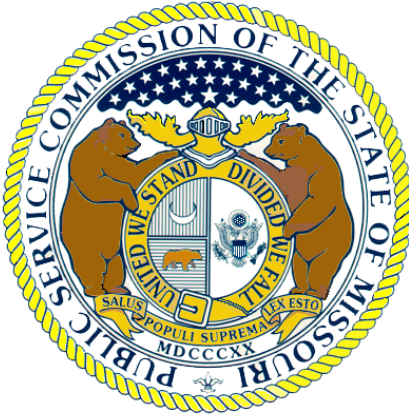


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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 the)
Missouri Service Area of the Company.)

File No. GR-2009-0434

REPORT AND ORDER ON DSM FUNDING

Issue Date: February 24, 2010

Effective Date: March 1, 2010

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Appearances

Dean L. Cooper, Esq. and **Diana C. Carter, Esq.**, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for The Empire District Gas Company.

Sarah Mangelsdorf, Esq., Assistant Attorney General, Office of the Attorney General, Supreme Court Building, Post Office Box 899, Jefferson City, Missouri 65102, for the Missouri Department of Natural Resources.

Stuart W. Conrad, Esq., Finnegan, Conrad & Peterson, 1209 Penntower Building, 3100 Broadway, Kansas City, Missouri 64111,

and

David Woodsmall, Esq., Finnegan, Conrad & Peterson, 428 East Capitol Avenue, Suite 300, Jefferson City, Missouri 65101, for Pittsburgh Corning Corporation.

William D. Steinmeier, Esq., William D. Steinmeier, P.C., 2031 Tower Drive, Post Office Box 104595, Jefferson City, Missouri 65110, for Constellation New Energy-Gas Division, LLC.

Marc D. Poston, Esq., Senior Public Counsel, and **Lewis R. Mills, Jr., Esq.**, Public Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Sarah Kliethermes, Esq., Legal Counsel, **Lera Shemwell, Esq.**, Deputy General Counsel, and **Eric Dearthmont, Esq.**, Assistant General Counsel, Missouri Public Service Commission, 200 Madison Street, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Deputy Chief Regulatory Law Judge: Nancy Dippell.

REPORT AND ORDER ON DSM FUNDING

Syllabus: This order defines a funding level to be budgeted by The Empire District Gas Company (Empire) for its portfolio of Demand Side Management (DSM) programs. The order also directs that the tank storage gas water heater rebate amount to initially be \$75 with any future adjustments set by Empire with the advice of the Demand Side Management and Energy Efficiency Advisory Group ("Energy Efficiency Collaborative" or "EEC").

Procedural History

On June 5, 2009, Empire filed proposed tariff sheets designed to produce a gross annual revenue increase of approximately \$2.9 million for natural gas service. The proposed tariff sheets bore an effective date of July 5, 2009. The Commission suspended the tariff sheets until May 2, 2010.¹ The Parties to this proceeding are: the Staff of the Missouri Public Service Commission; Empire; the Office of the Public Counsel; the Missouri Department of Natural Resources; Constellation NewEnergy–Gas Division, LLC; and Pittsburgh Corning Corporation.

Staff, Empire, and Public Counsel filed a *Partial Stipulation and Agreement* (General Agreement) on December 18, 2009. The General Agreement was not opposed by any party, and was approved by the Commission on January 20, 2010.²

Among other things, the General Agreement established an EEC and provided that the signatories would support the recovery in a future rate case of prudent costs for DSM and energy efficiency programs with those costs accumulating in certain regulatory

¹ *Suspension Order and Notice*, issued June 12, 2009.

² *Order Approving Partial Stipulation and Agreement and Partial Stipulation and Agreement on Transportation Tariff Issues*, issued January 20, 2010.

asset accounts. The signatories also agreed to support the DSM regulatory asset accounts being eligible for rate base treatment and the amounts accumulated in the regulatory asset accounts that have not been included in rate base being allowed to earn a return equivalent to Empire's AFUDC rate. The General Agreement resolved all issues associated with this case except for certain transportation tariff issues and the funding level for Empire's DSM programs and the amount for rebates for tank storage gas water heaters.

