

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

October 25, 2007
Jefferson City, Missouri
Volume 2

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)Case No. GA-2007-0289
Construct, Install, Own, Operate,)
Control, Manage and Maintain a)
Natural Gas Distribution System)
to Provide Gas Service in Platte)
County, Missouri, as an Expansion)

HAROLD STEARLEY, Presiding
REGULATORY LAW JUDGE
CONNIE MURRAY,
ROBERT M. CLAYTON, III
LINWARD "LIN" APPLING,
COMMISSIONERS

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1 P R O C E E D I N G S

2 JUDGE STEARLEY: All right. All right. Let's
3 bring this hearing to order. Good morning. Today is
4 Thursday, October 25th, 2007. We are here for an
5 evidentiary hearing in the matter of the application of
6 Missouri Gas Energy, a Division of Southern Union Company
7 to a Certificate of Public Convenience and Necessity
8 authorizing it to construct, install, own, operate,
9 control, manage and maintain a natural gas distribution
10 system to provide gas service in Platte County, Missouri,
11 as an expansion of its existing service area.

12 This case was consolidated with Case No.
13 GA-2007-0457 in the matter of the application of the
14 Empire District Gas Company for a Certificate of Public
15 Convenience and Necessity authorizing it to construct,
16 install, own, operate, control, manage or maintain a
17 natural gas distribution system to provide gas service in
18 Platte County, Missouri. It's an expansion of its
19 existing certificated area.

20 My name is Harold Stearley, and I am the
21 Regulatory Law Judge presiding over this matter today.
22 The court reporter is Monnie VanZant. And we will begin
23 by taking oaths of appearance, beginning with Missouri
24 Gas Energy.

25 MR. STEINER: Thank you, your Honor. Roger W.

1 Steiner with the law firm of Sonnenschein, Nath &
2 Rosenthal, representing Missouri Gas Enery. My address is
3 4520 Main Street, Kansas City, Missouri, 64111.

4 JUDGE STEARLEY: Thank you, Mr. Steiner. The
5 Empire District Gas Company?

6 MR. KEEVIL: Yes, your Honor. Appearing on
7 behalf of the Empire District Gas Company, Jeffrey A.
8 Keevil of the law firm Stewart & Keevil, LLC. Our address
9 is 4603 John Garry Drive, Suite 11, Columbia, Missouri,
10 65203.

11 JUDGE STEARLEY: Thank you, Mr. Keevil. Staff
12 of the Missouri Public Service Commission?

13 MR. BERLIN: Yes, Judge. Appearing on behalf of
14 the Staff of the Missouri Public Service Commission,
15 Robert S. Berlin, Post Office Box 360, Jefferson City,
16 Missouri, 65102.

17 JUDGE STEARLEY: Thank you, Mr. Berlin. And
18 Office of the Public Counsel?

19 MR. POSTON: Thank you, Judge. Mark Poston
20 appearing on behalf of the Office of the Public Counsel
21 and the public, P.O. Box 2230, Jefferson City, Missouri,
22 65102.

23 JUDGE STEARLEY: Thank you, Mr. Poston. We had
24 a little down time this morning while we were getting our
25 webcasting up. And during that time, we had exhibits

1 premarked and presented to our court reporter. I just
2 want to make sure have all exhibits now been given to our
3 court reporter?

4 MR. BERLIN: Judge, I owe the court reporter the
5 exhibits to the deposition, which is Staff Exhibit No.
6 16, and I will provide that this morning.

7 JUDGE STEARLEY: All right. Very good, thank
8 you, Mr. Berlin.

9 MR. KEEVIL: Judge, I may have some additional
10 exhibits come out during-cross examination, but I have all
11 the ones pre-filed that have been premarked.

12 JUDGE STEARLEY: Thank you, Mr. Keevil. And I
13 will, as those are introduced, have you all identify those
14 exhibits so we can all complete our exhibits list.

15 I do want to advise all that are present to
16 please turn off all cell phones, blackberries, any other
17 electronic devices. And by that, I mean completely off,
18 not just silenced. We do have problems with those devices
19 interfering with our webcasting and recording. So we
20 would greatly appreciate it if you would turn those off at
21 this time.

22 My understanding of our witness list is, for
23 MGE, we have Robert Hack and Mike Noack. And,
24 Mr. Steriner, I would ask you in terms of Mr. Hack, is he
25 available this morning? I -- I noticed he had received a

1 special invitation to appear this afternoon. I was just
2 curious if he was going to be here this morning or this
3 afternoon.

4 MR. STEINER: Your Honor, we worked it out so he
5 would be here until noon, and then he would be
6 unavailable.

7 JUDGE STEARLEY: Okay. So we'll be starting
8 with him as our first witness?

9 MR. STEINER: Correct.

10 JDUGE STEARLEY: For Empire, I have Dan Klein,
11 Steven Teter and Ron Gatz. For Staff, Henry Warren and
12 Mike Straub.

13 MR. BERLIN: That's correct, Judge.

14 JUDGE STEARLEY: All right. Are there any
15 preliminary matters we need to take up at this time?
16 Okay. Well, hearing none, I guess we are ready, then, to
17 start with opening statements. And we will begin with
18 MGE. Mr. Steiner.

19 MR. STEINER: I don't have a bigger -- bigger
20 easel.

21 COMMISSIONER CLAYTON: I can see it. You get
22 special attention here when you're the only one who shows
23 up.

24 OPENING STATEMENT

25 BY MR. STEINER:

1 MR. STEINER: May it please the Commission. My
2 name is Roger Steiner. I'm representing Missouri Gas
3 Energy today.

4 This case began innocently enough as a simple
5 certification case in which MGE requested territory
6 adjacent to sections that currently serves in Platte
7 County, Missouri. It wanted that certification -- wants
8 that certification so it can continue the extension of gas
9 mains and services to serve a subdivision.

10 However, before that certificate can be
11 approved, we must deal with concerns that have been raised
12 by Empire and Staff of whether or not a utility can rely
13 on its filed and approved tariffs.

14 When a new customer requests service from MGE,
15 MGE, like other companies, examines its tariff to make
16 sure that it is -- that the requested territory is in its
17 certificated territory.

18 If the legal location shown in the filed and
19 approved tariff is not shown in the filed and approved
20 tariff, MGE files a request for a certificate before it
21 serves the customer.

22 MGE's Tariff Sheet 6.15 indicates that Sections
23 10, 11 and 12 are in its certificated territory. MGE
24 relied on its tariff when deciding to serve customers in
25 those sections of Platte County and is currently providing

1 service under authority of these tariffs.

2 Now, under Section 386.270 of the Missouri
3 statutes, the Missouri legislature has made it quite clear
4 that a utility is entitled to rely on its Commission
5 approved tariffs.

6 That statute reads that all regulations,
7 practices and services prescribed by the Commission shall
8 be lawful and reasonable until found otherwise and a suit
9 brought for that purpose.

10 The tariffs that MGE relied on have never been
11 challenged. Now, I'm going to go into some utility
12 history and give you the background of the players. In
13 1955, the Gas Service Company was awarded a CCN to provide
14 gas service in this shaded area here.

