BEFORE THE MISSOURI 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 Tariffs to Change Its Rates for Natural Gas Service	)))	**Case No. GR-2021-0320**

MISSOURI SCHOOL BOARDS' ASSOCIATION POST-HEARING BRIEF

Comes now the Missouri School Boards' Association (hereinafter "MSBA"), by and through counsel, RSBIII, LLC, Richard S. Brownlee, III, respectfully submits its Post-Hearing Brief in accordance with the Commission's October 20, 2021, *Order Setting Procedural Schedule and Adopting Test Year.* This Post-Hearing Brief will address the issues as set forth in the parties Statement of Position as filed and amended at the formal hearing on April 25, 2022.

I. Executive Summary

MSBA's two issues are:

A. aggregation and balancing services charges are not at Empire District Gas' (hereinafter referred to as "EDG" or "Company") incremental cost; and

B. cash-out of imbalances is not at EDG's cost of purchasing gas supplies.

MSBA requests the Commission order EDG to set out the unique provisions regarding School Transportation Program for Eligible School Entities (ESEs) either in a standalone rate schedule or a separate section of its tariff.

Both MSBA issues are addressed by Section 393.310 RSMo (hereinafter referred to as the statute) and are unique to ESEs. In October 2002, the Commission issued a series of orders implementing the statute for every Missouri gas corporation. Paragraph 5 of the statute addresses

MSBA's issue of requiring aggregation and balancing charges be at incremental costs by ordering every Missouri gas corporation to record and annually report incremental costs to the Commission.

Subparagraph 2 of Paragraph 4 of the statute requires Missouri gas corporations to supply gas to ESEs at the cost of purchasing gas supplies. ESEs, like other transportation customers, purchase their own gas supply in the open market. In the event imbalance gas is supplied by the gas corporation, it is required to be at cost of purchasing the gas. Eighty percent of ESEs imbalance gas volumes are reconciled and repaid to the gas corporation in kind by netting, or "carry-over," of physical gas against the following month ESE gas deliveries; "cash-out" is another industry method of reconciling and monetarily repaying the gas corporation for its purchasing of imbalance gas for ESEs. The Commission has approved gas corporation tariffs for both methods of carry-over and cash-out. Gas corporations' cost of purchasing imbalance gas supplies does not include any penalty in addition to the cost of purchased imbalance gas.

II. Introduction and MSBA's Position Summary

This proceeding is a general rate case filed by Empire District Gas Company d/b/a Liberty. MSBA was granted intervenor status and has fully participated in all proceedings including the filing of testimony and appearance at the evidentiary hearing on May 2, 2022.

On or about April 12, 2022, a *Stipulation and Agreement* was entered into by all parties except for MSBA. MSBA has taken the position that Company's current transportation tariff rates are not in compliance with the applicable law regarding tariff charges, especially as being contrary to Section 393.310 RSMo. In particular, MSBA asserts:

> Missouri statutory law requires the Company's natural gas tariff charges to schools be cost-based as applicable to all school transportation charges including cash-out as well as aggregation and balancing charges.

III. Commission Legal Standard for Contested Cases

A. Ordinary Rate Cases

In an ordinary rate case proceeding, and in this case, the Commission must determine if the rates and charges to the customers of the Company are just and reasonable, Section 393.150.2 RSMo. The Company has the burden of proof on this legal standard of just and reasonable rates.

In order to carry its burden of proof, the Company must meet the preponderance of the evidence standard. *Bonney v. Environmental Engineering, Inc*., 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp*., 936 S.W.2d 104, 110 (Mo. banc 1996), citing to *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979). To meet this standard, the Company must convince the Commission it is "more likely than not" the proposed rate is just and reasonable. *Holt v. Director of Revenue, State of Mo*., 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109-111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

In addition to the above legal requirements, the Commission also must consider "all relevant factors" when setting rates. *State ex rel. Mo. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 858 S.W.2d 806, 812 (Mo. App. W.D. 1993); *State ex rel. Mo. Gas Energy v. PSC*, 210 S.W.3d 330, 336 (Mo. App. W.D. 2006). Failure to consider all relevant factors constitutes impermissible single-issue ratemaking. *State ex rel. Mo. Gas Energy*, 210 S.W.3d 330 (Mo. App. W.D. 2006).

