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.	))))	**Case No. GO-2014-0006** Tracking No. YG-2014-0004

POST-HEARING BRIEF OF LIBERTY UTILITIES

COMES NOW Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities[1] ("Liberty Utilities" or "Company"), and pursuant to the Commission's September 13, 2013, *Order Establishing Procedural Schedule and Other Procedural Requirements* ("Order") respectfully submits its Post-Hearing Brief in this proceeding.

Introduction

Following a period of crisis in natural gas safety in Missouri in the late 1980s, which resulted in far-reaching modifications to Missouri's natural gas pipeline safety regulations, the Missouri General Assembly enacted legislation in 2003 to encourage natural gas utilities to replace and maintain their aging infrastructure to protect against threats to public safety. Codified at Sections 393.1009 to 393.1015, RSMo., the Infrastructure System Replacement Surcharge ("ISRS") legislation took effect on August 28, 2003. The ISRS statutes and implementing rule were designed to eliminate the disincentives that natural gas companies would otherwise have to make incremental investments in infrastructure improvements, improvements that are required to operate safe and reliable natural gas systems between traditional rate cases.

[1] As noted in the Direct Testimony of Company Witness David Swain, the name of the corporation was recently changed to Liberty Utilities (Midstates Natural Gas) Corp. It will continue to do business under the fictitious name Liberty Utilities. The Company's name change request was filed with the Commission on October 2, 2013 and assigned File No. GN-2014-0090.

These disincentives were removed by allowing natural gas companies to recover incremental safety and relocation revenue requirements without a full rate case.[2]

Liberty Utilities' expert witness Mark D. Caudill, a highly respected regulatory consultant with broad experience concerning infrastructure replacement rate mechanisms, addressed the public policy considerations inherent in such mechanisms:

> The fundamentals of the Missouri provisions compare favorably with some of the better provisions in other jurisdictions. Because safe and reliable natural gas pipeline and distribution systems are essential to public health, safety and welfare, it is good public policy to eliminate disincentives that would inhibit natural gas system operators from making timely system repairs, modifications and replacements. It is virtually impossible to forecast accurately the revenue requirements associated with such fundamental safety obligations and establish sustainable revenue requirements through traditional ratemaking forecasts. Moreover, the nature and timing of most relocation, safety, and system integrity investments and expenditures are not within the control of system operators. Consequently, consumers and the general public are well served by establishing revenue mechanisms that recover associated revenue requirements not otherwise provided for in base rates. The Missouri ISRS code provisions allow the Commission to authorize that type of revenue mechanism for the natural gas companies it regulates. (Liberty Exhibit No. 2, p. 6).

In conformance with ten years of practice and procedure at this Commission regarding the filing and processing of natural gas utility ISRS petitions, Liberty Utilities filed its verified application and petition (including supporting documentation) (the "Petition") to change its existing ISRS on July 2, 2013, along with a proposed rate schedule that would generate a total incremental annual revenue requirement increase of $650,670. After a thorough investigation and examination of the petition, all supporting documentation, the ISRS statutory sections and all

[2] During his Opening Statement, Staff Counsel handed out a copy of the "veto letter" dated July 10, 2013 that Governor Nixon sent to the Secretary of State regarding Senate Bill No. 240, pointing out "that the Governor's view is that the ISRS mechanism has had the intended effect of encouraging the gas utilities to replace and maintain their aging infrastructure. And that is also Staff's view." (Tr. 22). Indeed, in reciting the creation of the existing ISRS mechanism, the Governor addresses the basis for such "encouragement" or incentives at page one of his correspondence: "The needed infrastructure replacements, unlike a new power plant for an electric company, would not have generated any additional revenue, but would simply have replaced gas and water mains to maintain their systems in working order and to protect against threats to public safety from aging infrastructure."

of the additional data provided by Liberty Utilities, the Commission Staff ultimately recommended approval of an incremental ISRS revenue requirement increase in the amount of annual pretax revenues of $579, 662, which was agreed to by the Company. As fully discussed herein, the evidence in this proceeding fully supports a Commission decision to implement the revised rates as recommended by the Staff and agreed to by the Company.

Despite the provision of additional data on both a formal and informal basis to the Office of the Public Counsel ("OPC" or "Public Counsel"), on September 9th the OPC filed its motion in this matter requesting that the Commission reject or deny Liberty Utilities' application to increase its ISRS rates or, in the alternative, set the matter for an evidentiary hearing ("OPC's Motion"). Throughout this proceeding, Public Counsel has characterized its positions as being primarily "legal" in nature and, as noted in its Position Statement, it offers summary comments but suggests that "[a] more in depth explanation of Public Counsel's position will be addressed in Public Counsel's post-hearing brief." While sharing the dilemma of Staff Counsel as expressed during his opening statement – "Public Counsel states that their argument on this point will be explained more fully in its brief, but at this point I'm – I can't say I am exactly sure what their whole argument is" – given the one round of briefing afforded by the procedural schedule, the Company will address and rebut the OPC's positions to the extent identified to date.

