

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at Saint Louis
University School of Law in
St. Louis, Missouri, on the 20th
day of January, 2010.

In the matter of The Empire District Gas Company of)	
Joplin, Missouri for Authority to File Tariffs Increasing)	<u>File No. GR-2009-0434</u>
Rates for Gas Service Provided to Customers in the)	Tariff No. YG-2009-0855
Missouri Service Area of the Company.)	

**ORDER APPROVING PARTIAL STIPULATION AND AGREEMENT
AND PARTIAL STIPULATION AND AGREEMENT ON TRANSPORTATION
TARIFF ISSUES**

Issue Date: January 20, 2010

Effective Date: January 30, 2010

Syllabus

This order approves the Partial Stipulation and Agreement (Main Agreement) executed by The Empire District Gas Company, the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel.¹ The Main Agreement resolves all issues in this case with the exception of the funding level of Demand Side Management (DSM) programs and the Transportation Tariff issues. This order also approves the Partial Stipulation and Agreement on Transportation Tariff Issues (Transportation Agreement) executed by Empire and Constellation.² The order also rejects Empire's initial tariff filing

¹ The parties who are non-signatories to the Main Agreement are the Missouri Department of Natural Resources, Constellation NewEnergy-Gas Division, LLC, and Pittsburgh Corning Corporation.

² The parties who are non-signatories to the Transportation Agreement are DNR, Pittsburgh Corning, Staff, and Public Counsel.

and authorizes Empire to file tariffs in compliance with the Main Agreement and the Transportation Agreement.

The issue regarding DSM funding remains outstanding and will be decided in a separate order.

I. Procedural History

On June 5, 2009, Empire submitted revised rate schedules designed to increase its gross annual gas revenues by approximately \$2.9 million, exclusive of applicable gross receipts, sales, franchise or occupational fees, and taxes. The proposed tariff sheets carried an effective date of July 5, 2009.

The Commission suspended the tariff sheets until May 2, 2010, issued notice, and set a deadline for intervention requests. The Commission granted requests for intervention to DNR, Constellation, and Pittsburgh Corning.

On December 18, 2009, the Main Agreement was filed. On January 8, 2010, the Transportation Agreement was filed. No party objected to either of the agreements and no party requested a hearing on any issue other than DSM funding. The agreements were presented to the Commission during the January 9, 2010 hearing on the remaining contested issue.

A true-up hearing on the matters contained in the agreements is scheduled for February 8-9, 2010. Because all issues related to the true-up are settled by means of the Main Agreement and the Transportation Agreement, that hearing is canceled.

II. The Agreements

The Main Agreement, when combined with the Transportation Agreement, resolves all issues in this matter except for the level of DSM funding.³ The Main Agreement addresses the following topics: (1) Tariffs; (2) Depreciation; (3) Pensions/OPEB; (4) Kansas Accounting Authority Order; (5) Tracking of Disconnects/Reconnects; (6) Demand Side Management (including the advisory group, programs, regulatory asset accounting, and annual reports); (7) accounting for Plant in Service; and (8) combining rates for Empire's North/South and Northwest Systems for all purposes except PGA/ACA.

Among other provisions, the Main Agreement provides that Empire should be authorized to file revised tariff sheets containing new rate schedules for gas service. The new rate schedules will be designed to produce overall Missouri jurisdictional gross annual gas revenues, exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar fees or taxes, in the amount of \$22,189,218 annually, an increase of \$2,600,000. The Main Agreement provides that these revenues shall be for gas service rendered on and after April 1, 2010.

The Transportation Agreement resolves the issues of telemetry equipment and balancing services and the charges for each. The Transportation Agreement also sets out specific language for the tariffs.

Both agreements include a contingent waiver of rights indicating that if the Commission approves in whole the agreements, the signatories agree to waive their rights

³ *Partial Stipulation and Agreement*, filed on December 18, 2009; *Partial Stipulation and Agreement on Transportation Issues*, filed January 9, 2010. The agreements are attached to this order as Attachment 1 and Attachment 2.

to call and cross-examine witnesses,⁴ to present oral argument and written briefs,⁵ and to judicial review.⁶

By submitting the agreements for consideration by the Commission, the signatories jointly recommend that the Commission accept the agreements as a fair compromise of their respective positions on the issues in this matter. The signatories negotiated the various terms of these provisions and no other party has objected or sought a hearing with respect to any of these provisions. There are no disputed issues between the parties with regard to the provisions of the agreements.

III. Relevant Legal Standards

A. Jurisdiction

Empire is a “gas corporation” and a “public utility,” as defined in Sections 386.020(18) and (43), respectively, and is subject to the personal jurisdiction, supervision, and control of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes as currently supplemented. Empire’s rate increase request falls under the Commission’s subject matter jurisdiction pursuant to Section 393.150.

