

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 2nd day of August, 2023.

In the Matter of the Application of The)
Empire District Gas Company d/b/a Liberty)
for an Order Granting a Variance from 20)
CSR 4240-10.030(19) to Revise its Meter)
Testing Plan)

File No. GE-2023-0196

**ORDER APPROVING STIPULATION AND AGREEMENT, GRANTING
VARIANCE, AND GRANTING WAIVER**

Issue Date: August 2, 2023

Effective Date: August 12, 2023

On December 13, 2022, The Empire District Gas Company d/b/a Liberty (“EDG”) filed an application with the Commission seeking a variance from Commission Rule 20 CSR 4240-10.030(19) so that it could implement a new Sample Meter Testing Plan in lieu of the meter testing plan currently in place. Commission Rule 20 CSR 4240-10.030(19) outlines the requirements for periodic meter testing of utility meters. The Commission provided notice and allowed for intervention applications, but no applications to intervene were received.

On April 26, 2023, the Staff of the Commission (Staff) filed its Recommendation with an attached Memorandum. Staff recommended approval of the variance subject to six proposed conditions. EDG objected to several of the conditions.

On July 21, 2023, EDG and Staff (Signatories) filed a Stipulation and Agreement (Agreement). The Office of the Public Counsel was not a signatory, but the Agreement indicated it had no objection. Nevertheless, Commission Rule 20 CSR 4240-2.115(2)

allows 7 days for parties to object to a nonunanimous stipulation and agreement. If no objections are filed, the Commission may treat the stipulation and agreement as unanimous. No responses or objections to the Agreement were filed, thus the Commission will treat it as unanimous.

The Agreement sets forth that good cause exists for EDG to obtain a variance from Commission Rule 20 CSR 4240-10.030(19) to implement a new Sample Meter Testing Plan that was proposed by EDG in its December 13, 2022 filing, and referred to as Appendix C (attached to the December 13, 2022, filing), in lieu of the meter testing plan currently in place. Commission Rule 20 CSR 4240-10.030(19) provides that the Commission may order the removal, inspection, and testing to be completed on a time line other than the stated 120 months.

The Signatories request the Commission grant the variance with agreed-upon conditions, as follows:

- a. EDG will conduct a 5-year pilot program to gather data concerning the effectiveness of meter sampling for meters of capacity greater than 450 and less than or equal to 2,200 cubic feet and report annually for 5 years.
- b. Annually, EDG will send courtesy safety inspection letters to 650 customers where the location has had neither a turn-on or a meter test performed in the previous 30 years until all customers with meters that exceed those requirements have received an offer. Thereafter, the Company will send letters to all meters newly meeting the criteria.
 - i. To the extent that it is practical to do so, EDG will prioritize by age of meter and location for work scheduling, and EDG will send offers early in the non-heating season, so that any resulting courtesy safety inspections can be scheduled during the non-heating season. The letter shall advise the customer that the inspection is on the customer's pipes and fittings and any resulting findings are the responsibility of the customer to correct.
 - ii. If the customer accepts the offer, EDG will perform a leakage test of each segment of fuel line under 20 CSR 4240-40.030(12)(S)1.A and perform a

visual inspection and a gas leak check of the accessible fuel line using gas detection equipment under 20 CSR 4240-40.030(12)(S)1.B.

- iii. EDG will notify the Commission within the annual report prescribed below of any changes in the program if alterations are necessary due to higher than anticipated acceptance or other substantive changes.
- c. EDG will target catching up its existing program within 5 years, and report progress and any delaying conditions to the Commission on an annual basis, until the catch-up is resolved.
- d. EDG will file a yearly report (catch-up program, pilot, and courtesy inspections) to show progress in completing scheduled meter inspections, until such time as the catch up is resolved, after which annual reporting will terminate. The report shall contain:
 - i. number of remaining meters required to be tested to complete catch-up program;
 - ii. summary of test results by Group as defined by in the Application appendix C (as amended);
 - iii. description of any impacts to annual meter testing target, including but not limited to supply-chain issues, internal constraints, and third-party testing;
 - iv. number of letters sent to customers offering courtesy inspections; and,
 - v. number of courtesy inspections completed.