B. Rate Cases Involving Missouri Schools – Section 393.310 RSMo.

While the aforementioned legal standards apply to all EDG transportation customers, the Missouri legislature in 2002 also enacted Section 393.310 RSMo. This statute creates a unique second legal standard for the Commission to follow when setting natural gas transportation rates for ESEs. Both of these separate legal standards apply to setting gas rates for ESEs.

IV. MSBA and the School Transportation Program

A. MSBA and School Transportation Program

As a matter of background, MSBA is a 501(c)(6) not-for-profit corporation representing approximately 390 school districts in the State of Missouri as a trade association. MSBA sponsors a statewide aggregate natural gas purchasing and transportation program which enables schools to take services under all Missouri gas corporations' school tariffs which are mandated by the special school natural gas aggregation statute Section 393.310 RSMo.

MSBA is the authorized gas contracting agent for approximately 270 schools with approximately 2,400 ESE accounts or meters, of which approximately 140 are in the Empire service areas. MSBA bids and contracts for natural gas supply on the open market and arranges gas supply, interstate pipeline delivery, and local gas corporation delivery or transportation service to ESEs pursuant to Section 393.310 RSMo. The total annual Missouri consumption of ESEs under the MSBA negotiated gas supply contracts is approximately 35,000,000 therms.

V. Contested Issues for Decision

A. Significant Industry Terms

Inherent to an understanding of the statute and the issues at hand is a discussion of certain phrases unique to natural gas transportation:

(1) **Aggregation:** The administrative work by a local distribution gas corporation to manage a pool of transportation customers on the same pipeline as if the pool is one customer for purposes of natural gas scheduling, deliveries, and services.

(2) **Balancing and Imbalance:** Balancing is a service to manage natural gas supply deliveries to the gas corporation's distribution system (input) with customers' actual metered use (output). Gas volumes are nominated in advance based on forecasted customer consumption which, for schools, is highly dependent on the accuracy of

weather forecasts, school closures and the like. Schools are similar to all other weather-sensitive customers as the normal industry expectation is a difference between forecasted consumption and actual gas use, adjusted for losses. This difference is "imbalance".

(3) **Reconciling Imbalances:** For monthly metered customers at month end, imbalances are reconciled and either the local distribution company (LDC) will owe the transportation customer for over delivered imbalances or the transportation customer will owe the LDC for under delivered imbalances. "Cash-out" is one method of financially reconciling imbalances by monetizing the monthly imbalance volumes. "Carry-over" is another industry method of reconciling imbalances by netting physical gas imbalances against following month's nominated deliveries. While these phrases are not specifically stated in the statute, they are inherent to paragraph (4)(2) of the statute because the only gas LDCs purchase for ESEs is imbalance gas which must be reconciled after the end of each month by either cash-out or carry-over.

B. Issue #1: The Cost of Aggregation and Balancing Services

Paragraph 5 of the statute states: "The commission may suspend the tariff as required pursuant to subsection 3 of this section for a period ending no later than November 1, 2002, and shall approve such tariffs upon finding that implementation of the aggregation program set forth in such tariffs will not have any negative financial impact on the gas corporation, its other customers or local taxing authorities, and that the aggregation charge is sufficient to generate revenue at least equal to all incremental costs caused by the experimental aggregation program."

The statute is clear that gas corporations are to charge their incremental costs of the aggregation program to ESEs to ensure there are no negative impacts to others. EDG provided no incremental or any other cost support in this case for charges uniquely applicable to ESEs.

