

# MISSOURI COURT OF APPEALS WESTERN DISTRICT

**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,**

**Respondents,**

**v.**

**THE OFFICE OF PUBLIC COUNSEL,**

**Appellant.**

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DOCKET NUMBER WD77089

**Date: July 29, 2014**

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Appeal from:  
Public Service Commission Circuit Court

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Appellate Judges:  
Division One: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and Gary D. Witt,  
Judges

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Attorneys:  
Shelley E. Brueggemann, Kevin A. Thompson, Jennifer L. Heintz, Jefferson City, MO for  
Public Service Commission; Larry W. Dority, Jefferson City, MO for Liberty Utilities, for  
Respondents

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Marc D. Poston, Jefferson City, MO, for Appellant.

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

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WD77089

Public Service Commission

Before Division One: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and Gary D. Witt, Judges

The Office of the Public Counsel appeals from the Missouri Public Service Commission's order approving the request of Liberty Energy (Midstates) Corp. d/b/a/ Liberty Utilities ("Liberty") to change its Infrastructure System Replacement Surcharge ("ISRS"). Public Counsel contends the Commission's order is unlawful because it allows Liberty to recover costs that are not authorized by the ISRS statutes.

**AFFIRMED.**

Division One holds:

The Commission's decision to allow Liberty to recover its costs, through the ISRS, for projects replacing pipes damaged by a third party is lawful and reasonable. The projects qualify as "gas utility plant projects" under Section 393.1009(5)(a), RSMo Cum. Supp. 2013, because they are replacing facilities that "are in deteriorated condition."

Pursuant to the plain and ordinary meaning of Section 393.1009(5)(a), facilities that "are in deteriorated condition" are those that have been made inferior or become impaired in quality, state, or value, and this definition is not restricted to describing *only* diminution or impairment that has occurred over time. Based upon this broad definition, the Commission could have properly determined that pipes that have been damaged by a third party "are in deteriorated condition," and that projects replacing such pipes are eligible projects under the ISRS statutes.

Opinion by: Lisa White Hardwick, Judge

**July 29, 2014**

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**