In accordance with the Commission's directive set forth in its Order, the Company's Brief will follow the same list of issues as filed in the case, setting forth and citing the proper portions of the record concerning the unresolved issues that the parties believe require decision by the Commission.

Issues To Be Resolved

1. Should the Commission approve an incremental ISRS (infrastructure system replacement surcharge) revenue requirement increase for Liberty Utilities in this case?

The record evidence supports a Commission finding that Liberty Utilities' Petition and supporting documentation complies with the requirements of Sections 393.1009 to 393.1015, RSMo. and Commission Rule 4 CSR 240-3.265 governing ISRS petitions and ISRS eligible projects, and further supports Commission approval of the Staff/Company agreed upon incremental ISRS revenue requirement increase for Liberty Utilities in this case.

Liberty Utilities' ISRS Petition

As referenced above, pursuant to the provisions of Sections 393.1009-1015 of the Missouri Revised Statutes and Commission Rule 4 CSR 240-3.265, Liberty Utilities filed its Petition initiating this matter on July 2, 2013, requesting an adjustment to its ISRS rate schedule that provides for the recovery of costs incurred in connection with ISRS-eligible infrastructure system replacements made during the period beginning June 1, 2012 through May 31, 2013. Liberty Utilities' State President David Swain sponsored and supported the Verified Application and Petition (attached and incorporated by reference to his Direct Testimony as Schedule DS-1) and its Appendices (attached and incorporated by reference to his Direct Testimony as Schedule DS-2). (Liberty Exhibit No. 1, p. 8).

The infrastructure system replacements for which Liberty seeks ISRS recognition are set forth on **Schedule DS-2, Appendix A.** These are eligible gas utility plant projects in that they are either: 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; or 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) unreimbursed infrastructure facility relocations due to the construction or improvement of a highway, road, street, public way or other public work required by or on behalf of the United States, the State of Missouri, a political subdivision of the State of Missouri, or another entity having the power of eminent domain. In addition to meeting the foregoing criteria, these infrastructure system replacements are also eligible for ISRS treatment because they: a) did not increase revenues by directly connecting to new customers; b) are currently in service and used and useful; c) were not included in rate base in the most recently completed general rate case, and d) replaced and/or extended the useful life of existing infrastructure. (*Id*., pp. 9-10).

Section 393.1015 of the Missouri Revised Statutes is the code provision that specifies the documents that a gas company must submit to support an ISRS petition. The Company's Petition fully complies with the statute. (Liberty Exhibit No. 2, pp. 10-11). Section 393.1015.2(4) provides that "if 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 . . . ." (*Id*., p. 11).

Capital data used for the ISRS filing was reported directly from Liberty Utilities' plant accounting system. Liberty Utilities' plant accounting is project based. Each project placed in service in Missouri was reviewed to ensure that it was an eligible "gas utility plant project" as defined in Section 393.1009 of the Missouri Revised Statutes. This review was facilitated through the use of several data elements maintained for each project in the plant accounting system. The In Service Date was used to eliminate any projects that did not fall within the filing

window of the ISRS. The Budget Category field was used to eliminate projects that did not fall into the categories of System Integrity, System Improvements, Public Improvements, and Maintenance. The Project Description was reviewed to ensure that the project was consistent with the intent of the ISRS. The Business Segment field was used to assign the cost to the appropriate rate division. And finally, the FERC Activity Code determined whether the costs were for an addition or a retirement. (Liberty Exhibit No. 1, p. 10). As determined by the Company's expert witness Mark Caudill, the Company's current methodology of tracking and reporting ISRS projects is fundamentally sound:

> I reviewed the accounting procedures and tools that the Company uses to track and report projects, including those projects that may be eligible for inclusion in the ISRS filings. Essentially, the process, procedures and tools are the same as Atmos Energy had used in Missouri, as well as in its other regulated operations. These processes, procedures, and tools are well understood by the people within the organization who have responsibilities to track and account for the relevant information and are an effective way to track and report projects. The project totals as well as project details can be viewed and reconciled with all other projects. Moreover, the costs and investments of ISRS projects are easily identified, creating a high level of transparency when costs and revenues are segregated and presented in subsequent rate case proceedings. (Liberty Exhibit No. 2, pp. 13-14).

In the face of repetitive questions propounded by counsel for OPC during the evidentiary hearing, Company Witness Swain consistently referred to the detail provided in his testimony to identify infrastructure investments eligible for ISRS treatment. (Tr. 37-41). Regrettably, due in part to not clearly understanding the question being asked by Commissioner William Kenney, the witness' response may have appeared to be incomplete in terms of identifying the converse to what is ISRS eligible, *i.e.*, attempting to list everything that is not ISRS eligible. In response to the characterization of the witness' testimony that the only category of items that are not ISRS eligible are those caused by growth or that are not in use and useful, Mr. Swain again pointed out

that such statements "can be somewhat open-ended, and that's why in my testimony I went to great lengths to describe those that are [ISRS eligible] and cited the parts of the ISRS that go into that detail. . . . Obviously, it has to be capital of nature. We do O&M work on a daily basis that is not capital of nature. That's not to be included. When it comes to capital projects, then those that are growth are not, and running a service line, running a main, those types of additions. But we do believe that those that, as identified in the ISRS, that extend the life of the system, that deal with a replacement, either of those do fall into that category." (Tr. 43-45). Mr. Swain further identified examples of O&M type expenses that are not capital-type projects. (Tr. 46).