15 Gas Service was also given a line certificate to
16 operate the Leavenworth supply line that is this dark line
17 here. And that Leavenworth supply line was to provide gas
18 to its certificated territory.

19 COMMISSIONER CLAYTON: What year did you say
20 that was?

21 MR. STEINER: That was in 1955. That's a ten --
22 that's a 12-inch main. Missouri Public Service, the
23 predecessor in interest to Aquila and Empire was awarded
24 the service territory to the north in 1956. That's
25 outlined in this dark blue line. Dark black line. Excuse

1 me.

2 Over the next several years, Gas Service was
3 asked to provide gas service and did provide gas service
4 to individual customers in Sections 10 and 12 near its
5 Leavenworth supply line.

6 COMMISSIONER CLAYTON: Who is providing gas?
7 I'm sorry. Who did you say is providing gas service in 10
8 and 12?

9 MR. STEINER: Gas service?

10 COMMISISONER CLAYTON: Gas service.

11 MR. STEINER: Gas Service, the predecessor to
12 Missouri Gas Energy. Now, those -- those sections are in
13 Missouri Public Service territory. Gas Service provided
14 that service. And Missouri Public Service did not contest
15 this provision of service.

16 Three years after MGE acquired the assets of Gas
17 Service in 1994, the Commission in two separate orders
18 ordered MGE to clarify the geographic boundaries of its
19 entire service territory, not just this Platte City area,
20 everywhere it serves in Missouri.

21 And MGE, with the assistance of Commission
22 staff, poured through dozens of orders as well as maps of
23 service facilities to determine the extent of the MGE
24 service area.

25 And based on this collaborative effort between

1 Staff and company, MGE filed tariffs which listed the
2 sections where MGE was authorized to serve. Sections 10,
3 11 and 12, which were in Aquila's certificated area were
4 listed as a part of MGE's certificated territory on Tariff
5 Sheet 6.15.

6 The Commission, based on Staff's recommendation,
7 approved MGE's tariff sheets in 1997. Those tariffs have
8 been in effect since that date, and their lawfulness has
9 never been challenged.

10 Now, in 1999, MGE was approached to provide
11 service in Section 6, which the 1997 tariff sheets also
12 said was part of MGE's service territory. MGE told Aquila
13 that that section -- this section was in its certificated
14 area pursuant to Tariff Sheet 6.15.

15 Aquila answered that no, that it has a
16 certificate for this section and it needs to provide
17 service. Even though Aquila had this knowledge that MGE
18 believed it had authority to serve, MGE made no filing
19 with the Commission to determine the nature of MGE's
20 authority or to file a complaint to challenge MGE's
21 tariff.

22 Now, MGE did not end up providing service in
23 Section 6, but it still relied on its tariff, and it
24 provided service to an individual customer in Section 10
25 in 2002.

1 A couple years later, MGE was approached by a
2 developer to provide gas service to a residential
3 subdivision called Seven Bridges in Sections 11, 12, 13
4 and 14. You'll be hearing a lot about Seven Bridges
5 today.

6 MGE believed it had a duty to provide service to
7 Seven Bridges since this subdivision was located in part
8 within the certificated territory described in its tariff.

9 Tariff Sheet 6.15 says that Sections 10, 11 and
10 12 are in MGE's certificated territory. MGE signed a
11 contract with the Seven Bridges developer in January 2006,
12 and, relying on its tariff, extended its distribution
13 system and begun providing service to the part of the
14 subdivision in Section 12 in May 2006.

15 After MGE provided service, Empire, which had
16 recently acquired this property from Aquila, contacted MGE
17 about the Seven Bridges subdivision. MGE indicated that
18 it was authorized to serve Seven Bridges pursuant to its
19 tariff. And Empire has never filed a complaint against
20 MGE for the provision of service to Seven Bridges.

21 Now, because Seven Bridges was located -- also
22 located in -- the plan for Seven Bridges was also stating
23 that it would be -- part of it would be going in Sections
24 13 and 14, which were not part of MGE's tariff, MGE filed
25 this case in January 2007 to get a certificate to serve 13

1 and 14.

2 Empire intervened in this case, alleging that as
3 the successor to Aquila, it should be allowed to serve
4 Seven Bridges. Now, because MGE is already providing
5 service to Seven Bridges, it is clear that MGE has the
6 financial, managerial and technical qualifications to
7 serve Sections 13 and 14, which is a continuation of the
8 Seven Bridges subdivision.

9 MGE requests that the Commission approve MGE's
10 application for a certificate to serve Section 13 and 14
11 and find that MGE was authorized to rely on its tariff,
12 which gave it the authority to serve in Sections 10, 11
13 and 12.

14 MGE must not be penalized for following its
15 tariff and providing gas service to customers that request
16 such service. The Commission must look at the interest of
17 the public when deciding a certificate case.

18 Customers are already being served at their
19 request by MGE, and MGE is providing safe and adequate
20 service. Requiring MGE and existing customers to go
21 through the inconvenience and added expense of changing
22 gas suppliers is not in the public interest. Thank you.

23 JUDGE STEARLEY: Thank you, Mr. Steiner. I
24 believe Commissioner Clayton would like to ask you a
25 question.

1 MR. STEINER: Okay.

2 COMMISSIONER CLAYTON: Unless Connie has --

3 COMMISSIONER MURRAY: No.

4 COMMISSIONER CLAYTON: I had a few legal
5 questions just to make sure I'm thinking about this case
6 in the right manner. First of all, I wanted to ask you,
7 on -- where MGE's predecessor, Gas Service, went in and
8 started serving Sections 10 and 12 -- which would have
9 been in the old Missouri Public Service certificated area;
10 is that correct?

11 MR. STEINER: That's correct.

12 COMMISSIONER CLAYTON: What year was that?

13 MR. STEINER: I believe the first instance was
14 1960. And I think there was another instance in 1980.

15 COMMISSIONER CLAYTON: And -- and is that
16 basically -- is it farm tap type of service, or is it --
17 was there actually -- will the evidence show that there is
18 extensive distribution plant put into those areas?

19 MR. STEINER: It is not a farm tap. I do not
20 know if there is evidence of extensive distribution
21 service, but I know it's not a farm tap.

22 COMMISISONER CLAYTON: Okay. So it's more than
23 just a little line coming off the pipeline?

24 MR. STEINER: That is my understanding. Yes.

25 COMMISSIONER CLAYTON: Okay. And will the

1 evidence show whether or not Missouri Public Service was
2 aware of that distribution service going into their
3 service territory?

4 MR. STEINER: Depending on cross-examination, it
5 could. I don't think we have anybody from the company
6 that long ago, so I doubt that 1960 and 1980 will show
7 that. But --

8 COMMISSIONER CLAYTON: Okay. So -- so you're
9 not sure of whether the evidence will show whether
10 Missouri Public Service was aware or not? We're just not
11 sure at this point?

