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**

STAFF'S POST-HEARING BRIEF

COMES NOW, the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and for its Post-Hearing Brief, respectfully states as follows:

STATEMENT OF THE FACTS

On June 5, 2009, The Empire District Gas Company ("EDG"), filed with the Commission proposed tariff sheets bearing an effective date of July 5, 2009, which were designed to produce a gross annual revenue increase of approximately $2.9 million for natural gas service. On June 12, 2009, the Commission issued its Suspension Order and Notice ("Order"). The Parties to this proceeding are: Staff, EDG, the Office of the Public Counsel ("OPC"), Missouri Department of Natural Resources ("DNR"), Constellation NewEnergy–Gas Division, LLC ("Constellation"), and Pittsburgh Corning Corporation ("Pittsburgh").

On December 18, 2009, Staff, EDG, and OPC filed their *Partial Stipulation and Agreement* ("*Partial Agreement*"). This *Partial Agreement* was not opposed by any party, and was approved by Order of the Commission dated January 20, 2010, to become effective January 30, 2010. The *Partial Agreement,* among other things, established a Demand Side Management ("DSM") and Energy Efficiency ("EE") Advisory group ("DSM collaborative"), and provided that the signatories agreed to support the recovery in a future rate case of costs prudently incurred and accumulated by EDG in DSM and EE Program Regulatory Asset Accounts ("DSM-RAA"), including a reasonable estimate of lost margin revenues. It also provided that the DSM-RAA are eligible for rate base treatment, and that the amounts accumulated in the DSM-RAA that have not been included in rate base shall be allowed to earn a return equivalent to EDG's AFUDC rate.

The December 18, 2009 *Partial Agreement* resolved all issues associated with this case except for: (1) certain transportation items; (2) the DSM and EE programs to be implemented by EDG; and (3) and the baseline funding level for EDG's DSM and EE programs.

Also on December 18, 2009, Staff, EDG, and OPC filed their *Partial Stipulation and Agreement on DSM Funding and Implementation* ("*Partial Stipulation DSM*"), which was opposed by DNR. There-in, EDG agreed to implement 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 programs.

On January 8, 2010, EDG and Constellation filed their *Partial Stipulation and Agreement on Transportation Tariff*. This stipulation was not opposed by any party, resolved all items on the issues list related to transportation, and was approved by Order of the Commission dated January 20, 2010, to become effective January 30, 2010.

ARGUMENT

Demand Side Management and Energy Efficiency: At what level should EDG make funding available for DSM and EE programs?

Staff generally concurs in the Argument set out in the Brief of the Empire District Gas Company. Specifically, Staff recommends the Commission authorize EDG to file tariffs reflecting the following:[1]

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[1] The year-specific funding levels for the first three years are as follows:

	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

1. A Weatherization Program with an average annual budget of $72,667 over the next three years.[2]

2. A High Efficiency Natural Gas Water Heater program consisting of rebates on ENERGY STAR® rated tank and tankless water heaters, with rebates of $50 and $200, respectively,[3] with an average annual budget of $28,975 over the next three years.[4]

3. A High Efficiency Natural Gas Space Heating program, designed to encourage customers to purchase and install an ENERGY STAR furnace, with annual fuel utilization efficiency ("AFUE") of ninety percent or better, by offering a $200 rebate, and a $25 rebate toward the purchase and installation of a programmable thermostat. This program has an average annual budget of $52,613 over the next three years.[5]

4. A Home Performance with ENERGY STAR program with an average annual budget of $25,671 over the next three years.[6]

5. A large-volume customer rebate program consisting of both prescriptive and custom rebates. An energy audit would be optional to the customer. However, the customer would qualify for an audit rebate if an audit was performed and at least one recommended measure installed. The amount of any audit rebate would be determined by the square footage of the building audited. The average annual budget for this program over the next three years is $40,667.[7]

