

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

In the Matter of the Application for	)	
Authority of Sendero SMGC LP	)	
Acquisition Company to Purchase the	)	
Partnership Interests of DTE Enterprises,	)	
Inc. and DTE Ozark, Inc. for Southern	)	Case No. GM-2005-0136
Missouri Gas Company, L.P., and for	)	
Southern Missouri Gas Company to	)	
Execute a Deed of Trust, Security	)	
Agreement and Financing Statement to	)	
Secure a Loan to Complete the	)	
Transaction.	)	

**RESPONSE TO SUGGESTIONS IN OPPOSITION  
TO APPLICATION TO INTERVENE**

COMES NOW The Empire District Electric Company (“Empire”), pursuant to 4 CSR 240-2.080(15), and for its Response To Suggestions In Opposition To Application To Intervene, respectfully states as follows:

1. On December 6, 2004 Sendero GP Acquisition Company and Sendero SMGC LP Acquisition Company (hereinafter “Sendero”), and DTE Enterprises, Inc. and DTE Ozark, Inc. (hereinafter “DTE”), (collectively referred to as “Joint Applicants”), filed their *Suggestions In Opposition To Application To Intervene Filed By Empire District Electric Company*.

2. On December 13, 2004, Staff filed *Staff’s Response To Empire District Electric Company’s Application To Intervene* pursuant to the Commission’s Order Directing Filing issued on December 2, 2004.

3. Also on December 13, 2004, just before the close of business, Joint Applicants filed their *Supplemental Suggestions In Opposition To Application To Intervene Filed By Empire District Electric Company* (“Supplemental Suggestions”).

4. 4 CSR 240-2.080(15) allows ten days to respond to any pleading. Joint Applicants have requested expedited treatment of their Application, if possible before year end. In order to accommodate Joint Applicants' desire for expedited treatment, and in order to not unnecessarily delay this proceeding, Empire is filing this Response well before the ten-day deadline permitted by Commission rule.

5. In paragraph 6 of their *Supplemental Suggestions*, Joint Applicants imply that Empire's failure to disclose in its December 1, 2004 *Application To Intervene* that Empire had participated in DTE's competitive bidding process was somehow improper. It was not. Empire some time ago informed the Commission Chairman and representatives of the Commission Staff of its participation in DTE's competitive bidding process and had at least one meeting with members of the Staff prior to the winning bid being publicly announced. This early disclosure was made to the Commission and Staff with the full consent and knowledge of DTE since, as DTE well knows, Empire was, until the public disclosure by Joint Applicants, subject to a written confidentiality agreement that barred any public disclosure of the matter and Empire had to first secure DTE's consent before disclosing such information. Empire's decision not to disclose its participation in DTE's competitive bidding process in Empire's publicly filed December 1, 2004 *Application To Intervene*, therefore, was fully consistent with DTE's own confidentiality requirements which it had imposed on Empire and was in no way an attempt to "hide" this information from the Commission or its Staff. That Empire had in fact participated in DTE's competitive bidding process has now been publicly disclosed by Joint Applicants in their December 13, 2004 filing and Empire should not now be criticized by Joint Applicants for doing what it was required by DTE to do. In any event,

there was nothing nefarious in Empire's failure to disclose its participation in DTE's competitive bidding process in Empire's December 1, 2004 filing and the Staff was made aware of Empire's participation long ago.

6. Joint Applicants further raise the spectre that granting Empire's Application To Intervene will somehow delay the Commission's prompt resolution of this proceeding. Empire states for the record that Empire is willing to abide by whatever procedural schedule might be ordered in this case. Moreover, it is not Empire's intent to request an evidentiary hearing, at least at this time.

7. Joint Applicants also allege that Empire's request to intervene has some "alternative motives" other than as stated in its intervention request. There is no alternative motive or underlying agenda. Empire is captive to Southern Star Central Gas Pipeline, Inc. ("Southern Star") and is legitimately concerned with any expansion plans—whether by means of expanding the service area or by organic growth—by Sendero or DTE.

8. The language of Joint Applicants' Application belies Joint Applicants' arguments against Empire's intervention. Specifically, Joint Applicants state in paragraph 8 of their Joint Application:

"...As the principal owner of SMGC, Sendero's primary role will be in managing the overall corporate business environment, developing strategic *growth plans* and maximizing the level of service SMGC provides. Sendero's *primary focus will be on growth, both internally within the existing markets already served by SMGC as well as potentially expanding service to other areas in proximity to its existing system*...Sendero does intend to *expand SMGC's marketing efforts* and is considering hiring additional representatives to help facilitate the growth strategies it believes exists...." (emphasis supplied).

9. Growth and expansion of Joint Applicants' customer base by Joint Applicants' own admission is key to their Application before this Commission. As properly noted by

the Staff, Joint Applicants' stated growth plans are a significant factor in whether Joint Applicants' request should be approved as part the public interest analysis which the Commission is obligated to perform. Existing Southern Star pipeline subscription limitations, and additional demands on the interstate pipeline—and how Joint Applicants and the Commission might address the issue as part of Joint Applicants' Application--directly impact Empire and its customers. Even if Joint Applicants have not yet filed a certificate expansion request and a full feasibility study outlining their future plans, Joint Applicants have themselves raised the issue of increased natural gas usage and existing system expansion in their Application.

10. Joint Applicants claim in footnote 2 on page 4 of their *Supplemental Suggestions* that Empire's participation will result in unnecessary "discovery disputes" related to "extraneous issues", and that in the event that Empire's intervention is granted, the Commission should somehow modify its usual discovery process and standard protective order such that Empire should not be allowed to access highly confidential or proprietary information. First, the Commission's existing discovery rules are quite sufficient to prevent "fishing expeditions", even if Empire desired to engage in such, which for the record, it does not. Second, the Commission's standard protective order is more than sufficient to prevent the wrongful disclosure of sensitive or otherwise "competitive" information and has been used successfully by this Commission in cases with far more competitive implications than those presented in this proceeding.<sup>1</sup> There is

---

<sup>1</sup> See, e.g. *In the Matter of a Commission Inquiry into the Possibility of Impairment without Unbundled Local Circuit Switching When Serving the Mass Market*, Case No. TO-2004-0207, *Order Modifying Service Requirements, Denying Challenge to Confidential Designation, and Denying Motion To Modify Protective Order*, issued November 20, 2003.

no need to modify the Commission's standard protective order in this case and Empire fully intends to comply with same if its intervention is granted.

11. Aside from the fact that no other party can adequately represent Empire's unique interests in this proceeding, the public interest will be served by permitting Empire's intervention because by having Empire as a party will actually facilitate more prompt discovery by the Staff and the Office of the Public Counsel (if any) which otherwise would be more difficult and procedurally more complicated if Empire was not made a party.

WHEREFORE, having responded to Joint Applicants' original and supplemental *Suggestions In Opposition To Intervene*, The Empire District Electric Company respectfully requests that the Commission grant this Application To Intervene in this proceeding.

Respectfully submitted,

**/s/ Charles Brent Stewart**

---

Charles Brent Stewart, MoBar#34885  
Jeffrey Allen Keevil, MoBar#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](mailto:Stewart499@aol.com)

ATTORNEY FOR  
THE EMPIRE DISTRICT  
ELECTRIC COMPANY

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing Application To Intervene was sent to counsel for all parties of record in Case No. GM-2005-0136 by depositing same in the U.S. Mail, first class postage prepaid, by hand-delivery, or by electronic mail transmission, this 14<sup>th</sup> day of December, 2004.

**/s/ Charles Brent Stewart**

---