The Commission finds that the unopposed Agreement is a reasonable resolution of the issues in this case. The Commission will approve the Agreement and will order the Signatories to comply with its terms.

EDG did not file the 60-day notice required by 20 CSR 4240-4.017(1), but requests a waiver of that requirement. Rule 20 CSR 4240-4.017(1)(D) provides that a waiver may be granted for good cause, such as a verified declaration that EDG has had no communication with the office of the Commission regarding the subject of the application. Good cause exists in this case in the form of EDG's filed verification. For good cause shown, the Commission will waive the 60-day notice requirement.

To allow EDG to begin implementation of its new Sample Meter Testing Plan efficiently and in advance of the heating season, the Commission finds it reasonable to make this order effective in fewer than 30 days.

THE COMMISSION ORDERS THAT:

1. The 60-day notice required by 20 CSR 4240-4.017(1) is waived.
2. The Agreement, attached to this order, is approved. The signatories of the Agreement shall comply with its terms.
3. EDG is granted a variance from the requirements of 20 CSR 4240-10.030(19) and may implement its Sample Meter Testing Plan (Appendix C to EDG's December 13, 2022 Application for Variance) in lieu of any meter testing plans currently in place and subject to the conditions set out in the body of this order.
4. This order shall become effective on August 12, 2023.
5. This file shall close on August 13, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell". The signature is written in a cursive, flowing style.

Nancy Dippell
Secretary

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

Hatcher, Senior Regulatory Law Judge

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of The Empire)
District Gas Company d/b/a Liberty for an Order)
Granting a Variance from 20 CSR 4240-) Case No. GE-2023-0196
10.030(19) to Revise its Meter Testing Plan)

STIPULATION AND AGREEMENT

COME NOW The Empire District Gas Company d/b/a Liberty (“EDG”) and the Staff of the Missouri Public Service Commission (“Staff”) (collectively, the “Signatories”),¹ by and through their respective counsel, and for their Stipulation and Agreement (“Stipulation”), respectfully state as follows to the Missouri Public Service Commission (“Commission”):

BACKGROUND

1. On December 13, 2022, EDG filed its Application for Variance herein, pursuant to Commission Rules 20 CSR 4240-2.060 and 20 CSR 4240-4.017(1).
2. On April 26, 2023, Staff filed its Staff Recommendation regarding EDG’s Application, setting out the results of Staff’s analyses and recommendations concerning EDG’s Application and recommending approval of the Application with certain conditions imposed. The conditions proposed by Staff at the time and EDG’s filed response to each are below.
 - a. Proposed Condition 1: EDG conduct a 5-year pilot program to gather data concerning the effectiveness of meter sampling for meters of capacity greater than 450 and less than or equal to 2,200 cubic feet. EDG’s Response: EDG has no objection to this condition. EDG proposes to provide feedback on this pilot program in conjunction with the reporting proposed in Staff Condition 6.
 - b. Proposed Condition 2: For gas meters in the sample meter testing plan, if a meter location has had neither a turn-on or a meter test performed in the previous 30 years, EDG will send the customer an offer of a courtesy safety inspection as described in Condition 3. To the extent that it is practical to do so, EDG will send these offers early in the non-heating season, so that any resulting courtesy safety inspections can be scheduled during the non-heating season. EDG’s Response: This condition should not be imposed. Currently, EDG performs a safety inspection and leak test during meter replacements in these situations. As such,

¹ The Office of the Public Counsel (“OPC”) is a party to the case and has authorized the Signatories to represent that OPC does not oppose this Stipulation.