At hearing, DNR expressed opposition to: (1) the level of rebates for ENERGY STAR tank water heaters offered under the water heater program, and (2) the average annual budgets of each program described above. In support of the Staff's position described above, Staff will address the relation of the average annual budgets of the described programs to the following issues: (1) the DSM collaborative established by the December 18 *Partial Stipulation DSM*; (2)

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

[2] Exhibit 15, Prefiled Direct Testimony of Sherrill McCormack: Page 5, Lines 11-13.
[3] The ENERGY STAR tank water heater rebate amount is subject to adjustment to reflect the higher incremental costs of the tank storage water heaters with an Energy Factor (EF) of .67, scheduled to become the new Energy Star storage tank water heater EF criteria on September 1, 2010.
[4] *See* Exhibit 15, Prefiled Direct Testimony of Sherrill McCormack: Page 6, Lines 2-6; and *Partial Stipulation and Agreement on DSM Funding and Implementation*: Page 2, Paragraph 3.
[5] Exhibit 15, Prefiled Direct Testimony of Sherrill McCormack: Page 6, Lines 7-12.
[6] Exhibit 15, Prefiled Direct Testimony of Sherrill McCormack: Page 6, Lines 13-15.
[7] Exhibit 15, Prefiled Direct Testimony of Sherrill McCormack: Page 7, Lines 5-10.

the effect non-utility-source funding and existing programs may have on customer subscribership and impact of the described programs; and (3) the negative effect of mandating a given funding level for a given program.

1. ***Impact of Collaborative***

The December 18 *Partial Stipulation DSM* provides that a DSM Advisory Group, consisting of Staff, OPC, the DNR Energy Center, an Industrial Customer Representative, and EDG will be organized ("collaborative"). The collaborative is to 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.[8]

No party has presented evidence on what happens if the collaborative recommends additional programs, not specifically addressed by either the unopposed *Partial Stipulation* or the DNR-opposed *Partial Stipulation DSM*. Staff is not aware of anything that would preclude EDG from seeking to include in the RAA costs related to additional programs that are developed and tariffed after this case concludes, but before the next EDG rate case.

Adopting the positions described in the *Partial Stipulation DSM* and summarized above would not preclude EDG from seeking to tariff and implement new DSM or EE programs or seeking to modify the tariffs of existing programs after the conclusion of this case, whether or not the new or modified programs are a product of the collaborative.

2. ***Impact of Non-Utility-Source Funding and Energy Efficiency Programs to Date***

DNR witness Laura Wolfe's recommended funding levels are based in large part on a study from January of 2005 which utilized data from 2002. (Tr. 135) Ms. Wolfe acknowledged that weatherization has occurred in EDG's service area since 2002. (Tr. 135-136) Ms. Wolfe

[8] *Partial Stipulation and Agreement on DSM Funding and Implementation*: Page 5, Paragraph 8.A.

also acknowledged that additional funding sources for energy efficiency have become available in recent years, including “substantial funding through the stimulus package or the ARRA for low income weatherization.” (Tr. 135-136)

DNR witness Wolfe acknowledged that her recommendation in this case does 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) She also acknowledged that a given structure does not gain substantial efficiencies from being weatherized a second time within ten years of an initial weatherization. (Tr. 156) Ms. Wolfe acknowledged that the impact of weatherization is more substantial in more northerly climates, and that Missouri is the southern-most state in the region studied. (Tr. 137-138)

In light of this testimony, it is reasonable to conclude that the levels of efficiency gains that DNR references for the studied region as a whole and ascribes to the 1% of gross revenue funding level would be unachievable given: (1) Missouri’s relatively mild climate, (2) the weatherization that has occurred in EDG’s service area since 2002, and (3) the energy-efficiency monies made available in EDG’s service area from non-utility sources, specifically, the ARRA.