12 MR. STEINER: That's correct.

13 COMMISSIONER CLAYTON: Okay.

14 MR. STEINER: I mean, it was done out in the
15 open. It's -- it wasn't clandestine or anything like
16 that.

17 COMMISSIONER CLAYTON: Open and notorious?

18 MR. STEINER: That's right.

19 COMMISSIONER CLAYTON: Well, that leads to my
20 next question. As an administrative body, from MGE's
21 perspective, can you give me some guidance whether --
22 whether there are any legal principals beyond just looking
23 at the tariffs?

24 I mean, we have conflicting tariffs here. Are there
25 any legal or equitable principles that are going to come

1 up in this from MGE's perspective that would be
2 applicable?

3 MR. STEINER: Well, you do have conflicting
4 tariffs, but the Commission can have two gas providers
5 certificated for the same area. It does not have to be a
6 monopoly. But there is case law that says that.

7 As far as equitable principles, I think the
8 principle of something like latches would apply where --

9 COMMISSIONER CLAYTON: Can we apply latches?

10 MR. STEINER: I don't --

11 COMMISSIONER CLAYTON: Can we apply estoppel?
12 Can we apply those provisions?

13 MR. STEINER: I think the Commission has the
14 power to do that. I have seen it done before. I think it
15 would be -- I think it's more of a fairness question and a
16 question of public interest.

17 Since MGE is already serving, does it make sense
18 to tear up those lines, inconvenience customers from
19 public interest perspective since MGE is already there?

20 COMMISSIONER CLAYTON: So MGE does think that we
21 can -- we can use equitable --

22 MR. STEINER: I don't know if you can call it
23 equitable.

24 COMMISSIONER CLAYTON: --terms of relief?

25 MR. STEINER: The Commission definitely has the

1 power to determine who should be serving in particular
2 sections. And I don't know if it -- I mean, PSC is --
3 traditionally case book law says you do not have equitable
4 powers, but it can make -- weigh the facts and
5 circumstances and make the right call based on its
6 information and belief that's what's best for the
7 ratepayer.

8 COMMISSIONER CLAYTON: If we have conflicting
9 tariffs and if a tariff -- if you make the assumption that
10 -- that the law says that a -- an approve tariff has the
11 full force and effect of law and we have two conflicting
12 tariffs, then we have two conflicting provisions of the
13 law, quote, unquote. So I am trying to understand what
14 our role is going to be in resolving this case. Is it an
15 equitable role? Is it --

16 MR. STEINER: I think it's a role of who -- who
17 is best qualified to provide service, who is best
18 positioned now to provide service. That has elements of
19 equity in it.

20 But just because there are two laws, two --
21 which tariffs are once they're approved by the Commission,
22 they both need to be interpreted to give both of them
23 effect.

24 And the Commission can have overlapping tariffs.
25 It does not have to have a monopoly provider for provision

1 of its regulated services. So --

2 COMMISSIONER CLAYTON: Can you give me an
3 example where we have overlapping service territories with
4 regard to gas utilities anywhere other than this example?

5 MR. STEINER: No, I cannot.

6 COMMISSIONRE CLAYTON: Can you give me an
7 example of overlapping electrical company tariffs in
8 service areas anywhere in the state?

9 MR. STEINER: I cannot.

10 COMMISSIONER CLAYTON: How about water
11 companies?

12 MR. STEINER: There probably are with regard to
13 municipals, same with electrics -- electricals. They
14 probably have overlapping territories.

15 COMMISSIONER CLAYTON: But you're not for sure?
16 I mean, that's --

17 MR. STEINER: No.

18 COMMISSIONER CLAYTON: Okay. Thank you.

19 JUDGE STEARLEY: Are there any other questions
20 for Mr. Steiner from the Bench? Thank you, Mr. Steiner.
21 Opening statement from Empire? Mr. Keevil.

22 COMMISSIONER CLAYTON: Is that exhibit marked?
23 Is that an exhibit?

24 MR. STEINER: May I -- I answer that? This was
25 -- we can mark it. That's fine. It was taken from --

1 COMMISSIONER CLAYTON: The filings?

2 MR. STEINER: An exhibit to Mr. Warren's
3 testimony. And some of the text was removed, so it's not
4 exactly the same. But the map is the same. I'll be happy
5 to mark it if you want it.

6 COMMISSIONER CLAYTON: Okay. No. That's all
7 right. We'll get to it.

8 MR. KEEVIL: Judge, I think Mr. -- Mr. Berlin
9 has marked a very similar map as Staff Exhibit 2, if that
10 helps you with this.

11 COMMISSIONER CLAYTON: Thank you. Thank you.

12 OPENING STATEMENT

13 BY MR. KEEVIL:

14 MR. KEEVIL: Good morning. May it please the
15 Commission. First of all, let me apologize. I didn't
16 bring a map. I thought there were going to be plenty of
17 maps in evidence anyway.

18 I'm Jeff Keevil, and I'm representing the Empire
19 District Gas Company in this case. With me today from
20 Empire are Ron Gatz, Vice President, and Chief Operating
21 Officer Gatz; Steve Teter, Director of Gas Operations; Dan
22 Klein, Director of Engineering; and Scott Keith, Director
23 of Planning & Regulatory.

24 Let me apologize for reading this, but with all
25 of the land section and township and range references that

1 you're going to hear, I thought this would be the safest
2 course.

3 First of all, I would like to remind the
4 Commission, as the Judge noted in his opening remarks,
5 that this case is actually two cases, which have been
6 consolidated under the heading and case number of one
7 case. Case No. GA-2007-0289 was originally an application
8 case filed by Missouri Gas Energy, or MGE, by which MGE
9 seeks a Certificate of Convenience and Necessity to
10 construct, install, own, operate, control, manage and
11 maintain a system for the provision of natural gas service
12 to the public in Sections 13 and 14, Township 52 North,
13 Range 35 West in Platte County, Missouri.

14 The Empire District Gas Company, which I may
15 refer to as Empire or EDG, filed Case No. GA-2007-0457 by
16 which Empire seeks an order from the Commission granting
17 it a Certificate of Convenience and Necessity to
18 construct, install, own, operate, control, manage and
19 maintain a system for the provision of natural gas service
20 to the public in Sections 13, 14, 15, 22, 23 and 24,
21 Township 52 North, Range 35 West in Platte County,
22 Missouri, as well as other additional relief, which I will
23 get to in a moment.

24 Now, in other words, both companies have filed
25 for what is commonly referred to as a service area

1 certificate for Sections 13 and 14, Township 52 North,
2 Range 35 West. And in addition to those two sections,
3 Empire has requested a Service Area Certificate for
4 Sections 15, 22, 23 and 24 in that same township and
5 range.

6 Now, Empire's application case was consolidated
7 with the MGE application case, and Case GA-2007-0289 was
8 made the lead case. Now, as Mr. Steiner indicated, what
9 initially prompted the filing of this case was the
10 construction of a subdivision, Seven Bridges, which began
11 in Section 12, Township 52 North, Range 35 West, but which
12 extends into or will extend into Sections 11, 13 and 14 of
13 that township and range.

