

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

Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2007-_____
)	
The Empire District Gas Company,)	
)	
Respondent.)	

**STAFF'S COMPLAINT AGAINST
THE EMPIRE DISTRICT GAS COMPANY**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) pursuant to Section 386.390.1 RSMo 2000¹, and Commission Rule 4 CSR 240-2.070, and in support of its complaint against The Empire District Gas Company, states:

1. The Empire District Gas Company (EDG), a wholly owned subsidiary of The Empire District Electric Company (EDE), is a local distribution company (LDC) with its offices in Joplin, Missouri. EDG owns and operates a natural-gas transmission and distribution system serving approximately 48,500 customers in 44 Missouri communities in northwest, north central, and west central Missouri.

AUTHORITY

2. EDG is a “public utility,” as that term is defined in Section 386.020(42) and a “gas corporation,” as that term is defined in Section 386.020(18). EDG is, therefore, subject to the Commission’s jurisdiction. Sections 386.020 and 386.250(1).

¹ All statutory citations are to RSMo 2000, or Supp. 2005 unless otherwise noted.

3. Section 386.390 (1) establishes, among other things, that parties may present a Complaint before the Missouri Public Service Commission (Commission) regarding any act or omission committed by any person, corporation or public utility. This statute also provides that the Complaint may be based upon any alleged violation of any provision of law or of any rule or decision of the Commission.

4. Commission Rule 4 CSR 240-2.070(1) provides, in part, that the Commission Staff has authority to file a Complaint through the general Counsel in connection with any violation of statute, rule, order or decision within the jurisdiction of the Commission.

BACKGROUND

5. On November 8, 2005, Aquila, Inc. d/b/a Aquila Networks – MPS and Aquila Networks – L & P (Aquila), EDG, and EDE filed an application seeking Commission authority for Aquila to sell, transfer, and assign certain liabilities to EDG (as EDE's assignee under the purchase agreement). *In the matter of the Joint Application of Aquila, Inc. d/b/a Aquila Networks – MPS and Aquila Networks L & P, The Empire District Gas Company and The Empire District Electric Company for an Order authorizing the sale, transfer and assignment of certain assets and liabilities from Aquila to EDG and in connection therewith, certain other related transactions*, Case No. GO-2006-0205.

6. On February 28, 2006, the signatory parties filed a Unanimous Stipulation And Agreement (Stipulation) with the Commission in Case No. GO-2006-0205. The signatory parties stipulated and agreed as follows:

II. Gas Supply Services

- (b) Aquila will develop its traditional hedging plan for the winter of 2006-2007 with the collaboration of EDG. On or before May 15, 2006, Aquila

and EDG shall submit and present a hedging plan for the winter of 2006-2007 in at least as much detail as Aquila's traditional hedging plan. EDG agrees that subsequent hedging plans will:

- (i) be in at least as much detail as the former Aquila plan;
- (ii) include a planning time horizon beyond one year; and
- (iii) be submitted and presented by May 1 of each year.

EDG will develop, with Aquila's assistance, and submit a plan in the same detail as listed in section (g) within 3 months after closing. [emphasis added]

II. (g) *Within 3 months after closing of the transaction, and annually in May thereafter, EDG shall submit to the Staff and OPC a plan including the elements in (b) above, plus the following: [emphasis added]*

- (i) Peak day demand studies for each EDG natural gas service area, estimating projected peak day (coldest day requirements) for the next five years and the capacity available to meet such requirement;
- (ii) EDG's gas supply plans for normal, cold, and warm weather;
- (iii) EDG's Hedging Plan including strategies and control policies;
- (iv) Any planned use of natural gas parking, balancing, transportation, storage, and supply contracts by non-LDC divisions or affiliates;
- (v) Listing by contract number and MDQ, MSQ, etc, of all natural gas supply, transportation, and storage contracts used by EDG;
- (vi) Capacity release and Off-system sales procedures (including any capacity release and/or Off-system sales utilized for Empire's power generation);

- (vii) Any sharing of gas procurement functions between EDE electric operations and EDG gas operations;
- (viii) Storage plans for each of the natural gas service areas of EDG; and
- (ix) Copy of algorithm used by EDG for short-term demand forecast by natural gas service area in order to accurately adjust nominations.

7. On April 18, 2006, the Commission issued its *Order Approving Unanimous Stipulation And Agreement And Granting A Certificate of Public Convenience And Necessity* (Order) in Case No. GO-2006-0205. In ordered paragraph no. 3 of the Order, the Commission ordered that “Aquila, Inc., The Empire District Gas Company and The Empire District Electric Company shall comply with the terms and conditions contained in the Stipulation and Agreement.”

ALLEGATIONS

8. The proposed transaction, which was approved by the Commission April 18, 2006 Order, closed on June 1, 2006. (See attached Empire Press Release “The Empire District Gas Company Completes Purchase of Missouri Natural Gas Operations Of Aquila, Inc.”, attached hereto and incorporated by reference herein).

9. EDG has failed to provide the Staff its Gas Hedging Plan as required under paragraph (g) in Section II of the Stipulation². Under the terms of the Stipulation, EDG’s gas supply and hedging plan was due to Staff 90 days after the June 1, 2006 closing, or by September 1, 2006. EDG has failed to comply with this requirement in the Stipulation and consequently, EDG is in violation of the Commission’s Order.

