BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Gas Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company	))))	**Case No. GR-2009-0434** Tariff No. YG-2009-0855

STATEMENT OF POSITIONS OF CONSTELLATION NEWENERGY-GAS DIVISION, LLC.

COMES NOW Constellation NewEnergy-Gas Division, LLC (hereinafter referred to as "Constellation"), and submits its Statement of Positions in this matter as follows:

Transportation Tariff Issues

Witnesses for Constellation:

Richard Haubensak – Direct, Rebuttal and Surrebuttal

Wendi P. Brown – Rebuttal and Surrebuttal

Issues:

1. Should the Commission approve the changes proposed by Empire District to its Transportation Service tariff, to-wit:

i.) Require small-volume transportation customers to install telemetry equipment, at their own cost, including existing small-volume transportation customers.

No. Constellation opposes Empire's proposal to require that all small-volume transportation customers install telemetry equipment, at the customer's expense, including existing small-volume transportation customers. Small-volume transportation customers on the Empire system have never been required to have telemetry, since the small-volume service began in 2001. (Haubensak Direct, p. 4, ll. 7-11, ll. 15-16; p. 6, ll. 10-12.) Telemetry equipment measures the volume of gas taken daily (and sometimes hourly) by the customer. This equipment is certainly necessary for measuring the volume of gas taken by large-volume industrial customers. (Haubensak Direct, p. 4, ll. 1-5.) However, small-volume transportation customers have always had the option of paying for a small-volume balancing service in lieu of having telemetry equipment installed. (Haubensak Direct, p. 4, ll. 14-19.)

Even though requiring telemetry is a major change affecting many small-volume transportation customers, this proposal is not stated anywhere in Empire's direct testimony in this case. Mr. Overcast's direct testimony for Empire (on page 37, beginning at line 19) makes the installation of telemetry equipment sound optional. However, Empire's proposed tariff sheets make it clear that the Company "*requires all*" small volume transportation customers "to have installed and operating telemetry equipment and reimburse the Company for the cost incurred by Company to install telemetry equipment …." (Emphasis added.) (Haubensak Direct, p. 3, ll. 13-21.) The alternative to telemetry which is present in the existing Empire tariff, namely, balancing service, is not provided for in Empire's proposed tariff in this case. (*Compare,* existing tariff Sheet 29, D. 2 and Sheet 34, D. 2, to proposed tariff Sheets 33, 34 and 35, F. 2, G. 2 and H. 2.)

As Mr. Haubensak explains in his testimony, telemetry is not necessary to predict the daily usage of small-volume customers. (Haubensak Rebuttal, p. 3, ll. 4-6.) Telemetry equipment is not required for small-volume transportation in either Iowa or Nebraska and in Kansas, the major LDCs do not require telemetry equipment to be installed for small-volume transportation customers. (Haubensak

Rebuttal, p. 3, ll. 7-22.) There are additional approaches that Empire could use, as do other LDCs, to minimize any costs that small-volume transportation customers put on the system. (Haubensak Rebuttal, p. 5, l. 14 – p. 6, l. 17.)

Empire has not demonstrated the reasonableness of this dramatic change. Empire's proposal to require telemetry for all (even existing) small-volume transportation customers should be rejected by the Commission. Rather, small-volume transportation customers should be allowed to continue to obtain (and pay for) balancing service from Empire, in lieu of telemetry.

Should the Commission approve the changes proposed by Empire District to its Transportation Service tariff, to-wit:

ii.) Make small-volume balancing service available only to School Customers of transportation service and not to other existing small-volume transportation customers.

No. As discussed above, Constellation opposes Empire's proposal to eliminate balancing service for small volume transportation customers. Balancing service is usually a service provided by the utility in lieu of requiring telemetry equipment. This is precisely the service offered by Empire under the existing tariff, which has been eliminated in the proposed tariff with no discussion or explanation. Under Empire's proposed tariff in this case, Empire proposes to offer balancing service only for the School Customers on transportation. The purpose of balancing service, and the related charge for balancing service, is to offset any balancing penalties Empire incurs from the pipeline, or related storage costs, that are the responsibility of the small volume transportation customers. By charging the small volume transportation customers for this service, and crediting the related revenues back to gas costs for the remaining sales customers, the sales customers are protected from incurring any gas-related costs or penalties that the transportation customers have caused on the system. (Haubensak Direct, p. 4, l. 21 – p.5, l. 10.)

Should the Commission approve the changes proposed by Empire District to its Transportation Service tariff, to-wit:

iii.) Raise the charge for small-volume balancing service from $0.0075 per Ccf to $0.025 per Ccf.

No. Empire proposes that its charge for small-volume balancing service be raised from $0.0075 per Ccf to $0.025 per Ccf, ***an increase of 333%***. Empire did not provide any justification for this dramatic increase, nor even mention it, in its direct testimony in this case. (Haubensak Direct, p. 6, ll. 12-15.) Only in the Rebuttal Testimony of Mr. Scott Keith of Empire did EDG purport to create a cost-justification for its proposed increase for this service.

Constellation calculated the cost of small-volume balancing, based on costs in the Southern Star tariff, as $0.0757 per dekatherm (or Mcf). (Brown Surrebuttal, p. 2, l. 13 – p. 3, l. 2; Schedule WPB-2.) This translates to $0.00757 per Ccf, which is almost exactly what Empire currently charges for small-volume balancing service under its existing tariff ($0.0075 per Ccf). There is no justification for Empire's proposed 333% increase in the charge for small-volume balancing service.

Should the Commission approve the changes proposed by Empire District to its Transportation Service tariff, to-wit:

iv.) Add a new Daily Charge of $1.25 per Mcf for transportation customers whose nominations of gas supplies and deliveries of gas are out-of-balance by more than 10% on a given day.
a) If "no," should all transport customers be subject to a balancing fee?