14 The evidence will demonstrate that Empire
15 already has a service area certificate from the Commission
16 for Sections 11 and 12 in that township and range and MGE
17 does not have a certificate. Therefore, in addition to
18 its other qualifications to provide the service as set
19 forth in the prefiled testimony, Empire, not MGE, should
20 be granted the certificate to serve the requested sections
21 in order to serve the entire subdivision development,
22 including the expansion into Sections 13 and 14 and avoid
23 duplication of facilities and the increased safety
24 concerns which are inherent with multiple providers in the
25 same development.

1 Furthermore, Empire should be granted the
2 certificate that it has requested for Sections 15, 22, 23
3 and 24 as set forth in the testimony of Empire's
4 witnesses, Gatz, Klein and Teter.

5 Now, as I stated, MGE does not have an order
6 from the Commission granting it a service area certificate
7 for Section 12, which is where the Seven Bridges
8 subdivision began.

9 However, this is where in case begins to get
10 more complicated than the typical service area certificate
11 application case because, although MGE does not have a
12 certificate to serve Section 12, MGE -- as Mr. Steiner
13 indicated, I believe, MGE has constructed facilities and
14 begun providing service to customers in Section 12 as well
15 as in additional sections without a certificate from the
16 Commission.

17 In fact, the evidence will demonstrate that MGE
18 has installed and/or operated natural gas distribution
19 facilities in Sections 10, 11, 12, 13 and 14, all without
20 obtaining a certificate from the Commission to do so.

21 Now, you have already heard Mr. Steiner say that
22 MGE is providing service in at least Section 12 based on a
23 1997 tariff. I suppose I have to say that given that they
24 don't have a certificate authorizing they provide service
25 in those sections.

1 The problem with MGE's argument is that a tariff
2 filing alone is not legally sufficient to grant or expand
3 a service territory. The tariff failing upon which MGE
4 relies was approved pursuant to the final and suspend
5 tariff procedure currently under Section 393.140 of the
6 Missouri statute.

7 On the other hand, certificate authority is
8 based upon an application pursuant to Section 393.170, a
9 completely different statute with a different procedure.

10 Furthermore, the evidence will demonstrate that
11 early as 1999, perhaps earlier, but at least by 1999, MGE
12 knew, or at the very least, should have known that its
13 tariff was wrong, yet MGE did nothing about it.

14 The evidence will establish that Empire, not
15 MGE, has a Certificate of Convenience and Necessity to
16 serve Sections 1, 2, 3, 10, 11 and 12 in Township 52
17 North, Range 35 West and Sections 4, 5 and 6 in Township
18 52 North, Range 34 West in Platte County.

19 However, these sections erroneously appear in
20 MGE's tariff. Also, in addition to containing sections of
21 land for which Empire holds a certificate, MGE's tariff
22 also lists other sections for which MGE has no
23 certificate.

24 In total, the evidence will demonstrate that the
25 service territory descriptions in MGE's tariffs contain 22

1 sections of land in Platte County alone for which MGE does
2 not have a service area certificate.

3 Based on the foregoing and on the other evidence
4 which will be presented, Empire requests an order from the
5 Commission which does several things: First, grants
6 Empire a certificate of convenience and necessity to
7 construct, install, own, operate, control, manage and
8 maintain a system for the provision of natural gas service
9 to the public, otherwise known as service area certificate
10 in Sections 13, 14, 15, 22, 23 and 24, Township 52 North,
11 Range 35 West in Platte County, Missouri, and which denies
12 MGE's request for a certificate.

13 Second, the Commission's order should clarify
14 that Empire not MGE, has a certificate to serve Township
15 52 North, Range 35 West, Sections 1, 2, 3, 10, 11 and 12
16 and Township 52 North, Range 34 West, Sections 4, 5 and 6,
17 all in Platte County, Missouri.

18 Third, also, clarifies precisely where MGE is
19 certificated in Platte County and orders MGE to file
20 corrected tariffs, which reflect only its Commission
21 certificated service area in Platte County as set forth
22 under issue four of the list of issues.

23 Fourth, finds that MGE has constructed gas
24 distribution facilities and/or provided natural gas
25 service to customers in Sections 10, 11, 12, 13 and 14 of

1 Township 52 North, Range 35 West in Platte County,
2 Missouri, without first obtaining the required
3 authorization from the Commission.

4 Fifth, orders MGE to cease operating or
5 providing service as a natural gas distribution company
6 these sections of Platte County, except for a limited area
7 as discussed in more detail in the rebuttal testimony of
8 Staff Witness Warren and the surrebuttal testimony of
9 Empire witness, Gatz and orders MGE to sell its facilities
10 to Empire at net book value, or, in the alternative, to
11 abandon these facilities at the time Empire commences to
12 provide natural gas service to these customers.

13 And in addition, the Commission should direct
14 its General Counsel's office to seek injunctive or other
15 necessary and appropriate relief against MGE in court.

16 And, finally, six, orders MGE to provide notice
17 to Empire of any future contact MGE has with developers in
18 areas adjacent to Empire's service area boundaries in
19 Platte County.

20 Now, as I mentioned at the beginning, Empire
21 witnesses Ron Gatz, Dan Klein -- excuse me -- and Steve
22 Teter are here today to sponsor their pre-filed testimony
23 and take the questions, which you may have. Thank you for
24 your time.

25 JUDGE STEARLEY: Are there any questions from

1 the Bench for Mr. Keevil?

2 COMMISSIONER CLAYTON: Can I ask -- just a few
3 preliminary questions. On the map that was up before,
4 does -- does Empire dispute --

5 MR. KEEVIL: Let me grab -- let me grab it.

6 COMMISSIONER CLAYTON: Do you all buy that? I
7 mean, is the map good with you? Are there any errors on
8 that? Is that a fair reference point?

9 MR. KEEVIL: Commissioner, let me say, the --
10 the map which was attached to Mr. Warren's testimony, we
11 have no problem. I haven't had a chance to look at this
12 one closely enough to see if it is the same or not.

13 COMMISSIONER CLAYTON: Okay. Okay. I'll ask
14 you about -- does -- does Empire believe that we have the
15 ability to render an equitable decision in this case?

16 MR. KEEVIL: Well, yes and no. Let me -- let's
17 start off with what we know you can do. We know you can
18 authorize the General Counsel's office to go to Circuit
19 Court and seek penalties.

20 We know that you can authorize the General
21 Counsel's office to go to court and seek to enjoin MGE
22 from unlawful operation. And in that -- such a proceeding
23 to also seek other relief, which would have the effect of
24 -- of other equitable type relief.

25 There -- there is case law out there that says

1 that the Commission has -- and forgive me. I'm not going
2 to get this book 100 percent right. But it's to the
3 effect the Commission has plantary authority to coerce a
4 regulated public utility to --

5 COMMISSIONER CLAYTON: Legally?

6 MR. KEEVIL: Yeah. This is what the case --
7 that's actually in the -- in the case. To coerce a
8 regulated utility into the provision of safe and adequate
9 service.

