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
EMPIRE DISTRICT GAS COMPANY

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 Empire District Gas Company (hereinafter "Empire" and "the Company") in accordance with the Commission's October 20, 2021, *Order Setting Procedural Schedule and Adopting Test Year.*

The Company relies almost entirely on Staff positions in this case. Staff has no burden of proof. This is a gas company rate case with no factual support from the Company!

Empire states that the current aggregation and balancing charges and cash-out multiplier penalties were approved in the 2009 case as a result of a settlement, thus are presumed to be lawful. Empire references Section 386.270 RSMo and states that no party has ever brought a suit to find the aggregation, balancing and cash-out rates to be unreasonable or unlawful and therefore Commission approval in 2009 is prima facia evidence that the current rates were and are just and reasonable going forward ad infinitum. Empire's reference to 386.270 RSMo is misplaced; this statute pertains to a challenge of past rates and relief in the form of a refund for past overcharges. In this pending rate case, MSBA is not requesting relief from past rates but is rightly challenging whether proposed past rates are just and reasonable for future application.

Ironically, MSBA was never 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 costs due to the invalid calculation which uses a proxy storage cost methodology instead of the actual costs or at least the method in which the costs are incurred.

Empire mentions that the aggregation and balancing rates and cash-out penalties were established in a Stipulation: "The Commission approved a stipulation that settled the issue in that case and established the current fees for aggregation, balancing and cash-out charges for small and medium transportation customers. These fees have remained unchanged for the last 12 years. Since these rates were originally approved by the Commission in Case No. GR-2009-0434, they are presumed to be lawful and reasonable under Section 386.270 RSMo". Again, the purpose of the school intervention in this case is to challenge those rates.

Regarding "cash-out" and "carryover", Empire states: "Under the cash-out method of balancing, transportation customers or aggregators pay for or receive credits for their imbalances at a price that recognizes the market cost of gas and the utility resources that are used to deal with imbalances." By stating "…at a price that recognizes the market cost of gas…", it is inferring it uses market cost, yet it designed the rates for this service entirely based on storage costs and interstate pipeline methodology. Further, Empire conveniently omits the cash-out multipliers that are punitive penalties under some of the imbalance tiers. There is no mention of multipliers in the statute. In fact, just the opposite, the statute states the charges are to be at the Company's cost of gas.

Empire also states that the statute "…does not require the Commission to establish that these aggregation, balancing, and cash-out charges "at cost."" Again, Empire takes the same

position as Staff and appears to take part of a paragraph, out of part of the statute, out of context to justify its position.

Empire fails to read the school 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"

Empire's position appears to break apart Paragraph 4 Subparagraph 2 to fit its position. Their interpretation disconnects the first part of the paragraph describing the gas corporation's cost from the aggregation and balancing fee: Empire incorrectly states: "Section 393.310 requires that the aggregation and balancing fee must be set at the level determined by the Commission. The statute does not mandate that the method to be used or that the Commission must establish the aggregation, balancing and cash-out fees "at cost.""

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 statutory history is also clear as to its intent. The Commission required companies to report their cost for aggregation and balancing annually. After 3 years of reporting, no gas company's reported cost exceeded the initial rate.

Again, for the following conclusions we have no Company supporting facts to substantiate these conclusions. Empire asserts that its aggregation, balancing charges, and cash-out multipliers/penalties are reasonable and represent the Company's cost to provide balancing service. For example:

1. Empire cited Staff testimony that the aggregation cost is probably too low but offers no company factual evidence of any analysis.

2. The Company also notes that the 2009 case in which these rates were established, the witness "…based their balancing fee on the cost of storage and transportation services on Southern Star Central Gas Pipeline ("SSC")." This method uses a fatally flawed model used in the 2009 case to change the rates and again in this case to justify the current rates. Empire clearly outlines the approach to arrive at the costs by citing Staff and describes the method as follows: "Imbalances were treated as injections or withdrawals from storage." EDG and Staff admittedly don't use Company costs related to the program and instead uses some theoretical cost based on a method (not cost) using storage as the basis. Empire admitted through its response to DR 7.2 that it uses the cost of market-based gas purchases for balancing, not the cost of storage as was used in Staff's calculations. Empire continues to cite Staff's testimony and calculations but does not offer any factual evidence of analysis of its own.

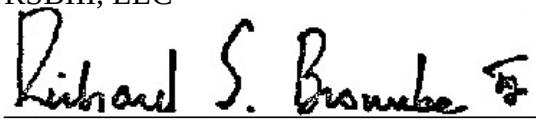
Finally, it is crystal clear that the method to establish the aggregation and balancing charges which were established in 2009 and repeated by Staff in testimony in this case does not reflect the "incremental cost" for aggregation and balancing for the school program. The statute clearly requires these charges be cost-based which is the standard for all regulated rates.

Empire recognizes the schools are recommending adopting the carry-over method, but states how the cash-out method of balancing is preferable. Once again, Empire cites Staff's explanations and even mentions that cash-out is the predominant method of balancing in Missouri when in fact, almost 80% of the MSBA ESEs are on the Spire system which uses carry-over. As stated repeatedly, MSBA does not disapprove of the cash-out method as long as it is representative of the Company's cost as required by the statute.

Finally, Empire again cites Staff's financial analysis which is an inaccurate 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 monthly price being paid back to schools or maximum monthly 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.

Empire disagrees with the MSBA that a separate section for the STP be established within its tariff in this case. It agrees with Staff that there isn't sufficient time to consider a standalone STP tariff but would work with MSBA and Staff to do so in the future. 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, Empire isn't willing to consider it.

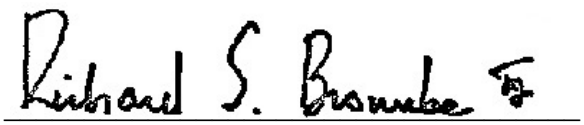
Respectfully submitted,
RSBIII, LLC



Richard S. Brownlee III, MO Bar #22422
Attorney for Missouri School Boards' Association
121 Madison Street
Jefferson City, MO 65101
(573) 616-1911
rbrownlee@rsblobby.com

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