As a result of the statute, the Commission established seven dockets in 2002, one for each gas corporation at that time, to hear testimony and meet the statutory requirement for the School Transportation Program (STP). Aquila Inc. was one of the Missouri gas corporations, with docket number GT-2003-0038. MSBA has asked the Commission to take administrative notice of its 2002 Orders. By 2009, Empire had acquired the Aquila system in Missouri and filed its first gas rate case, GR-2009-0434. MSBA did not receive notice of that case and thus did not participate. MSBA maintains that EDG and Staff errored in GR-2009-0434 and again in this case by not following the cost-based legal standards of the statute. Instead EDG and Staff rely on charges from the 2009 case to support charges in this case. Staff inappropriately attempts to meet EDG's burden of proof with cost support in this case by manufacturing a storage model to support EDG's balancing charge. MSBA maintains the storage model and rates derived therefrom are in direct conflict with Paragraph 5 of the statute and the original Commission's Orders in 2002. This statutory conflict exists today in the Empire tariff.

Staff and Empire's reliance on Staff's manufactured storage service model from the 2009 case GR-2009-0434 and in this case is also fatally flawed because EDG does not purchase interstate pipeline storge services for ESEs.

MSBA's Data Request 7.2 to EDG, Appendix 4 to Louie R. Ervin Sr.'s Surrebuttal testimony, states: "Does the Company purchase pipeline storage for transportation customers?" EDG's response is: "No, the Company does not purchase storage on upstream pipelines for transportation customers use. The Company's use of upstream storage services by the Company provides, in addition to winter and seasonal time gas needs for sales customers, daily balancing for service provided to the system's city gates."

MSBA also offers testimony of Louie R. Ervin Sr. in this case in support of an ESE Aggregation and Balancing charge which must be based on incremental cost as mandated by the

statute. Mr. Ervin drafted and worked with legislators on the bipartisan bill that became Section 393.310 RSMo. and testified in all seven of the 2002 dockets initially implementing the statute.

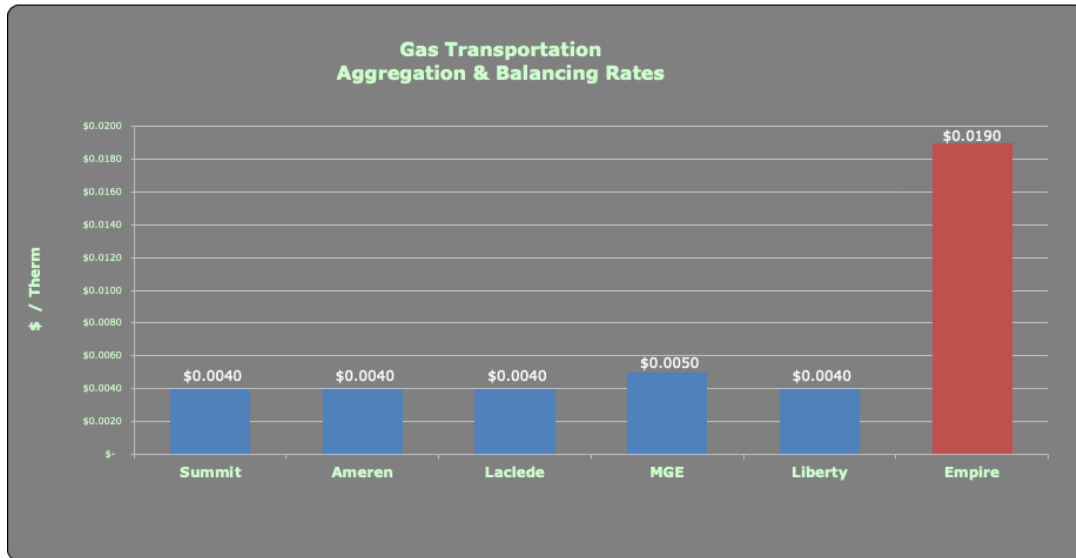
MSBA cites the statute and the Commission's 2002 seven companion orders on this issue for each Missouri gas corporation to initially implement the statutorily mandated School Transportation Program (STP) by November 1, 2002.