B. Standards for Approving Stipulations and Agreements

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of the issues raised in this case.⁷

In reviewing the agreements, the Commission notes:

Every decision and order in a contested case shall be in writing, and, except in default cases, or cases disposed of by stipulation, consent

⁴ Section 536.070(2).

⁵ Section 536.080.1.

⁶ Section 386.510.

⁷ Section 536.060, RSMo; and 4 CSR 240-2.115(1)(B).

order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law.⁸

A stipulation and agreement that is entered into by fewer than all parties to a case is deemed to be a nonunanimous stipulation and agreement.⁹ Each party is given seven days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement, and failure to file a timely objection constitutes a full waiver of that party's right to a hearing.¹⁰

No party objected to the agreements within the deadlines.¹¹ Consequently, pursuant to the Commission's rules, the Main Agreement and the Transportation Agreement shall be treated as though they are unanimous and the non-signatory parties are deemed to have waived their right to a hearing on any issue contained in the agreements.

IV. Decision

The Commission recognizes that the recommended revenue requirement increase presented in the agreements is not a trivial increase in rates to customers like those who testified at the public hearings. The increased cost of all utilities along with the recent rise in food costs, gasoline prices, and healthcare costs have had an effect on customers' ability to keep current on their bills. That being said, the Commission also recognizes that the agreements before the Commission resulted from extensive negotiations between parties with diverse interests and the Commission's Staff. Local Public

⁸Section 536.090, RSMo. This provision applies to the Public Service Commission. *State ex rel. Midwest Gas Users' Association v. Public Service Commission of the State of Missouri*, 976 S.W.2d 485, 496 (Mo. App. 1998).

⁹ 4 CSR-240-2.115(2)(A).

¹⁰ 4 CSR 240-2.115(2)(B).

¹¹ 4 CSR 240-2.115(2)(D).

Hearings were held to receive public comment on the proposed rate increase and Public Counsel was an active party to ensure the rights of the ratepaying public.

Subject matter experts, including accountants, economists and engineers, filed extensive testimony outlining their respective analyses and positions prior to the signatories reaching a consensus as to the reasonableness of the agreements and all of their elements. The signatories agree, and the non-signatories did not object, to the conclusion that the proposed revenue and rate design set out in the agreements are just and reasonable. And finally, no party requested a hearing on any issue related to the determination of the proposed annual revenue requirement, rate design, or any other provision set forth in either of the agreements.

The Commission determines that the proposed increase in overall Missouri gross annual gas revenues, exclusive of any applicable license, occupation, franchise, gross receipts taxes, or similar fees or taxes, of \$22,189,218 for service rendered on and after April 1, 2010, is just and reasonable. The Commission approves the Main Agreement and the Transportation Agreement.

Accordingly, the Commission shall reject the tariffs filed on June 5, 2009, and authorize Empire to file tariffs in compliance with the agreements. The parties shall be directed to comply with the terms of the Main Agreement and the Transportation Agreement.

THE COMMISSION ORDERS THAT:

1. The Partial Stipulation and Agreement filed on December 18, 2009, is hereby approved as the resolution of all factual issues encompassed within that agreement. A copy of the Partial Stipulation and Agreement is attached to this order as Attachment 1.

2. The signatories to the Partial Stipulation and Agreement are ordered to comply with the terms of the agreement.

3. The Partial Stipulation and Agreement on Transportation Tariff Issues filed on January 8, 2010, is hereby approved as the resolution of all factual issues encompassed within that agreement. A copy of the Partial Stipulation and Agreement on Transportation Tariff Issues is attached to this order as Attachment 2.

4. The Signatories to the Partial Stipulation and Agreement on Transportation Tariff Issues are ordered to comply with the terms of the agreement.

5. The proposed gas service tariff sheets (YG-2009-0855) submitted on June 5, 2009, by The Empire District Gas Company for the purpose of increasing rates for gas service to retail customers are hereby rejected.

