

**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 )  
Tariffs to Change its Rates for Natural Gas )  
Service )

**File No. GR-2021-0320**  
**Tariff No. YG-2022-0040**

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**REPORT AND ORDER**

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**Issue Date:** June 23, 2022

**Effective Date:** July 3, 2022

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## **APPEARANCES**

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**REGULATORY LAW JUDGE:** Ronald D. Pridgin

# REPORT AND ORDER

## I. Procedural History

### **A. Tariff Filings, Notice, and Intervention**

On August 23, 2021, The Empire District Gas Company d/b/a Liberty filed tariff sheets designed to implement a general rate increase for utility service. The tariff sheets bore an effective date of September 22, 2021. In order to allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the tariff sheets were suspended until July 20, 2022.

The Commission directed notice of the filings and set an intervention deadline. The Commission granted intervention requests from Midwest Energy Consumers Group, Symmetry Energy Solutions, LLC and Missouri School Boards' Association.

### **B. Local Public Hearings**

The Commission conducted two virtual local public hearings.<sup>1</sup>

### **C. Stipulation and Agreement**

On April 12, 2022, Liberty, the Staff of the Commission (Staff), the Office of the Public Counsel (OPC), and Midwest Energy Consumers Group (MECG) filed a Stipulation and Agreement (Stipulation). The Stipulation resolved all revenue requirement and rate design issues except for issues raised by the Missouri School Board Association (MSBA).

The Stipulation allows for a \$1 million rate increase, of which roughly \$700,000 would come from residential ratepayers. Liberty has about 38,000 residential customers.

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<sup>1</sup> Tr. Vols. 1-2.

That \$700,000 rate increase for 38,000 residential customers means about an \$18 annual increase, or a \$1.50 per month increase, for an average residential customer.

Although the Stipulation was not signed by all parties, the Commission can treat it as if it were unanimous because no party filed a timely objection.<sup>2</sup> The Commission has reviewed the Stipulation, and finds it reasonable. Thus, the Commission will approve the Stipulation.

#### **D. Evidentiary Hearing**

The evidentiary hearing was held on April 25, 2022.<sup>3</sup>

#### **E. Case Submission**

During the evidentiary hearing held at the Commission's offices in Jefferson City and via WebEx, the Commission admitted the testimony of four (4) witnesses, received nine (9) exhibits into evidence, and took official notice of certain matters. Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on June 2, 2022, and the case was deemed submitted for the Commission's decision on that date.<sup>4</sup>

## **II. General Matters**

#### **A. General Findings of Fact**

1. Liberty is a corporation organized and existing under the laws of the State of Kansas, with its principal office located at 602 Joplin Street, Joplin, Missouri 64802.

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<sup>2</sup> Commission Rule 20 CSR 4240-2.115(2).

<sup>3</sup> Tr. Vol. 3.

<sup>4</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

Liberty is a wholly-owned subsidiary of The Empire District Electric Company and an indirect subsidiary of Liberty Utilities Co.<sup>5</sup>

2. Liberty is a “gas corporation” and a “public utility” as those terms are defined in Section 386.020 RSMo. Liberty is thus subject to the jurisdiction of the Commission.<sup>6</sup>

3. OPC is a party to this case pursuant to Section 386.710(2), RSMo<sup>7</sup>, and by Commission Rule 20 CSR 4240-2.010(10).

4. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

5. Liberty provides natural gas service to approximately 44,000 customers in the Missouri counties of: Cooper, Henry, Johnson, Lafayette, Morgan, Pettis, Platte, Ray Saline, Vernon, Chariton, Grundy, Howard, Linn, Atchison, Holt, Nodaway, Andrew and Livingston.<sup>8</sup>

6. Approximately 87% of those customers are residential customers.<sup>9</sup>

7. Liberty’s distribution system is comprised of approximately 1,038 miles of mains and 42,938 active service lines.<sup>10</sup>

8. The Commission finds that any given witness’ qualifications and overall credibility are not dispositive as to each and every portion of that witness’ testimony. The Commission gives each item or portion of a witness’ testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific

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<sup>5</sup> Ex. 3, p. 3.

<sup>6</sup> Ex. 3, p. 3.

<sup>7</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

<sup>8</sup> Ex. p. 3.

<sup>9</sup> Ex. 10, p. 4.

<sup>10</sup> Ex. 3, p. 3.

weight and credibility decisions throughout this order as to specific items of testimony as is necessary.<sup>11</sup>

9. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.<sup>12</sup>

## **B. General Conclusions of Law**

Liberty is a “gas corporation” and a “public utility” as defined in Sections 386.020(18) and 386.020(43), RSMo, respectively, and as such is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission’s subject-er jurisdiction over Liberty’s rate increase request is established under Section 393.150, RSMo.

