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**

<u>MISSOURI SCHOOL BOARDS' ASSOCIATION</u>
<u>POST-HEARING REPLY BRIEF TO</u>
<u>OFFICE OF THE PUBLIC COUNSEL</u>

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 Public Counsel in accordance with the Commission's October 20, 2021, *Order Setting Procedural Schedule and Adopting Test Year*.

Public Counsel's principal argument is a "near certainty" that a shift in commodity costs will occur between the schools using market aggregators and the Company's non-transportation customers. They describe this as a cross-subsidization from Company non-transportation customers to qualifying schools ("ESEs").

First, they have produced no factual evidence in this case to support that position. Further, to our knowledge this concern has never been a reality in any gas rate case or complaint since 2002, the date of enactment of Section 393.310 RSMo.

OPC may not understand that the statute establishes special rules only for qualifying schools regarding how it affects the PGA/ACA and it very deliberately protects against the very concern that the OPC cites as its reason to deny MSBA's requests for changes to regain compliance with the statute.

The Statute prevents cross-subsidization under subparagraph 2 of Paragraph 4 and Paragraph 5. It 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.

Paragraph 5 states: "…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." (Emphasis added) Together these two paragraphs provide a statutory quid pro quo.

Important to remember is that ESEs must be charged the gas corporations' cost of purchasing gas supplies and transportation for ESEs which is only for imbalance gas (emphasis added). This is because ESEs are transportation customers which purchase their own supply from marketers, plus ESEs pay the gas corporation the Commission-approved tariff rates for distribution plus an aggregation and balancing charge as determined by the Commission. Because the school transportation program was new in 2002 and there were no prior costs recorded for aggregation and balancing, this statute also set the aggregation and balancing charge at $0.004 per therm for the first year.

The statute also requires there would be no negative financial impact on the gas corporation or its other customers by requiring that the gas corporation charge ESEs their **incremental costs** (emphasis added). This means that services for aggregation, balancing, cash-out and pipeline capacity releases are required by statute to be at the gas corporations' incremental cost of providing that service – no more and no less. Consequently, there will be neither negative impacts on others nor penalties to eligible small school entities.

Again, the drafters of the school statute had the same concern as the OPC for costs to non-transportation customers. The Commission recognized this cross-subsidization concern in 2002 by ordering each gas corporation to implement the statute by recording and reporting its incremental costs of providing aggregation and balancing services to ensure there not be cross-subsidization. To comply with the statute and prior Commission orders, Empire must provide incremental cost support for its aggregation and balancing charges which it has not done in this case. No gas corporation reported incremental costs that exceeded the statutory minimum of $0.004/ therm until Empire's 2009 rate case. That case was flawed because it did not follow the statutory requirements of incremental cost support and instead relied on a manufactured storage model that had no relationship to actual ESE transportation services.

OPC also cites a scenario in which the difference in the cost of gas for imbalances can be significant and asserts that the costs ultimately flow through the PGA/ACA. While accurate in part, they fail to realize 1) that the school program was statutorily set up to prevent this cross-subsidization and 2) that this can also be a slight benefit to the PGA/ACA just the same way it can be a slight benefit to the schools.

OPC has a concern that Marketers could manipulate deliveries, but they and the Commission must also recognize there has never been a complaint of Marketer manipulation in the twenty years the school program has existed. With no history in 20 years to warrant the concern, EDG could adopt similar language as is in the Spire tariff. This allows Spire to specify Marketer deliveries on any given day, so it takes that possibility of manipulation away to alleviate OPC's concern.

Standard transportation customers have daily metering and are balanced daily. Again, the statute does not require daily telemetry for schools under the School Transportation Program

("STP"), in fact, it prohibits requiring such for most schools. In essence, it dictates that STP schools must be balanced monthly. Transportation imbalances are either due to delivering too little gas or too much gas compared to what is actually used. The school program requires a payment of an aggregation and balancing charge for the Company's cost for the aggregation and balancing services. This aggregation and balancing charge is applied to ESE's 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 charges from ESEs are credited to the PGA to prevent cross-subsidization.

ESEs are trued-up for the monthly balancing after the month. The monthly imbalance is either paid from schools to the gas corporation (if more gas is needed over the course of the month than was forecast) or paid from the gas corporation back to schools (if less gas is needed over the month than what was forecast). The statue requires that the true-up to be based on the gas corporation's cost of purchasing gas supplies in the scenarios in which schools need to buy an incremental amount of gas more than their supplier delivered.

This cost of purchasing imbalance gas supply can be recovered by the gas Company by either returning the gas in-kind (carry-over) or monetizing the imbalance gas (cash-out).

OPC must understand Empire does not purchase storage gas for transportation customers like ESEs. Rather Empire purchases gas at market prices. The statute requires that the Company charge the schools for that cost without mention of any penalty of 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. To summarize, under Empire's rates, ESEs have a "triple whammy":

1. Aggregation and balancing charges on the entire load rather than just imbalances, plus
2. penalties on monthly imbalance, plus
3. the highest or lowest gas price depending on who is paying whom, all benefitting PGA customers.

The statute is a complete document and must be interpreted as a whole. Paragraph 5 has tandem requirements to prevent cross-subsidization either from schools to PGA customers or vice versa by requiring the gas Company to charge its cost of purchasing gas (Subparagraph 2 of Paragraph 4) and its incremental cost of aggregation and balancing services (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 Empire's cost of purchasing imbalance gas as specified by the statute when all paragraph and sentences are taken together.

Finally, OPC states, "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." The technical aspects of this process are complex but hopefully the MSBA has demonstrated just as OPC suggests that the statute intentionally and deliberately establishes a structure that helps prevents cross-subsidization. MSBA has gone a step further and demonstrated not only that the statute provides for non-discriminatory cost allocation but even that the current EDG tariff is discriminatory with its unreasonable aggregation and balancing charge and highly punitive cash-out structure which is in conflict with the statute. OPC suggests parties get together to resolve issues in the next rate case but respectively, MSBA was denied the opportunity to deal with this issue in 2018-2019 and was told to wait until the next rate case which is now.

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