To implement the statute in 2002, the Commission ordered every Missouri gas corporation to record its incremental administrative time and costs to perform the aggregation and balancing tasks of purchasing gas, a little more or little less gas to balance ESEs. The Commission also ordered every gas corporation in Missouri to annually file Aggregation and Balancing administrative incremental cost reports with the Commission to satisfy the statutory mandate that the Commission ensure there is no negative impact to others. Reporting was required for the first three years of the STP program to determine whether the statutory minimum $0.004 Aggregation and Balancing charge was sufficient to recover STP's incremental administrative costs. After the first three years, none of the seven gas corporations' reports exceeded the $0.004 for combined Aggregation and Balancing costs. The presumption thereafter was that no additional cost support reporting would be required unless the gas corporation filed a request to increase the $0.004.

From 2002 until 2009, no gas corporation filed to increase the $0.004. In 2009, in case No. GR-2009-0434, Empire filed to increase its combined Aggregation and Balancing charge by 475%. In the EDG 2009 case, Staff and Company manufactured balancing cost data by applying pipeline storage rates as the presumed method of balancing. This was despite the opposite statutory mandate that gas corporations charge their cost of purchasing gas supplies. The Company's cost of purchasing imbalance gas at daily, weekly or monthly market indices is not storage gas that is purchased for retail customers. This is a critical distinction ignored by Staff.

Although EDG provided no cost support in this case for its proposed Aggregation and Balancing charge, Staff inappropriately attempts to meet EDG's burden of proof by manufacturing a storage model for balancing. Staff's storage model is in direct conflict with statutory requirements that gas supplies be provided at cost; it is also otherwise fatally flawed. Staff's storage model is based on storage rates of only one of three pipeline that serves EDG. Staff's storage model ignores the fact that the EDG distribution system services far more than just ESEs and instead Staff manufactures a storage model as if only ESEs use the system, thus ignoring system diversity. MSBA's surrebuttal testimony points out that Staff's storage model data shows MSBA ESEs over delivered during a system peak month. This offset the need for EDG to acquire additional higher price gas supply for other customers. Staff's storage model testimony gives no credit to the ESE for this value to the system from the ESEs. Perhaps the most revealing of Staff's storage model flaws is that it manufactures daily data for schools. To the contrary, the statute requires ESEs to have meters read monthly – not daily read. Per statute, ESEs cannot be required to install daily metering capability.

Reviewing the revised cost calculation of Staff's balancing charge analysis in this case, it produces a figure of $0.818 per MCF which is 546% of what EDG is requesting, 1637% of the next highest Missouri gas corporation and 2026% of EDG's sister company, Liberty Midstates utilities. The chart below from MSBA Direct Testimony shows the comparison of all Missouri gas corporation current Aggregation and Balancing rates.



It is clear the 2009 rate case created an ESE charge that was unlawful under the school statute, and that unlawful tariff exists today. This disparity is per se unjust and unreasonable. MSBA has attempted to work with EDG to come to some resolution in 2018 and 2019 but EDG decided not to file a tariff change due to Staff's opposition. Staff's position was that tariff changes should not be decided outside of a rate case, which is MSBA's reason for intervening in this case. MSBA's position is that this issue should be decided in this rate case rather than waiting for yet another rate case to be filed at an unknown date that could be in another 13 years.

C. Issue #2: The Application of Cash-out Penalty Multipliers in Purchased Gas Cost for ESEs

Of foremost importance to this issue is understanding that the statute allows no direct or implied penalties on top of gas costs. However, if the Commission is inclined to consider penalties as part of the cost, MSBA points out that the Staff analysis of cost is flawed in several ways.

First, MSBA believes Spire's Commission-approved STP carry-over and netting imbalances is fair and simple to administer. However, MSBA is not opposed to Empire's cash-out method if it complies with the cost-based requirements of the statute.

