BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Request of the Empire	)	
District Gas Company d/b/a Liberty for	)	**File No. GR-2021-0320**
Authority to File Tariffs Increasing Rates	)	
For Gas Service Provided to Customers	)	
In its Missouri Service Area.	)	

INITIAL BRIEF OF THE EMPIRE DISTRICT GAS COMPANY D/B/A LIBERTY

COMES NOW, The Empire District Gas Company d/b/a Liberty ("Empire" or "EDG"), and hereby submits its Initial Brief in this matter.

I. INTRODUCTION

On August 23, 2021, EDG filed a rate case requesting a $1.36 million rate increase. This is the first general rate case for the company since 2010. On April 12, 2022, EDG, Staff, Office of the Public Counsel ("OPC"), and the Midwest Energy Consumers Group ("MECG") filed a Stipulation and Agreement ("Agreement") which resolved all revenue requirement and rate design issues in the case. The Agreement was not opposed by any other party, and it is therefore considered a unanimous stipulation and agreement under 20 CSR 4240-2.115. An on-the-record presentation of the Agreement occurred at the conclusion of the evidentiary hearing held on April 25, 2022. (Tr. 105-117) EDG would respectfully request that the Commission approve the unanimous Agreement at its earliest convenience.

II. CONTESTED ISSUES

The parties were not able to settle the issues raised by the Missouri School Boards' Association ("Association" or "MSBA"), and those issues were heard by the Commission in an evidentiary hearing on April 25, 2022. All contested issues involve the School Transportation Program ("STP") which EDG has been operating for the last 20 years. The STP has been working well from EDG's perspective, but EDG is willing to work with the Association and Staff to improve it in the future. MSBA also agrees that the EDG School Transportation Program has been successful over the last twenty years of operation. (Tr. 62)

MSBA has proposed three changes to the Empire transportation service tariff. Two of these issues would involve changes to the current Commission-approved tariff that Empire has not proposed to change. The MSBA has also opposed one of Empire's proposed revisions to clarify that the ultimate customer is responsible to pay the bill if its marketer or aggregator fails to pay for the gas transportation service, as happened during the Winter Storm Uri in February, 2021. During the hearing, EDG's counsel stated that EDG was withdrawing its request to clarify the tariff related to the responsibility of the ultimate customer for charges that remain unpaid by the marketer or agent for the transportation customer. (Tr. 12). The two remaining issues will be addressed below.

1. Should the Commission approve the recommendations filed on behalf of the MSBA?

Both EDG and the Commission Staff recommend that the Commission reject the recommendations filed on behalf of the MSBA. (Ex. 1, Earhart Rebuttal, pp. 4-5; Ex. 2, Earhart Surrebuttal, pp. 1-2; Ex. 100, Patterson Rebuttal, pp. 3-17)

a. Should the Commission modify EDG's Aggregation, Balancing, and Cash-out Charges in this case?

For the reasons stated herein, the Commission should not modify EDG's existing aggregation, balancing and cash-out charges, as suggested by MSBA. (See Ex. 1, Earhart Rebuttal, pp. 4-5; Ex. 2, Earhart Surrebuttal, pp. 1-2; Ex. 100, Patterson Rebuttal, pp. 3-17)

EDG witness Tatiana Earhart explained the Company's position as follows:

> EDG's aggregation and balancing fees are the legal rates approved by the Commission in its last rate case, and EDG has charged them since the effective date of its rates in 2010. EDG believes that the cash-out charges work to provide incentives for the STP pool to stay in balance. Such fees also help reduce the gas commodity fees charged to EDG's firm customers through the Purchased Gas Adjustment (PGA) Clause. Changing the aggregation and balancing fees at this time, either lower or higher, without any analysis on the impact to firm customers, would be inappropriate. (Ex. 1, Earhart Direct, p. 4)

EDG's rates were approved by the Commission in Case No. GR-2009-0434. These charges came about as a result of a settlement in the 2009 rate case. There was extensive testimony on the transportation tariffs and fees from six witnesses representing Empire, Staff, and a gas marketing company that supplied gas to transportation customers. 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.[1]

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[1] Section 386.270 RSMo. states: "All orders prima facie lawful and reasonable. — All rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter."