6. The specific tariff sheets rejected are:

P.S.C. MO. No. 2

1st Revised Sheet No. 2, Cancelling Original Sheet No. 2
1st Revised Sheet No. 9, Cancelling Original Sheet No. 9
1st Revised Sheet No. 10, Cancelling Original Sheet No. 10
1st Revised Sheet No. 11, Cancelling Original Sheet No. 11
Original Sheet No. 11.a
1st Revised Sheet No. 12, Cancelling Original Sheet No. 12
1st Revised Sheet No. 13, Cancelling Original Sheet No. 13
1st Revised Sheet No. 14, Cancelling Original Sheet No. 14
1st Revised Sheet No. 15, Cancelling Original Sheet No. 15
1st Revised Sheet No. 16, Cancelling Original Sheet No. 16
1st Revised Sheet No. 17, Cancelling Original Sheet No. 17
1st Revised Sheet No. 18, Cancelling Original Sheet No. 18
1st Revised Sheet No. 19, Cancelling Original Sheet No. 19
1st Revised Sheet No. 20, Cancelling Original Sheet No. 20
1st Revised Sheet No. 21, Cancelling Original Sheet No. 21
1st Revised Sheet No. 22, Cancelling Original Sheet No. 22
1st Revised Sheet No. 23, Cancelling Original Sheet No. 23
1st Revised Sheet No. 24, Cancelling Original Sheet No. 24
1st Revised Sheet No. 25, Cancelling Original Sheet No. 25
1st Revised Sheet No. 26, Cancelling Original Sheet No. 26
1st Revised Sheet No. 27, Cancelling Original Sheet No. 27

P.S.C. MO. No. 2

1st Revised Sheet No. 28, Cancelling Original Sheet No. 28
1st Revised Sheet No. 29, Cancelling Original Sheet No. 29
1st Revised Sheet No. 30, Cancelling Original Sheet No. 30
1st Revised Sheet No. 31, Cancelling Original Sheet No. 31
1st Revised Sheet No. 32, Cancelling Original Sheet No. 32
1st Revised Sheet No. 33, Cancelling Original Sheet No. 33
1st Revised Sheet No. 34, Cancelling Original Sheet No. 34
1st Revised Sheet No. 35, Cancelling Original Sheet No. 35
1st Revised Sheet No. 36, Cancelling Original Sheet No. 36
1st Revised Sheet No. 37, Cancelling Original Sheet No. 37
1st Revised Sheet No. 38, Cancelling Original Sheet No. 38
1st Revised Sheet No. 39, Cancelling Original Sheet No. 39
1st Revised Sheet No. 40, Cancelling Original Sheet No. 40
1st Revised Sheet No. 41, Cancelling Original Sheet No. 41
1st Revised Sheet No. 42, Cancelling Original Sheet No. 42
1st Revised Sheet No. 43, Cancelling Original Sheet No. 43
1st Revised Sheet No. 44, Cancelling Original Sheet No. 44
1st Revised Sheet No. 45, Cancelling Original Sheet No. 45
1st Revised Sheet No. 46, Cancelling Original Sheet No. 46
1st Revised Sheet No. 47, Cancelling Original Sheet No. 47
1st Revised Sheet No. 48, Cancelling Original Sheet No. 48
1st Revised Sheet No. 49, Cancelling Original Sheet No. 49
1st Revised Sheet No. 50, Cancelling Original Sheet No. 50
1st Revised Sheet No. 51, Cancelling Original Sheet No. 51
1st Revised Sheet No. 52, Cancelling Original Sheet No. 52
1st Revised Sheet No. 53, Cancelling Original Sheet No. 53
1st Revised Sheet No. 68, Cancelling Original Sheet No. 68
1st Revised Sheet No. 69, Cancelling Original Sheet No. 69
1st Revised Sheet No. 70, Cancelling Original Sheet No. 70
1st Revised Sheet No. 71, Cancelling Original Sheet No. 71
Original Sheet No. 71c
Original Sheet No. 71d
Original Sheet No. 71e
Original Sheet No. 71f
Original Sheet No. 71g
Original Sheet No. 71h
Original Sheet No. 72
1st Revised Sheet No. R-1, Cancelling Original Sheet No. R-1
1st Revised Sheet No. R-2, Cancelling Original Sheet No. R-2
1st Revised Sheet No. R-8, Cancelling Original Sheet No. R-8
1st Revised Sheet No. R-22, Cancelling Original Sheet No. R-22
1st Revised Sheet No. R-27, Cancelling Original Sheet No. R-27
1st Revised Sheet No. R-29, Cancelling Original Sheet No. R-29

P.S.C. MO. No. 2

1st Revised Sheet No. R-41, Cancelling Original Sheet No. R-41

1st Revised Sheet No. R-52, Cancelling Original Sheet No. R-52

1st Revised Sheet No. R-53, Cancelling Original Sheet No. R-53

7. The Empire District Gas Company is authorized to file tariffs in compliance with the terms of the Partial Stipulation and Agreement and the Partial Stipulation and Agreement on Transportation Tariff Issues.

8. Tariffs filed in accordance with Ordered Paragraph No. 7 shall be filed with an effective date of April 1, 2010.

9. The true-up hearing scheduled for February 8-9, 2010, is canceled.

10. This order shall become effective on January 30, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
Gunn, and Kenney, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge