

**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)	Case No. GR-2009-0434
File Tariffs Increasing Rates for Gas Service)	Tariff No. YG-2009-0855
Provided to Customers in the Missouri Service)	
Area of the Company.)	

**PARTIAL STIPULATION AND AGREEMENT
ON TRANSPORTATION TARIFF ISSUES**

COME NOW The Empire District Gas Company (“EDG” or “Company”) and Constellation NewEnergy–Gas Division, LLC (“Constellation”) (collectively, the “Parties”), and respectfully submit the following Partial Stipulation and Agreement on Transportation Tariff Issues (“Partial Transportation Stipulation”) to the Missouri Public Service Commission (the “Commission”):

1. This Partial Transportation Stipulation is intended to settle only the transportation tariff issues specifically set out below in paragraphs two and three of this Partial Transportation Stipulation. This Partial Transportation Stipulation is not “unanimous” because certain parties have not joined as signatories. It is the understanding of the Parties, however, that all of the non-signatory parties to this case, the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“OPC”), the Missouri Department of Natural Resources (“DNR”), and Pittsburgh Corning Corporation (“Pittsburgh”), will not object to this Transportation Stipulation and will waive their rights to a hearing on the specific issues resolved herein.

2. The Parties agree that the following changes shall be made to the Transportation Tariffs proposed by EDG:

A. Telemetry shall not be made mandatory for Small Volume Firm Transportation Service. Proposed Sheets Nos. 33-35 will be modified to indicate that Telemetry is

voluntary for the described customers. Those SVFT customers electing to not utilize telemetry and receiving bills based upon normal billing cycle meter readings shall be required to subscribe to EDG's Balancing Service (\$0.15/Mcf).

B. The following paragraph will replace paragraph S.A. on proposed Sheet No. 44 to address the availability of the balancing service:

“A. SVFT Balancing Service: This service is mandatory for customers under the SVFT rate schedules that do not have Telemetry installed. The cost of the service is \$0.15 per Mcf transported on Company's system. Revenues collected from the provision of this service will be credited to the overall general system gas cost through Company's PGA mechanism. The monthly charge for this service is in addition to the monthly charges set forth in Company's transportation service rate schedules.”

C. Two optional Large Volume Firm Transportation (LVFT) Balancing Services shall also be provided. Under the first option, the cost of the service is \$0.10 per Mcf of daily gas nominated on Company's system. This option will expand the customer or shipper daily imbalance tolerance to a 35% daily tolerance. The second LVFT optional balancing service cost is \$0.25 per Mcf of daily gas nominated on Company's system and will expand the daily imbalance tolerance band to 60%. The daily imbalance charge of \$1.25 shall apply to the daily imbalances that exceed 35% and 60%. Revenues collected from the provision of this service will be credited to the overall general system gas cost through Company's PGA mechanism. The optional balancing services described herein shall not be available during periods that a customer is subject to an OFO, and LVFT customers will not be charged for the optional balancing services during such OFO periods.

D. A Daily Balancing Charge is being added to the transportation tariff to recover a reasonable fee from transportation customers having Telemetry that do not match gas

receipts and deliveries within ten percent on a daily basis and in so doing use EDG's "no notice" transportation and storage arrangements. The Daily Charge would not apply to those customers without Telemetry who take the SVFT Balancing Services described above. The tariff language follows:

Daily Charge. This charge shall apply to those Customers using Telemetry. A daily charge shall apply to any Customer, Marketer or Aggregator's daily quantities by which the customer's out-of-balance condition exceeds the daily scheduling tolerance. Actual daily delivery quantities shall be used to determine the out-of-balance condition for customers with recording equipment or telemetry. Estimated daily delivery quantities shall be used to determine the out-of-balance condition for customers whenever such Telemetry equipment malfunctions. Estimated daily delivery quantities shall be determined based on available data including nominated quantities, meter readings, customer load characteristics, actual weather conditions, and any other information. This daily charge is accumulated and assessed monthly. This charge is in addition to the monthly cash out charge for Monthly Imbalances. This Daily Charge shall be determined on a Mcf basis as follows:

- A. 10% daily tolerance without charges,
 - B. Daily Imbalance calculated on an absolute basis without regard to netting positive or negative imbalances,
 - C. Summation of daily volumes calculated on an absolute basis at the end of the month, and
 - D. The sum of the total monthly daily imbalance will be charged \$1.25 per Mcf.
- E. LVFT Customers must make their election to take the above optional balancing services by October 1 of each year for the immediately following period November through March (winter). Customers must make their election of services by March 1 of each year for the immediately following period April through October (summer). In the event that a LVFT Customer fails to make an election for the above optional balancing service, the Customer will be assigned the previously elected balancing service option. Notice of the election periods shall be posted on EDG's telemetry (transportation) website thirty days prior to the election dates (October 1 and March 1).

F. The EDG tariff will further provide that where Telemetry equipment is required or voluntarily requested, the charge for telemetry equipment shall be limited to the actual loaded cost incurred by EDG.

G. The proposed Large Volume Interruptible Transportation Service Rate Schedule LVIT tariff (proposed Sheet No. 38) would be withdrawn in its entirety.

H. The following provision would be inserted in the curtailment section (proposed Sheet No. 29, para. 11):

If a supply deficiency occurs in the volume of gas available to the Company for resale, and the Customer's supply delivered to the Company for transportation continues to be available, then the Customer may continue to receive transportation service up to the level of actual gas deliveries being made on behalf of the Customer, even though sales gas of the same or higher priority is being curtailed.

I. The following language will be added to the OFO Issuance language (proposed Sheet 43, para. 1):

1. "Any OFO, along with associated conditions and penalties, shall be limited, as practicable, to address only the problem(s) giving rise to the need for the OFO."

2. Subject to the provisions of 2.H. and 2.I.1. above, EDG may call an OFO by pipeline, delivery zone or town border station when:

- EDG experiences failure of transmission, distribution or gas storage facilities;
- When transmission system pressures or other unusual conditions jeopardize the operation of EDG's system;
- When EDG's transportation, storage and supply resources are being used at or near their maximum rate deliverability;
- When any of EDG's transporters or suppliers call the equivalent of an OFO or Critical Day;

- When EDG is unable to fulfill its firm contractual obligations or otherwise when necessary to maintain the overall operational integrity of all or a portion of EDG's system.

J. EDG will delete the last sentence on proposed Sheet 31, para. 28 (Termination of Participation) ("In the event that the Marketer or Aggregator fails to deliver gas to the Company's City Gate on three consecutive winter days, the Company may terminate the agreement for cause without notice.").

3. The Parties further agree that the following Commission Staff proposed changes shall be made to the Company's proposed transportation tariff:

A. Language shall be added to EDG's tariff (Sheet 44, Section R) that clearly sets forth that the ownership of telemetry equipment remains with EDG, to be treated as Customer Contributed Property. Such language shall further specify that EDG has responsibility for maintenance of the telemetry equipment.

B. Transport Customer PGA Charges (Sheet 40, Section K.7.): The reference to "New Customers," those customers, who neither had contract service nor sales before, should be removed from this provision.

C. All provisions referencing requirement for certification as an energy seller shall be removed from EDG's proposed tariff.