It is settled law that the legal rate is the filed rate, and it is the duty of the public utility to charge and collect the rate as it is in the tariffs on file with the Commission. See Brooks v. Empire Dist. Elec. Co., 420 S.W.3d 586, 592 (Mo. App. S.D. 2013); Mobile & O.R. Co. v. Southern Sawmill Co., 251 S.W. 434, 436 (Mo. App. St. L.D. 1923). The tariffs submitted by EDG and approved by and on file with the PSC are prima facie lawful until found otherwise by the ruling of a court. Agnew v. Missouri-American Water Company, 567 S.W.3d 652, 662 (Mo.App. E.D., 2018); State ex rel. GTE North, Inc. v. Missouri Pub. Serv. Comm'n, 835 S.W.2d 356, 367-68 (Mo. App. W.D. 1992). No party has ever brought a suit to find the approved aggregation, balancing and cash-out rates to be unreasonable or unlawful. Therefore, the existing rates are the lawful rates and must be charged by EDG. Section 386.270.

(1) Background on Balancing, Aggregation, and Cash-out Fees

Staff witness Patterson explained many of the underlying technical aspects of the issues in this case. 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. When a gas corporation delivers gas for a transportation customer, it is serving the role of TSP and the customer is a shipper. In some cases, including Empire's tariffs for small and medium transportation customers, customers may be aggregated for purposes of balancing. (Ex. 100, Patterson, pp. 4-5)

EDG's tariff includes an aggregation service for small and medium general service transportation customers in its proposed tariff, as it does to their predecessor classes in the current tariff. 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.

An aggregator is a gas supplier or marketer that contracts with transportation customers to aggregate and supply natural gas for a pool. They estimate how much gas will be needed by the pool, and they arrange supply out of their own resources or from gas they purchase. They also arrange for the shipping of gas on interstate pipelines. Empire releases firm interstate pipeline capacity to its transportation customers or their aggregators, and those customers or aggregators control the use of that capacity. (Ex. 100, Patterson Rebuttal, pp. 3-4)

A pool is a group of transportation customers that are aggregated for certain purposes of receiving transportation services. For instance, a pool is treated as a single customer for the purposes of balancing. A single aggregator would source gas supply for all customers in a pool. (Ex. 100, Patterson Rebuttal, p. 4)

Because pools are treated as a single customer for balancing purposes, the over-deliveries and under-deliveries of the customer in the pool are netted out. One would expect the remaining pool imbalance to be less than the imbalances of the individual customer, reducing the average cost of imbalances for the pools. (Ex. 100, Patterson Rebuttal, p. 4)

MSBA is the authorized purchasing agent for approximately 2,329 STP accounts of which approximately 140 are in the Empire service areas. The Consortium's supplier, acting as agent, purchases natural gas on the open market and arranges gas supply, pipeline delivery, and local utility transportation to Missouri school meters pursuant to Section 393.310 RSMo. The total annual Consortium consumption is approximately 35,000,000 therms. (Ex. 300, Ervin Direct, p. 4) The 140 schools in Empire's service area served by MSBA represent approximately six percent (6%) of MSBA's Missouri school accounts. (Tr. 61)

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. Another advantage to cash-outs is that it is a timely economic signal to customers or aggregators about the occurrence and degree of imbalances. Each month, the customer receives a bill or payment indicating its balancing performance. (Ex. 100, Patterson Rebuttal, p. 6)

(2) EDG's Aggregation, Balancing And Cash-out Fees Are Just And Reasonable.

MSBA's principal argument against EDG's aggregation, balancing, and cash-out fees are that these fees are not supported by cost studies filed by EDG and these charges must be established "at cost." (Tr. 20, 24-25, 35) This is simply incorrect. Section 393.310 does not require the Commission to establish these aggregation, balancing, and cash-out charges "at cost." Section 393.310(4)(2) states as follows:

> 4. The tariffs required pursuant to subsection 3 of this section shall, at a minimum:
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> (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;
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> (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, <u>plus an aggregation and balancing fee to be determined by the commission</u>, not to exceed four-tenths of one cent per therm delivered during the first year; and
>
> (3) Not require telemetry or special metering, except for individual school meters over one hundred thousand therms annually. (Emphais added).

