

Exhibit No.: \_\_\_\_\_  
Issues: Request for Certification  
Witness: Michael R. Noack  
Type of Exhibit: Rebuttal Testimony  
Sponsoring Party: Missouri Gas Energy  
Case No.: GA-2007-0289  
Date Testimony Prepared: September 7, 2007

MISSOURI PUBLIC SERVICE COMMISSION

MISSOURI GAS ENERGY

CASE NO. GA-2007-0289

REBUTTAL TESTIMONY OF

MICHAEL R. NOACK

Jefferson City, Missouri

September 7, 2007

MGE Exhibit No. 2  
Case No(s). GA-2007-0289  
Date 10/25/07 Rptr MV

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri Gas Energy, )  
a Division of Southern Union Company, for a Certificate )  
of Public Convenience and Necessity Authorizing it to )  
Construct, Install, Own, Operate, Control, Manager and ) Case No. GA-2007-0289  
Maintain a Natural Gas Distribution System to Provide )  
Gas Service in Platte County, Missouri, as an Expansion )  
Of its Existing Certified Area )

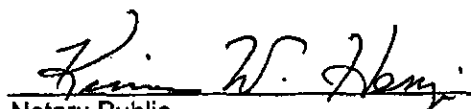
AFFIDAVIT OF MICHAEL R. NOACK

STATE OF MISSOURI            )  
                                      )  
COUNTY OF JACKSON        )       ss.

Michael R. Noack, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

  
MICHAEL R. NOACK

Subscribed and sworn to before me this 6<sup>th</sup> day of SEPTEMBER 2007.

  
Notary Public

My Commission Expires: Feb. 3, 2011



**REBUTTAL TESTIMONY OF MICHAEL R. NOACK**

**CASE NO. GA-2007-0289**

**SEPTEMBER 2007**

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1 Q. WOULD YOU PLEASE STATE YOUR NAME AND BUSINESS  
2 ADDRESS?

3 A. My name is Michael R. Noack and my business address is 3420 Broadway,  
4 Kansas City, Missouri 64111.

5 Q. DID YOU SUBMIT DIRECT TESTIMONY IN THIS PROCEEDING?

6 A. Yes, I did.

7 **EXECUTIVE SUMMARY**

8 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

9 A. In my rebuttal testimony I will:

- 10 1. Make minor corrections to the original application filed which will correct  
11 a county name and provide an accurate list of landowners or homeowners  
12 within the requested certification area.
- 13 2. Explain how MGE began building gas service facilities in sections 13 and  
14 14 where MGE is requesting certification.
- 15 3. Address Mr. Henry Warren's testimony dealing with the previously filed  
16 certificates of convenience and necessity (CCN) focusing on the tariff  
17 filing No 9700571 made on February 21, 1997.
- 18 4. Address the testimony of Mr. Gatz dealing with the remedies Empire is  
19 requesting from the Commission.
- 20 5. Finally address the application for the CCN Empire has made in this case.

1                                   **1. CORRECTIONS TO THE APPLICATION**

2   **Q.   DOES MGE WISH TO MAKE ANY CORRECTIONS TO THE**  
3       **APPLICATION WHICH WAS ORIGINALLY FILED?**

4   **A.**   Yes. The first correction should be made on page 2 in paragraph 7 of the original  
5       application where Greene County should be replaced with Platte County and the  
6       words "one section" replaced with "two sections". The second correction is in  
7       response to Mr. Klein's direct testimony on page 7, lines 7 through 17 where he  
8       correctly points out that the list of landowners provided in the application were  
9       not necessarily located within the requested sections. Attached to my rebuttal  
10      testimony as Rebuttal Schedule MRN-1 is an updated list of landowners or  
11      residents within the requested sections 13 and 14 of Township 52 North, Range  
12      35 West in Platte County Missouri.