Sections 393.130 and 393.140, RSMo, mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed increase is just and reasonable rests on the corporation seeking the rate increase. As the party requesting the rate increase, Liberty bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, Liberty must

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<sup>11</sup> Witness credibility is solely a matter for the fact-finder, “which is free to believe none, part, or all of the testimony”. *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

<sup>12</sup> An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

meet the preponderance of the evidence standard.<sup>13</sup> In order to meet this standard, Liberty must convince the Commission it is “more likely than not” that Liberty’s proposed rate increase is just and reasonable.<sup>14</sup>

### **III. Disputed Issues**

*Should the Commission approve the recommendations filed on behalf of the MSBA?*

*a. Should the Commission modify Liberty’s Aggregation, Balancing, and Cashout Charges in this case?*

*b. Should the Commission establish a section within Liberty’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?*

#### **A. Findings of Fact**

16. MSBA is a 501(c)(6) not-for-profit corporation representing 388 schools and school districts in Missouri as a trade association with approximately 2,000 individual school locations, several of which have multiple natural gas meters or accounts.<sup>15</sup>

17. MSBA sponsors a statewide aggregate natural gas purchasing program which enables schools to take services under all Missouri gas corporations’ School Transportation Program (STP) tariffs.<sup>16</sup>

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<sup>13</sup> *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).

<sup>14</sup> *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 v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>15</sup> Ex. 300, p. 4.

<sup>16</sup> Ex. 300, p. 4.

18. Aggregation pools are treated as a single transportation customer for the purpose of balancing. All eligible school entities that participate in the school aggregation program are in pools.<sup>17</sup>

19. An aggregator is a gas supplier or marketer that contracts with transportation customers to aggregate and supply natural gas for a pool. An aggregator estimates how much gas will be needed by the pool, and then arranges supply out of its own resources or from gas it purchases.<sup>18</sup>

20. Balancing is a process by which a transportation service provider (TSP) and a shipper of gas reconcile the differences between the amounts of gas the TSP receives and delivers for the shipper.<sup>19</sup>

21. Balancing is important because natural gas pipelines and gas corporations must assure that the amount of gas they receive into their transmission or distribution systems closely matches the amount they deliver to customers.<sup>20</sup>

22. Transportation customers' imbalances could cause Liberty to buy additional gas on the spot market, inject or withdraw gas from storage, or adjust other supply purchases. All of these actions could cause the sales customers' gas costs to be higher than they otherwise would have been if the costs associated with the transportation customers' imbalances are not recovered from the transportation customers.<sup>21</sup>

23. Transportation customers are responsible for balancing. All of the gas pipelines that transport gas to Liberty have balancing provisions in their tariffs.

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<sup>17</sup> Ex. 100, p. 3.

<sup>18</sup> Ex. 100, p. 3.

<sup>19</sup> Ex. 100, p. 3.

<sup>20</sup> Ex. 100, p. 4.

<sup>21</sup> Ex. 100, p. 4.

Specifically, these pipelines are ANR Pipeline Company, Panhandle Eastern Pipe Line Company (“PEPL”), and Southern Star Central Gas Pipeline, Inc. (“SSC”).<sup>22</sup>

24. All Missouri gas corporations’ tariffs have balancing provisions for transportation customers. Other than Spire Missouri, all Missouri gas corporations, including Liberty, use cash-out balancing for schools.<sup>23</sup>

25. Cash-out balancing is administratively simple compared to other methods of balancing. In addition, cash-outs provide an economic incentive to balance. The Commission has previously found cash-out balancing a just and reasonable way to resolve imbalances of school aggregation pools and other transportation customers.<sup>24</sup>

26. MSBA proposes that the Commission order Liberty to adopt the carry-over method of balancing instead of the current cash-out method. The carry-over method is currently only used by Spire Missouri and requires school aggregation pools to balance by adjusting nominations in the month following the month in which an imbalance occurs.<sup>25</sup>

27. Liberty’s system is sufficiently different from Spire Missouri’s system that the carry-over method of balancing would be inappropriate for Liberty. For example, Spire Missouri operates extensive distribution systems with high-pressure lines that provide it with greater flexibility of managing line pack than that of a smaller utility like Liberty.<sup>26</sup>

28. Line pack is the amount of natural gas in a distribution or transmission system. Natural gas is compressible, so as the pressure in a gas line goes up or down, so does the line pack. A gas line that can operate at a higher pressure can have more

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<sup>22</sup> Ex. 100, p. 5.

<sup>23</sup> Ex. 100, p. 5.

<sup>24</sup> Ex. 100, p. 6.

<sup>25</sup> Ex. 100, pp. 5-6.

<sup>26</sup> Ex. 100, p. 7.

line pack than a line of the same size that is limited to a lower pressure. Similarly, a gas line that can operate with broader range of pressures will have more flexibility in the amount of line pack it holds.<sup>27</sup>

29. Also, Spire Missouri (East) has on-system storage, which no other Missouri gas corporation has. This provides Spire Missouri with some capacity to respond to imbalances without resorting to supply adjustments or storage on interstate pipelines.<sup>28</sup>

30. In addition, Spire Missouri (West) has schools within its pools on different meter reading schedules, making it difficult to properly determine imbalances and calculate cash-outs.<sup>29</sup>

31. Multipliers are intended to encourage transportation customers and aggregators to closely balance their systems. That is done by charging a higher price for increasingly severe under-deliveries and crediting customers decreasing prices for more severe over-deliveries.<sup>30</sup>

32. Liberty passes on the multipliers that apply to its imbalances on upstream pipelines to its transportation customers. Each of these pipelines has its own schedule of cash-out multipliers, but Liberty applies the least severe of them to all of its service area.<sup>31</sup>

33. The Commission established Liberty's charges for aggregation, balancing, and cash-out in File No. GR-2009-0434.<sup>32</sup>

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<sup>27</sup> Ex. 100, p. 7.

