

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

Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	Case No. GC-2007-0112
v.)	
)	
The Empire District Gas Company,)	
)	
Respondent.)	

**NOTICE OF SATISFACTION AND, ALTERNATIVELY, ANSWER AND
AFFIRMATIVE DEFENSES TO COMPLAINT**

COMES NOW Respondent, The Empire District Gas Company (“EDG” or “Respondent”), and pursuant to 4 CSR 240-2.070 and the Commission’s Notice of Complaint issued on September 26, 2006, respectfully states the following as its notice of satisfaction and, alternatively, answer and affirmative defenses to Staff’s Revised Complaint¹ (the “Complaint”):

1. EDG admits the allegations of paragraph 1 of the Complaint.
2. EDG admits the allegations of paragraph 2 of the Complaint.
3. EDG admits that Section 386.390(1) RSMo provides in part that

“Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic,

¹ The Commission’s Notice of Complaint states that Staff filed a complaint against EDG on September 22, 2006, and filed its revised complaint the same day; enclosed with the Notice of Complaint was a copy of the revised complaint only. Therefore, presumably the initial complaint has been withdrawn and superseded by the revised complaint and this answer with affirmative defenses is directed to the revised complaint.

commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission.” However, EDG denies any further allegations or implications contained in paragraph 3 of the Complaint including the implication that Section 386.390(1) RSMo authorized Staff to file the Complaint and specifically denies that Staff has standing, capacity or authority under any statute to file the Complaint.

4. EDG admits that 4 CSR 240-2.070(1) provides in part that “The commission on its own motion, the commission staff through the general counsel, the office of the public counsel, or any person or public utility who feels aggrieved by a violation of any statute, rule, order or decision within the commission’s jurisdiction may file a complaint.” However, EDG denies any implications contained in paragraph 4 of the Complaint that the statutory powers or authority of the Commission or its Staff may be expanded by administrative rule and specifically denies that Staff has standing, capacity or authority under any statute to file the Complaint.

5. EDG admits the allegations of paragraph 5 of the Complaint.

6. EDG admits that paragraph 6 of the Complaint accurately quotes the referenced portion of the Stipulation filed on February 28, 2006, in Case No. GO-2006-0205 except for the omission of the letter “s” at the end of the word “requirement” in (g)(i) and the word “Plan” in (g)(iii). Further answering, EDG states that Aquila/EDG

submitted a gas supply and hedging plan for the Missouri gas properties on April 19, 2006, and EDG submitted an update to this previously supplied gas supply and hedging plan to the signatory parties on August 3, 2006. As part of the update, EDG disclosed its progress toward implementing the plan previously submitted on April 19, 2006.

7. EDG admits the allegations of paragraph 7 of the Complaint.

8. EDG admits the allegations of paragraph 8 of the Complaint.

9. EDG admits that under the terms of the Stipulation in Case No. GO-2006-0205 it was to submit an update to the gas supply plan to Staff and OPC as set forth in Section II paragraph (g) of the Stipulation within three months (not 90 days) of the close of the transaction, which occurred on June 1, 2006, or in other words by September 1, 2006. EDG admits that it did not submit an update to the gas supply plan to Staff and OPC by September 1, 2006, but denies the remainder of the allegations contained in paragraph 9 of the Complaint because the required plan has now been submitted. Further answering, EDG states that the required update to the gas supply plan was submitted to Staff and OPC in electronic form on September 26, 2006, which was followed up by submission of a hard copy on September 27, 2006. On September 29, 2006, EDG held a technical conference with Staff, to which all signatories to the Stipulation were invited, to present information concerning the transition of gas operations from Aquila to EDG; inform them that EDG intended to complete its assumption of the gas supply function for the gas properties effective November 1, 2006; and answer any questions from Staff or OPC concerning the update to the gas supply plan submitted on September 26, 2006. However, the September 1 to September 26 delay in providing Staff and OPC with an update to the gas supply plan did not cause EDG to delay implementation of the gas

supply plan previously submitted on April 19th and updated and presented to the signatories on August 3rd.

10. EDG admits that paragraph 10 of the Complaint quotes a portion of Section 386.600 RSMo but denies any implications arising from or contained in paragraph 10.

11. EDG admits that before the Commission may bring a penalty action in court it must first hold a contested case hearing as stated in paragraph 11 of the Complaint.

12. EDG admits that paragraph 12 of the Complaint quotes Section 386.570.1 and .2 RSMo, but denies any further implications arising from or contained in paragraph 12 of the Complaint, including but not limited to those portions of the statute highlighted by Staff in the Complaint.

