BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In The Matter of The Empire District Gas Company of Joplin, Missouri for the Authority To File Tariffs Increasing Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company	)))))	Case No. GR-2009-0355

MISSOURI DEPARTMENT OF NATURAL RESOURCES' BRIEF

COMES NOW the Missouri Department of Natural Resources (MDNR) and states as follows:

The Missouri Department of Natural Resources (MDNR) objected to the Partial Stipulation and Agreement on DSM Funding and Implementation (DSM Partial Stipulation) because the Stipulation did not provide for sufficient funding levels, and sought hearing on this issue (Missouri Department of Natural Resources' Notice of Position Respecting Partial Stipulation and testimony of Laura Wolfe, Ex. 17 and Ex 18). As stated in MDNR's Statement of Position, the Commission "should authorize the continuation of Empire District Gas Company's (EDG) energy efficiency programs", "allow EDG to maintain its planned investment . . .for 2010", and increase the investment for 2010 for the following two years (December 31, 2009, p. 2).

In sum, the amount Empire District Gas (EDG) spends on energy efficiency initiatives must be increased in order to attain true energy savings and conservation. That increase should begin at 0.332 percent of EDG's annual gross operating revenues beginning in the calendar year 2010, increase to 0.5 percent for calendar year 2011 and then to 1.0 percent of EDG's annual gross operating revenues for calendar year 2012 (Ex. 17, p.

12, l. 10-15. Further, the Commission should authorize EDG to implement the following energy efficiency programs as described in the direct testimony and rebuttal testimony of Sherrill McCormack and as further described in the Partial Stipulation and Agreement on DSM Funding and Implementation (DSM Partial Stipulation): 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. (Ex. 15, Ex. 16.). In addition, the High Efficiency Water Heating Program should be implemented as described in Sherrill McCormack's testimony except that the rebate amount for tank storage water heaters should be as set by EDG with input from the DSM Advisory Group.

I. DEMAND SIDE MANAGEMENT AND ENERGY EFFICIENCY

A. At what level should EDG make funding available for DSM and Energy Efficiency programs?

Section 393.130.1, RSMo states, "[e]very gas corporation…shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." Energy efficiency programs that are designed to reduce natural gas consumption by its customers can lead to the reduction of wholesale natural gas prices as well as generating direct cost savings to natural gas customers, which will be reflected in rates (Ex. 17, p. 10, l. 10-11). Therefore, because energy efficiency programs are designed to increase the efficiency, and in turn the adequacy, of the service a gas company provides, the Commission has the ability to authorize such programs in order to ensure that the rates that are charged to the customers are just and reasonable.

The MDNR does have positions on how much should be included as funding for energy efficiency programs and how that funding amount should be determined.

According to a recent study completed by the American Council for an Energy-Efficient Economy (ACEEE), reductions in natural gas consumption could result in wholesale natural gas price reductions. Because of the very tight and volatile U.S. natural gas market, the study estimated that a reduction of about 1 percent per year in total U.S. gas demand could potentially result in wholesale natural gas price reductions of 10 to 20 percent (Ex. 17, p. 10, l. 3-7).

The ACEEE study identifies new energy policies and additional funding for energy efficiency programs necessary to achieve savings significant enough to reduce the wholesale price of natural gas as well as to generate direct cost savings to natural gas consumers. The study estimated an annual energy efficiency investment by each of the 8 Midwest states, including Missouri, based on each state's proportional allocation of total projected regional natural gas savings in 2010. From a regional perspective, in order to reduce natural gas demand sufficiently to pressure wholesale prices downward, the study roughly estimated that Missouri would be required to expend approximately $12 million per year for natural gas related energy efficiency programs through the year 2020. The study estimates that the dollar savings impact of the associated natural gas price reductions from this level of investment would be approximately $60 million for Missouri by 2015 and an additional $97 million by the year 2020.[1] (Ex. 18, p. 5, l. 42 – p. 6, l. 5.

[1] Examining the Potential for Energy Efficiency To Help Address the Natural Gas Crisis in the Midwest, January 2005, Report Number U051, American Council for an Energy-Efficient Economy

This study is also significant because was conducted by an organization with access to nationwide information regarding the development of energy efficiency programs. The ACEEE also has many years of knowledge and experience in identifying funding levels for energy efficiency programs.