<sup>28</sup> Ex. 100, p. 7.

<sup>29</sup> Ex. 100, p. 7.

<sup>30</sup> Ex. 100, p. 15.

<sup>31</sup> Ex. 100, p. 16.

<sup>32</sup> Ex. 100, p. 12.

34. Liberty's costs for those services have increased since the Commission's order in File No. GR-2009-0434, but Liberty has not asked to increase its charges to cover those cost increases.<sup>33</sup>

35. A separate tariff is not required nor necessary to implement a school aggregation program. No law requires a stand-alone tariff, and one is not practical in this case.<sup>34</sup>

36. A new tariff is likely to have complex interactions with the existing transportation tariff and possibly other tariff provisions, and these may result in unintended consequences if the tariff is not thoroughly reviewed.<sup>35</sup>

## **B. Conclusions of Law**

Section 393.310 RSMo states:

3. Each Missouri gas corporation shall file with the commission, by August 1, 2002, a set of experimental tariffs applicable the first year to public school districts and applicable to all school districts, whether charter, private, public, or parochial, thereafter.

4. The tariffs required pursuant to subsection 3 of this section shall, at a minimum:

(1) Provide for the aggregate purchasing of natural gas supplies and pipeline transportation services on behalf of eligible school entities in accordance with aggregate purchasing contracts negotiated by and through a not-for-profit school association;

(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

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<sup>33</sup> Ex. 100, pp. 12-13.

<sup>34</sup> Ex. 100, pp. 17-18.

<sup>35</sup> Ex. 100, p. 18.

(3) Not require telemetry or special metering, except for individual school meters over one hundred thousand therms annually.

**C. Decision**

The Commission concludes it should not modify Liberty’s aggregation, balancing, and cash-out charges. The Commission further concludes it should not order a standalone tariff for the School Transportation Program.

The Commission finds that the language in Section 393.310.4 RSMo which states “including related transportation service costs,” and “plus an aggregation and balancing fee to be determined by the commission” contradicts MSBA’s argument that it is entitled to transportation service from Liberty “at cost.” Further, Liberty’s costs have increased since the Commission set the aggregation, balancing, and cash-out charges in File No. GR-2009-0434.

MSBA’s argument that it did not get notice of File No. GR-2009-0434 also fails. The Commission sent its customary notice about that case, and received applications to intervene. MSBA cites no law stating it was entitled to actual notice. Further, its argument is an impermissible collateral attack on the Commission’s order in that case.

The Commission encourages Liberty to file a standalone tariff for its School Transportation program no later than its next general rate case. Such a filing should give parties enough time to study the tariffs impact on Liberty’s other tariffs and programs.

**IV. Decision**

In making this decision, as described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has

failed to consider relevant evidence, but indicates rather that the material was not dispositive of this decision.

Additionally, Liberty provides safe and adequate service, and the Commission concludes, based upon its review of the whole record, that the rates approved as a result of this order are just and reasonable and support the continued provision of safe and adequate service. The revenue increase approved by the Commission is no more than what is sufficient to keep Liberty's utility plants in proper repair for effective public service and provide to Liberty's investors an opportunity to earn a reasonable return upon funds invested.

By statute, orders of the Commission become effective in thirty days, unless the Commission establishes a different effective date.<sup>36</sup> In order that this case can proceed expeditiously, the Commission will make this order effective on July 3, 2022.

**THE COMMISSION ORDERS THAT:**

1. The Stipulation is approved, and its signatories are ordered to comply with its terms.
2. The tariff sheets submitted on August 23, 2021, assigned Tariff No. YG-2022-0040 are rejected.
3. Liberty is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order.
4. Liberty shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 20 CSR 4240-10.060 no later than June 29, 2022.

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<sup>36</sup> Section 386.490.3, RSMo.

5. This Report and Order shall become effective on July 3, 2022.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff  
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and  
Kolkmeier CC., concur.

Pridgin, Regulatory Law Judge

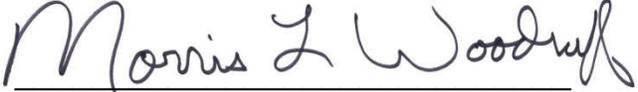
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS** my hand and seal of the Public Service Commission,  
at Jefferson City, Missouri, this 23<sup>rd</sup> day of June, 2022.



  
\_\_\_\_\_  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**June 23, 2022**

**File/Case No. GR-2021-0320**

**Missouri Public Service Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.