

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

In the Matter of the Application of)	
The Empire District Gas Company for a)	Case No. GT-2007-0207
Waiver from the application of certain)	Tariff Filing YG-2007-0375
Tariff language regarding refunds.)	

**RESPONSE TO APPLICATION TO INTERVENE
AND TO COMMISSION ORDER**

COMES NOW The Empire District Gas Company (“EDG”), and in response to the *Application To Intervene* filed by the Sedalia Industrial Energy Users’ Association (“SIEUA”) on December 6, 2006, and the Commission’s *Order Directing Notice and Establishing Time For Requesting Intervention and Filing Recommendations* (“Order”) issued on December 5, 2006, respectfully states as follows:

1. EDG does not oppose SIEUA’s *Application To Intervene*. In fact, EDG sent a courtesy copy of its December 1, 2006 filing to counsel for SIEUA in anticipation of SIEUA’s intervention request and already has complied with an informal request for information by counsel for SIEUA.

2. In its December 5, 2006 *Order*, the Commission questioned the significance of the date of December 31, 2006 and implied that EDG should have specifically requested expedited treatment of this Application. The significance of the December 31, 2006 date, and the reason EDG did not request expedited treatment under 4 CSR 240-2.080(16), can be explained both procedurally and in practical application.

3. With respect to procedure, EDG filed via EFIS this Application for waiver of certain tariff language pursuant to 4 CSR 240-2.060 and 4 CSR 240-3.015 on December

1, 2006. The case was docketed as Case No. GT-2007-0207. On the same day, EDG concurrently filed via the standard EFIS tariff filing procedure a proposed tariff sheet designed to allow the implementation of the customer refund procedure proposed in the Application. The tariff filing was separately assigned tariff filing number YG-2007-0375. Procedurally, this was a “standard 30-day tariff filing” because EDG did not request that the tariff become effective in fewer than thirty days.¹ Pursuant to the language of 4 CSR 240-2.065(2), a motion for expedited treatment, therefore, did not appear to be procedurally required.

4. As a practical matter, the Application case (Case No. GT-2007-0207), and the tariff submission case (YG-2007-0375), are inextricably intertwined such that the disposition and schedule of one case necessarily will affect the disposition and schedule of the other. If the tariff in YG-2007-0375 is suspended and further proceedings are ordered, the Application case necessarily will be delayed accordingly. On the other hand, the Commission presumably and necessarily will have to grant the waiver sought in the Application case if the tariff in YG-2007-0375 is approved before (or otherwise allowed to go into effect on) its January 1, 2007 requested effective date. Whether the tariff will be suspended and further proceedings ordered, or whether the tariff will be approved before (or allowed to go into effect on) January 1, 2007, has yet to be determined and could not have been known at the time of filing. All that is known is that the earliest the tariff can become effective is January 1, 2007 and that there otherwise is no operation of law date, specified by statute or by rule, for this type of Application other than that directly linked to the tariff itself. For these reasons, counsel for EDG concluded that the

¹ The tariff’s proposed effective date actually is January 1, 2007. A copy of this tariff also is found as Appendix E to the Application.

filing a Motion For Expedited Treatment in the Application case was neither required nor warranted.

5. The situation, admittedly, is somewhat confusing. In order to allow for implementation of the customer refunds at the earliest opportunity while still permitting all interested parties a reasonable opportunity to review EDG's request, EDG needed to formally file its proposed tariff as a "standard 30-day tariff" along with its Application, even if that necessarily created two separate cases. The other option would have been to file its Application first, wait until the Commission issued its order in a case with no operation of law date, then file a compliance tariff.

6. Counsel considered requesting consolidation of the two cases at the outset, but the language of 4 CSR 240-2.110(3) seems to apply only in the context of hearings, and here, it is not yet known whether additional proceedings, let alone an evidentiary hearing, will be required. EDG is assuming that since this matter involves the issue of customer refunds, all parties will have an interest in disposing of the matter as quickly as possible, hopefully without the need for an evidentiary hearing. Furthermore, the specific language of 4 CSR 240-2.065 (respecting tariff filings which create docketed cases) does not appear to directly apply here since as of yet no party has requested that the tariff be suspended. Should the Commission be asked to suspend the tariff, the Commission at that time could direct the parties to submit a joint procedural proposal and might then properly consider consolidating the two cases for procedural purposes rather than creating yet a third case, which arguably is contemplated by the strict language of the rule.

WHEREFORE, The Empire District Gas Company states that it does not oppose the Application To Intervene filed by the Sedalia Industrial Energy Users' Association filed on December 6, 2006 and offers the explanation stated above in response to the Commission's December 5, 2006 Order.

Respectfully submitted,

/s/ Charles Brent Stewart

Charles Brent Stewart, #34885
Jeffrey A. Keevil, #33825
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
(573) 499-0635
(573) 499-0638 (fax)
Stewart499@aol.com
per594@aol.com

ATTORNEYS FOR THE
EMPIRE DISTRICT GAS
COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent to all counsel of record in Case No. GT-2007-0207 and Tariff Filing No. YG-2007-0375 by electronic mail transmission, this 7th day of December, 2006.

/s/ Charles Brent Stewart