Staff, Empire, and Public Counsel also filed the *Partial Stipulation and Agreement on DSM Funding and Implementation* (Partial Stipulation on DSM) on December 18, 2009. The Partial Stipulation on DSM set out the positions of Staff, Public Counsel, and Empire with regard to the remaining DSM issues. DNR objected to the Partial Stipulation on DSM and requested a hearing on the DSM funding issue. With regard to the High Energy Efficiency Water Heating program, no party disputed that the program should be implemented as described in Sherrill McCormack's Direct Testimony with the exception that the amount of the rebate for tank storage water heaters was disputed.

On January 8, 2010, Empire and Constellation filed a *Partial Stipulation and Agreement on Transportation Tariff* (Transportation Agreement). The Transportation Agreement was not opposed by any party, resolved all items on the issues list related to transportation, and was approved by the Commission.³

The Commission held a hearing regarding the uncontested agreements and the DSM funding issue on January 8, 2010. The parties, with the exception of DNR, submitted briefs on January 22, 2010.

³ Order Approving *Partial Stipulation and Agreement and Partial Stipulation and Agreement on Transportation Tariff Issues*, issued January 20, 2010.

DNR filed its brief on Monday, January 25, 2010, along with a motion requesting permission to file that brief one business day out of time. DNR explained that it had mistakenly filed its brief in the wrong case on Friday, January 22, 2010, and was unable to correct its mistake until after the deadline had passed, in part due to the Commission's Electronic Filing and Information System (EFIS) being off line for routine maintenance. No party is prejudiced by the late-filing and the Commission grants the motion and accepts the brief.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

1. The General Agreement provides for an EEC consisting of Staff, Public Counsel, DNR, and industrial customer representative, and Empire.⁴
2. The EEC will monitor the DSM programs' funding and participation levels and will provide input to Empire on a regular basis.⁵
3. Under the terms of the General Agreement approved by the Commission, the energy efficiency programs that Empire will be implementing are: Low Income Weatherization; High Efficiency Water Heating; High Efficiency Space Heating; Home Performance of Energy Star; Large Commercial Audit and Rebate; Apogee; and Building Operator Certification.

⁴ General Agreement, para. 8.

⁵ General Agreement, para. 8.

Water Heater Rebates

4. Empire originally proposed a \$75 rebate for Energy Star rated tank storage water heaters (.62 Energy Factor or higher)⁶ and DNR concurred with this proposal.⁷

5. Empire worked with a consultant, Applied Energy Group, which conducted a study to determine the amount of the recommended rebate.⁸

6. During the course of the case, the positions of Empire and DNR changed.

7. Empire currently supports the position set forth in the Partial Stipulation on DSM that the rebate should be \$50 per water heater until this amount is adjusted to reflect the higher incremental costs of the tank storage water heaters with an Energy Factor of .67.⁹

8. An Energy Factor of .67 is scheduled to become the new Energy Star tank storage water heater Energy Factor criteria on September 1, 2010.

9. DNR now advocates for the rebate amount to be set by Empire with input from the EEC.¹⁰

10. The amount of the rebate may affect the number of customers who want to participate in the program or the number of customers for which funding will be available to participate in the program.¹¹

11. The amount of the rebate could affect the program's cost-effectiveness.¹²

⁶ Direct Testimony of Sherrill L. McCormack, Ex. 15, p. 6, and Schedule SLM-1, p. 8.

⁷ Direct Testimony of Laura Wolfe, Ex. 17, p. 6.

⁸ Tr. pp. 51, 56, 64, and 74.

⁹ Rebuttal Testimony of Sherrill L. McCormack, Ex. 16, p. 2; Tr. pp. 64-65

¹⁰ *Missouri Department of Natural Resources' Statement of Position*, (filed Dec. 31, 2009), p. 2; and, *Missouri Department of Natural Resources' Brief*, (filed Jan. 25, 2010), p. 7.

¹¹ Tr. pp. 65-68 and 121.

¹² Tr. p. 121

12. One 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.”¹³

DSM Funding

13. Empire currently provides funding for weatherization through low income weatherization funding to all of its territory, an experimental low income program available only in Sedalia, and a one-time distribution of weatherization kits to the public. Empire also offers an Experimental Commercial Energy Audit Program and two on-line energy calculators.¹⁴

14. No customers have used the Experimental Commercial Energy Audit Program and the budgeted amounts for the other programs were not completely utilized.¹⁵

15. Empire conducted a study to determine what participation level to expect for the new programs.¹⁶

16. DNR did not do a study of its own to assess the level of participation in Empire’s energy efficiency programs¹⁷ or directed specifically at Empire’s customers and their particular needs.¹⁸

17. DNR relies on a study from the American Council for an Energy-Efficient Economy (ACEEE) and the National Action Plan for Energy Efficiency sponsored by the

¹³ Tr. pp. 126-127.

