

**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 and  
MOTION FOR CLARIFICATION**

**COMES NOW** the Missouri Office of the Public Counsel (OPC) and for its Application for Rehearing and Motion for Clarification states:

1. On March 10, 2010, the Commission issued its Order Clarifying Report and Order on DSM Funding (Clarifying Order). OPC requests clarification of the basis for the Commission finding that the \$75 water heater rebate level recommendation was based on a study performed by The Empire District Gas Company’s (Empire) consultant that used Empire-specific data. In addition, OPC seeks rehearing of this finding because it is unreasonable and not supported by the record.

2. OPC explained to the Commission in its prior Application for Rehearing that there is no evidence in the record that Empire’s conservation program consultant, Applied Energy Group (AEG), performed a study into the \$75 water heater rebate recommendation. The record only shows that AEG studied the overall energy efficiency program funding levels, and there is no evidence in Empire’s prefiled testimony or the hearing transcript to support the conclusion that the \$75 rebate amount was based on Empire-specific data. There is an unmistakable distinction between efficiency program

funding levels and rebate amounts that is not recognized in the Commission's Report and Order or in the Commission's Clarifying Order.

3. In the Commission's Order Clarifying Report and Order on DSM Funding, the Commission states under the heading "Water Heater Rebates":

As to the weight given to the data examined by Empire's consultant versus that examined by Mr. Kind, the evidence presented by Empire was based on Empire-specific data. There was no reference to the scope of the data examined by Mr. Kind and this also contributed to the Commission's determination that \$75 was a more reasonable rebate amount with which to begin the program. The Commission's decision is clarified to include these considerations but its decision is the same.

OPC asks the Commission to clarify its Order by explaining what specific evidence the Commission is relying upon when finding that AEG's recommendation on water heater rebate levels "was based on Empire-specific data." The Clarifying Order does not cite to any supporting evidence and OPC is not aware of any evidence in the record to support this finding. As explained in OPC's Application for Rehearing, the record only shows that AEG studied the overall energy efficiency program funding levels, and did not provide any analysis on the \$75 water heater rebate level.

4. The Order Clarifying Report and Order on DSM Funding of March 10, 2010 contains the same fact finding errors identified in OPC's Application for Rehearing of the Commission's February 24, 2010 Report and Order on DSM Funding. OPC's March 8, 2010 Application explained:

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.

5. Consumers deserve to have rebate levels set based on a reasonable rationale that is supported by the evidence. They do not deserve to have rebate levels set simply under the theory of “more is better” without additional support. Consumers will be funding 100% of these rebates, and they should not be forced to fund rebate levels that are not supported by the evidence and that do not provide any additional conservation benefits. OPC asks that the Commission clarify where it finds evidence supporting the \$75 rebate levels, or in the alternative, grant OPC’s application for rehearing on this matter and order a proper rebate level based on a rehearing of the evidence.

6. OPC also seeks rehearing of the Commission’s Clarifying Order because the findings of fact are unjust, unreasonable, arbitrary, capricious, and constitute an abuse of the Commission’s discretion in violation of Sections 386.510, 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 Motion for Clarification and requests rehearing and clarification of the Commission’s Order Clarifying Report and Order on DSM Funding.

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 12th 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@wdspsc.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