

Summary of SC94470, *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, Missouri Public Service Commission v. The Office of the Public Counsel*

Appeal from the public service commission

Argued and submitted March 18, 2015; opinion issued June 16, 2015

Attorneys: The public counsel was represented by Mark D. Poston and Dustin J. Allison of the public counsel's office in Jefferson City, (573) 751-5558. The public service commission was represented by Jennifer Heintz and Kevin A. Thompson of the commission in Jefferson City, (573) 751-8377. Liberty was represented by Larry W. Dority of Fischer & Dority PC in Jefferson City, (573) 636-6758.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state's public counsel appeals a determination by the public service commission that a gas utility's costs to replace pipes damaged by a contractor or third party qualify for an infrastructure system replacement surcharge increase. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri reverses the commission's order and remands (sends back) the case. The commission erred in relying on an incomplete definition of "deteriorate," resulting in an order that was unlawful. As used in the statute, only infrastructure that is worn out or deteriorated is eligible for an infrastructure surcharge.

Facts: Liberty Energy (Midstates) Corp., which does business as Liberty Utilities, provides natural gas. Gas corporations are permitted to recover certain infrastructure system replacement costs outside of a formal rate case through a surcharge on their customers' bills. In July 2013, Liberty filed a petition with the public service commission requesting an increase to its infrastructure system replacement surcharge to recover costs it incurred in making certain infrastructure system replacements from June 2012 through May 2013. The commission's staff conducted an investigation, inspecting 37 of the 275 projects for which Liberty sought recovery. The projects investigated incurred approximately 58 percent of the costs for which Liberty sought recovery. In their September 2013 report to the commission, the staff noted that Liberty included some growth projects that are not eligible for recovery in an infrastructure system surcharge. They also noted some other errors and omissions in Liberty's data. The office of the public counsel – who by statute is permitted to represent the public interest in any proceeding before the commission and in appeals from the commission's orders – filed a motion asking the commission to reject Liberty's petition or schedule an evidentiary hearing. The public counsel maintained that Liberty's replacement of pipe that was damaged accidentally during excavation by a contractor or other third party did not satisfy the requirement of section 393.1009(5)(a) that replacement was for "existing facilities that have worn out or are in a deteriorated condition." Following a September 2013 evidentiary hearing, the commission approved the infrastructure increase for Liberty, concluding that "damaged" is synonymous with "deteriorated." The public counsel appeals.

REVERSED AND REMANDED.

Court en banc holds: The commission erred in relying on an incomplete definition of “deteriorate,” resulting in an order that was unlawful. Under section 393.1009, eligible infrastructure replacements include gas utility plant projects that are limited to include only certain 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.” The statutes do not define “deteriorate” as used in section 393.1009. As such, it is defined by the plain and ordinary meaning as derived from the dictionary. The dictionary defines “deteriorate” as “to make inferior in quality or value,” “to grow worse” and “become impaired in quality, state, or condition.” The commission used one part of this definition – “impaired in quality, state, or condition” – in concluding the statute permitted the proposed infrastructure costs. But this ignores the clear language of the dictionary, which clarifies its meaning by adding the synonym “degenerate” and an illustration of usage about idle houses. This definition indicates that deterioration is a gradual process that happens over a period of time rather than an immediate event. Had the legislature intended to include the replacement of gas utility plant projects that were damaged by a third party’s negligence, it could have inserted different language to effectuate that intent. The commission’s order is contrary to the plain language of the statute.