

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

**PUBLIC COUNSEL’S APPLICATION FOR REHEARING**

**COMES NOW** the Missouri Office of the Public Counsel (OPC) and for its Application for Rehearing 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. In a subsequent order, the Commission corrected the effective date to March 9, 2010. OPC seeks rehearing of the Commission’s Order because the findings of fact are arbitrary, capricious, and constitute an abuse of the Commission’s discretion.

2. The first point of error is where the Order relies on a study from the American Council for an Energy-Efficient Economy (ACEEE). Here 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 Pages 5 and 6 of her Surrebuttal Testimony that:

The study estimates that the dollar savings impact of the associated natural gas price reductions from this level of investment plus reductions from electric energy efficiency investments would be approximately \$921 million for Missouri by 2015 and an additional \$847 million by the year 2020. The the dollar savings that can be attributed to natural gas price reductions from a \$12 million annual investment in natural gas energy efficiency (as defined in the report to include programs outside the scope of utility companies) 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 (Pages 28-35) is attached to the Rebuttal Testimony of Mr. Ryan Kind, and as Mr. Kind's testimony states at line 13 on page 12:

It is a huge overstatement to conclude that by investing \$12 million per year for natural gas energy efficiency programs, Missourians could be expected to receive savings per year in the range of \$847,000,000 to \$921,000,000. As I noted above, the study results are premised upon the assumption that one-half of the load reductions and energy savings would be the result of actions other than the annual funding of utility energy efficiency programs. These other actions are things like enhanced building codes and appliance standards. While Ms. Wolfe pointed out that the savings were premised upon the \$12 million annual funding of gas utility programs shown in Table 23 on page 35 of the ACEEE Study, she failed to point out that **the \$55 million annual funding of electric utility programs shown in Table 24 on page 35 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.

3. At Paragraph 30 the Order 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.

4. 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, there is no cite to where the studies “show that 1.0 percent spending statewide is necessary” and neither of the studies contain statements regarding this 1.0 percent spending level. The 1.0 percent spending level was merely the recommendation of DNR based on Ms. Wolfe’s misinterpretation of the studies referenced in her Direct Testimony. If the Commission is relying on Ms. Wolfe’s testimony, that evidence is insufficient to support the Commission’s finding. If the Commission is relying on other evidence or reasoning, such evidence has not been identified (nor does it appear to be in the record) and any such Commission reasoning has not been explained.

5. OPC also seeks rehearing of the Commission’s findings on pages 5-6 of its Order regarding the appropriate water heater rebate amount 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 the appropriate amount for the tank storage water heater rebate.

The four portions of the hearing transcript that are referenced in paragraph 5 of the Order as support for evidence that the consultant conducted a water heater rebate study provide no support that such a study was performed by the consultant. All these references show is that the consultant recommended a \$75 rebate, but they do not show that a study was performed indicating that \$75 was the proper rebate level using the “general rule of thumb” regarding the proper level of incentives referenced in paragraph 12 of the Order or even that any study of any sort was performed of the appropriate rebate level. The only portion of the transcript cited in footnote 8 for paragraph 5 of the Order that pertains to a study performed by Empire’s consultant was the citation to Staff witness Henry Warren’s testimony on page 74 of the transcript where he testified about the consultant’s study regarding overall funding levels (e.g. the annual budget of \$217,000) while answering questions regarding the Staff’s endorsement of an annual funding level of \$217,000. There is no evidence that AEG performed a study regarding the determination of the \$75 amount.

6. 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 a study has been performed to determine 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 such

an incremental cost study 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.<sup>1</sup>

7. 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.

8. OPC also notes that *no party* in this case is advocating a \$75 water heater rebate, which the Commission recognizes in Paragraphs 7 and 9 of its Order. Even DNR backed off the \$75 rebate recommendation and now recommends that Empire and the Energy Efficiency Collaborative select the rebate amount.

9. For the reasons identified above, OPC seeks rehearing of the Commission’s Order because the findings of fact are unreasonable, arbitrary, capricious, and constitute an abuse of the Commission’s discretion. The Order authorizes an unjust and unreasonable rate design in violation of Sections 393.130, 393.140, 393.150, 393.230, 393.270, and 536.140 RSMo.

WHEREFORE, the Office of the Public Counsel respectfully submits this Application for Rehearing and asks that the Commission rehear the matters addressed herein.

---

<sup>1</sup> Tr. 126-127.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Deputy Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

[marc.poston@ded.mo.gov](mailto:marc.poston@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 8th day of March 2010:

General Counsel Office  
Missouri Public Service  
Commission  
200 Madison Street, Suite  
800  
P.O. Box 360  
Jefferson City, MO 65102  
GenCounsel@psc.mo.gov

Conrad Stuart  
Pittsburgh Corning  
Corporation  
3100 Broadway, Suite 1209  
Kansas City, MO 64111  
stucon@fcplaw.com

Kliethermes Sarah  
Missouri Public Service  
Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
sarah.kliethermes@psc.mo.gov

Woodsmall David  
Pittsburgh Corning  
Corporation  
428 E. Capitol Ave., Suite  
300  
Jefferson City, MO 65101  
dwoodsmall@fcplaw.com

Steinmeier D William  
Constellation NewEnergy-  
Gas Division, LLC  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, MO 65110-  
4595  
wds@wdspc.com

Swearengen C James  
Empire District Gas Company,  
The  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
LRackers@brydonlaw.com

Callier B Sarah  
Missouri Department of  
Natural Resources  
P.O. Box 899  
Jefferson City, MO 65102  
sarah.callier@ago.mo.gov

/s/ Marc Poston