OPEB Agreement

The intent of this agreement is to:

A. have the amount collected in rates for OPEB cost be based on the actuarially determined cost under ASC 715-60, formerly FAS 106, using methodology similar to that used to determine ASC 715-30, formerly FAS 87, pension cost, as described below in item 2; and

B. have all prudent amounts expensed by the Company and contributed by the Company to the VEBA trust in accordance with the provisions of this agreement be recoverable in rates; and

C. clarify the recommendations as to future treatment of any charges that would otherwise be recorded to equity (e.g., decreases to other comprehensive income) as required by ASC 715-20, formerly FAS 158, or any other FASB codification, statement or procedure relative to the recognition of OPEB costs and /or liabilities and to bind the Parties to such future recommendations as may be required by the terms of this agreement.

To accomplish the goals evidenced by these recommendations, the provisions listed below are included in this agreement. The Parties acknowledge that this agreement creates certain rights and obligations with respect to future positions and recommendations of these Parties, if approved by the Commission herein, but does not bind the Commission in any subsequent proceeding.

1. The Company's actuarially determined OPEB cost is currently recognized in rates and for financial reporting purposes. For regulatory purposes this amount is without regard to purchase accounting as agreed in the "Unanimous Stipulation and Agreement" in Case No. GO-2006-0205.

2. OPEB cost will be calculated based on the following methodology:

   a. A Market Related Value of assets will be used to determine costs, smoothing all asset gains and losses that occur on and after January 1, 2006 over a five-year-period.

b. Unrecognized gains and losses will be amortized over a 10-year period without respect to the 10% Corridor described in ASC 715-60.

3. In the case that OPEB expense becomes negative, the Company is ordered to set up a regulatory liability to offset the negative expense. In future years, when OPEB expense becomes positive again, rates will remain zero until the regulatory liability that was created by negative expense is reduced to zero. The OPEBs regulatory liability will be reduced by the amount of subsequent positive OPEBs expense experienced by the Company. This regulatory liability is a non-cash item and should be excluded from rate base in the future years.

4. A regulatory asset or liability will be established on the Company's books to track the difference between the level of OPEB expense during the rate period and the level of OPEB expense built into rates for that period. If the OPEB expense during the period is more than the expense built into rates for the period, the Company will establish a regulatory asset. If the OPEB expense during the period is less than the expense built into rates for the period, the Company will establish a regulatory liability. If the OPEB expense becomes negative, a regulatory liability equal to the difference between the level of OPEB expense built into rates for that period and $0 will be established. Since this is a cash item, the regulatory asset or liability will be included in rate base and amortized over 5 years at the next rate case.

5. The provisions of ASC 715-20, formerly FAS 158, require certain adjustments to the prepaid pension or OPEBs asset and/or OPEBs liability with a corresponding adjustment to equity (i.e., decreases/increases to Other Comprehensive Income). The Company shall be allowed to set up a regulatory asset/liability to offset any adjustments that would otherwise be recorded to equity caused by applying the provision of FAS 158 or any other FASB statement or procedure that requires accounting adjustments to equity due to the funded status or other attributes of the OPEB plan. The parties acknowledge that the adjustments described in this paragraph shall not increase or decrease rate base.

<u>Pension Agreement</u>

The intent of this settlement is to:

A. have the amount collected in rates be based on the ASC 715-30, formerly FAS 87, using the methodology described below in item 2; and

B. have, once any prepaid pension asset has been collected in rates by the Company, all pension cost collected in rates be contributed to the pension trust; and

C. have any "prior prepaid pension asset" and all prudent amounts contributed by the Company to the pension trust per items 3 and 5 below recoverable in rates; and

D. have the Company receive no more or less than the amount in B before the Company is required to fund the plan; and

E. have additional funding required to ensure compliance with minimum funding requirements or to reduce or avoid PBGC variable premiums under certain provisions of the Pension Protection Act (PPA) of 2006 be properly reflected in rates.

To accomplish these goals, the below items are agreed upon as part of this settlement. The Parties acknowledge that this agreement creates certain rights and obligations with respect to future positions and recommendations of these Parties, if approved by the Commission herein, but does not bind the Commission in any subsequent proceeding.

1. The Company's pension cost will be recognized in rates consistent with the cost recognized for financial reporting purposes. For regulatory purposes this amount is without regard to purchase accounting, as agreed in the "unanimous Stipulation and Agreement in Case No. GO-2006-0205.

2. Pension cost will be calculated based on the following methodology:

   a. Market Related Value for asset determination, smoothing all asset gains and losses that occur on and after January 1, 2004 over a five-year period.

b. Unrecognized gains and losses will be amortized over a 10-year period without respect to the 10% Corridor described in ASC 715-30.

3. Any ASC 715-30, formerly FAS 87, amount (as calculated above) which exceeds the ERISA minimum required contribution will reduce the prior prepaid asset currently recognized in rate base. When the prior prepaid pension asset currently recognized in rate base is reduced to zero, any amount of pension cost (as calculated above) which exceeds the ERISA minimum required contribution must be funded.

4. In the case that pension expense becomes negative, the Company is ordered to set up a regulatory liability to offset the negative expense. In future years, when pension expense becomes positive again, rates will remain zero until the regulatory liability that was created by negative expense is reduced to zero. The pension regulatory liability will be reduced by the amount of subsequent positive pension expense experienced by the Company. This regulatory liability is a non-cash item and should be excluded from rate base in future years.