Second, Empire has provided absolutely no evidence or cost support for its extremely high proposed cash-out penalty multipliers to be applied to Empire's cost of purchasing imbalance gas for ESEs. In the absence of evidence provided by the company, Staff attempts to meet EDG's burden of proof regarding cost support for cash-out penalties without any Company cost data. Instead, it uses anecdotal support for cash-out penalty multipliers based on interstate pipeline cash-out provisions.

Paragraph 4 subparagraph 2 of the statute provides for the resale of natural gas supplies to ESEs at the gas corporation's cost of purchasing such gas supplies. The only gas supplied by the gas corporation to any transport customer, including ESEs, is imbalance gas. For ESEs, imbalance gas can be repaid in two ways. Carry-over is payment in-kind with physical gas the following month, or cash-out is paid at the end of the month after monetizing the imbalance. As previously stated, the statute inherently includes cash-out or carryover to satisfy the requirement for compensating the LDC at its cost of purchasing imbalance gas. Again, while eighty percent of ESE volumes in Missouri use the carry-over method, the Commission has also approved the cash-out method as a means for which to compensate the gas corporation at its cost.

Clearly, Paragraph 4 subparagraph 2 requires gas corporations to charge ESEs their cost of imbalance gas supplies which are recovered through EDG's Aggregation and Balancing and either carryover (payment in-kind) or cash-out charges (monetization). ESEs, as transportation customers, purchase their own gas supply except for the gas supplied by the gas corporation to balance ESE deliveries to metered use like all other transportation customers. EDG and Staff support a gas cost plus up to a 50% penalty for gas supplied by EDG to balance ESEs. MSBA, in compliance with the statute, supports gas cost for imbalances without penalties.

Staff testified that "cash-out", or monetizing imbalance gas, is the predominate method used in Missouri, presumably based on the number of gas corporations. In fact, eighty percent

(80%) of the ESE imbalance volumes are reconciled by "carry-over" of physical gas and netting against the following month deliveries. "Carry-over" is the long-established industry practice which is used by Spire to reconcile ESE's imbalances for the large majority of the Missouri schools.

For cash-out, Empire's tariff uses industry-wide published price indices from Natural Gas Weekly. Other published indices include Platts' Inside FERC First of Month Price Index and Gas Daily which are frequently utilized throughout the industry. EDG responded to MSBA's Data Request number 7.6, Appendix 5 to Louie R. Ervin Sr.'s Surrebuttal testimony, as follows: "All Company purchases were based on Gas Daily Average and First of Month Price Index." This indicates that the penalties for cash-out should not apply and instead to be compliant with the statute, the Company should be charging ESEs for their cost of gas at these stated indices.

Further, a percentage-based tariff penalty is discriminatory against small schools. Cash-out penalties may be appropriate for pipelines and large industrial transportation customers with large magnitude imbalances of 10 or even 100 times that of the small school imbalance, but a penalty provision that is based on percentage can render no penalty for large transporters but up to fifty percent (50%) penalties for small schools. This is because small schools have a smaller magnitude imbalance which produces a high percentage even on relatively small volumes.

The following table compares EDG's proposed ESE cash-out charges to other Commission-regulated gas utilities. This table shows that Empire has a much, much higher penalty for imbalances.

IMBALANCE CASHOUT PENALTY					
% Imbalance	**Spire**	**Ameren**	**Summit**	**Liberty**	**Empire**
0-5%	0%	0%	0%	0%	0%
5-10%	0%	10%	10%	0%	15%
10-15%	0%	10%	10%	0%	30%
15-20%	0%	10%	20%	0%	40%
20-25%	0%	10%	20%	0%	50%

Even though not allowed by statute, Staff and EDG maintain that the penalties are justified for four reasons: (a) interstate pipelines have percentage based imbalance penalties, (b) large industrial transportation customers have percentage-based imbalance penalties, (c) penalties are necessary to incent schools' marketer supplier to not manipulate deliveries intramonth by underdelivering on days when gas prices are high and overdelivering on days when gas prices are low and (d) the schools imbalance charges are small and were net credits for over delivery.