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.”

The law (Section 393.310) established an initial fee for aggregation and balancing services for the first year of the program to expedite the adoption of tariffs. Since then, it has been within the Commission’s authority to establish just and reasonable rates for school aggregation and transportation services. (Ex. 100, Patterson Direct, p. 11) This fee has continued to be place since the beginning of the program. (Tr. 92) When the Commission fixed and established EDG’s rates in its last rate case, they are presumed by law to be just and reasonable. Section 386.270 RSMo.

Under EDG’s approved tariff, “The charge to the Customer, Aggregator or Marketer for Aggregation Pooling Service is $0.004 per Ccf of natural gas received on behalf of the aggregated Customers. Revenues received from this service shall be credited to the Company’s PGA mechanism.” (EDG Tariff Sheet No. 30) The balancing service fee is $0.01500 per Ccf. (EDG Tariff Sheet No. 33). The cash-out process is established in Section M of the EDG Transportation Tariff.[1] All of these rates and tariff provisions have been approved by the Commission, and therefore

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3. Monthly Cash-out Charges: The difference between monthly confirmed Nomination volumes and actual consumption, including L&U will be charged to and/or credited to the Customer (cashed out) using the indices shown below, plus pipeline fuel, pipeline capacity and commodity charges. Imbalance Level	Receipts > Deliveries Due Customer	Deliveries > Receipts Due Company
Up to 5%	Spot x 100%	Spot x 100%
5% to 10%	Spot x 85%	Spot x 115%
10% but less than 15%	Spot x 70%	Spot x 130%
15% but less than 20%	Spot x 60%	Spot x 140%
20% or higher	Spot x 50%	Spot x 150%

are "prima facie lawful and reasonable until found otherwise in a suit brought for that purpose. . ." Section 386.270. MSBA witness Louie Ervin II did not know if MSBA has ever challenged these rates by filing a formal complaint. (Tr. 63)

Both EDG and Staff support the existing charges for Empire. (Tr. 13) However, Staff witness Patterson suggested that since these types of charges have not changed across the LDC industry for so many years, they may not be high enough to cover the current cost for providing these services. (Ex. 100, Patterson Rebuttal, p. 10, lines 16-19)

EDG's aggregation fee is the same as that determined by Section 393.310(4)(2) to be appropriate in the first year of the STP--$0.004 per Ccf. This charge has not changed since the inception of the program in 2002. (Tr. 92). Staff witness Patterson did not analyze the aggregation cost, but Mr. Patterson testified that it seems unlikely to cover its costs. Assuming it was a reasonable estimate of the cost of administering the program when it was initiated 20 years ago, Mr. Patterson pointed out that inflation alone is likely to have resulted in increased costs for administering aggregation services. (Ex. 100, Patterson Rebuttal, p. 14)

The balancing fee was based upon the cost analysis of witnesses in the 2009 EDG rate case. The witnesses in the prior Empire rate case based their balancing fee proposals on the cost of storage and transportation services on Southern Star Central Gas Pipeline ("SSC"). Empire's south service is the largest, and it is served by SSC. (Ex. 100, Patterson Rebuttal, p. 12) In this case, Staff allocated the storage and transportation resources used by Empire's small and medium volume pools on SSC based on the usage and imbalances of those pools in the last actual cost adjustment case for which Staff completed a review (Case No. GR-2021-0121). Imbalances were treated as injections or withdrawals from storage. Based on this analytical approach, Staff calculated the storage and

transportation quantities that would need to be set aside to accommodate such injections or withdrawals. Based upon this cost analysis, Mr. Patterson determined that the appropriate rate would be $0.0197 per Ccf for the balancing fee. (Ex. 100, Patterson Rebuttal, p. 13). However, he continues to recommend the existing balancing rates. (Ex. 100, Patterson Rebuttal, p. 10)

(3) EDG's Cash-out Balancing Method Is Preferable to the Carry-Over Method Recommended by MSBA.

