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

EDG'S POST-HEARING BRIEF

COMES NOW The Empire District Gas Company ("EDG" or the "Company"), a wholly-owned subsidiary of The Empire District Electric Company ("Empire"), and for its Post-Hearing Brief in this matter respectfully states as follows to the Missouri Public Service Commission (the "Commission"):

EDG's Operations and the Rate Increase Request

On June 5, 2009, EDG submitted revised rate schedules designed to increase EDG's gross annual gas revenues by approximately $2.9 million, exclusive of applicable gross receipts, sales, franchise or occupational fees, and taxes. EDG provides natural gas service to approximately 45,000 gas customers in 44 communities in northwest, north central, and west central Missouri. EDG serves approximately 39,500 residential customers, 5,300 commercial and industrial customers, and 290 large and small transportation customers. The natural gas distribution system is served by three different interstate pipelines: Southern Star Central, Panhandle Eastern, and ANR. Empire has been operating this gas distribution business since June 1, 2006. (Ex. 1, Gipson Direct, pp. 2-3) This is the first rate case for EDG. The major factors driving the need for this EDG gas rate case are the overall contraction in the number of customers served by the system and the continued decline in usage per customer. (Ex. 1, Gipson Direct, p. 5)

Suspension and Intervention Matters

On June 12, 2009, the Commission issued its Suspension Order and Notice, suspending EDG's revised tariff sheets from July 5, 2009, to November 2, 2009. By the Commission's Order of July 14, 2009, the Missouri Department of Natural Resources ("DNR"), Constellation NewEnergy-Gas Division, LLC ("Constellation"), and Pittsburgh Corning Corporation ("Pittsburgh") were granted intervention in this matter. The Staff of the Commission ("Staff") and the Office of the Public Counsel ("OPC") are also parties to this case.

The Partial Stipulations and Agreements

On December 18, 2009, EDG, Staff, and OPC filed a non-unanimous Partial Stipulation and Agreement (the "Main Stipulation") in this matter. The Main Stipulation addresses all issues in this proceeding with the exception of the transportation tariffs and the funding level of Demand Side Management ("DSM") programs. No party filed an objection to the Main Stipulation within the time permitted by the Commission's Rules, and the Commission was permitted to treat this Main Stipulation as being unanimous. The Commission approved this Main Stipulation by its *Order Approving Partial Stipulation and Agreement and Partial Stipulation and Agreement on Transportation Tariff Issues* dated January 20, 2010.

Among other things, the Main Stipulation provides that the Commission direct 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. It also provides that the Commission direct 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 to the Main Stipulation.

The Main Stipulation does not provide for a Straight Fixed Variable ("SFV") rate design, but it does provide for a substantial increase in the fixed customer charges. The residential customer charge will be $16.50 (compared with the current charge of $7 for the Northwest system customers and $9.50 for the North and South system customers). The Main Stipulation provides that Empire Gas's North/South and Northwest systems will be combined for all purposes except the PGA/ACA rates.

Although the funding level of DSM programs is not addressed in the Main Stipulation, it does address the programs to be implemented by EDG and the process by which the programs will be funded. The Main Stipulation provides that 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").

The Main Stipulation also provides that 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. This rate recovery mechanism is not directly tied to EDG's DSM budget amounts. The agreement is for EDG to recover all prudently incurred costs, including lost margin revenues.

Also on December 18, 2009, EDG, Staff, and OPC filed a non-unanimous Partial Stipulation and Agreement on DSM Funding and Implementation (the "DSM Stipulation"). On December 28, 2009, DNR filed a Notice of Position stating that DNR does object to the DSM Stipulation, and DNR requested a hearing on the issue of the funding level of DSM programs. This issue was heard before the Commission at the evidentiary hearing on January 8, 2010, and the contents of the DSM Stipulation were presented to the Commission as the positions of EDG, Staff, and OPC on the issue of the funding level of DSM programs.

On January 8, 2010, EDG and Constellation filed a Partial Stipulation and Agreement on Transportation Tariff Issues (the "Partial Transportation Stipulation"), addressing all issues pertaining to the transportation tariffs. There were no objections made to this Partial Transportation Stipulation, and the Commission approved it by its *Order Approving Partial Stipulation and Agreement and Partial Stipulation and Agreement on Transportation Tariff Issues* dated January 20, 2010. Only the issue of the funding levels of DSM programs remains to be decided by the Commission.