While EDG is to be commended for voluntarily pursuing a much more robust portfolio of energy efficiency programs than it currently has in place, the funding levels proposed by EDG and now incorporated into the DSM Partial Stipulation will not result in sufficient savings to contribute to lower wholesale natural gas prices and do not constitute an effective energy efficiency program. A more significant level of investment in energy efficiency is required to potentially pressure natural gas wholesale prices lower. The MDNR recognizes that EDG alone can not have a significant impact on wholesale prices through its energy efficiency programs. But EDG can and should contribute in a more meaningful way toward a regional reduction in natural gas consumption. (Ex. 17, p. 11, l. 19-20 through p. 12, l. 9 and Ex. 18, p. 5, l. 42 – p. 6, l. 5.)

In addition to the American Council on an Energy-Efficient Economy study, the National Action Plan for Energy Efficiency sponsored by the USDOE and the United States Environmental Protection Agency and prepared by 50 leading organizations, including a variety of natural gas companies, noted the most effective energy efficiency projects were funded at a level equal to a minimum range of 0.5 to 1.5 percent of a natural gas utility's annual operating revenue.[2] The minimum level of annual energy efficiency program investments by EDG should be approximately $217,000 for 2010,

[2] National Action Plan for Energy Efficiency, July 2006

$327,000 for 2011 and $655,000 for 2012, using EDG's 2008 annual total operating revenue, including cost of gas, of $65,437,968 (Response to Data Request, DNR-002, Sherry McCormack, EDG Company, September 4, 2009). (Ex. 17, p. 12, l. 11-20.) The Commission would be sending the wrong policy signal to adopt the DSM Partial Stipulation's funding levels, which provide too low a target overall, and provide for virtually no increase from year to year. There is $0 increase from year 1 to year 2, and a paltry $11,000 increase from year 2 to year 3; namely $231,000 in year 1, $231,000 in year 2 and $242,000 in year 3--all figures rounded to nearest $1000. (Ex. 16, p. 3, l. 1-4, Tr. Vol 7, p 51, l. 1-5).

The MDNR realizes that achieving its recommended spending level is a challenging goal; however, challenging goals need to be set in order to encourage and incentivize utility companies to seek out and aggressively implement all possible cost effective energy efficiency programs with the goal of spending at the levels proposed by MDNR (Tr. 154, l. 2-4, Tr. 141, l.25-142, l.3). Although several of the parties have questioned whether EDG will be able to spend the funds identified as necessary by MDNR, the Energy Center has made it clear that it does not support imprudent spending on energy efficiency. (Tr. Vol. 7, p. 138, pp. 141-142.) However, a significant expenditure of funds on energy efficiency programs is needed before real energy savings are seen. Staff witness Warren acknowledged such a correlation in his response to questions during the January 8, 2010 hearing. (Tr. Vol. 7, p. 72.) Furthermore, in his response to questions from the bench, Mr. Warren also stated that he did not see a problem with allowing the Commission to authorize, not mandate, EDG to spend more on energy efficiency if the collaborative is able to come up with ideas to spend the funds efficiently and wisely. (Tr. Vol. 7, p. 74.)

At hearing, the signatory parties sometimes declared that the funding levels in the DSM Partial Stipulation were "goals" or budgeted amounts rather than a cap; it was also suggested that any funds spent over those amounts would be imprudent. (Tr. Vol. 7, pp. 124-126, pp. 162-164.) Stating that any funds spent over the budgeted amount would be imprudent without first knowing how those funds would be spent, in effect makes the budgeted amount a cap because it does not provide EDG with any incentive to spend over the budgeted amount, to seek out and aggressively implement all possible cost effective energy efficiency programs. DNR proposes that a goal or target, rather than a cap, be set, but that it be set at a meaningful level that strongly encourages aggressive, but cost-effective, energy efficiency programs, and that it include meaningful increases from year to year.

The American Recovery and Reinvestment Act ("ARRA") was cited as an additional source of funding for energy efficiency programs. While it is true the State of Missouri is receiving significant federal funds as a result of the ARRA, it should be emphasized that these funds are specifically intended to supplement and not supplant existing programs, are being distributed statewide, are only available for a short period of time, and do not go directly to the utility companies (Tr. Vol. 7, p. 150, p. 151, l. 16-19, p. 152, l. 15-20). The bulk of the ARRA funds being managed by MDNR go to community action agencies for weatherization of homes of low income citizens; another major portion will be released in subgrants to cities and counties, and a smaller amount will be made available to Missouri citizens through an appliance rebate program. The Act specifically states that these funds are to be used for “the expansion of existing energy programs.” (Sec. 407(c)). In other words, these funds are to be used to supplement, not supplant existing energy efficiency programs in order to ensure that these programs will continue to thrive in the future, after the federal stimulus money has been spent (Tr. Vol. 7, p. 157, l. 23 – p. 158, l. 5). The availability of the ARRA funds for low-income weatherization was accommodated to an extent in the MDNR recommendation that EDG’s “increased investment should be in the form of adding the BOC and planning for more aggressive participation levels than what appears in EDG’s current plan.” (Ex. 17, p. 12, l. 15-17).