EDG's Commission-approved cash-out fees are based upon the multipliers used by up-stream interstate pipelines. (Tr. 29) As Mr. Patterson pointed out, the multiplier schedule used by Empire is the same one used by ANR. SSC is more severe in that, even though its top tier multiplier is also 1.5, it reaches this level for imbalances greater than 15 percent rather than the larger 20 percent used by ANR. The PEPL tariff applies the same 1.5 multiplier as the ANR tariff at a 20 percent imbalance, but it is more severe in that it applies a multiplier for the smallest tier of imbalances of 5 percent or less. Empire applies no multipliers to imbalances of 5 percent or less. Of the three upstream pipelines, Empire's cash-out multipliers and tiers are based on the least severe. Empire is passing 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 Empire applies the least severe of them to all of its service areas. (Ex. 100, Patterson Rebuttal, pp. 15-16)

The Commission recognized that the cash-out method was a just and reasonable method of resolving imbalances of school aggregation pools and other transportation customers when Atmos Energy Corporation, whose prior Missouri assets are now owned by Empire's sister company Liberty (Midstates Natural Gas) Corp., implemented cash-out balancing. The Commission found in that case it was "just and reasonable to have a standardized policy regarding cash-outs" and that "the Cash-

Out Policy…provide[s] for just and reasonable rates." *Report and Order*, p. 37, Re Atmos Energy Corporation, Case No. GR-2006-0387 (February 22, 2007).

In this case, MSBA has recommended that EDG abandon the use of the Cash-out balancing method in favor of a "Carry-over" method that was recently adopted for the schools in the Spire service territory, or alternatively modify the multipliers for increasing imbalances. (Ex. 300, Ervin Direct, pp. 6-7) For the reasons stated below, this recommendation should be rejected.

Mr. Patterson explained that the cash-out method is the predominant method used in Missouri (Tr. 81) and Staff recommends that it is the "norm" for school aggregation pools in Missouri. (Tr. 14-15; Ex. 100, Patterson Rebuttal, p. 8) Mr. Patterson succinctly explained the differences between Spire Missouri and Empire with regard to these two methods:

> In Missouri's largest metropolitan areas, Spire Missouri operates extensive distribution systems with high pressure lines that provide it with greater flexibility of managing line pack than smaller utilities. While Empire may also apply line pack as a balancing resource, it cannot do so at the scale of Spire Missouri.
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> Spire Missouri East also has on-system storage, which no other Missouri gas corporation has. This provides it with some capacity to respond to imbalances without resorting to supply adjustments or storage on interstate pipelines. A portion of the cost of these facilities is allocated to its transportation customers.
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> Spire Missouri West presents another unique situation. Schools within its pools may be on different meter reading schedules, making it difficult to properly determine imbalances and calculate cash-outs. Staff anticipates that as a new generation of meter reading is implemented that incorporates modern communication technology, Spire Missouri West will be able to read meters with greater flexibility and frequency.
>
> Spire Missouri now cashes out all of its transportation customers except for school aggregation pools. The continuation of carry-over balancing for school aggregation pools served by Spire Missouri is an accommodation to the metering limitations of Spire Missouri West. (Ex. 100, Patterson Rebuttal, p. 7)

During questioning by Judge Pridgin, EDG witness Earhart also explained the problems with the carry-over method for EDG. (Tr. 45-47) Given the differences between Empire and Spire, EDG does not believe it would be appropriate to switch balancing methods at this time.

(4) The Financial Impact of EDG's Approved Fees Are Not Significant on Schools.

