

**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 REPLY BRIEF
TO PSC STAFF**

Comes now the Missouri School Boards’ Association (hereinafter “MSBA”), by and through counsel, RSBIII, LLC, Richard S. Brownlee, III, respectfully submits its Reply Brief to PSC Staff in accordance with the Commission’s October 20, 2021, *Order Setting Procedural Schedule and Adopting Test Year*.

Staff’s principal arguments are:

1. The current aggregation and balancing rates and cash-out penalties were approved in the 2009 case therefore must be lawful.
2. Empire has not proposed changes to the rates MSBA proposed to change and that MSBA has not proposed evidence of what the charges should be.
3. MSBA “insists that the current Empire tariff is inappropriate for schools because there is not a separate stand-alone tariff for school transportation consumers.”
4. Cash-out is better for Empire than carry-over as the balancing method.

First, Staff asserts the Company’s aggregation balancing charges, and cash-out multipliers/penalties are reasonable and represent the Company’s cost to provide balancing service. Staff calculates that balancing costs have increased but did not analyze the aggregation cost. However, Staff testifies that “it seems unlikely to cover its costs” without any supporting facts. Staff also uses a fatally flawed model which was also used in the 2009 case to change the

rates. Empire clearly outlines the approach to arrive at the costs at the bottom of page 8 of their Brief by citing Staff and describes the method as follows: “Imbalances were treated as injections or withdrawals from storage.” Empire and Staff admittedly fail to use Company costs related to the program, and instead use some theoretical cost based on a method (not cost) using storage. In fact, Empire admitted in the response to MSBA Data Request 7.2 response that it uses market-based gas purchases for balancing, not the cost of storage as was used in Staff’s calculations. Staff suggests Empire is essentially passing on the cost of the multipliers in cash-out. This is misrepresentative. It clearly is the structure they are emulating and not the cost for balancing the school program.

Staff and Empire propose the same pipeline and large transportation customers penalty charges applicable to daily balanced customers only on the imbalance quantity. This is despite the statute requiring no special or daily metering for ESEs and requiring gas corporations to charge their cost of purchasing gas supplies to balance ESEs. Plus, ESEs by statute, pay a balancing service fee on all throughput. There is no penalty in the statute.

The statute also clearly establishes a different set of rules for small school of less than 100,000 therms annually than traditional rules for large pipeline and large transportation customers. Staff and Empire’s positions ignore the statute by supporting penalty multipliers of the gas corporation’s cost of purchasing imbalance gas at market indices.

Standard transportation customers have daily metering and are balanced daily. The statute creates special rules that pertain to ESEs, in part, by not requiring daily telemetry for schools. This dictates that schools must be balanced monthly. Imbalances are either due to delivering too little gas or too much gas compared to what is actually used. STP schools pay a specific aggregation

and balancing charge for the Company's cost of administering the aggregation and balancing services.

Schools pay the aggregation and balancing fee on their entire use, not only on just the difference between the nominated volumes and actual use as is required for standard transportation customers. The revenue from the aggregation and balancing fees from the schools are credited to the PGA. Historically, statutory requirements at the start of the program established the fee was determined to closely approximate the actual cost for this reason. In the years after the fee was established, the Commission required each Company to keep track of costs and submit actual costs if the initial fee wasn't adequate. No gas corporation requested an increase in that aggregation and balancing fee until the Empire 2009 case, at which time the cost was not accurately derived!

Schools are true-up for the monthly balancing after the month. The monthly imbalance is either paid from schools to the Company if more gas is needed over the course of the month than was forecasted or paid from the Company back to schools if less gas is needed over the month than what was forecasted. The statute requires that the true-up to be based on the Company's cost of purchasing gas supplies when schools need to buy an incremental amount of gas more than their supplier delivered. The cost of purchasing imbalance gas supply can be recovered by the gas corporation by either returning the gas in-kind (carry-over) or monetizing the imbalance gas (cash-out). The Company has stated in its response to MSBA Data Request 7.2 that it does not purchase storage gas for the schools' imbalances, rather Empire purchases gas at market prices. The statute requires that the Company charge the schools for that cost without mention of any penalty, in this case up to 50%. Furthermore, Empire charges the maximum cost of the daily gas price over the month if schools are paying Empire and only pay the minimum daily cost of gas over the course of the month if Empire is paying schools.

Empire again cites Staff's financial analysis which is inaccurate and a misrepresentation of the calculation of the credits from cash-out. They show netting of payments to and from the schools to the Company to try to minimize the impact rather than showing how much extra schools paid to the Company and how much schools were shorted on amounts owed to them due to 1) the minimum price being paid back to schools or maximum price when schools pay the Company and 2) the penalties on the cash-out of up to 50%. Regardless, it isn't a question of magnitude but instead is a question of legality and reasonableness of rates.