As fully discussed in the Direct Testimony of Mr. Swain, this is not Liberty Utilities' first ISRS filing. This filing represents Liberty Utilities' second ISRS filing since acquiring the Missouri assets previously owned by Atmos Energy Corporation ("Atmos"); however, this is the first filing using Liberty Utilities specific information. The rates related to Liberty Utilities' previous ISRS filing, File No. GO-2013-0048, became effective on November 2, 2012. As addressed in more detail, *infra*, Liberty Utilities adopted the currently effective ISRS authorized for Atmos in File No. GO-2011-0149, which became effective February 14, 2011. Importantly, the Petition and supporting documentation filed in this matter is virtually identical in form and scope to the four (4) previous ISRS filings submitted by Liberty Utilities or Atmos, dating back to August of 2008. Each of those cases was resolved by the company filing a notice of agreement with the staff recommendation and a Commission order approving a revised tariff filed in conformance with such agreement. (Liberty Exhibit No. 1, pp.8-9).

As noted in Mr. Swain's Direct Testimony, while compiling information for Staff and OPC, the Company identified four ineligible projects that had been included in the Petition. The Company notified the parties, and the total cost of ineligible projects was $34,734.69. He also testified that to further ensure the accuracy of the costs included in the filing, he instructed his staff to conduct an additional review of the ledger and sub-ledger, which revealed two additional issues, which also were communicated to the Staff and OPC. (Liberty Exhibit No. 1, pp. 12-13). As discussed by Company Witness Caudill, the above issues do not change his opinion of the appropriateness of the Company's project tracking methodology. "Those errors are more accurately attributed to the transition than to the accounting processes and procedures." (Liberty Exhibit No. 2, p. 14). The Staff acknowledged receipt of this information in its Updated Report, addressed the matter in its Exhibit List filing, and reflected this new information in its Updated Statement of Position.

Staff Report

Pursuant to Section 393.1015.2, RSMo., when a petition to establish or change an ISRS is filed, the Commission is required to conduct an examination of the proposed ISRS. In connection with the Commission's examination, the Staff may examine information to confirm that the underlying costs are in accordance with the ISRS code provisions (sections 393-1009 to 393.1015) and to confirm that the proposed charges are appropriately calculated. The findings and determinations of Staff's examination may be submitted to the Commission as a report not later than sixty days after the petition is filed. In this docket, the Company filed a petition to change its authorized ISRS, the Staff undertook an examination as described above, and the Staff

submitted its initial Report to the Commission in accordance with the Commission's directive on September 3, 2013. The Company filed its Notice of Agreement with that Report on September 13.

Thereafter, on September 20, 2013, the Staff filed its "Staff Updated Report On Infrastructure System Replacement Surcharge For Liberty Utilities" (admitted into evidence as Staff Exhibit No. 1), setting forth in detail (fourteen pages plus appendices) its investigation and resulting recommendations regarding Liberty Utilities' ISRS Petition. During the evidentiary hearing, the Staff further updated its position in this case by submitting Staff Exhibit No. 2 into evidence. As thoroughly discussed in its Updated Report, the Staff investigation included a review of: the Application, all supporting documentation, the ISRS Missouri statutory sections, and all additional data provided by Liberty. Staff notes that its review of all the supporting workpapers and calculations included an audit sample of work orders. During its review, the Staff identified several errors and omissions in the data provided by Liberty, but as Staff stated: "Staff has worked with Liberty in an effort to sort out all of the concerns and believes this recommendation addresses all of the items identified." Staff then lists the adjustments it makes to the company's application. (Staff Exhibit No. 1, p. 4). As noted above, and as supported by the testimony of Staff Witness Roberta Grissum during the evidentiary hearing, the Staff updated and revised its recommendation as reflected in Staff Exhibit No. 2, resulting in a recommendation for approval of an incremental ISRS revenue requirement increase in the amount of annual pre-tax revenues of $579,662 (allocated in the amounts of $30,432 for the Western District, $178,799 for the Southeast District and $370,430 for the Northeast District). Staff Exhibit No. 2 specifically reflects that it is based upon additional data provided by the

Company addressing the impact of the above-referenced additional issues identified in Mr. Swain's direct testimony at pages 12 and 13. (Staff Exhibit No. 2 , page 2 of 4).

