

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of The Empire District Gas)
Company's d/b/a Liberty Request to File) Case No. GR-2021-0320
Tariffs to Change its Rates for Natural Gas) Tariff No. YG-2022-0040
Service)

The Office of the Public Counsel's Initial Brief

Respectfully submitted,

Nathan Williams, Mo. Bar No. 35512

Chief Deputy Public Counsel

May 23, 2022

TABLE OF CONTENTS

Introduction..... 3

ARGUMENT..... 4

CONCLUSION..... 5

COMES NOW the Office of the Public Counsel and for its Initial Brief states:

Introduction

If the Commission approves and adopts the resolution of the issues by the unopposed settlement agreement among The Empire District Gas Company d/b/a Liberty (“EDG”), the Commission’s Staff, the Missouri Energy Consumers Group, and the Office of Public Counsel, that the Commission’s Staff filed on April 12, 2022, then the only issues remaining before the Commission for decision are those tariff issues affecting transportation service to schools listed as Issue 1., with subparts a. through c. to which Public Counsel filed its position. The stated issues and Public Counsel’s position follow:

1. Should the Commission approve the recommendations filed on behalf of the MSBA?
 - a. Should the Commission modify EDG’s Aggregation, Balancing, and Cash-out Charges in this case?
 - b. Should the Commission establish a section within EDG’s tariff or standalone rate schedule applicable only to special statutory provisions for School Transportation Program? If so, when should a revised tariff be submitted to the Commission?
 - c. Should the Commission adopt EDG’s proposal to change current tariff language regarding Empire’s passage of charges on to customers for actions or inactions of their suppliers, marketers or aggregators, or adopt MSBA’s proposal to retain current tariff language until the Commission later reviews outcomes of pending federal court cases and Commission complaints and establishes parameters applicable to all Missouri Gas Corporation tariffs?

OPC Position: Public Counsel does not oppose schools using market aggregators to acquire the natural gas they use and relying on EDG for transportation service only; however, the costs of the natural gas those schools use and the costs of the gas those market aggregators acquire for them rarely, if ever, match; and through EDG’s PGA/ACA EDG’s non-transportation customers bear the difference—a classic case of “customer class cross-subsidization.” While EDG’s proposals do not resolve Public Counsel’s concerns, they do not exacerbate them; whereas MSBA’s proposals, which the Commission’s Staff opposes, do.

Through the rebuttal testimony of its witness Tatiana Earhart EDG states:

EDG would be willing to work with Staff, MSBA and any other interested party to develop a standalone STP rate schedule that would contain best practices for the school aggregation programs of both EDG and Midstates prior to the filing of the next Midstates general rate case at the Commission.

Public Counsel would participate in such an effort.

ARGUMENT

The Commission exercises broad discretion when designing rates; however, unduly discriminatory rates are unlawful.¹ Public Counsel's position is based on this prohibition.

Public Counsel reiterates that does not oppose schools using market aggregators to acquire the natural gas they use and rely on EDG for transportation service to deliver that gas to them. Public Counsel's concern is that MSBA's proposal, with near certainty since EDG must closely match gas consumption with gas delivered at all times,² will shift gas commodity costs between the schools who use market aggregators and EDG's non-transportation customers.

It is virtually certain that the volume of gas schools using market aggregators consume at each point in time will not balance with the volume of gas those market aggregators have obtained for delivery at that point in time,³ and it is certain that EDG must have sufficient volumes of gas to supply all of its customers (transportation only and non-transportation) or it will be unable to provide adequate service to its non-transportation customers. The difference in the cost of the gas for those imbalances in volume can be significant⁴; however, capturing the impacts of those imbalances is progressively attenuated as the period of time over which they are measured is increased. Ultimately, those cost impacts flow through EDG's PGA/ACA. This result is a classic

¹ §§ 393.130 & 393.140(5), RSMo.

² Staff witness Patterson Rebuttal, p. 4.

³ *Id.*

⁴ Staff witness Patterson Rebuttal, pp. 8-9.

case of “customer class cross-subsidization.” The following extreme example illustrates this point. Assume the schools’ short-term imbalances during a day aggregate to 100 mmBtu at a wholesale average cost of \$100/mmBtu for a total cost of \$10,000. The schools’ longer term imbalance for the month that includes that day is 10 mmBtu at an apparent average wholesale cost of \$10/mmBtu or \$100. This occurs because, in the balance of the month, the cost of gas is much lower as is the imbalance mmBtu amount. If the schools’ gas marketers did not have sufficient gas to supply the schools’ usage during the day with extreme costs, then the schools would pay less for the gas they actually used that month (\$100) than what the gas actually cost on that extreme day (\$10,000) let alone the rest of the month.

EDG’s only proposal now is that the Commission change EDG’s tariff to state that non-transportation customers ultimately are responsible to EDG for the commodity cost of gas they use when their gas supplier failed to supply that gas. That proposal neither resolves Public Counsel’s concern, nor exacerbates it. In contrast, MSBA’s proposal exacerbates Public Counsel’s concern because it does not require daily meter readings. MSBA’s proposal, if implemented would make it impossible to avoid the imbalances cost impacts between the schools using market aggregators and EDG’s non-transportation customers (cross-subsidization) being realized through EDG’s PGA/ACA as described above.

As it stated in its Position Statements, Public Counsel is willing to participate in an effort to develop appropriate tariff language and rates for schools who use market aggregators.

CONCLUSION

Unless and until MSBA demonstrates that its proposed tariff provisions will not allow discriminatory cost shifting between schools taking only transportation service from EDG and

EDG's non-transportation customers, the Commission should reject MSBA's proposed tariff provisions. To develop nondiscriminatory tariff provisions specific to schools that use market aggregators, as EDG proposes, the Commission should order EDG to make itself available to meet with the Commission's Staff, MSBA, Public Counsel and anyone else interested in developing tariff provisions specific to schools that use market aggregators and to whom EDG provides only gas transportation service with a goal of EDG filing such tariff provisions in the next general rate case of its affiliate Liberty Utilities Corp. d/b/a Midstates Natural Gas.

Respectfully,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-4975 (Voice)
(573) 751-5562 (FAX)
Nathan.Williams@opc.mo.gov

Attorney for the Office
of the Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23rd day of May 2022.

/s/ Nathan Williams