10 Now, what exactly that means, I don't think has
11 been clearly defined.

12 COMMISSIONER CLAYTON: I'll be sure to look that
13 one up.

14 MR. KEEVIL: I'll -- I'll be glad to cite it for
15 you. The -- yeah. Does that mean that you can order them
16 to -- to sell the facilities to Empire at net book? Like
17 I said, I'm not sure that it -- that language is defined
18 well enough to say either way, frankly.

19 I think you could order it. And as long as you
20 also order the General -- or direct the General Counsel's
21 office to go to Circuit Court to seek injunctive or other
22 relief, I think you've got your bases covered.

23 But I would agree with the general proposition
24 that there -- there's other statements and cases out there
25 that the Commission has no power to order -- what is it?

1 Not to order, but to enforce equitable or legal remedies.

2 But I don't think that applies in this situation.

3 COMMISSIONER CLAYTON: Well, with -- with this
4 case, where arguably you have -- you have service
5 territories that -- where the tariffs reflect the same
6 section, primarily Sections 10, 11 and 12 where --

7 MR. KEEVIL: Actually, if I could just interrupt
8 you just briefly?

9 COMMISSIONER CLAYTON: Sure.

10 MR. KEEVIL: You can see -- if this is the map
11 from Mr. Warrne's testimony, you can see the 22 sections
12 which MGE has reflected in their tariff but for which they
13 have no Certificate of Convenience and Necessity.
14 Beginning way over here with Section -- whatever that one
15 is. I can't read that. But this -- this shaded area
16 right here.

17 COMMISSIONER CLAYTON: Uh-huh.

18 MR. KEEVIL: All the way over to here. And then
19 from here all the way over to here. Those 22 sections are
20 the sections that are listed in their tariff for which
21 they do not have a Commission certificate order.

22 Now, some of those sections, the ones in this
23 box here, are the sections which Empire has a certificate
24 for and which are reflected in Empire's tariffs. So
25 Empire has both a certificate and tariff for these

1 sections in this box. MGE has a tariff that claims it has
2 authority for those sections, those 22 sections, but they
3 have no certificate to back it up.

4 COMMISSIONER CLAYTON: Okay. Let me ask you
5 this, then. In a legal question, is a tariff filed out of
6 compliance with an order, with a Commission order, is it
7 void, *av initio*? Is it voidable? Is it unlawful? Is it
8 in purgatory?

9 MR. KEEVIL: Is it void or voidable?

10 COMMISSIONER CLAYTON: Or neither?

11 MR. KEEVIL: Well, it -- it may be voidable. I
12 don't honestly --

13 COMMISSIONER CLAYTON: Why is that --

14 MR. KEEVIL: I don't have the answer to that. I
15 do know that there is case law out there that says that
16 filing a -- a territory description by itself is not
17 sufficient to expand territory in the absence of a
18 certificate order to support it.

19 Now, whether that means it's -- it's void or
20 voidable, I don't honestly remember, Commissioner, if the
21 case law that I -- I'm thinking of went into the void or
22 voidable. I think it just said that it's -- it's not
23 sufficient.

24 COMMISSIONER CLAYTON: Well, then, let me ask
25 this -- ask the next question this way: If we assume that

1 the tariff is valid, that it's not void and that it is --
2 the time that passed for it to be voidable, if that's even
3 an appropriate analysis, which I don't, but if we assume
4 that the tariffs in place are valid tariffs, does the
5 Commission have the legal authority to unwind one of those
6 tariffs?

7 MR. KEEVIL: I -- I would say you have not only
8 authority, but obligation.

9 COMMISSIONER CLAYTON: Okay. So do you think we
10 could do it to Empire also?

11 MR. KEEVIL: If -- if we have tariffs that
12 reflect territory that have no certificate to back them
13 up?

14 COMMISSIONER CLAYTON: Well, I'm -- I'm just
15 saying in general, do we have the ability to unwind a
16 tariff to reach a particular result? Can we -- can we
17 either unwind your tariff or, in the alternative, unwind
18 MGE's tariff?

19 MR. KEEVIL: If you have -- well, again, let me
20 -- I want to limit it to this factual situation. I would
21 say yes. But, again, I'm basing on case a law that --
22 it's really kind of surprising how close -- this actually
23 did almost happen once before in a different -- different
24 setting.

25 And the Court -- like I said, the Court found

1 that the tariff filing in that situation was not effective
2 to expand the company's service territory. And that was
3 not in an appeal. It was in a separate proceeding later
4 on.

5 So, you know, based on that case, I'd say --
6 like I said, tariff filings without certificates to back
7 them up, insufficient to expand territory.

8 COMMISSIONER CLAYTON: And last question, do you
9 believe -- do you believe that we could apply equitable
10 principles in rendering a decision, apply estoppel or any
11 of those terms? Or would they have to wait for a Circuit
12 Court action, either through writ of review or possibly an
13 original action, that sort of original -- I'm -- this is
14 an exciting legal question here.

15 I think this is very interesting. This is about
16 as interesting as it gets around here, Mr. Keevil.

17 MR. KEEVIL: Yeah. We -- we try to keep it
18 interesting. You went several place there with that
19 question is what I'm trying to think -- your basic
20 question is can the Commission apply equitable principle?

21 I think you can certainly consider it. In fact,
22 I think that's one of the things you should consider when
23 deciding who should get the certificate for the new area.
24 You know, Empire -- Empire lawfully certificated, properly
25 approved tariff for Sections 12 and 10, and, therefore,

1 are able to serve the new area.

2 MGE, on the other hand, we do not believe,
3 should be, in effect, rewarded for providing unauthorized
4 service in Section 12 by granting them additional
5 territory.

6 So to that extent, to the extent that is equity,
7 yeah. Now, latches, estoppel, I don't really think
8 latches estoppel -- assuming you're raising that in --

9 COMMISSIONER CLAYTON: You guys get paid extra
10 for those words, so --

11 MR. KEEVIL: Yeah. Yeah. I'm assuming you're
12 raising that in the context of Mr. Kastanza's (ph.) claim
13 that Empire should have done something sooner to bring the
14 problem to the attention of MGE.

15 COMMISSIONER CLAYTON: I see -- as a matter of
16 law, I see the issue of the expansion into service
17 territory 13 and 14 is far less sticky. I mean, it's
18 adjacent to both sections.

19 But those sections of 10, 11 and 12 where you've
20 got overlapping tariffs, I think, is a big, legal question
21 that no matter what the Commission does, it has facts that
22 -- that are going to be very unique for what we normally
23 do over here.

24 MR. KEEVIL: You have overlapping, to the extent
25 you want to use that term, tariffs, I agree with that.

1 But, again, you have to go back to the -- the question,
2 frankly, is not the tariff. The question is the
3 certificate.

4 Who has a certificate for it? Only Empire has a
5 certificate for any of these sections.

6 COMMISSIONER CLAYTON: Is it relevant or
7 irrelevant that that infrastructure tour in 10, 11 and 12
8 -- or 10 and 12 has been in the ground for 47 years?