3. ***Mandated Funding Levels***

DNR’s recommended funding levels and the level of energy efficiency gains DNR projects at those funding levels are premised on circumstances not found in EDG’s service area in the 2009 – 2010 timeframe. DNR did not rely on information specific to 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. Importantly, Staff and OPC witnesses agreed that EDG is aggressive in promoting these programs. (Tr. 81, 118)

DNR has not requested that a funding floor or ceiling be set, and no other party has requested a funding floor or ceiling. (Tr. 142) Further, DNR agreed that inefficient spending of DSM and EE monies would not contribute to energy efficiency, and indicated its opposition to imprudent spending on DSM and EE.[9] (Tr. 137-138)

The level of customer participation results from both EDG's promotional efforts, and factors beyond EDG's control – such as the existence of non-utility-source funding. The rebate programs are designed so that the incurred funding level is a result of:

Number of Participants	X	Rebate Amount	+	Reasonable Administrative Costs	+	Reasonable Promotional Costs	=	Funding Level

The collaborative will be reviewing EDG's promotion and administration of these programs for whether EDG is reasonably administering and aggressively promoting the programs. The rebate amount will be fixed in EDG's tariff.

Therefore, if a minimum funding level for a given program (or the programs as a whole) is mandated, and prudent promotional practices do not yield sufficient participation to meet that mandated funding level, EDG would be unable to meet that funding level without incurring imprudent promotional costs or incurring imprudent administrative costs. In short, if EDG's prudent actions do not generate spending to achieve a mandated funding level, then there is no way for EDG to prudently meet that funding level. No evidence was presented by DNR as to what it believes a realistically attainable level of participation is, (Tr. 140-141) and DNR agreed that imprudent spending on these programs would not contribute to the efficacy of the programs.

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[9] *See* Tr. 145:

Q. Ms. Wolfe, help me understand the position of DNR with regard to this dollar amount. If you-all aren't requesting a mandated figure, exactly what are you asking for us to call this? What do you want us to order Empire to do as it relates to this .5 percent and 1 percent on gas revenues? Is it a goal? Is it a target? What do you call it?

A. I see it is a goal or a target. I kind of use those terms interchangeable. As I've said earlier, DNR does not encourage in any way an imprudent spending of ratepayer dollars or what will eventually be ratepayer dollars as we go through the depreciation of the regulatory asset account or the implementation of energy efficiency programs that are not cost effective.

(Tr. 137-138, 140-142)

Although only the amounts actually and prudently spent on DSM and EE programs will be recommended for inclusion in the subsequent rate case, per the *Partial Agreement*, Staff encourages adoption of a budget that will encourage EDG to manage and implement the DSM and EE programs prudently and efficiently.

CONCLUSION

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will resolve the issue remaining for determination according to its recommendation set out herein, to wit:

authorize EDG to file tariffs reflecting the following:

1. A Weatherization Program with an average annual budget of $72,667 over the next three years.

2. A High Efficiency Natural Gas Water Heater program consisting of rebates on ENERGY STAR® rated tank and tankless water heaters, with rebates of $50 and $200, respectively,[10] with an average annual budget of $28,975 over the next three years.

3. A High Efficiency Natural Gas Space Heating program, designed to encourage customers to purchase and install an ENERGY STAR furnace, with annual fuel utilization efficiency ("AFUE") of ninety percent or better, by offering a $200 rebate, and a $25 rebate toward the purchase and installation of a programmable thermostat. This program has an average annual budget of $52,613 over the next three years.

4. A Home Performance with ENERGY STAR program with an average annual budget of $25,671 over the next three years.

5. A large-volume customer rebate program consisting of both prescriptive and custom rebates. An energy audit would be optional to the customer. However, the customer would qualify for an audit rebate if an audit was performed and at least one recommended measure installed. The amount of any audit rebate would be determined by the square footage of the building audited. The average annual budget for this program over the next three years is $40,667.

[10] The ENERGY STAR tank water heater rebate amount is subject to adjustment to reflect the higher incremental costs of the tank storage water heaters with an Energy Factor (EF) of .67, scheduled to become the new Energy Star storage tank water heater EF criteria on September 1, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

/s/ Sarah Kliethermes