Demand Side Management and Energy Efficiency

At what level should EDG make funding available for DMS and Energy Efficiency programs?

Pursuant to the DSM Stipulation and the agreement of EDG, Staff, and OPC, EDG submits that, with the exception of the Apogee and BOC programs which EDG agreed to implement following the filing of its Direct Testimony, EDG should initially fund and implement its DSM programs as described in the Direct Testimony of Sherrill McCormack. The Apogee and BOC programs should be implemented as set forth in the Rebuttal Testimony of EDG witness McCormack. For year one, Empire, Staff, and Public Counsel recommend total funding of over $230,000, with funding over $240,000 in year three. This year one funding recommendation amounts to a little over one percent of non-gas revenues, but is based on actual projections of the costs of the various programs and expected participation levels. DNR, on the other hand, is urging this Commission to require funding levels based on total revenues, including gas costs, without any showing that these funding levels are needed – or that the money would even be put to good use.

The positions of EDG on the funding levels of DSM programs are summarized in the following table containing EDG's proposed budget amounts:

	Year 1	**Year 2**	**Year 3**
Low Income Weatherization	$71,500	$71,500	$75,000
High Efficiency Water Heating	$28,500	$28,500	$29,925
High Efficiency Space Heating	$51,750	$51,750	$54,338
Home Performance with Energy Star	$25,250	$25,250	$26,513
Large Commercial Audit and Rebate	$40,000	$40,000	$42,000
Building Operator Certification	$4,775	$4,803	$5,229
Apogee Calculators	$9,425	$9,425	$9,425
TOTALS	$231,200	$231,228	$242,430

Pursuant to the Direct and Rebuttal Testimony of EDG witness McCormack and the DSM Stipulation, to be taken by the Commission as the positions of EDG, Staff, and OPC, the funding amounts set forth in the testimony of Ms. McCormack represent EDG's budgeted amounts and are not to be construed as funding maximums or minimums – either as to the individual programs specified or the DSM portfolio as a whole. If the positions of EDG, Staff, and OPC are adopted by the Commission on this issue, EDG will work with the DSM Advisory Group provided for in the Main Stipulation to determine the proper and appropriate funding level of each DSM program and the DSM portfolio as a whole, with the goal of increasing prudent DSM funding. As noted, pursuant to the Main Stipulation, all expenses incurred related to these programs, including a reasonable assessment of lost margin revenues, will be included in a regulatory asset account, to be amortized over a ten-year period for recovery of all prudently incurred costs in the subsequent rate case.

DNR, the only party that opposed the DSM Stipulation, is not arguing for a DSM funding "floor" or minimum spending levels.[1] DNR witness Laura Wolfe testified at the evidentiary hearing that she is not advocating for a mandate, but is instead suggesting a goal or target amount. (Tr. 142, 145) Ms. Wolfe also acknowledged that the DNR proposal would result in a moving target for EDG. (Tr. 142) As demonstrated by the following exchange between counsel for EDG and DNR witness Wolfe (Tr. 142-143), the DNR proposal would also result in less being budgeted for energy efficiency whenever gas prices decrease:

> Q. If you base the target or goal or budget on 1 percent of revenues including gas, would you agree with me that your target moves from week to week and month to month and year to year?
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> A. It is a moving target. I understand that. And what I did in developing the funds that I suggested, the funding levels that I suggested was to pick the most recent year for which we had data and use that as our benchmark.
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> Q. If the benchmark or budget for DSM programs is tied to total revenues including gas, am I correct then that you'd actually have the goal of spending less on energy efficiency and conservation if gas costs are low, that it's tied to how much gas costs?
>
> A. That's correct.