- there would be no purpose served by having EDG *offer* to perform these tasks.
- c. Proposed Condition 3: If the customer accepts the offer made under Condition 2, EDG will perform a leakage test of each segment of fuel line under 20 CSR 4240-40.030(12)(S)1.A, and perform a visual inspection and a gas leak check of the accessible fuel line using gas detection equipment under 20 CSR 4240-40.030(12)(S)1.B. EDG's Response: This condition should not be imposed. With all 30+ meter replacements, EDG currently performs a safety inspection and leakage test in conformity with the referenced rules, without the need for any offer letter to and acceptance from the customer.
 - d. Proposed Condition 4: EDG will notify the Commission once the processes for customer offers and courtesy safety inspections outlined in Conditions 2 and 3 are developed. EDG's Response: This condition should not be imposed, as it is unnecessary (see above).
 - e. Proposed Condition 5: The Commission order EDG to complete a two-year catchup program encompassing all untested meters. EDG's Response: EDG understands the reasoning behind this Staff recommendation. EDG agrees with the creation of a catchup program and the periodic reporting suggested in Staff Condition 6, but EDG will not be able to comply with the suggested two-year timeframe. With current staffing and supply chain constraints, EDG estimates that ten years would be needed to fully catch up in conjunction with remaining current on its new meter testing plan. EDG, however, proposes to hire or contract additional workers to perform meter testing. Contractors are not able to perform certain aspects of the testing and, as a result, are limited in their ability to reduce the timeline further. EDG estimates that with the additional resources it will deploy it could fully catch up within five years. EDG will report, as described in Condition 6, any supply chain or other constraints out of the Company's control that could potentially delay the timeline.
 - f. Proposed Condition 6: EDG files a yearly catch-up program report with the Commission to show their progress in completing scheduled meter inspection. EDG's Response: EDG has no objection to this condition. EDG proposes to submit annual reports in this docket by March 1 of each year, providing information on the prior calendar year.

3. Regarding the provision of gas service, Commission Rule 20 CSR 4240-10.030

provides, in part, as follows:

(18) No gas service meter shall be allowed in service which has incorrect gear ratio or dial train or is in any way mechanically defective or shows an error in measurement in excess of two percent (2%) when passing gas at the rate of six (6) cubic feet per hour per rated light capacity. When adjustment is necessary, the adjustment should be made to within at least one percent (1%) of correct registration. Tests for accuracy shall be made with a suit- able meter prover, at least two (2) consecutive test runs being made which agree within one-half (1/2) of one percent (1%).

(19) Unless otherwise ordered by the commission, each gas service meter installed shall be periodically removed, inspected and tested at least once every one hundred twenty (120) months, or as often as the results obtained may warrant to insure compliance with the provisions of section (18) of this rule.

4. EDG's Application for Variance requests a variance from Commission Rule 20 CSR 4240-10.030(19) to implement a new Sample Meter Testing Plan in lieu of any meter testing plans currently in place.

SPECIFIC TERMS AND CONDITIONS

5. The Signatories agree that good cause exists for waiver of the 60-day notice requirement of 20 CSR 4240-4.017(1), and the Signatories request that the Commission grant waiver of this requirement as requested by EDG.

6. The Signatories agree that good cause exists for EDG to obtain a variance from Commission Rule 20 CSR 4240-10.030(19) to implement a new Sample Meter Testing Plan that was proposed in the December 13, 2022, filing and referred to as Appendix C in lieu of any meter testing plans currently in place, and the Signatories request that the Commission grant the requested variance with the following conditions:

- a. EDG to conduct a 5-year pilot program to gather data concerning the effectiveness of meter sampling for meters of capacity greater than 450 and less than or equal to 2,200 cubic feet and report annually for 5 years.
- b. Annually, EDG will send courtesy safety inspection letters to 650 customers where the location has had neither a turn-on or a meter test performed in the previous 30 years until all customers with meters that exceed those requirements have received an offer. Thereafter, the Company will send letters to all meters newly meeting the criteria.
 - i. To the extent that it is practical to do so, EDG will prioritize by age of meter and location for work scheduling, and EDG will send offers early in the non-heating season, so that any resulting courtesy safety inspections can be scheduled during the non-heating season. The letter shall advise the customer that the inspection is on the customer's pipes and fittings and any resulting findings are the responsibility of the customer to correct.
 - ii. If the customer accepts the offer, EDG will perform a leakage test of each segment of fuel line under 20 CSR 4240-40.030(12)(S)1.A and perform a visual inspection and a gas leak check of the accessible fuel line using gas detection equipment under 20 CSR 4240-40.030(12)(S)1.B.
 - iii. EDG will notify the Commission within the annual report prescribed below of any changes in the program if alterations are necessary due to higher than anticipated acceptance or other substantive changes.
- c. EDG will target catching up its existing program within 5 years and report progress and any delaying conditions to the Commission on an annual basis until the catch-

