

**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)	Case No. GR-2009-0434
File Tariffs Increasing Rates for Gas Service)	Tariff No. YG-2009-0855
Provided to Customers in the Missouri Service)	
Area of the Company.)	

PARTIAL STIPULATION AND AGREEMENT

COME NOW The Empire District Gas Company (“EDG” or “Company”), the Staff of the Missouri Public Service Commission (“Staff”), and the Office of the Public Counsel (“OPC”) (collectively, the “Parties”), and respectfully submit the following Partial Stipulation and Agreement (“Stipulation”) to the Missouri Public Service Commission (“Commission”):

1. Issues Not Settled With This Stipulation. If this Stipulation is approved by the Commission, the funding level of Demand Side Management (DSM) programs and the Transportation Tariff issues will remain to be tried by the parties to this case and decided by the Commission, or resolved by separate agreement.

2. Issues Settled With This Stipulation. This Stipulation is intended to settle all issues among the Parties for purposes of Case No. GR-2009-0434, except the Transportation Tariff issues and the funding level of DSM programs. This Stipulation is not “unanimous” because certain parties have not joined as signatories to this Stipulation. It is the understanding of the Parties, however, that the non-signatories, the Missouri Department of Natural Resources (“DNR”), Constellation NewEnergy–Gas Division, LLC (“Constellation”), and Pittsburgh Corning Corporation (“Pittsburgh”), will not object to this Stipulation and will waive their rights to a hearing on the issues resolved herein.

3. Tariffs. The Parties request that the Commission order EDG to file revised tariff sheets containing rate schedules for natural gas service designed to produce overall Missouri

jurisdictional gross annual non-gas revenues, exclusive of any applicable license, occupation, franchise, gross receipts taxes, or similar fees or taxes, in the amount of \$22,189,218 annually, an increase of \$2,600,000. The Parties further request that the Commission order EDG to file tariff sheets for service rendered on and after April 1, 2010 in conformity with the specimen tariff sheets attached as **Appendix A**.

A. The attached tariffs reflect the following with regard to service fees and miscellaneous tariff issues:

1. Section 2.04, subsection 2 – change reference date for interest on customer deposits, so that the prime rate published in the Wall Street Journal on the last business day in December of the prior year is used.

2. Section 2.04, regarding refunding of customer deposits, specify that: “Deposits from non-residential Customers may be retained by the Company as a guarantee of payment of final bills. Only new customers taking service after the effective date of this tariff shall be subject to this requirement.”

3. Section 2.07, regarding reconnections, specify the following charges:

\$40 reconnection fee during normal business hours

\$100 reconnection fee after business hours, with allowance to pay over 2 months

\$40 disconnection fee

4. Retention of Section 2.09, regarding excess flow valve installation charges.

5. Section 5.03, regarding Meter Testing Requests, shall include a \$65 charge for the testing of the meters if the meter tests as accurate within 2%. Customers shall be advised of this possible fee prior to the meter test.

6. Deletion of Section 9.07 in the Rules and Regulations to eliminate the Commercial and Industrial Purchase Plan.

7. Section 10, subsection 6.09, regarding Late Payment Charge, charge to remain one-half percent (0.50%) on all classes

8. Section 10, subsection 2.07c, \$41 Collection Charge

9. Include language regarding Leak detection surveys: “The customer shall be solely responsible for the maintenance of all piping and all other gas equipment on the premise which is owned by the customer and not specifically stated as the responsibility of EDG within these Rules, except that Company shall be responsible for conducting periodic (as required by Commission Rules) instrument leak surveys over the buried piping.”

B. Staff does not join as to the issues listed above in 3(A)(3), but does not oppose these tariff revisions and does not request a hearing as to these issues.

C. EDG owns and operates approximately 265 miles of natural gas pipeline. Much of this pipeline is located in areas that are subject to woody vegetation growth in and along the route of the pipelines, thus requiring a periodic clearing of the original pipeline right-of-way (ROW). EDG has established a five year cycle for ROW clearing (i.e. vegetation clearing, erosion control, and pipeline identification/markings), at a rate of approximately one fifth of its 265 miles of its natural gas pipeline annually at an estimated cost of \$2,000 per mile for the initial cycle. The initial cycle began October 1, 2008.

EDG shall track costs related to ROW clearing. A regulatory asset or liability shall result from the difference of the costs actually annually incurred and the target annual budget of \$106,000. This “tracker” shall create a regulatory asset or liability to track the difference between the amount spent and the target annual budget amount. If, at the time of its next general rate proceeding, the Company has reflected a net regulatory asset for this item on its books, the Company will not request recovery of it in rates. If, at the time of its next general rate proceeding, the Company has reflected a net regulatory liability for this item on its books, the parties will support the inclusion of that regulatory liability in rates, using an amortization period of five years.

EDG will submit an annual report to the Commission Staff detailing the number of miles of pipeline cleared, the cost per mile to clear the pipeline, and the annual amount expended on its ROW clearing activities (as defined above).

D. The attached tariffs reflect the following customer charges:

Residential = \$16.50
Small Commercial – Small (retail and transportation) = \$25
Small Commercial – Medium (retail and transportation) = \$85
Small Commercial – Large (retail and transportation) = \$200
Large Volume (retail and transportation) = \$400

E. Staff does not join as to the issues listed above in 3(D), but does not oppose these tariff revisions and does not request a hearing as to these issues.

F. Billing Determinants for the calculation of volumetric rates shall be as shown on **Appendix B**.

4. Depreciation. The Parties request that the Commission order EDG to utilize the Depreciation rates shown on **Appendix C**. The Parties further request that the Commission's order include language that EDG be ordered to follow the policy and guidance sought and received in Case No. ER-2004-0570, that a separate accounting be kept of its amounts accrued for recovery of its initial investment in plant from the amounts accrued for the cost of removal.