No. Constellation opposes Empire's proposed, new Daily Charge for transportation customers whose nominations and deliveries are out of balance by more than 10% on a given day. The only Missouri gas LDC that has such a daily charge is Ameren-UE, which is served by Panhandle Eastern Pipeline which, itself, requires daily balancing by its customers (including LDCs). Southern Star Central Pipeline, from which Empire acquires much of its gas supply, does not have daily balancing. (Brown Rebuttal, p. 3, ll. 13-15; Brown Surrebuttal, p. 3, l. 18.) MGE, which also acquires much of its supply from Southern Star, does not have a daily balancing charge. (Brown Rebuttal, p. 3, ll. 15-16; Brown Surrebuttal, p. 4, ll. 15-20.) If Empire is allowed to add its proposed daily charge on imbalances, marketers like Constellation would be subject to a higher level of perfection in nominating gas supplies than Empire is held to by its interstate pipeline, which would be entirely unfair. (Brown Surrebuttal, p. 5, ll. 1-4.)

Empire bases its purported need for this daily charge on its storage costs. Empire's proposal assumes that every dekatherm or Mcf that a marketer is out of balance causes storage costs for Empire. However, this is not an accurate portrayal of what is actually happening on Empire's system. One marketer may be "long" (nominate more than it delivers) on a given day and another marketer could be "short" (nominate less than it delivers), which flattens out the imbalance, thus costing Empire *no* storage costs. (Brown Surrebuttal, p. 2, ll. 7-11.)

Southern Star is not a daily balanced pipeline. As Ms. Brown explains, no transporter is getting charged daily balancing charges from Southern Star. Southern Star allows transporters to carry a ten percent (10%) imbalance from month to month with no costs or penalties charged. Empire could have this same right, but chooses to inject/withdraw their imbalances on a monthly basis. Empire proposes to charge marketers for Empire's storage charges. If marketers are getting charged maximum tariff rates for the storage costs, then marketers should be offered the benefits of storage, *i.e.,* carrying a balance from the injection season to the withdrawal season.[1] No other LDC on Southern Star has implemented daily balancing charges. The other LDCs keep their costs to a minimum by actively managing their daily gas flows. (Brown Rebuttal, p. 4, ll. 3-14; Brown Surrebuttal, p. 3, l. 13 – p. 4, l. 6.)

Further, Empire has not offered to provide intraday meter reads to transportation customers and marketers to help them stay in balance, if Empire is allowed to employ daily balancing requirements. (Haubensak Direct, p. 8, l. 21 – p. 9, l. 13.) Empire has failed to prove the necessity or reasonableness of its proposed daily charge on imbalances. The Commission should reject Empire's proposal.

If the Commission rejects Empire's proposed daily charge for imbalances, as Constellation believes it should, but can show there truly are storage injection and withdrawal costs applicable to transporters other than Empire itself, then

[1] Per the Southern Star tariff, gas is to be injected into storage from April through October and withdrawn from storage from November through March. (Brown Rebuttal, p. 3, ll. 4-6; Schedule WPB-1.)

Empire should consider offering a cost-based balancing service that all transportation customers could purchase to offset these costs. (Haubensak Direct, p. 10, ll. 7-10.) Another possibility would be to identify any transporter that is truly gaming the system and add provisions to the tariff that would require only that specific transporter (or those transporters) to be subject to daily balancing. (Haubensak Direct, p. 10, ll. 10-13.)

Should the Commission approve the changes proposed by Empire District to its Transportation Service tariff, to-wit:

v.) Add language to its transportation tariff regarding Operational Flow Orders (OFOs), including giving EDG the right to issue an OFO in its "sole judgment."

Not without modification. Empire proposes to add considerable, new language to its tariff concerning Operational Flow Orders (OFOs). (Proposed Tariff Sheet 43.) That new language states, at Section P. 1.:

> Company will have the right to issue an Operational Flow Order that will require actions by the Customer to alleviate conditions that, *in the sole judgment of the Company,* jeopardizes the operational integrity of Company's system required to maintain system reliability. Customer shall be responsible for complying with the directives set forth in the OFO. *(Emphasis added.)*

Constellation urges the Commission to require Empire to add explicit language to its transportation tariff limiting the circumstances under which Empire may issue an Operational Flow Order (OFO). When Empire issues an OFO, marketers and transportation customers are held to a much higher standard for balancing their nominations of gas and deliveries of gas to their customers than when an OFO is not in effect. Empire should only be allowed to call an OFO when one has been called by the respective interstate pipeline *or* if there is a true emergency on the Empire system. Empire should not be allowed to call an OFO just for its own convenience with the result that Empire would be imposing possible penalties on the transportation customers and marketers that those customers and marketers are not responsible for. (Haubensak Direct, p. 12, ll. 5-12.)

The Commission should order Empire to add language to its tariff that limits the circumstances under which Empire can call an OFO day or issue an Operational Flow Order (OFO). Specifically, Constellation proposes that the Commission require Empire to add language such as that employed in the Iowa tariff of Mid-American Energy Company. (Haubensak Surrebuttal, p. 2, ll. 1-6; Schedule RJH-3.)

WHEREFORE, Constellation NewEnergy-Gas Division, LLC, respectfully submits this Statement of Positions to the Missouri Public Service Commission in this matter.

Respectfully submitted,

/s/ William D. Steinmeier

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the Office of Public Counsel at opcservice@ded.mo.gov, on the General Counsel's office at gencounsel@psc.mo.gov, and on all counsel of record this 31st day of December 2009.

/s/ William D. Steinmeier

William D. Steinmeier