¹⁴ Ex. 15, pp. 2-4.

¹⁵ Ex. 15, pp. 4-7.

¹⁶ Ex. 15, pp. 4-5 and Schedule SLM-1.

¹⁷ Tr. p. 141.

¹⁸ Tr. pp. 143-144.

USDOE and the United States Environmental Protection Agency and prepared by 50 organizations, including a variety of natural gas companies.

18. Empire, Staff, and Public Counsel's proposed budget for Empire's total energy efficiency portfolio, including Apogee and BOC, is \$231,200 for the first year (2010), \$231,228 for the second year (2011), and \$242,430 for the third year (2012).¹⁹

19. DNR's position on DSM funding is that the amount Empire spends on energy efficiency initiatives must be increased in order to attain true energy savings and conservation. According to DNR, that increase should begin at 0.332 percent of Empire's annual gross operating revenues in 2010, increase to 0.5 percent for 2011, and increase to 1.0 percent for 2012.²⁰ Thus, DNR believes that the minimum level of annual investments should be \$217,000 for 2010, \$327,000 for 2011, and \$655,000 for 2012.

20. Empire's annual total operating revenue, including the cost of gas, for 2008 was \$65,437,938.²¹

21. Spending by Empire in excess of the budgeted amount may be scrutinized more closely by Staff when reviewed for prudence for inclusion in the rate case.²²

22. When considered on a regional or national scale, energy efficiency programs that are designed to reduce natural gas consumption by customers can lead to the reduction of wholesale natural gas prices as well as generating direct cost savings to those customers.²³

¹⁹ Tr. pp. 50-51, and pp. 54-55; Ex. 16, pp. 2-3.

²⁰ Ex. 17, p. 12.

²¹ Ex. 17, p.12.

²² Tr. pp. 96.

²³ Direct Testimony of Laura Wolfe, Ex. 17, p. 10-12; citing to the American Council for an Energy Efficient Economy (ACEEE), Report No. U051 issued in January 2005.

23. A reduction of about one percent per year in total U.S. natural gas demand could result in wholesale natural gas price reductions of 10 to 20 percent.²⁴

24. Both new energy policies and additional funding for energy efficiency programs are necessary to achieve savings significant enough to reduce the wholesale price of natural gas as well as to generate direct cost savings to natural gas consumers.²⁵

25. The ACEEE study includes data from the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

26. The ACEEE study estimated an annual energy efficiency investment needed to affect natural gas prices by each of the eight states based on each state's proportional allocation of total projected regional natural gas savings in 2010.²⁶

27. The ACEEE study relies on data from calendar year 2002.²⁷

28. From a regional perspective, in order to reduce natural gas demand sufficiently to put downward pressure on wholesale prices Missouri would need to spend approximately \$12 million per year statewide for natural gas-related energy efficiency programs through the year 2020.²⁸

29. The dollar savings impact of the associated natural gas price reductions from this level of investment would be approximately \$921 million for Missouri by 2015 and an additional \$847 million by the year 2020.²⁹

²⁴ Ex. 17, p. 10.

²⁵ Ex. 17, p. 10.

²⁶ Ex. 17, p. 10.

²⁷ Tr. p. 135.

²⁸ Ex. 17, p. 10.

²⁹ Ex. 17, pp. 10-11; Surrebuttal Testimony of Laura Wolfe, Ex. 18, pp. 5-6.

30. 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.³⁰

31. Empire's current energy efficiency funding levels will not result in sufficient natural gas savings to contribute to lower wholesale natural gas prices. A more significant level of investment in energy efficiency is required to potentially pressure natural gas wholesale prices lower.³¹

32. The portfolio of energy efficiency programs that are contained in the General Agreement will provide opportunities for improved energy efficiency for every class of customer.³²

33. The DSM programs set out in the General Agreement cover the limited array of opportunities that natural gas companies have for energy efficiency improvements: low income weatherization, water heating, space heating, home energy audits, building-shell improvements, commercial energy audit, and commercial equipment improvements.³³

34. Setting a challenging goal for Empire's energy efficiency programs will encourage Empire to seek out and aggressively implement all possible cost effective energy efficiency programs with the goal of spending the proposed levels.³⁴

³⁰ Ex. 17, p. 11.

