

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

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| 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 |) | Case No. GR-2009-0434 |
| the Missouri Service Area of the |) | |
| Company. |) | |

PUBLIC COUNSEL’S MOTION FOR RECONSIDERATION

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Motion for Reconsideration states:

1. On February 24, 2010, the Commission issued its Report and Order on DSM Funding (Order) with an effective date of March 1, 2010. OPC requests that the Commission reconsider and extend the effective date of the Order to give OPC an opportunity to file an Application for Rehearing.

2. The Order was released late on February 24, 2010, and gave the parties *two days* to file an Application for Rehearing before the end of business on Friday, February 26, 2010. The shortened effective date is unreasonable because it did not provide a sufficient opportunity for an aggrieved party to study the Order, study the evidence, research the law, and draft an Application for Rehearing, which OPC has a statutory right to do under §§ 386.500 and 386.710 RSMo.

3. The Missouri Supreme Court recently held that “to make the right to rehearing meaningful – applicants must be given a *reasonable period of time* in which to file their petitions.” *State ex rel. Office of the Public Counsel v. Public Service Commission*, 236 S.W.3d 632, 636 (Mo. banc 2007); *State ex rel. St. Louis County v.*

Public Service Commission, 228 S.W.2d 1 (Mo. 1950). By giving OPC only two days to file an application for rehearing, the Commission “effectively eliminated any meaningful opportunity for public counsel to apply for rehearing, and, thus, to seek review, a remedy to which it is statutorily entitled.” *Office of the Public Counsel v. Public Service Commission*, 236 S.W.3d 632, 636 (Mo. banc 2007).

4. OPC counsel was out of the office during the three business days between February 25, 2010 and March 1, 2010. Upon returning to the office on March 2, 2010, counsel became aware of the March 1, 2010 effective date, which precluded OPC from filing an Application for Rehearing and bringing the fact finding errors within the Order to the Commission’s attention. § 386.500 RSMo.

5. If given an opportunity to file an Application for Rehearing, OPC would ask the Commission to rehear several findings in its Order. First, OPC’s Application for Rehearing would address the issue of DSM funding levels. The Order relies on a study from the American Council for an Energy-Efficient Economy (ACEEE), but unfortunately the Order indicates a significant misunderstanding of this evidence. The Order finds in Paragraph 29 that the “dollar savings impact of the associated natural gas price reductions from [a \$12 million] level of investment would be approximately \$921 million for Missouri by 2015 and an additional \$847 million by the year 2020.” The Order cites to Ms. Laura Wolfe’s Surrebuttal Testimony, specifically to pages 5-6. However, Ms. Wolfe testified on Page 6 of her Surrebuttal Testimony that the dollar savings that can be attributed to natural gas price reductions from a \$12 million annual investment in *natural gas* energy efficiency “is \$60 million dollars by 2015 and \$97 million by 2020.” In addition, the evidence before the Commission included portions of

the actual ACEEE study that contradicts the Commission's findings. The relevant portion of the ACEEE study is attached to the Rebuttal Testimony of Mr. Ryan Kind, and as Mr. Kind's testimony states at line 13 on page 12, "\$55 million annual funding of electric utility programs shown in Table 24 on Page 35 [of the ACEEE study] is also necessary to achieve savings per year in the range of \$847,000,000 to \$921,000,000." This evidence clearly conflicts with the findings the Commission pulled from Ms. Wolfe's testimony analysis of the ACEEE study. Since the Order relied upon the inflated natural gas savings figures of hundreds of millions of dollars per year in adopting the DSM Funding levels approved by the Order, the Order is unreasonable.

6. Furthermore, the Order at Paragraph 30 incorrectly cites to Ms. Wolfe's testimony to find that the "most effective energy efficiency projects studied in the National Action Plan for Energy Efficiency were funded at a level equal to a minimum range of 0.5 to 1.5 percent of a natural gas utility's annual operating revenue." The facts in evidence do not support this conclusion. The facts merely support a finding that "successfully operated" energy efficiency projects were funded at those levels, but make no statement as to the "most effective" projects.

7. The Order also states on Page 12 that the ACEEE and NAEPP "studies show that 1.0 percent spending statewide is necessary to bring downward pressure on natural gas prices." However, the studies do not support this 1.0 percent spending level. The 1.0 percent spending level was merely the recommendation of DNR, and therefore this finding in the Order is incorrect.

8. OPC would also ask the Commission to rehear its findings on pages 5-6 of its Order regarding water heater rebates for Energy Star rated tank storage water heaters

(.62 Energy Factor or higher). The Order adopts a \$75 water heater rebate level based on factual findings that cannot be found in the record, even when looking at the citations contained in the Order. For example, the finding in Paragraph 5 states that Empire “worked with a consultant, Applied Energy Group, which conducted a study to determine the amount of the recommended rebate.” This finding is factually inaccurate because the record, including the citations in the Order, does not contain evidence showing that Applied Energy Group (AEG) performed a study specifically to determine that \$75 is an appropriate amount for the recommended rebate. The evidence provided by Empire only shows that AEG studied the individual program funding levels (budgets), and did not study the rebate amounts. There is no evidence in the AEG report to suggest that AEG did a study regarding the determination of the \$75 amount.¹

9. The lack of support for a \$75 rebate level is exacerbated by the Commission’s finding in Paragraph 12 of the Order, which states that a “general rule of thumb with incentive programs like the water heater rebate is that the incentive should represent about 50 percent of the incremental cost of [the] energy efficiency measures you are trying to promote.” The Order cites to the evidence of Mr. Ryan Kind. However, there is no evidence in the record showing that \$75 is 50 percent of the incremental costs of the more efficient water heaters for which rebates are provided. The only evidence in the record regarding this issue is testimony from Mr. Kind where he testified that a \$50 water heater rebate is more representative of the 50 percent rule of thumb than a \$75 rebate.²

¹ See McCormack Direct Testimony, Schedule SLM-1.

² Tr. 126-127.

10. The Order concludes that “[w]hile Public Counsel’s witness testified that \$50 was a more cost-effective rebate amount and more in line with the general rule of thumb, it was unclear what data Public Counsel relied on to reach its conclusion.” OPC challenges the Commission to apply this same standard to the \$75 rebate level and what “data,” if any, was relied upon to reach the conclusion that \$75 is appropriate. The Order states on Page 14 that the \$75 rebate level “was the amount Empire’s consultant recommended after completing a study of this question specific to Empire.” However, there is no evidence in the record that such a study was performed.

11. The Commission has more than enough time to extend the effective date of the Order pursuant to § 386.490(3) RSMo and still ensure that the tariffs would become effective by April 1, 2010. Granting OPC’s Motion for Reconsideration would not prejudice any party.

WHEREFORE, the Office of the Public Counsel respectfully offers this Motion for Reconsideration and prays that the Commission extend the effective date of its Report and Order on DSM Funding from March 1, 2010 to March 12, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 3rd day of March 2010:

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