9 MR. KEEVIL: Actually, there's very little that
10 has been there for 47 years.

11 COMMISSIONER CLAYTON: I think the -- the
12 statement was that the evidence was going to show that
13 1960 was when that distribution infrastructure was put
14 into place.

15 MR. KEEVIL: Well, we would disagree with that.
16 I think there were one or two individual customers. And,
17 frankly, if they weren't served off a farm tap, I don't
18 know how they're being served.

19 COMMISSIONER CLAYTON: Okay. Well, we'll leave
20 that for the hearing. I wanted to address that legal
21 issue. Thank you for the indulgence.

22 JUDGE STEARLEY: Any additional questions for
23 Mr. Keevil? Thank you, Mr. Keevil.

24 MR. KEEVIL: Thank you,

25 JUDGE STEARLEY: Opening statement from Staff?

1 Mr. Berlin.

2 OPENING STATEMENT

3 BY MR. BERLIN:

4 MR. BERLIN: Good morning. Maybe it please the
5 Commission. After you've heard the opening statements of
6 both applicants, MGE and Empire, I think it would be very
7 important to lay the ground work of this particular case
8 to give you an aerial view of what this case involves.

9 And to that end, I have -- or Staff has prepared
10 some maps that will give you a good picture of what we're
11 talking about and where the -- these areas -- where the
12 sections referred to are located with respect to Platte
13 County, Platte City, Kansas City and the Kansas City
14 International Airport.

15 So I have two objectives here. I would like to
16 go through the maps or diagrams that are part of Staff's
17 pre-filed testimony so that you are aware of them and that
18 you may refer to them in any questioning during this
19 hearing.

20 And so may I approach and hand you a packet of
21 what I have reflected here on the easel?

22 JUDGE STEARLEY: Certainly.

23 MR. BERLIN: I'm going to refer to these as
24 Staff exhibits, these particular maps or diagrams. I
25 would like to also point out that I have two copies of

1 these boards, one that can sit behind the witness over at
2 the Smart Board and the other that can be set here to
3 facilitate your observations of these particular areas.

4 The -- the first map is a map of MGE's supply
5 line that serves the Kansas City International Airport and
6 Platte City and other designated areas. I'm going to
7 point out to you what is a 12-inch supply line or pipeline
8 that carries gas from the pipeline, Southern Star Central,
9 across and over to Kansas City International Airport.

10 And MGE was authorized this supply line to
11 construct, operate, maintain that supply line in a 1955
12 case before the Commission, Case No. 12,632. You're going
13 to hear a lot about that case.

14 The next map is partially shown by MGE in its
15 opening statement. And this is a map of all the sections
16 in Platte County that are certificated to MGE and to
17 Empire.

18 And let me guide you through this map. The
19 light blue line sections that are -- where the name Kansas
20 City is centered into, the light blue sections, solid
21 light blue sections represent the sections that MGE is
22 certificated to provide area service. And it is also
23 authorized to be served in its certificated area by the
24 Leavenworth supply line.

25 You will see that there are some lines --

1 underlines that start from the west and -- and go all the
2 way over to -- to east to MGE's certificated area. The
3 underlying sections and the light blue line are the
4 sections that MGE is claiming in its Tariff 6.1 5.
5 They're claiming those sections for area service.

6 The line block here just to the north and to the
7 west of MGE, you will see Empire certificated sections and
8 Empire certificated area abuts or joins the northwest
9 corner of MGE's certificated area. The dark blue line is
10 an approximation of the Leavenworth supply line.

11 Now, Staff Exhibit 3 is part of Mr. Warren's
12 rebuttal testimony, and it is a diagram or explanation of
13 MGE Tariff Sheet 6.15, which you heard about earlier. And
14 you'll notice that there are some red lines that encompass
15 certain tariff sections. And it's also listed by township
16 and range numbers.

17 Inside those red lines are the -- are the
18 sections that MGE is claiming for area service and for
19 which MGE has no CCN to provide area service. There is no
20 order of the Commission providing them a CCN to provide
21 service in those sections.

22 This is Staff Exhibit 4. It gives you a picture
23 of the Platte City annexation plan. You can see Platte
24 City in the black predominately. You'll see the green
25 shaded area to the north. That is in Platte City's

1 annexation plan. And you'll see to the south of Platte
2 City a light blue shaded area, and that is part of Platte
3 City's annexation plan.

4 You'll also see that dark blue line I referred
5 to earlier, MGE's Leavenworth supply line. And then also
6 circled in the middle of the diagram, the lower middle, is
7 the Seven Bridges subdivision, which you heard about
8 earlier and that it will include four different sections
9 when it is fully developed.

10 And you'll see to the north the Copper Ridge
11 subdivision, which is served properly by Empire District
12 Gas.

13 Staff Exhibit 5 is a satellite view of Platte
14 City and the area of Platte City to the south. This is
15 the area in question. Again, you see a dark blue line
16 cutting across. That's the Leavenworth supply line.

17 And then you see some yellow borders, and
18 you'll see in the middle a green circle. And, that,
19 again, shows you the Seven Bridges subdivision. And if
20 you look, you'll see Section 12 where Seven Bridges has
21 the predominant -- will have the predominate amount of
22 development in Section 12.

23 You'll notice that there are some dark red
24 circles. You'll hear about this later in testimony today,
25 but MGE had a -- hadn't moved into Section 12 and Section

1 13 at the end of Oakmont Drive. These were small street
2 extensions that went from MGE's area certificate into the
3 area that is certificated to Empire. There's two of them.
4 Oakmont Drive and Northwest 126th Street.

5 Finally, I'll give you some sense as to the
6 topography is a topographic map of Section 13 and 14 and
7 the adjacent sections. You see here Seven Bridges in the
8 top middle. And you'll see that Seven Bridges when fully
9 developed will include the four different sections
10 referred to.

11 This is Section 13. This is Section 14. And
12 then to the north of 14 is 11. To the north of 13 is 12.
13 Also, I have, by way of reference, maps of the -- I'm
14 sorry -- photographs of the Seven Bridges subdivision that
15 shows you pictures of this particular development from
16 different angles.

17 Do you have -- did you have a copy? Do you have
18 a copy? Okay. I'm not going to talk directly about that
19 particular exhibit, but I -- I provide that for reference.
20 The photo's perfect -- explain, I think, pretty -- pretty
21 adequate.

22 But -- Staff's recommendation in this case is --
23 is somewhat similar to Empire District Gas's
24 recommendation. I would like to say that Staff's
25 principal witness in this matter is Henry Warren, and he

1 has pre-filed direct, rebuttal and surrebuttal testimony
2 in this matter.

3 Staff's other witness is Mike Straub. He has
4 prefiled rebuttal and surrebuttal testimony in this
5 matter, and his testimony centers particularly around the
6 1997 tariff filing made by MGE that was approved by the
7 Commission that is at issue today.

8 Originally, when, as you heard, MGE filed this
9 application and sought permission from the Commission for
10 an area CCN for Sections 13 and 14, Empire District Gas
11 Company intervened in that case.

12 And sometime later, it filed its own application
13 case for 13 and 14 and four additional sections that abut
14 around it. And I think I'll put that section map back up.