5. The Company will be allowed rate recovery for contributions made to the pension trust in excess of the actuarially determined cost for the following reasons: the minimum required contribution is greater than the pension expense level, and avoidance or reduction of PBGC variable premiums.

   a. Any additional contributions will increase the prepaid pension asset as described in item 3, so no special regulatory asset needs to be established and no special amortization treatment is necessary. Since additional contributions made per the above provision represent pre-funding of future pension expense amounts, the additional prepaid pension asset that results will receive regulatory treatment as described in item 3. That is, such amounts will increase the prepaid pension asset and will delay the requirement to fund future pension costs until such time that the entire prepaid pension asset has been reduced to zero.

b. If Empire experiences a situation where a contribution equal to the actuarially determined cost is insufficient to comply with minimum funding requirements, or if Empire decides to make an additional contribution to avoid or reduce the variable premium that must be paid to the PBGC, Empire will be allowed to make an additional contribution to alleviate these issues. Additional contributions made pursuant to this Paragraph will increase Empire's rate base by increasing the prepaid pension asset and / or reducing the accrued liability, and will receive regulatory treatment since it is a cash item.

6. Due to the PPA, EDG may choose to make contributions in excess of ASC 715-30, formerly FAS 87 level in order to avoid benefit restrictions under the PPA. Such contributions will be examined in the context of future rate cases and a determination will be made at that time as to the appropriate and proper level recognized for ratemaking as a Net Prepaid Pension Asset.

7. A regulatory asset or liability will be established on the Company's books to track the difference between the level of ASC 715-30 expense during the rate period and the level of pension expense built into rates for that period. If the ASC 715-30 expense during the period is more than the expense built into rates for the period, the Company will establish a regulatory asset. If the ASC 715-30 expense during the period is less than the expense built into rates for the period, the Company will establish a regulatory liability. If the pension expense becomes negative, a regulatory liability equal to the difference between

the level of pension expense built into rates for that period and $0 will be established. Since this is a cash item, the regulatory asset or liability will be included in rate base and amortized over 5 years at the next rate case.

8. The provisions of ASC 715-20, formerly FAS 158 require certain adjustments to accrued pension liability with a corresponding adjustment to equity (i.e., decreases/increases to Other Comprehensive Income). The Company shall be allowed to set up a regulatory asset/liability to offset any adjustments that would otherwise be recorded to equity caused by applying the provision of FAS 158 or any other FASB statement or procedure that requires accounting adjustments to equity due to the funded status or other attributes of the pension plan. The parties acknowledge that the adjustments described in this paragraph shall not increase or decrease rate base.

9. In a situation where the Company funds excess amounts into the pension fund, the additional contribution will be used to fund Empire and EDG to the same funded percentage, where funded percentage is defined as the ASC 715-30 Fair Value of Assets divided by the ASC 715-30 Accumulated Benefit Obligation "ABO" as of the preceding measurement date. The Company will allocate the additional contribution such that it increases the funded status of both Empire and EDG to the same funded percentage.

<u>Pension and OPEB Special Events</u>

<u>Adjustment to Pension and Other Post-Employment Benefits</u>

These provisions are intended to accomplish the following: To clarify, for ratemaking purposes, the accounting treatment of any special events under ASC 715-30, formerly Statement of Financial Accounting Standards No. 88 ("FAS 88"), and ASC 715-60, formerly FAS 106, that would require the Company to recognize one time charges (expense) or credits (income) and to ensure that any of these prudent one-time charges or credits be properly reflected in rates.

Treatment of special events for pension and OPEB

If the Company has a curtailment, settlement, or special termination benefits cost or credit due to requirements of applicable accounting rules according to ASC 715-30 and ASC 715-60, the following procedure will be used to address the cost reimbursement for pension and OPEB costs:

a. If the special event triggers a net charge, then the Company will establish an offsetting regulatory asset. This regulatory asset will not be added to rate base (since it is not a cash item), and it will be amortized over five years beginning when new rates are implemented in the Company's next general gas rate increase or decrease proceeding before the Missouri Public Service Commission (MoPSC). The Company shall make additional contributions to the applicable pension or VEBA trust equal to the amount of the amortization.
b. If the special event triggers a net credit, then the Company shall establish an offsetting regulatory liability. This regulatory liability will not be added to rate base (since it is not a cash item), and it will be amortized over five years beginning when new rates are implemented in the Company's next general gas rate increase or decrease proceeding before the MoPSC. Generally, the Company will contribute to the applicable pension or VEBA trust an amount equivalent to its ASC 715-30 or ASC 715-60 costs for the year less the amortization amount, subject to the following condition:
    i. If pension or OPEB cost becomes negative as a result of an ASC 715-30 or ASC 715-60 credit, the Parties agree the Company shall set up

an offsetting regulatory liability equal to the difference between $0 and the negative cost. If pension or OPEB cost was negative before the ASC 715-30 or ASC 715-60 credit, the Parties agree the Company shall set up an offsetting regulatory liability equal to the full amount of the ASC 715-30 or ASC 715-60 credit. This regulatory liability is a non-cash item which will not require rate base treatment. When pension or OPEB costs become positive again, the regulatory liability will be amortized, beginning at the time new rates are implemented in Empire’s next general gas rate increase or decrease proceeding before the MoPSC, over five years, or longer, if necessary to avoid the net of the ASC 715-30 or ASC 715-60 cost and the offsetting regulatory liability amortization yielding a result which is less than $0 in any year.