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.	))))))	Case No. GR-2009-0434

BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

This brief addresses the remaining contested issue regarding demand side management and energy efficiency funding for Empire District Gas Company (Empire). The Office of the Public Counsel (OPC) was a signatory to the Partial Stipulation and Agreement that resolved the funding issue between Empire, OPC, and the Commission's Staff. OPC continues to support the terms of that agreement, and urges the Commission to order the funding levels contained within that agreement.

The only party advocating for different funding levels is the Missouri Department of Natural Resources (DNR). DNR wishes to establish the funding level at a percentage of Empire's revenues with little regard toward the likelihood that Empire is capable of cost-effectively spending funds for demand side management and energy efficiency at the expenditure levels proposed by DNR. DNR's proposed use of ratepayer funds is not in the public interest.

Proposed Funding Levels

In the Direct Testimony of Empire witness Ms. Sherrill McCormack, Ms. McCormack explains that Empire's proposed budget for its energy efficiency portfolio is $217,000 for the first two years (2010 and 2011) and $231,200 for the third year (2012).

(Tr. 55). This budget is a target amount to be spent, and is not a cap on spending. (Tr.113). Empire would defer all DSM expenditures into a regulatory asset account, including amounts spent over the budgeted goals for each year, to be deferred to Empire's rate case where prudently incurred expenditures would be recovered in rates.

DNR proposes funding levels based on Empire's operating revenues, including gas revenues. DNR wants ratepayers to pay approximately $217,000 in 2010, $327,000 in 2011, and $655,000 in 2012. (Ex. 19, p.12). DNR provided no evidence suggesting that Empire could spend anywhere near these amounts, and DNR offers no suggestions on how Empire could spend more than the budgeted amounts Ms. McCormack's testimony suggests can be achieved. The rate increase agreed to by the parties will increase rates by $2,600,000, and DNR's proposed third year funding level of $655,000 would increase ratepayer rates by one quarter of this increase just for conservation and efficiency funding. OPC asserts that this is excessive, especially during a time when Empire's efficiency programs are in the early stages of development.

During the evidentiary hearing, DNR witness Ms. Laura Wolfe testified that she had not assessed the DSM program participation levels estimated in the testimony of Empire witness Ms. McCormack. (Tr. 141). Ms. Wolfe also testified that DNR performed no study of its own to determine whether Ms. McCormack's participation levels were reasonable. (*Id.*). Moreover, DNR did not develop a specific budget for the DSM programs being proposed in this case. (Tr. 143). Without such a study in participation levels, DNR has provided no evidence to suggest the funding levels recommended by DNR can possibly be spent on the DSM programs agreed to by the parties.

NAPEE Funding Levels

Ms. Wolfe cites to the National Action Plan for Energy Efficiency (NAPEE) to support DNR's position that the most energy efficient projects were funded at a minimum range of 0.5 percent to 1.5 percent of a natural gas utility's annual operating revenue. However, Ms. Wolfe's cite to NAPEE is incorrect in that NAPEE does not state that this level of funding is "the most effective." (Ex.27, p.5). Furthermore, Ms. Wolfe wrongly asserts that the NAPEE's reference was in regards to 0.5 percent to 1.5 percent of "annual operating revenue" when the NAPEE actually only states that "the majority of programs reviewed" was "0.5 to 1 percent of gas utility revenue." (*Id.*). When questioned on whether the NAPEE recommendations measured cost-effectiveness, Ms. Wolfe testified that she was not aware of whether the NAPEE was based on any measure of cost effectiveness. (Tr.147-148).

The funding levels proposed by Empire, OPC and the Staff would amount to over one percent of non-gas revenues. This is consistent with the Commission's decision in Case No. GR-2006-0387 that tied the level of energy efficiency funding to the utility's non-gas revenues rather than gross revenues. (Ex.27, pp 5-7). Furthermore, basing funding levels on a percent of gross revenues, including gas revenues, poses difficulties due to the fact that gas costs can fluctuate from year to year depending on the wholesale price of gas. (Tr. 75).