During her testimony, Ms. Grissum expressly stated that her examination of Liberty Utilities' ISRS expenses included looking at the underlying costs to confirm that they are correct costs to include in ISRS. (Tr. 74). She also described her audit sample of the 275 distinct projects, whereby she requested "36 work orders, which covered a dollar amount of approximately $2.2 million, which is about 58 percent of the amount requested by the company in its petition." (Tr. 74-75). In response to a question from OPC, Ms. Grissum also described her opinion on the adequacy of the cost detail included in the Company's subledger:

> **Q.** [Mr. Poston]: **And are the costs included in the project number subledger, are those detailed enough to identify and understand the activities and costs incurred for each job whose cost is then aggregated into the larger project number?**
>
> A. [Ms. Grissum]: I believe they are. Not only in one column did they designate whether it was material, supplies, overhead or labor, there was an additional column that designated whether it was done for the integrity of the system or whether it was a growth-type item.
>
> I will admit that the company did fail to remove the growth items, but when I redid the calculations, I removed those. (Tr. 81-82).

Clearly, the record evidence confirms that the Staff had sufficient information to make an informed report as updated and adjusted in Staff Exhibit Nos. 1, 2 and 3, in accordance with Section 393.1015.2(2). (*See also*, Liberty Exhibit No. 2, pp. 9-10).

Public Counsel's Positions in Opposition Should be Rejected

On September 19, Liberty Utilities filed its "Response in Opposition to Office of the Public Counsel's Motion for Order Rejecting or Denying Petition, or Order Setting an Evidentiary Hearing," denying the various allegations contained in OPC's Motion regarding purported infirmities of Liberty Utilities' ISRS Petition. It appears that OPC's arguments for rejecting or denying the relief requested can be summarized as follows: (1) Liberty Utilities failed to file all required documents with its Application; (2) Liberty Utilities seeks to include expenses in the ISRS that are not authorized by statute; and (3) the Commission does not have the authority to approve the incremental ISRS rate increase because more than three years has passed since the Company's last rate case. Liberty Utilities will address these points in reverse order.

The Commission is not prohibited by law from approving subsequent changes to Liberty Utilities' existing ISRS

By its Order Approving Unanimous Stipulation And Agreement issued March 14, 2012 in File No. GM-2012-0037, the Commission approved the Unanimous Stipulation and Agreement ("Stipulation") entered in that proceeding and authorized Atmos to sell, and Liberty Utilities to purchase, substantially all of the assets of Atmos used to provide natural gas and transportation services in Missouri. The Commission further issued new certificates of convenience and necessity to Liberty Utilities for the service areas formerly served by Atmos. The Stipulation was signed and supported by Atmos, Liberty Utilities, the Commission Staff, OPC and IBEW Local No. 1439. (Liberty Exhibit No. 1, p. 3).

Paragraph 9 of the Stipulation provided:

> 9. Tariffs
>
> Atmos has Commission approved tariffs. Liberty-Midstates shall formally adopt in whole Atmos' tariffs verbatim upon closing of the transaction. These tariffs shall remain in effect until changed by Order of the Commission or by operation of law.

On July 2, 2012, Liberty Utilities filed a tariff adoption notice and request for name change to (1) adopt Atmos' tariffs, including its existing ISRS tariff, and (2) authorize the use of the fictitious name "Liberty Utilities." By its *Order Recognizing Name Change and Approving Tariff Sheets*, the Commission approved the adoption of the tariffs and recognized the fictitious name, effective August 1, 2012. (*Id*., pp. 3-4).

Atmos' last general rate proceeding was in 2010 in Commission Case No. GR-2010-0192. The Unanimous Stipulation and Agreement ("Rate Case Stipulation") entered in that case was approved by the Commission's Order effective August 27, 2010, with new rates effective September 1, 2010. After the previous Atmos ISRS was zeroed out effective with new rates on September 1, 2010, Atmos filed for a new ISRS in November 2010, which became effective February 14, 2011, in Commission File No. GO-2011-0149. This is the ISRS that is the subject of the instant change request.

OPC argues that "the Commission lacks the statutory authority to grant the relief requested in Liberty's ISRS Petition because more than three years has passed since Liberty's last rate case." (Motion, p. 6). OPC acknowledges that the last rate case was decided in August 2010, with new rates effective September 1, 2010. The evidence herein and the Commission's records reflect that the existing ISRS that is being changed in the instant proceeding was filed in November 2010, and became effective February 14, 2011 (File No. GO-2011-0149), clearly

within the statutory three-year period of Section 393.1012.2. This Commission recently addressed this very issue in File No. GO-2013-0391, *In the Matter of the Application of Southern Union Company d/b/a Missouri Gas Energy, for Approval to Change its Infrastructure System Replacement Surcharge*, and the Commission unanimously rejected the very argument that OPC's advances in this proceeding. As stated in the May 1, 2013 Order Approving Change In Infrastructure System Replacement Surcharge, Rejecting Tariff, and Approving New Tariff:

> 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 the 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 the statutory authority to issue an order approving MGE's application in this case. (Order, page 6).

In its Position Statement, OPC acknowledges that "it challenged a recent ISRS Petition filed by Missouri Gas Energy for the same reason," and having lost that challenge, it has appealed the above-referenced Commission decision to the Missouri Court of Appeals – Western District. There is absolutely no reason for the Commission to change its legal conclusions in this proceeding.

Liberty Utilities does not seek to include expenses in the ISRS that are not authorized by statute

In its Motion, the OPC now suggests, for the first time, that Liberty Utilities' Petition does not comply with Section 393.1009(5), alleging that investments made to comply with state safety requirements such as 4 CSR 240-40.030(13) are not eligible ISRS projects. The OPC claims that only investments made "to comply with a law or order that requires the utility to

replace certain facilities" are ISRS eligible. It is difficult to even understand the OPC's argument given that the plain language of 4 CSR 240-40.030(13)(B)(2) states "Each segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service."

The OPC appears to be trying to apply a standard for ISRS eligibility that is not supported by either the statutes or the rule. The plain language of both the statutes and rule define ISRS eligible projects as investments installed or undertaken "to comply with state or federal safety requirements." 4 CSR 240-3.265(1)(G). The language says nothing about eligibility being based on having a replacement program. The OPC's unsubstantiated claim that the rule was meant to limit eligibility to investments mandated by a replacement program is just that -- an unsubstantiated claim that is in fact belied by the ISRS rulemaking. An examination of the record in the ISRS rulemaking proceeding, GX-2004-0090, reveals that such a limited interpretation was rejected in the formulation of what is now 4 CSR 240-3.265(20)(L). The initial language of the proposed ISRS rule contained only the following language: "For each project for which recovery is sought, **the commission order, 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."

However, certain parties objected and stated that to be consistent with the ISRS provisions of HB 208, **that subsection should also be modified to provide that the source of any regulatory or other commission requirement to install facilities may also be a statute, rule or regulation, as well as a Commission Order**. The Staff agreed to this modification, as did the Commission in its Order of Rulemaking: "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 additions this change now appears as subsection (20)(L)." (*Missouri Register*, Vol. 29, No. 8, page 664, April 15, 2004).

As noted in the Missouri Public Service Commission "Annual Report":

> The Commission continues to take a proactive approach to pipeline safety in Missouri with pipeline safety rules, which are in many cases, more stringent than current federal regulations. This approach includes looking at and extensively evaluating various pipeline replacement programs, leak survey inspections, leak investigations and classifications, corrosion control of steel pipelines, and other pipeline safety programs. (2012 PSC Annual Report at 16).

Clearly, one of the primary purposes of the ISRS statutes and rule was to encourage the gas utilities to replace and maintain their infrastructure to protect against threats to public safety. As reflected in the Commission's ISRS Rulemaking proceeding: "It appears from the language and structure of Sections 393.1009 through 393.1015, that the purpose of the legislation is to address the single issue of relief for natural gas utilities from regulatory lag attributable to safety-related infrastructure investments." (Staff Exhibit No. 1 admitted in December 10, 2003 Public Hearing in Case No. GX-2004-0090, page 3). The OPC's position is antithetical to this purpose.

If the Public Counsel truly believes that a Commission "Order" is required as a prerequisite for expenditures related to safety, it only has to look at the previous 33 ISRS Orders issued for gas utilities over the last decade. Indeed, for Liberty Utilities in particular, it should be remembered that "Gas Safety" was one of the major subjects addressed in the above-referenced asset sale unanimous stipulation and agreement, a stipulation endorsed and supported by OPC:

> **17. <u>Gas Safety</u>**
>
> a. <u>Liberty-Midstates shall comply fully with all of the Commission's pipeline safety regulations **and,** prior to operating the system, must meet the following requirements and have the following programs or plans in place and fully operational, subject to existing waivers or variances authorized for Atmos</u>:

Field personnel shall be Operator Qualification tested;

Field personnel shall be drug tested as required by CSR 240-40.080;

Field personnel shall be trained in Missouri's specific gas safety rules;

Leak calls shall be responded to immediately;

Operations and Maintenance Plan;

Emergency Plan;

Operator Qualification Plan;

Anti-Drug and Alcohol Misuse Plan;

Damage Prevention Program;

Public Awareness Program;

Integrity Management Program for Transmission Pipelines;

Integrity Management Program for Distribution Pipelines; and,

Membership in Missouri One Call Systems, Inc

Control Room Management Program

b. In addition to an Operator Qualification Plan, Liberty-Midstates shall have qualified personnel in place to operate the natural gas system. In addition to having an Anti-Drug and Alcohol Plan, Liberty-Midstates shall conduct pre-employment testing of new personnel, and conduct random testing as required by Commission rules.

c. Liberty-Midstates shall have a process to receive and respond to emergency, leak and odor calls, at any time (24 hours a day, 7 days a week, 365 days a year). Joint Applicants shall have a transition plan in place for transferring to Liberty-Midstates personnel the Liberty-Midstates customers that call Atmos' telephone numbers. Liberty-Midstates shall have personnel in place to receive, dispatch and respond to emergency, leak and odor calls as required by the Commission (within one hour for inside odor call and within two hours for outside odor calls). If Liberty-Midstates changes the emergency telephone number used by the public, Liberty-Midstates shall widely advertise that number so the public is aware of the 24-hour emergency telephone number to be called in an emergency.

d. Liberty-Midstates shall establish a plan to replace signage at regulator stations, above ground piping, road crossings and other locations. In addition to establishing a Control Room Management Program, Liberty-Midstates shall establish a gas control function for supervisory

> control and data acquisition (SCADA) systems for remotely controlling and monitoring remote-controlled valves and system pressures. (Emphasis added).