13                                   **2. CURRENT EXTENSION OF MAINS**

14   **Q.   HAD MGE BEGUN CONSTRUCTION IN SECTIONS 13 AND 14**  
15      **BEFORE THE CCN WAS REQUESTED?**

16   **A.**   Yes. Section lines shown on maps are not marked in fields, roads or otherwise so  
17      as to be apparent where construction takes place. At the request of the customer  
18      (Central Platte Holdings, LLC, with whom MGE has a contract for the extension  
19      of facilities), MGE extended new facilities approximately 1,200 feet into Sections  
20      13 and 14 where they border Sections 11 and 12 before it became apparent to  
21      MGE that the construction activities were not in an area approved by the  
22      Commission as MGE's service territory. Upon realizing that the construction  
23      activities had taken place in an area not approved by the Commission as MGE's

1 service territory, MGE made this filing with the Commission to become  
2 certificated in those sections.

3 **3. DIRECT TESTIMONY OF HENRY WARREN**

4 **Q. HAS HENRY WARREN FILED TESTIMONY IN THIS CASE ON**  
5 **BEHALF OF STAFF OF THE COMMISSION?**

6 **A.** Yes. Mr. Warren filed about three pages of testimony in this case.

7 **Q. WHAT WERE MR. WARREN'S RECOMMENDATIONS TO THE**  
8 **COMMISSION?**

9 **A.** Mr. Warren did not make any recommendations to the Commission in his direct  
10 testimony. He simply makes reference to Commission decisions in 1955 and  
11 1956.

12 **Q. DOES MR. WARREN ADDRESS THE FACT THAT MGE TARIFF**  
13 **SHEET NO. 6.15, EFFECTIVE MAY 21, 1997, DESIGNATES SECTIONS**  
14 **1, 2, 3, 10, 11 AND 12 OF TOWNSHIP 52 NORTH, RANGE 35 WEST AS**  
15 **MGE CERTIFICATED AREAS?**

16 **A.** No, he ignores that Commission-approved tariff sheet. In fact MGE made that  
17 tariff filing to comply with a directive of the Commission, made at the  
18 recommendation of the Staff by order issued in early 1997, that MGE file tariff  
19 sheets with metes and bounds descriptions and maps showing MGE's certificated  
20 service areas in the State of Missouri (Page 80, Report and Order, GR-96-285).  
21 Empire's predecessor in interest with respect to its Platte County service territory  
22 (Aquila, formerly known as Utilicorp United, Inc. as well as Missouri Public

1 Service) was a party to Case No. GR-96-285. Tariff Sheet No. 6.15 (See Rebuttal  
2 Schedule MRN-2) was filed and approved on May 21, 1997 based upon a staff  
3 recommendation in tariff filing 9700571. This tariff sheet designated Sections 1,  
4 2, 3, 10, 11 and 12 of Township 52 North, Range 35 West as MGE service  
5 territory.

6 **4. DIRECT TESTIMONY OF RONALD GATZ**

7 **Q. WHAT REMEDIES IS MR. GATZ REQUESTING FROM THE**  
8 **COMMISSION IN HIS DIRECT TESTIMONY?**

9 **A.** Mr. Gatz is requesting that the Commission:

- 10 a. Grant Empire a CCN in Sections 13, 14, 15, 22, 23 and 24 of Township 52  
11 North, Range 35 West in Platte County, Missouri
- 12 b. Deny MGE's request for a CCN in Sections 13 and 14 of Township 52  
13 North, Range 35 West in Platte County, Missouri
- 14 c. Find that MGE has not been granted a certificate of convenience and  
15 necessity in the overlapping service territories
- 16 d. Order MGE to correct the tariff sheets to correspond with item (c) above
- 17 e. Order MGE to sell all of its facilities in the overlapping service territories  
18 to Empire at net book value or in the alternative abandon the facilities at  
19 the time that Empire has facilities available to serve the current MGE  
20 customers.