Funding and Rate Design

DNR's testimony regarding rate design emphasizes the fact that DNR's funding proposal has little relation to the level of funding that is appropriate for Empire. In the rate design agreement of the parties, the parties agreed to a decoupled rate design that moves more margin costs into the fixed rate and retains the volumetric usage rate instead of a straight-fixed variable (SFV) rate design. In the direct testimony of DNR witness Ms. Laura Wolfe, Ms. Wolfe discusses rate design in relation to funding levels for energy efficiency programs. Ms. Wolfe quotes several studies that find fault with a SFV rate design due to the harmful impacts the SFV has on the ratepayer's incentive to conserve energy. For example, Ms. Wolfe testified that according to the NAPEE, SFV rates "do not encourage customers to change energy usage behavior or invest in efficient technologies." Ms. Wolfe also quoted a report by the Lawrence Berkeley National Laboratory that concluded the SFV rate design "has the effect of weakening the link between customers' total utility bills and their actual consumption levels, which reduces the price signal for individual consumers to conserve and undertake energy efficiency investments." Lastly, Ms. Wolfe quoted from a Regulatory Assistance Project report appearing in *The Electricity Journal* concluding in regards to the SFV rate design that "[w]hile this rate design does break the link between sales and fixed cost recovery, it does so by greatly diminishing customer incentives to conserve or invest in energy efficiency." (Ex.19, pp.6-7). Ms. Wolfe quotes to these sources, all concluding that the SFV would reduce the incentive to conserve energy for *all* ratepayers, yet Ms. Wolfe makes no separate proposal for funding levels under a traditional rate design that strengthens the incentive to conserve for all ratepayers. In fact, Ms. Wolfe states that DNR's proposed funding levels "are appropriate for [Empire] regardless of the rate design employed." (Ex.19, p.12). By proposing a funding level irrespective of the different impacts that rate design has on a ratepayer's ability to conserve energy, it is apparent that DNR's funding proposal is based more on an arbitrary amount than on a proper analysis of the funding that is appropriate for Empire's ratepayers.

<u>Stimulus Package Funding</u>

An additional factor that could impact Empire's ability to reach the funding levels proposed by DNR is the stimulus package funding allocated to Missouri pursuant to the American Reinvestment and Recovery Act (ARRA). (Tr. 136). Ms. Wolfe testified that DNR will have at its disposal $200 million in ARRA funds for energy efficiency. (Tr. 140). Ms. Wolfe also testified that "tens of millions of dollars" will be available in Missouri for appliance rebates, including rebates for gas water heaters and gas furnaces. (Tr. 156-157). These additional resources would impair Empire's ability to meet the budget spending amounts proposed by DNR.

<u>Water Heater Rebate Level</u>

The agreement reached by OPC, Empire and Staff includes a $50 rebate for water heater replacements, whereas DNR proposes rebates of $75. It is a general rule of thumb to establish incentives that represent about fifty percent (50%) of the incremental cost of the energy efficiency measures that are being promoted. (Tr. 127). The $50 rebate for water heaters is representative of fifty percent of the associated incremental cost. (*Id.*). In addition, under a cost/benefit analysis utilizing the total resource cost (TRC) test for water heaters, the benefits of moving from a .58 efficiency factor to a .62 efficiency factor does not provide the benefits to overcome the cost of providing rebates at $75. (Tr. 127-128). Until water heaters become more energy efficient, setting the rebate level at $50 is more cost effective than setting a $75 rebate level.

Conclusion

Instead of focusing on Missouri's DSM expenditure ranking, OPC believes, as testified to by OPC witness Mr. Ryan Kind, "that energy efficiency is best promoted by presenting facts and analysis that accurately represent the contributions that energy efficiency can make to [address] Missouri's energy issues." An important aspect of DSM programs is ensuring that the funds are spent in a cost effective manner, and simply advocating for more spending without more does not ensure cost effectiveness. The proposed funding levels in the Partial Stipulation and Agreement on DSM Funding and Implementation best addresses the cost effectiveness goal because it bases funding amounts on the spending levels that appear reasonably possible to achieve rather than on inflated funding levels that may be impossible to achieve in these early stages of Empire's DSM programs.

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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 22nd day of January 2010:

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