³¹ Ex. 17, pp. 8 and 12.

³² Ex. 17, p. 8.

³³ Ex. 17, p. 8.

³⁴ Tr. pp. 154 and 141-142.

35. Some weatherization of homes has occurred in the Empire service area since 2002.³⁵

36. More state, federal, and charitable energy efficiency programs and funding exist in the state now than existed in 2002.³⁶

37. The State of Missouri has received or will receive through the stimulus package, the American Recovery and Reinvestment Act (ARRA), approximately \$200 million for use over the next two to three years.³⁷

38. More federal funding, including the stimulus funding,³⁸ is available for Empire's low income weatherization customers than was available in 2002.³⁹

39. New energy efficiency programs need time to get established and become successful and cost-effective.⁴⁰

40. Once Empire's energy efficiency programs become established, and it initiates additional, cost-effective programs, it will be possible for Empire to spend significantly more.⁴¹

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

³⁵ Tr. pp. 135-136.

³⁶ Tr. pp. 62-63 and 136.

³⁷ Tr. pp. 136; 140.

³⁸ Tr. pp. 140, 150-152.

³⁹ Tr. pp. 135-136.

⁴⁰ Ex. 17, p. 12; Tr. p. 116.

⁴¹ Tr. pp. 56 and 58

1. Empire is a gas utility and a public utility subject to the Commission's jurisdiction.⁴²

2. The Commission has authority to regulate the rates and services of Empire.⁴³

3. An initial rebate of \$75 for tank storage gas water heaters with Empire making any necessary adjustments with advice from the EEC results in just and reasonable services and rates.

4. Setting a challenging budget goal for Empire's DSM programs beginning in 2010 with \$231,200 and increasing to 0.5 percent of annual operating revenues including gas costs in 2010 results in just and reasonable services and rates.

Decision

The Commission previously approved a stipulation and agreement in this matter which set out how Empire shall structure its energy efficiency programs. The agreement includes accounting for all monies spent by Empire on these programs through a regulatory asset account rather than including those amounts in rates. The main issue for Commission decision is: at what level should the programs be funded? Another issue is determining a specific amount for the tank storage gas water heater rebate. Finally, the Commission provides some guidance as to the role and expectations for the EEC.

DSM Funding Level

All the parties agree that the portfolio of programs proposed by Empire will provide opportunities for improved energy efficiency for Empire's customers. The parties

⁴² Subsections 386.020(18) and (43), RSMo Cum. Supp. 2009.

⁴³ Section 393.130, RSMo Cum. Supp. 2009, and Section 393.140, RSMo 2000.

also agree that through this added energy efficiency, customers will directly benefit from savings on their monthly energy bills. In addition, the studies show that wholesale prices of natural gas can also be affected through energy efficiency programs thus affording another opportunity for customers to benefit from reduced gas costs.

The Commission recognizes that Empire alone cannot have a significant impact on wholesale prices of natural gas through its energy efficiency programs. Energy efficiency is, however, critically important to empower customers to take control of their energy bills. And, Empire can and should contribute in a more meaningful way toward a regional reduction in natural gas consumption by aiding its customers in becoming more energy efficient. Increased expenditures are necessary to accomplish these goals.

The ACEEE study pointed to the most successful programs in the Midwest as having spent .5 to 1.0 percent of total annual operating revenues. And the studies show that 1.0 percent spending statewide is necessary to bring downward pressure on natural gas prices. The studies did not, however, take into account the additional \$200 million in stimulus funding that will be available for energy efficiency programs in the state in addition to the funds available from the various utilities. Even so, DNR made a strong argument that the Commission should set a challenging goal for energy efficiency programs in order to make a difference in the overall cost of gas. The various studies were persuasive that energy efficiency funding should be tied to Empire's annual gross operating revenues. Further, taking into consideration the proposed funding levels, the stimulus funding, and the studies by national organizations and Empire's own consultant, the Commission determines that a challenging, yet reasonable and attainable goal for Empire's energy

efficiency programs is to reach .5 percent of annual operating revenues, including the cost of gas, in 2011 and 2012.⁴⁴

Any new energy efficiency programs will need time to get started and to “ramp up” before they are effective. Thus, there is no need to budget for the full .5 percent in the first year. Empire has proposed beginning funding at \$231,200 in 2010 and increasing that funding in the following two years. In addition, Empire’s witness made it clear that Empire is not opposed to increasing the amounts even further if the programs are successful and the need for additional funding is warranted. Thus, Empire shall initially fund energy efficiency programs at \$231,200 in 2010. If the EEC or Empire finds that any year’s energy efficiency expenditure is unattainable or will be subject to waste, abuse or fraud, then Empire or the EEC can petition the Commission to amend that amount.