15 Okay. Looking at Staff Exhibit 2, you can see
16 13 and 14 with a light blue shading around them. Those
17 were applied for by MGE. And then 15 is directly to the
18 west of 14. And to the south is 22. To the south of 14
19 is 23. And to the south of 13 is 24.

20 Those sections were applied for an area CCN by
21 Empire. Part of Empire's relief requested in its
22 application was to ask that the Commission determine the
23 who -- what LDC holds a CCN to serve the sections or the
24 area in Platte County.

25 And that is what Staff has done in its

1 investigation and analysis that is part of this case. The
2 Staff recommends that MGE be ordered to correct its tariff
3 to reflect the area CCN sections that it has been granted
4 by the Commission from its orders; the Commission
5 authorize MGE to sell to Empire the facilities it has
6 built in sections 11, 12, 13 and 14 and quite possibly to
7 continue; and to order MGE to either -- well, to -- to
8 sell or abandon its facilities in those sections where it
9 has no CCN from the Commission and order both utilities,
10 not just MGE, but also Empire District Gas, to provide
11 formal notice to the other when it intends to build
12 facilities in sections that are adjacent to or next to the
13 other LDC.

14 And those are principally Staff's
15 recommendations in this matter. Now, Staff finds that, as
16 Commissioner Clayton had stated earlier, there's a
17 significant legal issue involved here. And that is does
18 an approved tariff of the Commission trump an order of the
19 Commission that grants the CCN for its service?

20 And Staff says, it does not. MGE makes the
21 argument that the tariff carries a full force and effect
22 of law. And, certainly, we've all seen the cases that
23 have that language in them.

24 However, you have to look at what the tariff
25 does. The tariff principally governs the relationship of

1 the utility with the customer. A tariff does not confer
2 rights that it cannot statutorily provide.

3 A tariff, while the public may rely on it, as in
4 the filed rate doctrine, which will touch on this, is
5 based on a very key presumption, and that is that both the
6 public and the utility know the contents of its tariff.

7 Now, there is case law out there, particularly
8 an imper -- imperial utility core case where the Western
9 District Court invalidated a sewer utility's tariff. It
10 did so because there was no statutory authority in
11 Missouri enabling the utility to enforce that tariff.

12 That particular tariff involved -- or allowed
13 the utility to place a lien on property that would run
14 with the property and would require -- and would allow the
15 utility to collect unpaid bills from the new customer that
16 are unpaid from the first customer or previous customer.

17 And the Western District was very clear. There
18 is no statutory authority for that, and it invalidated the
19 tariff.

20 Also, there's case law that Mr. Keevil referred
21 to. It's the Donafin Telephone Company, VPSC. The Kansas
22 City Court of Appeals held that a telephone company cannot
23 add to a certificate area by filing a service area map
24 that details a new geographic area.

25 Though that map that was filed by Donaphin not

1 only included a 3-mile strip of land, but it also included
2 its tariff rates that it would offer to the public in that
3 new area encompassed by the map that was filed.

4 The map went into effect by operation of the
5 law. And then the Court said that nothing in that
6 particular filing which has the effect of a tariff held
7 out to the public, nothing can derogate the requirements
8 of the PSC law. Nothing.

9 The Court said that Donaphin also had no
10 protected property right to that area, and it was not
11 authorized by the Commission to serve in that area.
12 And a non-existent property right cannot be violated,
13 cannot be subject to eminent main.

14 It is not the law that a utility -- a telephone
15 utility is privileged to annex additional territory to a
16 certificated area by filing a map. And, again, that map
17 with its rates scheduled to it and going into effect by
18 operation of law, the map enhanced the certificate -- the
19 certificated area of the telephone company and the Court
20 said that it cannot do that. It needs a CCN order from
21 the Commission.

22 I have touched on some of the principal legal
23 arguments that you're going to hear -- or have heard about
24 today. And after -- that concludes my opening statement.

25 JUDGE STEARLEY: Commissioner Murray, I believe

1 you have a question for Mr. Berlin?

2 COMMISSIONER MURRAY: Mr. Berlin, is there a
3 public interest determination that needs to be made in
4 this case?

5 MR. BERLIN: Yes, Commissioner Murray, there is.
6 Public interest standard does apply to the Commission when
7 it determined the granting of an area CCN.

8 COMMISSIONER MURRAY: And what are some of the
9 things that should be considered in looking at the public
10 interest in this particular situation?

11 MR. BERLIN: I think there's a lot of things
12 that have to be considered, particularly with a gas
13 utility.

14 When -- there are overlapping areas that -- the
15 municipality or the cities are particularly concerned
16 about that. They tend to prefer having one utility. And
17 for the reason, mostly, of safety concerns and such
18 concerns as one call numbers, who to call, emergency
19 response situations, so that there's no confusion among
20 the public as to who the provider is in a particular area.
21 I think that's a very big public interest factor weighing
22 in that decision.

23 COMMISISONER MURRYA: We're being asked here to
24 certificate certain areas. We're being asked by two
25 different companies to certificate them for those areas.

1 Correct?

2 MR. BERLIN: That's correct.

3 COMMISSIONER MURRAY: And your position is to
4 certificate one or the other. But in looking at the
5 public interest concerns, in order to determine which one
6 of those two to grant the certificates to, what unique
7 public interest considerations should be made here?

8 MR. BERLIN: Well, the safety concern, the
9 one-call number concern that I mentioned. And, also, I
10 think -- and I showed you a map earlier of the annexation
11 plans.

12 COMMISSIONER MURRAY: I'm sorry. I'm missing
13 why granting the certificate to one versus the other would
14 impact safety concerns and one-call concerns.

15 MR. BERLIN: Well, certainly, in Seven Bridges,
16 it wouldn't -- it wouldn't be logical to have two service
17 providers. And that's my opinion only because you have
18 four phases of development that cross into four separate
19 sections.

20 MGE has asked for a certificate in 13 and 14.
21 It's asked for two of the four sections. It has not asked
22 for any other certificate. Now, it makes its application
23 based on a -- the wrong assumption that it already has a
24 certificate -- or, actually, I don't even know if they do
25 assume this.

1 They're relying on a tariff, a tariff that
2 includes wrong information, but they do not have a
3 certificate in 11 and 12. And that is properly
4 certificated by Commission order to Empire District Gas or
5 its predecessor.

6 COMMISSIONER MURRAY: So the public interest
7 concerns are -- that you are speaking of are applicable to
8 Sections 11 and 12 where there would be two certificated
9 providers; is that correct?

10 MR. BERLIN: It would be. I don't believe that
11 in the context of this case the Commission can authorize
12 MGE to serve in 11 and 12 because, No. 1, MGE has not
13 asked for a certificate to serve in those areas in its
14 application. And, No. 2, those are properly certificated
15 areas of Empire.

16 I -- Staff views the -- the -- both companies
17 are capable of providing gas service to customers in this
18 area. What is at issue is that MGE has gone into sections
19 where it has no order of the Commission to provide
20 service. IT has no area CCN.