Paragraph 19 (a) of the Stipulation regarding "Miscellaneous Conditions" provides as follows: "Prior to Liberty-Midstates filing its first general rate proceeding related to the acquired Atmos properties, Liberty-Midstates will not request Commission authorization to alter or be relieved of any of the terms or conditions contained in past stipulations or Commission orders that were applicable to Atmos just prior to the acquisition."

Of course, the Commission found that the terms of the Stipulation were just and reasonable and further ordered "that the signatories shall be bound by and comply with the terms of the Unanimous Stipulation and Agreement." (*Order Approving Unanimous Stipulation and Agreement*, Ordered Paragraph 11, File No. GM-2012-0037, March 14, 2012). (Liberty Exhibit No. 1, pp. 6-7).

Public Counsel takes issue with the repair and/or replacement of facilities experiencing gas leaks, appearing to suggest that such expenses are "maintenance type expense that would be included in base rates." However, the evidence clearly refutes OPC's contentions in regards to Liberty Utilities. As State President David Swain testified, leak repairs were in fact capitalized in the last Atmos general rate case (a rate case resolved by a Unanimous Stipulation and Agreement to which OPC was a signatory), and in conformance with the asset sale stipulation referenced above, Liberty Utilities is still booking those expenditures that way today. Accordingly, there is no "double-dipping" between what would be capitalized versus what would be recovered in O&M-type expenses. (Tr. 47-48).

Staff Witness Roberta Grissum also addressed the propriety of including such expenses in Liberty Utilities' ISRS filing.

> I don't know that I could tell you a specific amount of leak projects. I know that when I reviewed the work orders, there were some items referred to as gas leaks. But in my review of the work orders, it had more detail that led me to believe that it was more of a capital project rather than a maintenance-type item. It was replacing either steel pipe or the polyethylene pipe that has also been a problem with brittling. It also included some installations of either gas safety valves or excess flow valves, which also speak to a safety requirement. . . . And there was additional information that noted to me what age the pipe was that was being replaced, whether there was any corrosion or any other defects that was leading to the safety concern. (Tr. 79).
>
> Well, again, I don't know exactly how you're defining simple replacement. The way I looked at the project was, was it an item that rose to the level of the company's threshold for capitalization and whether that led to an improvement in the integrity and safety of the system. (Tr. 80).

Public Counsel also appears to take issue with expenses resulting from repairing or replacing infrastructure due to damage caused by a contractor or other third parties. It is important to note that the Company credits any compensation received from either insurance or third parties to the relevant project number. In the event the recovery occurs prior to an ISRS filing it is reflected in the ISRS filing. If the recovery occurs after the ISRS filing it is reflected in the true-up in the rate case.

It is difficult to anticipate whether the various "ratemaking" and accounting issues that OPC Witness Ted Robertson attempts to interject in this proceeding would fall under this broad OPC "objection" concerning ISRS-related expenses. As Staff Counsel succinctly observed in his Opening Statement, ". . . Staff is concerned that the kinds of arguments that OPC are calling for in this case are actually the kind of wide-ranging and deep-diving ratemaking analysis that the statute specifically prohibits." (Tr. 27). As discussed during the evidentiary hearing, the ISRS statutes (and the Commission's implementing rule) specifically provide substantial consumer protections regarding the ability of the Commission and parties to examine issues in the

Company's subsequent rate case. Of equal importance, they also spell out what the ISRS process is NOT designed to address.

- ISRS revenues shall be subject to a refund. (393.1012.1 / 3.265(4));

- The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. **No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015.** (393.1015.2(2)). (Emphasis added).

- A gas corporation's filing of a petition or change to an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall not be considered a request for a general increase in the gas corporation's base rates and charges. (393.1015.7).

- 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**. (393.1015.8/ 3.265(15)). (Emphasis added).

- 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. (393.1015.9/ 3.265(15)).

- Nothing contained in sections 393.1009 to 393.1015 shall be construed to impair in any way the authority of the commission to review the reasonableness of rates or charges of a gas corporation, including the review of the prudence of eligible infrastructure system replacements made by a gas corporation, pursuant to the provisions of section 386.390. (393.1015.10).

Indeed, Staff Witness Grissum, responding to an inquiry from Commissioner Stoll, emphasized that anything approved in an ISRS proceeding can be reviewed in the process of a rate case, where Staff and other parties have more time to conduct a full audit.

> My understanding is that anything approved in an ISRS case can be rereviewed in the context of a rate case, and if there is something inappropriate about something that was included in an ISRS surcharge, it can be addressed in the concept – or in the context of that next rate case. . . . So if there's anything that has been misallocated as far as a cost, that can be reviewed in the next rate case and be disallowed and addressed in developing the revenue requirement that is ultimately proposed by Staff. (Tr. 83).