Water Heater Rebate

The Commission also determines that it should not set a specific permanent rebate amount for water heaters. The evidence showed that even Empire’s position on how much the rebate should be has changed from \$75 as recommended by its consultant, to \$50 as recommended by Public Counsel. The amount of the rebate will affect both the number of customers who decide to participate and the number of customers for which there will be sufficient funds to participate. While 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 this conclusion. Furthermore,

⁴⁴ This is also consistent with goals that the Commission is setting for other utilities and will amount to approximately \$325,000 under current projections.

even Public Counsel's position includes an adjustment upward for the rebate amount in September 2010 only five months after new tariff's become effective.

Recognizing that Empire may need guidance on what specific amount to include immediately in its tariffs effective on April 1, 2010, the Commission determines that the \$75 rebate is the most reasonable. Staff, Public Counsel, Empire, and DNR all agree that some adjustment to the rebate amount will be needed in September when the new Energy Star standards are established. In addition, the rebate amounts are not large when compared with the total budget for energy efficiency programs. Further, Empire's energy efficiency programs have a history of low participation and a higher rebate amount may encourage more participation. Indeed, this was the amount Empire's consultant recommended after completing a study of this question specific to Empire. These are also the kinds of factors that the EEC will be examining and will be in the best position to give advice on a going forward basis. Therefore, the Commission concludes that the tank storage gas water heater rebate amount should initially be \$75 and any adjustments to it should be set by Empire after input from EEC.

The Energy Efficiency Collaborative

On an annual basis, the EEC shall review Empire's annual funding amount and expenditures for its energy efficiency programs. The EEC shall provide input and suggestions on Empire's energy efficiency programs. The Commission finds that the EEC should take all steps necessary to work toward implementation of cost-effective energy efficiency programs at the spending levels set out in this order.

The energy efficiency programs shall be designed to encourage more efficient use of natural gas by encouraging energy efficiency improvements through the

replacement of less efficient natural gas equipment with high efficiency Energy Star qualified natural gas equipment and other high efficiency equipment and measures. Empire shall solicit input from the EEC on specific programs and incentive levels.

The Commission is not mandating immediately spending .5 percent of annual gross operating revenues on energy efficiency programs. The Commission believes that Empire and the EEC should, however, work toward reaching that goal in 2011 and 2012. Empire shall initially fund an annual amount of a minimum of \$231,200 for its energy efficiency programs. The EEC shall develop a plan that will increase this amount toward the goal of .5 percent of gross operating revenues. Increases in expenditures shall be dependent upon the programs' continued growth and success.

The Commission expects the EEC to inform the Commission of the steps taken to reach this goal or to bring before the Commission disputes among the parties in the EEC. The recommended increase or decrease to the annual amount of funding may be contested by any member of the EEC. In addition, if the EEC is unable to reach consensus for any reason related to the energy efficiency programs (e.g. increased expenditures, rebate amounts, types of programs to be implemented) any party may petition the Commission for further direction.

THE COMMISSION ORDERS THAT:

1. The Missouri Department of Natural Resources' Motion to Late File Brief filed on January 25, 2010, is granted.
2. The Empire District Gas Company is directed to budget for energy efficiency programs previously approved in the *Partial Stipulation and Agreement* at levels that will begin at \$231,200 in 2010; and to take all reasonable actions toward the goal of increasing

expenditures for those programs to .5 percent of annual operating revenues, including gas costs, for 2011 and 2012.

3. The gas rebate amount for tank storage water heater shall initially be \$75, with any adjustments to be set by Empire with the advice of the Demand Side Management and Energy Efficiency Advisory Group.

4. The Empire District Gas Company shall provide quarterly reports regarding its energy efficiency programs to the Commission.

5. The Empire District Gas Company shall file the necessary tariff amendments to implement the terms of this Report and Order on DSM Funding.

6. This Report and Order on DSM Funding shall become effective on March 1, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., concurs, with separate concurring opinion attached;
Davis, Jarrett, Gunn, and Kenney, CC., concur;
and certify compliance with the provisions of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 24th day of february, 2010.