Staff witness Patterson completed a financial analysis of the impact of aggregation and balancing fees on the school aggregation pools. The bills Empire supplied in response to MSBA DR No. 3.1 also show the charges for aggregation and balancing fees. The four pools combined paid an average annual amount of $16,774 in aggregation fees and $4,843 in balancing fees. This amounts to an average annual charge of about $154 per school. (Ex. 100, Patterson Rebuttal, p. 10; Tr. 84)

MSBA witness Louie Ervin II testified that the School Transportation Program has been successful over the last twenty years of its existence: "Schools, students, teachers, and taxpayers benefit from group purchasing of natural gas under STP. Absent these STP savings on gas supply costs, schools would have fewer dollars for teachers, computers, and other classroom learning tools." (Ex. 300, Ervin II Direct, p. 5) With the level success of the STP claimed by MSBA, an average annual fee for aggregation and balancing of only $154 per year (Tr. 84), or $13 per month would appear quite manageable and reasonable for the 40 schools served by EDG's STP.

Similarly, Mr. Patterson reviewed the financial impact of EDG's cash-out charges on the school aggregation pools. Excluding the period of the February 2021 cold weather event (Winter Storm Uri), the four pools combined received an average annual credit of $6,635. They received a credit because cash-out balancing make-up gas when they under-deliver. This amounts to an average annual credit of approximately $47 per school. (Ex. 100, Patterson Rebuttal, pp. 8-9)

None of the aggregation, balancing and cash-out fees charges being complained of by the MSBA seem overly significant or unreasonable to the average school from a financial impact perspective.

For these reasons, the Commission should find that EDG's existing aggregation, balancing, and cash-out rates are lawful, just and reasonable. The Commission should therefore reject MSBA's recommendation the modify these rates in this case.

b. Should the Commission establish a section within EDG'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?

For the reasons stated herein, the Commission should not adopt MSBA's recommendation to establish a section with EDG's tariff or a stand-alone rate schedule applicable only the special statutory provisions for the School Transportation Program.

Empire agrees that it would be helpful and appropriate to develop a separate rate schedule for the School Transportation Program schools. Eventually, Empire hopes to have a separate rate schedule for School Transportation Programs for both Empire District Gas and its sister company, Liberty Utilities (Midstates Natural Gas) Corp. that includes the best practices for School Transportation Programs.

As explained by Staff witness Keenan B. Patterson and EDG witness Tatiana Earhart, there is not sufficient time to fully consider and vet a new stand-alone STP tariff in this case. However, EDG is willing to work with the MSBA and Staff to develop a stand-alone STP tariff prior to the next general rate case for EDG's sister company, Liberty Utilities (Midstates Natural Gas) Corp.

(See Ex. 1, Earhart Rebuttal, pp. 2-3; Ex. 2, Earhart Surrebuttal, pp. 2-3; Ex. 100, Patterson Rebuttal, pp. 17-21)

EDG does not believe that it would be reasonable to merely adopt the stand-alone tariff that currently exists for Liberty Utility (Midstates) or incorporate parts of that tariff into the EDG tariff at this time. EDG believes that there needs to be significant updates and other language improvements in the Liberty Utilities (Midstates) School Transportation Program tariff. EDG has had discussions with the Staff regarding some of these updates or improvements. The Company believes that it will take time to discuss Staff's perspective on these issues, and develop and implement some of these changes. For example, EDG believes it would be appropriate to change the cash-out structure of the Midstates' tariff to be similar to Empire District Gas Company's existing cash-out structure, or some other type of cash-out structure that is acceptable to MSBA, the Commission Staff, and other interested parties. (Ex. 1, Earhart Rebuttal, pp. 2-3).

EDG proposes to begin discussing the provisions of a stand-alone tariff with MSBA and Staff and other interested parties after the conclusion of this rate case, and have a revised tariff ready for the Commission's consideration concurrent with Liberty Utilities (Midstates Natural Gas) Corp.'s next general rate case. This case is expected to be filed no later than June 21, 2024. (Tr. 16)

WHEREFORE, EDG respectfully submits its Initial Brief for consideration by the Commission in this proceeding.

Respectfully submitted,

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ATTORNEYS FOR THE EMPIRE DISTRICT GAS COMPANY D/B/A LIBERTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 23rd day of May, 2022, to all counsel of record.

/s/ James M. Fischer
James M. Fischer