Further, in responding to OPC, Ms. Grissum confirmed:

> . . . It's just my understanding is that type of review does occur in the context of a rate case when reviewing plant in service and whether those items were appropriately capitalized. (Tr. 85).

The Company provided a complete petition as required by law

As previously discussed, the Petition filed in this matter is virtually identical in form and scope to the four (4) previous ISRS filings submitted by Liberty Utilities or Atmos, dating back to August of 2008. Each of those cases was resolved by the company filing a notice of agreement with the staff recommendation and a Commission order approving a revised tariff filed in conformance. Liberty Utilities' actions in this case are completely consistent with the filings and procedures that the Company (and its predecessor) has followed in previous ISRS cases – without any objection by Public Counsel. (Liberty Exhibit No. 1, p. 15).

In fact, as established by the Company's expert witness Mark Caudill, the instant petition is consistent with ISRS petitions filed by other regulated companies and approved by this Commission.

> Although I did not review every ISRS petition that has been filed since sections 393.1009 to 393.1015 were enacted, I did review the petitions filed since 2007. The petitions I reviewed were all consistent with the form of the Company's Petition in this docket and contained a comparable level of information as is contained in the Company's Petition. In other words, if the same standard that OPC is asking this Commission to impose on the Company's Petition in this docket had been applied to the other petitions that I have reviewed, none of those other petitions would have met such standard. Indeed, the prevailing practice before this Commission does not comport with OPC assertions regarding the level of detail required in supporting documentation. Nonetheless, it is relatively easy to determine from the Company's Petition that the projects qualify given the descriptive nature of the "project description" as found in Appendix A. (Liberty Exhibit No. 2, pp. 11-12).

Mr. Caudill further expounded on this point during the evidentiary hearing by noting that there is "a certain amount of regulatory risk with changing and departing from such a well-established practice." (Tr. 64).

Additionally, Mr. Caudill noted that the project descriptions in the Petition and prior Company petitions "are really far superior to some of the others in terms of being descriptive. In some of them you simply get project numbers, which is very hard to ascertain." (Tr. 65).

> These go to great detail in explaining cathodic protection or clamps being applied or non-growth main functional replacements. **Very, very descriptive and, again, an easy read of the combination of the sworn petition, the headings in which they were classified and the specific project descriptions leads one to a conclusion that the projects qualify.**
>
> The three that were found in the 50 could have been identified essentially as growth projects and ergo not included.
>
> (*Id.*, emphasis added).

Irrespective of the decade-long practice and procedure embodied in the Commission's processing of ISRS petitions, Mr. Caudill also addresses the specific subsections found at 4 CSR 240-3.265(20)(K) and (L), noting that they are far from models of clarity. Nevertheless, he testifies that one could certainly reach the conclusion that the Company's petition complies with their respective requirements. He further notes that even if one were to conclude that subsection

(L) requires citations, that information has been provided in Schedule DS-3 to David Swain's testimony. (*See*, Liberty Exhibit No. 2, pp. 12-13).

During cross-examination, Mr. Caudill addressed the ambiguity inherent in Subsection (L):

> If you look back at L, the language says in subpart L, for each project for which recovery is sought, the statute, the commission order, rule or regulation, if any, requiring the project. Where the "if any" is placed creates a great deal of ambiguity. There's not an option to do nothing when you have a leak, where you have a relocation, where you have a qualifying ISRS project. They have to do something.
>
> So the concept that there would not be a regulation or rule requiring action is – I can't contemplate that. I can't imagine a situation where the "if any" makes any sense. If the "if any" had been limited to the commission order, then there very possibly could be a rational interpretation.
>
> So when you look at the face of the regulation – and again, I'm doing this not as a lawyer but as a guy who deals with regulatory compliance every day – and you see that there is ambiguity on the face of the reg that's there, then before advising a client that they ought to change a format, the natural thing to do is to go back and look to see what the standing precedent is.
>
> Well, they didn't make up this for this filing. They had a very well-established track record of more than 30 other ISRS filings. . . . (Tr. 55-56).

The Commission Staff also rejects OPC's argument on this point. Even if one accepted the argument that Liberty Utilities' filing did not include the kind of specific citations that OPC would now erroneously require, "in Staff's view that amounts to a harmless error, something that Staff was able to pursue in its investigation. To deny the entire petition on such grounds would be unreasonable and possibly unlawful because, again, the statute states that if the Commission finds the petition complies with the statute, it shall grant the petition." (Tr. 25).

> It would be most unreasonable and I think more than a little ironic to use this harmless error about citations to a safety requirement to completely disregard the intent of the Legislature and totally defeat the purpose of a statute which is designed to improve public safety in the first place.
>
> In Staff's view, like I said, the ISRS statute works well to encourage companies to replace or extend the useful life of their infrastructure. In Staff's

> view, this is a good thing. Staff does not see the need for the Commission to embark on a radical reinterpretation of the ISRS statute in this case. (Tr. 26).