D. The definition of "Security Performance" found on Sheet 31, Section 24 of EDG's proposed transportation tariff shall be replaced in its entirety with the following language:

Security Performance: The Aggregator or Marketer shall upon request of the Company agree to maintain a cash deposit, surety bond, irrevocable letter of credit, corporate guarantee or such other financial instrument satisfactory to cover a reasonable assessment of risk of each particular situation. Factors that shall be incorporated into this assessment of risk may include but not limited to, the following: the volume of natural gas to be transported in behalf of an Aggregation

Pool, the general credit worthiness of the Aggregator or Marketer, and the Aggregator's or Marketer's prior credit record with the Company, if any. In the event that the Aggregator or Marketer defaults on its obligations under this rate schedule, the Company shall have the right to use such cash deposit, or proceeds from such bond, irrevocable letter of credit, or other financial instrument to satisfy the Aggregator's obligation hereunder. In the case of default by the Aggregator or Marketer, the Company reserves the right to recalculate the charges and bill the appropriate Aggregator Pool Customers directly as though no Aggregation Pool arrangement existed. Specific terms and conditions regarding credit requirements shall be included in the Aggregator's or Marketer's Agreement. Proceeds from insurance payments or bonds payable in the event of a default shall flow through the Company's PGA to the degree necessary to safeguard sales customers from negative repercussion of a contract customer's default.

4. Contingent Waiver of Rights. This Partial Transportation Stipulation is being entered into solely for the purpose of resolving the issues described herein. Unless otherwise explicitly provided herein, none of the Parties to this Partial Transportation Stipulation shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue-related methodology. Except as explicitly provided herein, none of the Parties shall be prejudiced or bound in any manner by the terms of this Partial Transportation Stipulation in this or any other proceeding regardless of whether this Partial Transportation Stipulation is approved.

This Partial Transportation Stipulation has resulted from extensive negotiations among the Parties, and the terms hereof are interdependent. If the Commission does not approve this Partial Transportation Stipulation unconditionally and without modification, then this Partial Transportation Stipulation shall be void and no Party shall be bound by any of the agreements or provisions hereof.

If the Commission does not approve this Partial Transportation Stipulation without condition or modification, and notwithstanding the provision herein that it shall become void; neither this Stipulation nor any matters associated with its consideration by the Commission shall

be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

In the event the Commission accepts the specific terms of this Partial Transportation Stipulation without condition or modification, the Parties waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial review pursuant to §386.510. This waiver applies only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Stipulation.

5. Right to Disclose. The Staff may file suggestions or a memorandum in support of this Partial Transportation Stipulation. Each of the Parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum, which shall also be served on all Parties. The contents of any suggestions or memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted

by the other signatories to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests; provided, that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to Commission Rule 4 CSR 240-2.135.

WHEREFORE, the undersigned Parties respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Partial Transportation Stipulation.


The Empire District Gas Company:

By: 

Dean L. Cooper Mo. Bar 36592
Diana C. Carter Mo. Bar 50527
BRYDON, SWEARENGEN &
ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone: (573) 635-7166
Facsimile: (573) 634-7431
E-Mail: DCarter@BrydonLaw.com

**Constellation NewEnergy-Gas
Division, LLC:**

By: 

William D. Steinmeier Mo. Bar 25689
WILLIAM D. STEINMEIER, P.C. 
2031 Tower Drive (ZP 65109)
P.O. Box 104595
Jefferson City, MO 65110-4595
573-659-8672 Tel.
573-636-2305 Fax
E-Mail: wds@wdspe.com

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 8th day of January, 2010, to:

Sarah Kliethermes
Missouri Public Service Commission
Governor's Office Building
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102
Sarah.Kliethermes@psc.mo.gov

Marc Poston
Governor's Office Building
200 Madison Street
P.O. Box 7800
Jefferson City, Missouri 65102
marc.poston@ded.mo.gov

Stuart Conrad
David Woodsmall
Finnegan, Conrad & Peterson, LC
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com
dwoodsmall@fcplaw.com

William D. Steinmeier
William D. Steinmeier, P.C.
2031 Tower Drive
P.O. Box 104595
Jefferson City, MO 65110-4595
wds@wdspsc.com

Sarah B. Mangelsdorf
Shelley A. Woods
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
sarah.mangelsdorf@ago.mo.gov
shelley.woods@ago.mo.gov