Further, DNR witness Wolfe's recommendations are based in large part on a study from January of 2005 which utilized data from 2002. (Tr. 135) The study is out-of-date and should not be relied upon at this time. Ms. Wolfe acknowledged that weatherization has occurred in EDG's service area since 2002 and that additional funding sources have become available in

[1] In addition to the practical concerns regarding whether or not EDG could force its customers to participate in certain programs and guaranty spending at certain levels, other than for advertising, it is EDG's position that the Commission lacks the statutory authority under the Public Service Commission Act to impose a set level of energy efficiency spending on a gas corporation such as EDG. RSMo. §393.1075 is limited to electrical corporations, and §393.130.1 is inapplicable. The Commission does not have the statutory authority to become involved in the day-to-day management of the utility's business, particularly when it does not address the offering of a fundamental public service. There is ample legal authority for the proposition that the Commission has no authority to manage the utilities it regulates. *See State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8, 14 (Mo. banc 1930); *see also State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181 (Mo.App. W.D. 1960); *State ex rel. Laclede Gas Company v. Public Service Commission*, 600 S.W.2d 222, 228 (1980).

recent years, including "substantial funding through the stimulus package or the ARRA for low income weatherization." (Tr. 135-136)

In forming her recommendations in this case, DNR witness Wolfe did not take into account the approximately $200 million in federal funds being made available over the next two to three years for Missouri residents. (Tr. 140, 150-152) DNR also performed no study regarding EDG's customers, EDG's service area, and/or the expected or anticipated participation levels in the programs EDG has offered to implement as a part of this case. (Tr. 141, 143-144) The DSM funding level should be based, at least in part, on the particular programs to be implemented and the expected participation levels and costs, and the funding level should be realistic.

EDG should not be required to put an excessive amount of money aside, to the possible detriment of its customers and its operations, just so DNR can say that Missouri utilities are striving for energy efficiency. EDG and its customers are striving for energy efficiency. An arbitrary and unrealistically high goal or target should not be set simply to encourage EDG to seek out all possible cost-effective energy efficiency measures, which DNR witness Wolfe acknowledged are limited for natural gas companies, and to encourage EDG to be aggressive in assisting its customers with energy efficiency. (Tr. 145-146).

When asked by Chairman Clayton about EDG's efforts in encouraging energy efficiency, OPC witness Ryan Kind testified that EDG's performance has been "encouraging and aggressive." (Tr. 118) Similarly, Staff witness Henry Warren testified that EDG has been "aggressive" in this regard, explaining that EDG has made a "very good faith effort" to encourage participation. (Tr. 81) As noted, it is EDG that proposed to add a number of DSM programs to its portfolio as a part of this case.[2]

The Main Stipulation provides for the creation of a DSM Advisory Group, which will be following Empire's DSM gas programs and participation levels. The Company will be able to revise its DSM budget amounts, adapting to and adjusting for the needs and behaviors of its customers, if the positions of EDG, Staff, and OPC are adopted by the Commission. On the other hand, if the positions of DNR are adopted by this Commission, EDG will be forced to reserve an excessive amount of money for DSM programs, with the target for funding changing with gas prices and gas volumes sold, and will be judged in the future by an unrealistic benchmark. The Commission should authorize realistic funding levels, as proposed by EDG after careful study, with changes to be made in the future by the Company as the DSM Advisory Group evaluates the programs and the participation levels of EDG's customers. The Commission should not seek to impose an unrealistic, and possibly imprudent goal.

Request for Relief

EDG respectfully requests that the Commission, consistent with the DSM Stipulation and the competent and substantial testimony presented at the evidentiary hearing in this matter, authorize EDG to implement and fund its DSM programs pursuant to the budget amounts set forth in the Direct and Rebuttal Testimony of EDG witness McCormack, with on-going budget changes being made by the Company in collaboration with the DSM Advisory Group.

[2] It should be noted that when EDG filed this case, it considered its proposed DSM programs to be tied to its SFV rate design proposal. (Ex. 2, Walters Direct, p. 3) As part of the settlement of this case, EDG agreed to a non-SFV rate design, with the fixed portion of customer charges instead being increased. This case is distinguishable from the current Missouri Gas Energy case (Case No. GR-2009-0355), where it appears that the Commission may set a certain level of energy efficiency funding as a goal for MGE in conjunction with the authorization of a SFV rate design for MGE.

WHEREFORE, EDG respectfully requests that the Commission consider the positions and arguments set forth in this Post-Hearing Brief and adopt the recommendations and positions of EDG on the DSM funding issue.

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 22nd day of January, 2010.

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