13. EDG denies the allegations of paragraph 13 of the Complaint.

14. EDG admits to the frequent discussions² between Staff and Mr. Scott Keith of EDG regarding the subject gas plan referenced in paragraph 14 of the Complaint and admits that EDG has only recently assumed the responsibility of serving Missouri natural gas customers; however, EDG is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and implications contained in paragraph 14 of the Complaint and therefore denies same. Further answering, EDG states that the discussions between Staff and EDG apparently caused a misunderstanding between the two regarding the submission of the updated gas supply plan. Staff was informed in late August that the submission of the gas plan might be delayed, due to

² Despite the frequent discussions mentioned by Staff in its Complaint, Staff did not inform EDG that Staff was considering the filing of a Complaint; in fact, Staff did not inform EDG of the filing of the Complaint until after the Complaint had been filed.

Empire personnel scheduling conflicts. Knowing that there would be a meeting between EDG and Staff in late September to discuss the transition of gas operations from Aquila to EDG, EDG personnel suggested that the September 1 submission be rolled-in to the late September meeting, at which time all gas supply matters could be addressed. EDG was under the impression that this was acceptable to Staff, since Staff personnel did not indicate that it would not be acceptable. Furthermore, as stated above, the delay in submitting the updated gas supply plan to Staff did not cause EDG to delay implementation of the gas supply plan previously submitted on April 19th and updated and presented to the signatories on August 3rd, or affect service to customers in any way, as implied by Staff in paragraph 14 of the Complaint.

15. Further answering and for its first affirmative defense, EDG hereby incorporates all affirmative defenses previously stated hereinabove.

16. Further answering and for its second affirmative defense, EDG hereby states that it believes the Complaint has been satisfied. EDG states that the required plan was submitted to Staff and OPC in electronic form on September 26, 2006, which was followed up by submission of a hard copy on September 27, 2006. On September 29, 2006, EDG held a technical conference with Staff, to which all signatories to the Stipulation were invited, to present information concerning the transition of gas operations from Aquila to EDG; inform them that EDG intended to complete its assumption of the gas supply function for the gas properties effective November 1, 2006; and answer any questions from Staff or OPC concerning the gas supply plan update submitted on September 26, 2006. However, the September 1 to September 26 delay in providing Staff and OPC with the update to the gas supply plan did not cause EDG to

delay implementation of the gas supply plan previously submitted on April 19th and updated and presented to the signatories on August 3rd.

17. Further answering and for its third affirmative defense, EDG states that any delay in submitting the subject gas plan was the result of mistake or misunderstanding. EDG states that the discussions between Staff and EDG apparently caused a misunderstanding between the two regarding the submission of the subject gas plan. Staff was informed in late August that the submission of the updated gas plan might be delayed, due to Empire personnel scheduling conflicts. Knowing that there would be a meeting between EDG and Staff in late September to discuss the transition of gas operations from Aquila to EDG, EDG personnel suggested that the September 1 submission be rolled-in to the late September meeting, at which time all gas supply matters could be addressed. EDG was under the impression that this was acceptable to Staff, since Staff personnel did not indicate that it would not be acceptable. Furthermore, as stated above, the delay in submitting the updated gas supply plan to Staff did not cause EDG to delay implementation of the gas supply plan previously submitted on April 19th and updated and presented to the signatories on August 3rd, or affect service to customers in any way.

18. Further answering and for its fourth affirmative defense, EDG states that any delay in submitting the updated gas plan should be excused under the facts set forth in paragraphs 16 and 17 above.

19. Further answering and for its fifth affirmative defense, EDG states that under the facts as set forth in paragraphs 16 and 17 above, Staff should be estopped from pursuing this Complaint action against EDG.

20. Further answering and for its sixth affirmative defense, EDG states that that Staff lacks standing, capacity and/or authority under statute to file the Complaint. Section 386.390(1) RSMo, under which Staff filed the Complaint, provides that “Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission.” Although the foregoing statute contains a rather lengthy list of entities which may bring a complaint, nowhere in this statutory list of entities that may bring a complaint is Staff listed.

WHEREFORE, having provided notice of satisfaction, and in the alternative fully answered and set forth its affirmative defenses, Respondent The Empire District Gas Company prays the Commission dismiss the Complaint filed herein by Staff, deny Staff the relief requested in the Complaint, and discharge Respondent with its costs herein

expended and enter such other orders and relief as the Commission deems reasonable and just.

Respectfully submitted,

/s/ Jeffrey A. Keevil

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent to counsel for parties of record by depositing same in the U.S. Mail, first class postage prepaid, by hand-delivery, or by electronic mail transmission, this 5th day of October, 2006.

/s/ Jeffrey A. Keevil