MSBA contends these reasons are flawed due to the following:

(1) Interstate pipelines are not subject to Section 393.310 RSMo. but EDG is with regard to ESEs.

(2) Large industrial transportation customers are not subject to Section 393.310 RSMo. but EDG is with regard to ESEs.

(3) The penalty incentive argument is unfounded. For the twenty years the statute has existed, there has not been a single complaint of manipulation by any Missouri gas corporation. Further, EDG requires contracts for Marketers and Aggregators to operate on their system and EDG can and should provide incentives/penalties to Marketers if they attempt to manipulate deliveries based on daily gas prices with potential for disqualification as a supplier or shipper of gas on the EDG system. Spire simply addresses this potential issue with tariff language that gives Spire the right to tell the Marketer how much gas to deliver on any given day; EDG could do the same.

(4) The small dollar argument fails. First, it is somewhat of a self-fulfilling prophecy - the net credits to schools were small due in part to under payments of up to fifty percent of gas cost from EDG to schools and an over payment from schools of up to one hundred fifty percent. Second, the "net" credit argument misses the point and is based only on the current flawed tariff rather than looking at the difference between the current tariff and the lawful

tariff. For example, using Staff's and EDG's proposed punitive cash-out method, if schools over paid $20,000 at the one hundred fifty percent penalty multiplier and was underpaid $21,800 by EDG due to the fifty percent penalty multiplier, there would be only an annual net credit of $1,800, which is small. However, the real dollars schools over paid and under credited actually amounts to $41,800.

In summation, MSBA objects to cash-out penalties of up to 50 percent of the spot market cost of gas, those penalties are neither cost-based nor allowed by the statute. EDG's existing and proposed tariff assesses penalty multipliers up to of 150% of the cost of spot market gas for cash-out of imbalance gas when the customer owes EDG and as much as a 50% penalty reduction to the spot market gas costs when EDG owes ESEs. EDG has not attempted to base ESE cash-out on cost of purchasing supply for school imbalance gas as mandated by statute. Instead, EDG applies the same cash-out penalties to ESEs as was developed for large industrial and commercial customers transportation customers years before the statute was enacted. Penalties applied to Empire's spot market gas cost are clearly in conflict with the statutory provision ESEs be charged at the gas corporation's cost of purchasing gas supplies.

VI. Conclusion and Relief Requested

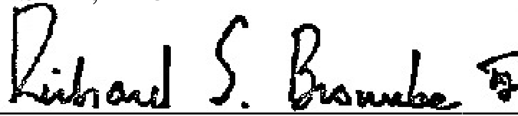
Now is the time to regain compliance with Section 393.310 RSMo. by Commission order for Empire to:

A. Establish its "Aggregation and Balancing" charge equal to the statutory minimum of $0.004/therm (or Ccf) until Empire demonstrates its administrative costs of aggregation and purchasing gas supply for ESE balancing service exceeds the statutory minimum;

B. Adopt the carry-over method of a monthly reconciliation of imbalances or eliminate penalty multipliers applied to gas cash-out for ESEs; and

C. Set forth its school tariff rates which are unique to ESEs in a separate section or rate schedule rather than retaining its comingled tariff for ESEs and all other standard transportation customers. This can be accomplished in this case by ordering EDG to implement the standalone rate schedule developed by MSBA on EDG's formatted tariff form and inserting Aggregation and Balancing charges by order in this case.

Respectfully submitted,
RSBIII, LLC



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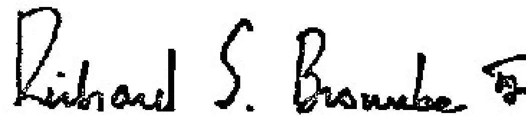
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list for this case on this 23rd day of May, 2022.



Richard S. Brownlee III, Attorney