5. Pensions/OPEB. The Parties support the treatment of FAS 87 and FAS 106 as shown on **Appendix D**. The Parties agree that the amount of OPEB expense recovered in rates is \$500,235, the actuarially determined expense for 2009. The Parties agree that the pension expense recovered is a negative \$148,591, based on the actuarially determined pension expense of \$382,584 and negative amortization of the pension tracker of (\$531,175). The prepaid pension asset balance as of June 30, 2009 is \$2,495,405.

6. Kansas AAO. The Parties request that the Commission enter the following Accounting Authority Order (“AAO”):

EDG is granted an AAO whereby the company is authorized to record on its books a regulatory asset, which represents the expenses associated with the property tax to be paid to the state of Kansas in relation to natural gas in storage pursuant to House Substitute for Senate Bill No. 98 for 2009 and subsequent years based on assessments from Kansas taxing authorities. EDG may maintain this regulatory asset on its books until the beginning of the month after the final judicial resolution of the legality of that tax. Thereafter, EDG shall commence amortization of the deferred amounts, with the amortization to be completed over a five-year period. If EDG files a general rate case prior to that final resolution, ratemaking treatment of the deferral may be considered within that case. If EDG is allowed ratemaking treatment providing a return of any AAO funds for Kansas Property Tax, there shall be no return on the Kansas Property Tax AAO funds included in rates. The Commission shall include language in its Order stating that the grant of this AAO does not in any way control how the Commission will treat this deferral for ratemaking purposes in subsequent rate cases, except there shall be no rate base treatment of deferred amounts as provided above.

7. Tracking of Disconnects/Reconnects. As soon as possible, and in no event later than June 30, 2010, EDG will implement method(s) to track incidence and associated revenues of the following: (a) disconnects billed, (b) disconnects collected, (c) reconnects during business hours, (d) reconnects after business hours, (e) reconnects, by type, billed according to missed months, and (e) collection trips.

8. Demand Side Management

A. DSM Advisory Group: An advisory group consisting of Staff, OPC, the DNR Energy Center, an Industrial Customer Representative, and EDG will be organized. This group will have meetings or conference calls at least two times per year and provide input to EDG on the implementation of the proposed energy efficiency portfolio, potential new energy efficiency programs, and future evaluations of the programs.

B. DSM Programs: EDG shall implement the following programs: 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 (“BOC”).

C. All expenses incurred related to these programs, including a reasonable assessment of lost margin revenues directly associated with participation in these Empire natural gas DSM programs, shall be included in a regulatory asset account that is amortized over a ten-year period for recovery of prudently incurred costs in the subsequent rate case. The amortization period of the DSM regulatory asset will remain at ten-years unless changed by an order from the Commission. This regulatory asset account shall begin with a negative balance that reflects the amount of unspent energy efficiency funds that have been collected in rates set in GR-2004-0072. Empire shall accumulate the Demand Side Management Program costs in regulatory asset accounts as the costs are incurred, and these costs shall be eligible for rate base treatment. The amounts accumulated in these regulatory asset accounts that have not been included in rate base shall be allowed to earn a return equivalent to Empire’s AFUDC rate. The amount of unspent funds for Low Income Weatherization and the Commercial Audit Program were provided in Empire’s response to OPC DR No. 2004 in the file named “Reconciliations 2006-2009.xls”. This file shows unspent weatherization funds of \$190,914.83 as of September 2009 and unspent Commercial Audit Program funds of \$35,416 as of June 2009. These amounts will need to be updated to reflect unspent balances as of the time that new rates resulting from this case become effective.

D. EDG will file annual reports with the Commission reporting on the status of implementing DSM programs. The first report will be filed within 45 days of the end of the first year after new rates resulting from this case become effective. Annual reports

will include: (1) a narrative description of the status of each program, (2) information (by program) on actual program expenditures and impacts (Ccfs), and (3) a comparison (by program) of budgeted expenditures and impacts to actual expenditures and impacts (Ccfs). Annual reports will also specify and document EDG's assessment of the lost margin revenues directly associated with the program impacts (Ccfs) for the 12 month period covered by the annual report.

9. Additional Agreements.

A. The cost of paving a parking lot that was included in the Company's case filing as Chillicothe FMGP return and expense (\$76,803.44) will be moved and booked in the Company's financial records as normal Plant in Service.

B. The rates for EDG's North/South and Northwest systems shall be combined for all purposes except PGA/ACA.

10. Contingent Waiver of Rights. This Stipulation is being entered into solely for the purpose of settling the issues in this case. Unless otherwise explicitly provided herein, none of the Parties to this Stipulation shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue-related methodology. Except as explicitly provided herein, none of the Parties shall be prejudiced or bound in any manner by the terms of this Stipulation in this or any other proceeding regardless of whether this Stipulation is approved.

This Stipulation has resulted from extensive negotiations among the Parties, and the terms hereof are interdependent. If the Commission does not approve this Stipulation unconditionally and without modification, then this Stipulation shall be void and no Party shall be bound by any of the agreements or provisions hereof.

If the Commission does not approve this Stipulation without condition or modification, and notwithstanding the provision herein that it shall become void; neither this Stipulation nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

In the event the Commission accepts the specific terms of this Stipulation without condition or modification, the Parties waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial review pursuant to §386.510. This waiver applies only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Stipulation.

11. Right to Disclose. The Staff may file suggestions or a memorandum in support of this Stipulation. Each of the Parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum,

which shall also be served on all Parties. The contents of any suggestions or memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests; provided, that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to Commission Rule 4 CSR 240-2.135.

WHEREFORE, the undersigned Parties respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Stipulation.

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