To be sure, OPC acknowledges that this issue has never been raised before. "I recognize that in the 30-plus ISRS petition that have been filed before this Commission this issue has not been raised before, but that doesn't alter the rule or what the rule requires." (Tr. 33). This is "Gotcha Regulation" in the worst sense of the term.

As summarized by Mr. Caudill:

> After more than thirty filings under the current statutory and regulatory structure, the practices and procedures followed by this Commission, the Staff, and the regulated companies are fairly well established. Applying the Commission's Rules in the manner suggested by OPC in its September 9th Motion would be a significant departure from well-established practices and procedures. Customers, utilities, investors and regulators all benefit from increased regulatory certainty. Consequently, every regulator should be concerned if asked to make a ruling that is likely to introduce higher levels of regulatory uncertainty. . . .
> . . . The current practice as established in more than 30 filings before this Commission has fleshed out the requirements of Commission Rule 4 CSR 240-3.265. A decision to change those practices would be more appropriately made after opening a workshop proceeding that would allow all interested stakeholders to address the proposed changes. (Liberty Exhibit No. 2, pp. 14-16).

Section 393.1015.2(4) provides: "If 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 section 393.1009 to 393.1015." The record evidence supports such a finding by the Commission in this proceeding.

2. (i) What amount of incremental ISRS revenue requirement increase should the Commission approve for Liberty Utilities in this case (total and by district), and (ii) what composite/cumulative ISRS rate should Liberty Utilities be authorized to file for each customer class by district based on such increase?

Having answered the first issue in the affirmative, the uncontroverted evidence in this proceeding clearly supports the following findings and conclusions by the Commission:

(i) In accordance with Staff Exhibit No. 1 (Staff Updated Report) and Staff Exhibit No. 2, entered into the record on September 26, 2013, the Commission should approve an incremental ISRS revenue requirement increase for Liberty Utilities in the amount of annual pre-tax revenues of $579,662 (allocated in the amounts of $30,432 for the Western District, $178,799 for the Southeast District and $370,430 for the Northeast District).

(ii) Liberty Utilities should be authorized to file a composite/cumulative ISRS rate for each customer class by district as reflected in Staff Exhibit No. 3, entered into the record on September 26, 2013.

Conclusion

This case has very significant policy implications which directly affect public health and safety. Over the last decade, the ISRS mechanism clearly has had the intended effect of encouraging gas utilities to replace and maintain their aging infrastructure to protect against threats to public safety. In the more than thirty (30) ISRS filings processed and approved by this Commission during that time-frame, the practices and procedures have been well established. The record evidence establishes that the verified Petition of Liberty Utilities complies with the statutory and regulatory requirements for ISRS filings, and that said Petition clearly comports

with the other natural gas utility filings and the Commission's long-standing practice and procedure. After a thorough investigation and examination of the Petition, all supporting documentation, the ISRS statutory sections and all additional data provided by Liberty Utilities, the Commission Staff ultimately recommends approval of an incremental ISRS revenue requirement increase in the amount of annual pretax revenues of $579,662, which has been agreed to and endorsed by the Company. The record evidence confirms that Staff had sufficient information to make an informed report as updated and adjusted in Staff Exhibit Nos. 1, 2 and 3, in accordance with Section 393.1015.2(2).

For all of the reasons fully discussed herein, the Commission should deny Public Counsel's request that Liberty Utilities' Petition be rejected or denied. The positions advocated by Public Counsel would undermine the purpose of ISRS and impose disincentives to doing all that is required to ensure safe and reliable operations.

In this docket – just as in the more than 30 other petitions filed pursuant to the Commission's ISRS regulations – Staff clearly had access to information required to determine that projects were, or were not, eligible to be included within ISRS revised charges. This Commission's established practices and procedures work, and there is no need to reinterpret the rules as suggested by OPC. Nonetheless, to the extent that any review of the Commission's well-established practice and procedures might be deemed appropriate, the Commission should consider an industry-wide process, such as a workshop proceeding, that would allow all interested stakeholders the opportunity to participate.

The competent and substantial evidence in this proceeding clearly supports a Commission finding that Liberty Utilities' Petition complies with the requirements of Sections 393.1009 to 393.1015, RSMo., and a Commission order authorizing an incremental ISRS

revenue requirement increase for Liberty Utilities in the amount of annual pretax revenues of $579,662 (allocated in the amounts of $30,432 for the Western District, $178,799 for the Southeast District and $370,430 for the Northeast District). Since the revenues and rates so authorized would differ from those contained in the tariff the Company first submitted, the Commission should reject that tariff and allow Liberty Utilities an opportunity to submit a new tariff consistent with the Commission's order that would include a composite/cumulative ISRS rate for each customer class by district as reflected in Staff Exhibit No. 3, entered into the record on September 26, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Post-Hearing Brief was served on all counsel of record on this 4th day of October, 2013 by hand-delivery, fax, electronic or regular mail.

/s/ Larry W. Dority

Larry W. Dority