center regarding how those personnel should respond to calls pertaining to the ISRS.