The MDNR also has a position on how the rebate amount should be determined for the High Efficiency Water Heating Program.

According to the Partial Stipulation and Agreement on DSM Funding and Implementation, the parties have proposed a $50 rebate amount for tank storage water heaters; a lower amount than was proposed by EDG based on the recommendation of their consultant (p. 2). Instead of setting a specific rebate amount for this program, the rebate amount should be determined by EDG, after consultation with the DSM Advisory Group. This approach would allow EDG and the DSM Advisory Group to not only analyze what is currently happening in the market, but it also gives them the flexibility to adjust the rebate amount accordingly so that the customers are truly incentivized to participate in this program. During her response to questions during the January 8, 2010 hearing, EDG witness McCormack stated that lowering the rebate from $75 as originally proposed in the Applied Energy Group Study to $50 provided an opportunity for additional customers to participate in the program. (Tr. Vol. 7, pp. 50-52.) However, this statement is counter-intuitive in the face of skepticism expressed by the parties with the likelihood of EDG achieving the agreed-upon level of expenditures; EDG will need to find 30% more customers, while offering those customers less of an incentive to choose a more energy-efficient model of water heater. Rather than decreasing the rebate amount per customer, EDG should set a higher overall target for water heaters in the budget to encourage higher participation in this program. In his response to questions from the bench, OPC witness Kind acknowledged that if EDG is going to spend more money, it has to have a higher level of customer participation. (Tr. Vol. 7, p. 121) While it is true that customers cannot be forced to participate in these programs, increasing the rebate amount would certainly increase the incentive for customers to participate in these programs. Lowering the rebate amount sends the wrong signal. However, rather than recommending a specific dollar figure per unit, DNR recommends that the DSM Advisory Group be permitted the flexibility to help EDG determine the proper level of rebate to maximize customer participation in this cost-effective energy efficiency program.

In the course of the January 8, 2010 hearing, Chairman Clayton inquired of several witnesses and the Staff, with an invitation for all parties "to chime in" (Tr. Vol. 7, p. 160) on what flexibility the Commission has in its decision on this issue, and asked several other specific questions about ramifications and options. The MDNR's position remains that the Commission should adopt the recommendations addressed above, but MDNR also wishes to address some of Chairman Clayton's questions that appear on pages 160-162.

It would appear that the Commission may treat the funding levels expressed in the DSM Partial Stipulation as a "budgeted amount" and not a "not-to-exceed" cap, despite the lack of clarity on this position in the document itself and the record of the January 8 hearing. However, because of the confusion over the nature of the dollar amounts, the assertions regarding the probability that higher amounts would be considered imprudent by Staff, and the testimony of other parties to the Stipulation, if the DSM Partial Stipulation is approved as submitted, EDG will be left only with **disincentives** to expend additional funds. The suggestion of an additional Accounting Authority Order is not a suitable option. In reality, it is a disincentive in the form of the additional effort that will have to be undertaken by the company.

MDNR suggests that it is absolutely essential for the Commission to find as a matter of public policy that the goal or target amounts for EDG spending on DSM should actually be higher than "budgeted amounts" in the Stipulation, and should increase significantly from year to year. Also, MDNR suggests that the Commission order provide strong guidance to the DSM Advisory Group to aggressively seek out cost-effective opportunities for additional spending by EDG on energy efficiency programs, either the existing ones or new ones, and to identify incentives for additional programs and expenditures rather than ways to penalize EDG for exceeding the targets, so long as the programs are cost-effective. Missouri will not make significant progress on energy efficiency based on the terms of the DSM stipulation and prevailing attitudes. The

Commission should take this opportunity to provide appropriate public policy guidance to the parties.

EDG can and should spend more on energy efficiency, because it is only by ramping up the funding levels for energy efficiency to a significant and meaningful amount that we can ever hope to see real energy savings. Implementing an energy efficiency program incorporating expenditure of funds at the levels proposed by the MDNR is a necessary step in the right direction.

WHEREFORE, MDNR respectfully submits its Initial Brief.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Sarah Mangelsdorf
Sarah Mangelsdorf
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
Bar No. 59918
573-751-0052
573-751-8796 (fax)
sarah.mangelsdorf@ago.mo.gov

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I hereby certify that copies of the foregoing have been transmitted by email to all counsel of record this 22nd day of January, 2010.

/s/ Sarah Mangelsdorf