Regarding rates set in previous cases, Staff states that those rates were established in a prior case and therefore must be legal. As we have stated, MSBA was not informed of the 2009 rate case. The methodology adopted to arrive at a cost representation for the aggregation and balancing charges was fatally flawed as it does not represent the Company's cost to provide the STP service. Staff used the same flawed approach to state that these costs have increased rather than decreased but again, there is no support that these are the Company's current costs due to the invalid calculation.

MSBA believes that all rates should be able to be challenged in a rate case rather than just the proposed rate changes. Otherwise, with the current rates so high, Empire may never attempt to change them and thus can never be challenged. Further, MSBA attempted to work with Empire and Staff in 2018/2019 and Staff essentially stopped Empire from filing an agreed-upon rate schedule based on its position that it couldn't be changed outside of a rate case. Therefore, MSBA is now attempting to make the desired changes in the current case but is facing opposition suggesting we need to wait for the next rate case at some unknown future date.

Staff asserts that MSBA hasn't provided any evidence for what the costs should be. That is not the burden of the schools in this case. MSBA does not have Empire's cost information and thus Empire should hold the burden to justify rates, not a customer like MSBA.

To summarize the statute argument, Empire and Staff positions fail to recognize the Statute in its entirety. Paragraph 4 subparagraph 2 of the statute states:

“(2) Provide for the resale of such natural gas supplies, including related transportation service costs, to the eligible school entities at the gas corporation's cost of purchasing of such gas supplies and transportation, plus all applicable distribution costs, plus an aggregation and balancing fee to be determined by the commission, not to exceed four-tenths of one cent per therm delivered during the first year; and”

The Staff and Company's position appears to break apart Paragraph 4 Subparagraph 2 to fit their position. Their interpretation disconnects the first part of the paragraph describing the gas corporation's cost from the aggregation and balancing fee.

However, the intent is clear with Paragraph 5:

“...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 history is also clear as to the intent. The Commission required companies to report their cost for aggregation and balancing annually and adjust it if they found the cost to be lower or higher than the minimum set initially. After 3 years of reporting, no gas company's reported cost exceeded the initial rate.

The statute is a complete document and must be interpreted as a whole. Staff and Empire have supported their positions by quoting parts of one section. For example, Staff and Empire have interpreted part of one sentence in Subparagraph 2 of Paragraph 4 by effectively putting a period after “...at the gas corporation's cost of purchasing of such gas supplies and transportation, ...” This subparagraph specifies to the Commission that gas corporations will charge their cost of purchasing gas supplies and other charges, such as transportation which the Commission establishes for all customers in the course of a rate case. Paragraph 5 of the statute is a tandem requirement to Subparagraph 2 of Paragraph 4 which prevents cross-subsidization either from schools to PGA customers or vice versa by requiring the gas Company to charge its cost of purchasing gas in Subparagraph 2 of Paragraph 4 and its incremental cost of aggregation and balancing services in Paragraph 5. There can be no cross-subsidization if the schools are paying for the Company’s incremental cost of the aggregation and balancing service and the Company’s cost of purchasing imbalance gas supplies.

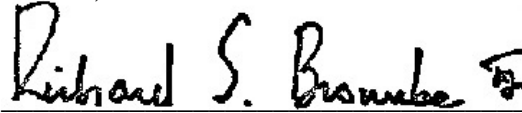
Staff suggest the cash-out multipliers and gas costs that are somewhat based on market indices are reasonable. They state that cash-out “...multipliers decrease the likelihood that the cash-out prices would be advantageous in relation to the daily spot prices.⁴¹ between these prices could create situations where it would be advantageous for a transportation customer to buy or sell gas to the gas corporation at an average price that is advantageous relative to the spot price, and, therefore, create large imbalances.⁴² Large imbalances could cause other customers’ gas supply, transportation, or distribution costs to go up.⁴³ Multipliers discourage imbalances and protect the costs paid by other customers by reducing such opportunities.⁴⁴”

Staff fails to realize 1) that the program was set up to prevent this cross-subsidization, 2) that this can also be a **benefit to the PGA/ACA** just the same way it can be a benefit to the schools,

and 3) there has never been a complaint of Marketer manipulation in the twenty years the school program has existed, for any Marketer on any Missouri gas utility. Even though there is no history in 20 years to warrant the concern, Empire could adopt similar language as is in the Spire tariff which allows Spire to specify Marketer deliveries on any given day, so it takes that possibility of manipulation away to alleviate Staff's concern.

Finally, Staff states that MSBA "insists" the current tariff is inappropriate for schools. In fact, all parties agree that it would be cleaner and better to be a separate section and even committed to working towards that in the future saying it is too hard and complex to do it during this case, yet when presented with a draft tariff section specifically for STP, Staff isn't willing to consider it.

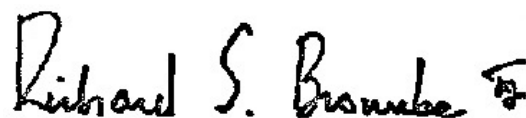
Respectfully submitted,
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CERTIFICATE OF SERVICE

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 2nd day of June, 2022.



Richard S. Brownlee III, Attorney