21 **Q. DO YOU AGREE WITH THE REQUESTS OF MR. GATZ?**

22 **A.** No. Mr. Gatz ignores the fact that other gas companies have provided service for  
23 many years in the southern portions of the overlapping service territories, as he

1 calls them. In 1960, the Gas Service Company ("Gas Service", a predecessor in  
2 interest to MGE) began providing service to a customer in section 12. In 1992  
3 and 1993, Gas Service began providing service to two customers in section 10. In  
4 2002, MGE began providing service to a customer in section 10, pursuant to its  
5 tariff. In May and October of 2006, MGE began serving customers in the Seven  
6 Bridges development and another customer in section 12, also pursuant to its  
7 tariff. Despite the fact that other companies have been providing service in this  
8 overlapping service territory for over 40 years, neither Empire nor any of its  
9 predecessors ever brought this provision of service to the attention of the  
10 Commission until this case. I will address each of Mr. Gatz's requests below.

11 a., b. Mr. Gatz requests that a) Empire be granted a CCN in sections 13,  
12 14, 15, 22, 23 and 24 and b) MGE be denied a CCN in sections 13 and 14 (all in  
13 Township 52 North, Range 35 West in Platte County, Missouri). The Seven  
14 Bridges development encompasses portions of adjoining sections 11, 12, 13 and  
15 14. MGE was approached by the developer to provide service. Because it was  
16 authorized to provide service in section 11 and 12, MGE entered into a contract  
17 with the developer to serve the entire subdivision and is currently serving  
18 customers in the portion of the subdivision which is in section 12. In order to  
19 serve the entire subdivision, MGE filed for a CCN in sections 13 and 14. It  
20 makes little sense to deny MGE a certificate for sections 13 and 14 when it  
21 already has facilities in sections 11 and 12 -- which have been constructed under  
22 the authority of a lawfully approved tariff. MGE is serving this subdivision from  
23 its Leavenworth line which abuts the northern edge of the subdivision and is  
24 closer than the supply line of Empire. Granting a CCN to Empire and denying a



1 CCN to MGE would mean that the subdivision would be served by two different  
2 service providers. Empire's request for a CCN in sections 15, 22, 23 and 24 is  
3 dealt with in the next portion of my testimony.

4 c., d. Mr. Gatz's request that the Commission make a finding that MGE  
5 does not have a certificate in the overlapping service territories ignores the fact  
6 that MGE's predecessor, Gas Service, began serving customers in the overlapping  
7 service territory in 1960. Empire's request would unfairly penalize MGE for  
8 continuing to provide service to these customers after the Commission authorized  
9 MGE's purchase of those customers and facilities, among other things. MGE had  
10 no reason to believe that these customers would be claimed by another utility  
11 when it undertook the obligations of a natural gas utility and began serving the  
12 customers of its predecessor. The Commission should not allow Empire to serve  
13 customers that neither it nor its predecessor showed any interest in serving for  
14 many, many years.

15 e. Mr. Gatz's request that the Commission order MGE to sell its facilities  
16 in sections 11 and 12 to Empire does not recognize the interests of existing  
17 customers and should be rejected. The developer of Seven Bridges chose MGE to  
18 provide gas service to the subdivision. MGE was authorized to serve the initial  
19 phases of that subdivision under its Commission-approved tariffs. The residents  
20 of the subdivision are receiving service from MGE, pursuant to those same tariffs.  
21 These customers' interests, as well as those customers outside of the Seven  
22 Bridges development are not served by Empire's ill-advised remedy of placing  
23 duplicate facilities so that Empire can provide service or forcing MGE to sell its  
24 facilities. Empire's remedy does not recognize the customer confusion and

1 inconvenience which may occur nor does it address safety issues which might  
2 occur when Empire is placing service lines in the same area as MGE's existing  
3 service lines.

4 **5. EMPIRE'S APPLICATION**

5 **Q. SHOULD THE COMMISSION GRANT EMPIRE'S APPLICATION FOR**  
6 **A CCN IN SECTIONS 13 and 14 IN TOWNSHIP 52 NORTH, RANGE 35**  
7 **WEST?**

8 **A.** No. The granting of a certificate must promote the public interest. The public  
9 interest is best served by MGE providing service to the entire Seven Bridges  
10 development as it already has many of the facilities in place to do so. MGE has  
11 already placed main extensions from its Leavenworth line to serve the portion of  
12 the development in sections 13 and 14. If Empire is granted a certificate, its main  
13 extension facilities will duplicate those already in place which is not in the public  
14 interest.