- up is resolved.
- d. EDG will file a yearly report (catch-up program, pilot, and courtesy inspections) to show progress in completing scheduled meter inspections until such time as the catch up is resolved, after which annual reporting will terminate. The report shall contain:
 - i. number of remaining meters required to be tested to complete catch-up program;
 - ii. summary of test results by Group as defined by in the Application appendix C (as amended);
 - iii. description of any impacts to annual meter testing target, including but not limited to supply-chain issues, internal constraints, and third-party testing;
 - iv. number of letters sent to customers offering courtesy inspections; and
 - v. number of courtesy inspections completed.

GENERAL PROVISIONS

7. This Stipulation is being entered into solely for the purpose of settling the issues specifically set forth above, and unless otherwise specifically set forth herein represents a settlement on a mutually-agreeable outcome without resolution of specific issues of law or fact. This Stipulation is intended to relate only to the specific matters referred to herein; no Signatory waives any claim or right which it may otherwise have with respect to any matter not expressly provided for herein. No Signatory will be deemed to have approved, accepted, agreed, consented, or acquiesced to any substantive or procedural principle, treatment, calculation, or other determinative issue underlying the provisions of this Stipulation except as otherwise specifically set forth herein. Except as specifically provided herein, no Signatory shall be prejudiced or bound in any manner by the terms of this Stipulation in any other proceeding, regardless of whether this Stipulation is approved.

8. This Stipulation has resulted from extensive negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not approve this Stipulation or approves it with modifications or conditions to which a Signatory objects, then this Stipulation shall be null and void, and no Signatory shall be bound by any of its provisions.

9. If the Commission does not approve this Stipulation unconditionally and without modification, and notwithstanding its provision that it shall become void, neither this Stipulation, nor

any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.090, RSMo 2016 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

10. If the Commission unconditionally accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect only to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2016; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2016; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2016; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2016; and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2020. These waivers apply only to a Commission order respecting this Stipulation issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation.

11. The Signatories shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that each Signatory shall, to the extent reasonably practicable, provide the other parties with advance notice of the agenda meeting for which the response is requested. Signatory's oral explanations shall be subject to public disclosure, except to the extent they refer to

matters that are privileged or protected from disclosure pursuant to the Commission's rules on confidential information.

12. This Stipulation contains the entire agreement of the Signatories concerning the issues addressed herein.

13. This Stipulation does not constitute a contract with the Commission and is not intended to impinge upon any Commission claim, right, or argument by virtue of the Stipulation's approval. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has or as an acquiescence of any underlying issue. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

14. The Signatories agree that this Stipulation, except as specifically noted herein, resolves all issues related to these topics, and that the agreement and its exhibits should be received into the record without the necessity of any witness taking the stand for examination. Further, contingent upon Commission approval of this Stipulation without modification, the Signatories hereby stipulate to the admission into the evidentiary record of the pre-filed written testimony of their witnesses.

WHEREFORE, the Signatories respectfully request that the Commission approve this Stipulation, so that EDG may move forward on these provisions, and grant any other and further relief as it deems just and equitable.

Respectfully submitted,

/s/ Diana C. Carter

Diana C. Carter MBE #50527

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 21st day of July, 2023, and sent by electronic transmission to all counsel of record.

/s/ Diana C. Carter

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 2nd day of August, 2023.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 2, 2023

File/Case No. GE-2023-0196

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

Sincerely,



**Nancy Dippell
Secretary**

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