² On April 19, 2006, EDG submitted to Staff its Gas Hedging Plan for the winter of 2006-2007 due on May 15, 2006 as required under para. (b) of Section II of the Stipulation. EDG also provided the parties with an update of its gas supply and transition services on August 3, 2006.

¹ On April 19, 2006, EDG submitted to Staff its Gas Hedging Plan for the winter of 2006-2007 due on May 15, 2006 as required under para. (b) of Section II of the Stipulation. EDG also provided the parties with an update of its gas supply and transition services on August 3, 2006.

PENALTIES

10. Section 386.600 provides, in pertinent part:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture ... All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

11. Missouri courts require that matters within the jurisdiction of an administrative agency, such as the Commission, must be determined by that agency and, therefore, before it may bring a penalty action in court the agency must first hold a contested case hearing to determine the matters in its jurisdiction. *See State ex rel. Sure-Way Transp., Inc v. Division of Transp., Economic Development*, 836 S.W.2d 23, 27 (Mo.App. 1992).

12. Section 386.570.1 and .2 provide:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, *is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense. [emphasis added]*

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and *in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.* [emphasis added]

13. EDG has failed to “obey, observe or comply with any order, decision, decree, rule, direction” of the Commission within the meaning of that term in Section 386.570 by EDG’s failure to submit to the Staff the company’s gas supply and hedging plan, in accordance with the requirements specified of it in the Stipulation in Case No. GO-2006-0205. *See para. 6 above.*

14. While Staff acknowledges its frequent discussions with Mr. Scott Keith, EDG, regarding the required gas supply plan, these discussions do not replace the obligation of EDG to provide Staff what it is due by Commission order. Moreover, Staff may not waive a Commission order. Staff’s highest concern is that EDG’s gas customers are protected by EDG’s execution of a thorough and prudent gas supply and hedging plan. EDG has only recently assumed the responsibility of serving Missouri natural gas customers and EDG’s failure to submit its gas supply and hedging plan in accordance with the Stipulation is both unacceptable and a violation of a Commission order.

WHEREFORE, the Staff respectfully requests that the Commission: (a) establish a case to address the allegations contained in this Complaint; (b) find that EDG failed to observe or comply with an order or decision of the Commission within the meaning of Section 386.570; (c) order EDG to immediately comply with the terms of the Stipulation; (d) authorize the General Counsel of the Commission to seek the appropriate penalties against EDG allowed by law for this violation; and (e) any other and further relief as the Commission deems necessary.

Respectfully submitted,

/s/ Robert S. Berlin

Robert S. Berlin

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 21st day of September, 2006.

/s/ Robert S. Berlin



PRESS RELEASE

FOR IMMEDIATE RELEASE

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**THE EMPIRE DISTRICT GAS COMPANY
COMPLETES PURCHASE OF MISSOURI
NATURAL GAS OPERATIONS OF AQUILA, INC.**

JOPLIN, MO – June 1, 2006 – The Empire District Gas Company, a wholly owned subsidiary of The Empire District Electric Company (NYSE:EDE), announced today that it has completed the acquisition of the Missouri natural gas distribution operations of Aquila, Inc. The operations consist of approximately 48,500 customers in 44 Missouri communities in northwest, north central, and west central Missouri.

The total purchase price paid, including working capital and net plant adjustments of \$17.1 million, was \$102.1 million. The working capital and net plant amount is subject to post-closing adjustment. The permanent financing of the acquisition is expected to be a mix of debt and equity consistent with the Company's current consolidated capital structure. The acquisition was initially financed by \$55 million of privately placed 6.82% First Mortgage Bonds due 2036 issued by The Empire District Gas Company, and with short-term debt issued by The Empire District Electric Company. The short-term debt is expected to be replaced with common equity of The Empire District Electric Company.

Empire announced its intent to purchase the operations on September 21, 2005, and received approval for the purchase from the Missouri Public Service Commission on April 18, 2006.

In making the announcement of the completion of the purchase, Ron Gatz, Vice President and

(more)

Chief Operating Officer - Gas, stated, "Our organization has an established, ninety-plus-year reputation for quality service, prudent management, and fair rates. We are excited about the prospect of serving these new customers and believe this is an excellent opportunity for our customers and our shareholders. The purchase of the gas property will allow us to diversify our weather risk, balancing our current summer air conditioning peak with this natural gas winter heating peak. In addition, this property is located in close proximity and is regulated by an agency with whom we are familiar. It is a strategic fit for us."

Gatz continued, "We offered employment to the 51 Aquila field employees who have been providing service to customers in these communities. Forty-eight employees have chosen to join us, and we look forward to working with them to grow this segment of our company."

Based in Joplin, Missouri, The Empire District Electric Company (NYSE:EDE) is an investor-owned utility providing electric service to approximately 162,000 customers in southwest Missouri, southeast Kansas, northeast Oklahoma, and northwest Arkansas; natural gas service to approximately 48,500 customers in northwest, north central, and west central Missouri; and water service to about 4,600 customers in three southwest Missouri communities. The Company also provides fiber optic and Internet services, customer information software services, and has an investment in close-tolerance, custom manufacturing.

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Certain matters discussed in this press release are "forward-looking statements" intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. Such statements address future plans, objectives, expectations, and events or conditions concerning various matters. Actual results in each case could differ materially from those currently anticipated in such statements, by reason of the factors noted in our filings with the SEC, including the most recent Form 10-K and Form 10-Q.