15 **Q. SHOULD EMPIRE BE GRANTED CERTIFICATION IN SECTIONS 15,**  
16 **22, 23 and 24 WHICH WERE INCLUDED IN THE FILING?**

17 **A.** No. Empire's application and testimony does not contain any evidence of  
18 customer requests for service or definite development plans in these sections  
19 beyond a general statement that development is approaching these areas. Thus,  
20 there is no need for service demonstrated in these sections. (MGE has not had  
21 any requests for service in these sections which is why MGE has not requested a  
22 CCN for sections 15, 22, 23 and 24). Until such time as there is a need for  
23 service, the application should be denied for sections 15, 22, 23 and 24. Empire's

1 filing appears to simply be for the purpose of stockpiling sections in Platte  
2 County. The Commission and the public would be better served by letting MGE  
3 compete to serve these sections as they develop instead of awarding them to  
4 Empire. MGE is well positioned to serve these sections from its Leavenworth  
5 supply line.

6 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

7 **A.** Yes, it does.

**Rebuttal Schedule MRN-1****Missouri Gas Energy  
Residents and Landowners in Proposed Service Area**

<u>Name</u>	<u>Address</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
Bivens Construction	16465 126th Street	13	52	35
Lakes at Oakmont	16430 126th Street	13	52	35
Golden Key	Lots 103 & 104	13	52	35
Jay Jackson Builders	17800 128th Street	13	52	35
Central Platte Holdings LLC	Seven Bridges Lot 102	13	52	35
Dulin, Arlin and Sharon	12110 Dulin Dr	14	52	35
Lentine, Kordel & Sheryl	12240 Dulin Dr	14	52	35
Dulin, Kevin & Julie	12290 Dulin Dr	14	52	35
O'Rourke, James	12310 Dulin Dr	14	52	35
Carson Custom Homes	Lot 123 Seven Bridges	14	52	35
Kostelac, Michael P & Amy L	Lot 125 Seven Bridges	14	52	35
Garrett Construction Inc	Lot 126 Seven Bridges	14	52	35

P.S.C. MO. No. 1OriginalSHEET No. 6.15Missouri Gas Energy,  
a Division of Southern Union CompanyFor: All Missouri Service AreasINDEX OF CERTIFICATED AREASTOWNSHIP    RANGE            SECTIONSPETTIS COUNTY

T43n	R23w	6,7
T44n	R23w	31
T46n	R23w	11,14,15,22,23
T47n	R22w	13,14,23,24,25,26
T48n	R22w	32

PLATTE COUNTY

T50n	R33w	4,5,6,7,8,9
T51n	R33w	4,5,6,7,8,9,16,17,18,19,20,21,28,29,30,31,32,33
T51n	R34w	1,2,3,4,5,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36
T51n	R35w	11,12
T52n	R33w	4,5,7,8,9,16,17,18,19,20,21,28,29,30,31,32,33
T52n	R34w	1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36
T52n	R35w	1,2,3,4,5,6,7,8,9,10,11,12
T52n	R36w	1,12
T54n	R33w	4,5,6,7,8,9,16,17,18,19,20,21,28
T54n	R34w	1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,28,29,30,31,32,33
T54n	R35w	1,2,3,4,5,8,9,10,11,12,13,14,15,16,17,
T55n	R34w	31
T55n	R35w	32,33,34,35,36

DATE OF ISSUE February 21 1997  
month    day    yearDATE EFFECTIVE May 21 1997  
month    day    yearISSUED BY: Charles B. Hernandez

Director, Pricing &amp; Regulatory Affairs

Missouri Gas Energy  
Kansas City, MO. 64111