21 There are some sections where there is very much
22 a CCN, but it is a line certificate. It is not an area
23 certificate to -- to provide service. And that area -- if
24 you look at the dark blue line on the map, you'll see the
25 Leavenworth supply line. That 1955 case, 12,632, provides

1 a line certificate to MGE or its predecessor.

2 COMMISSIONER MURRAY: In looking at the public
3 interest, should we be concerned at all about rates?
4 Should we be concerned about location of facilities and
5 which company has the more conveniently located facilities
6 and would be able to provide lower rates? Should that be
7 a concern?

8 MR. BERLIN: Both companies, as you know, have
9 just and reasonable rates. I don't believe it's -- it's
10 necessarily a -- it is a concern. Again, I have to -- I'd
11 have to go back to -- and perhaps I'm -- I don't know if
12 you're asking strictly about 13 and 14 with regard to
13 MGE's applicaiton or if you're asking about 13, 14 and the
14 four other sections that are a part of Empire's
15 application.

16 COMMISSIONER MURRAY: Well, it's my
17 understanding from the pre-filed testimony that it will be
18 more costly to the customers to be served by Empire than
19 to be served by MGE in terms of the rates. Is that in the
20 testimony?

21 MR. BERLIN: It is in the testimony that for a
22 certain level of gas consumption -- I forget what level is
23 specified. But a specific volume that the rates are
24 slightly higher from that volume -- those rates are
25 slightly higher with Empire. But then again, it's -- it's

1 based on volumetric concerns, too, as to how much gas is
2 consumed.

3 COMMISSIONER MURRAY: Okay. Just let me ask you
4 this legally. Is that -- are we able to consider that
5 even in the public interest standard, or is that something
6 that should be outside of what we consider here based on
7 purely legal issues in this case?

8 MR. BERLIN: Assuming that both LDCs have -- are
9 properly certificated for the area or -- okay. Going
10 forward with that, your question, yes, the Commission can
11 consider, too, just and reasonable rates of the -- of the
12 utilities because both rates are just and reasonable.
13 They were set by the -- the Commission. And you can
14 consider that.

15 COMMISSIONER MURRAY: Thank you.

16 JUDGE STEARLEY: Commissioner Clayton?

17 COMMISSIONER CLAYTON: Mr. Berlin, in the
18 sections that involve the Leavenworth transmission line,
19 which I think primarily we're talking here Sections 10, 11
20 and 12 -- I'm not even sure which range and township. But
21 the 10, 11 and 12 where allegedly there is some
22 distribution system in those, is Staff aware of the
23 factual nature of the distribution infrastructure in
24 place?

25 Are they farm taps? Are they more than farm

1 taps? What -- what type of service is being provided?

2 MR. BERLIN: The -- Staff is aware that there
3 are some isolated cases that -- one particularly going
4 back, I think, to 1960, perhaps a handful of these types
5 of situations that have the appearance of farm taps. But
6 we can't say for certain.

7 COMMISSIONER CLAYTON: Okay. Does the company
8 need a certificate to provide service on a farm tap?

9 MR. BERLIN: I believe they need -- from a
10 purely legal viewpoint, yes. And in terms of the
11 Commission order attaching conditions to a particular
12 certificate, you know, a certificate order of the
13 Commission -- the Commission may attach certain conditions
14 to those orders. And that would be the proper way to do
15 it.

16 COMMISSIONER CLAYTON: So -- so you're -- you're
17 suggesting that a distribution company does have to have a
18 certificate to sell any gas service on a farm tap?

19 MR. BERLIN: It -- it goes back to the type of
20 certificate that the Commission has -- has granted that
21 utility.

22 COMMISSIONER CLAYTON: If the Commission -- a
23 line certificate. It's not a distribution certificate.
24 It's a line where a transmission line is going to be
25 built. What I'm trying to understand, though, is -- is

1 can they -- can they run farm taps off of their system,
2 even if it's outside of their territory?

3 MR. BERLIN: I think they need a Commission
4 order to do so.

5 COMMISSIONER CLAYTON: Why?

6 MR. BERLIN: Because it's providing service.

7 COMMISSIONER CLAYTON: Okay. Well, it's --
8 Eastern pipeline has farm taps up and down their pipeline.
9 They do not have a certificate of service. Can you
10 explain to me the difference?

11 MR. BERLIN: I can't. I can only say that
12 you're looking at some very isolated -- isolated
13 situations.

14 COMMISSIONER CLAYTON: Okay. In -- in terms of
15 what is present in 10, 11 -- Sections 10, 11 and 12, can
16 Staff tell me with some degree of detail whether we're
17 talking about just farm taps or a lot more than farm taps?

18 MR. BERLIN: I don't --

19 COMMISSIONER CLAYTON: If you don't know, just
20 -- you know, say you don't know. That's okay.

21 MR. BERLIN: I don't -- I can't address that
22 specifically. But I think Mr. Warren can -- can provide
23 you some more information on that question.

24 COMMISSIONER CLAYTON: Okay. So Mr. Warren has
25 that information?

1 MR. BERLIN: He -- he has information on that.

2 MR. WARREN: I -- I do not -- I -- the
3 information I have is --

4 COMMISSIONER CLAYTON: That's all right. You
5 probably can't talk. I was just going to look for like a
6 wink or a nod, which is inappropriate anyway. So -- let
7 me ask you this, Mr. Berlin: Does it -- does it matter
8 from Staff's perspective -- let's assume that we're just
9 talking farm taps off the line in Sections 10, 11 and 12.
10 Would it -- does it matter to Staff if they're
11 -- minimal infrastructure, would Staff agree to let those
12 customers continue to be served in that system or in that
13 manner if they're just farm taps?

14 MR. BERLIN: Staff is -- is not concerned about
15 those isolated farm -- what appears to be isolated farm
16 tap customers that are legacy type customers or
17 situations. Those are isolated incident -- incidents.

18 COMMISSIONER CLAYTON: Okay. How many customers
19 does MGE serve in Sections 10, 11 and 12?

20 MR. BERLIN: I -- I can't answer exact -- that
21 number exactly. I know that --

22 COMMISSIONER CLAYTON: Less than a hundred?

23 MR. BERLIN: They're serving some customers in
24 the Seven Bridges subdivision and that -- that investment
25 started in Section 12 and has bled over into 13. And I

1 think MGE would be better qualified to tell you exactly
2 how much they're serving there.

3 COMMISSIONER CLAYTON: Do you believe -- does
4 Staff -- I know Staff doesn't believe this. For customers
5 that have been served by MGE or its predecessor since
6 1960, for 47 years, Staff believes that they should be
7 changed -- they should be changing providers; is that
8 correct?

9 MR. BERLIN: No.

10 COMMISSIONER CLAYTON: Okay. Then maybe I
11 misunderstand Staff's position. I thought Staff was
12 saying that the lines either had to be abandoned or sold.
13 Maybe I misunderstand Staff's --

14 MR. BERLIN: No. In Staff -- Staff is -- when
15 -- when we look at the facilities, we're -- we're talking
16 about facilities intended to provide area distribution
17 service by the utility, not facilities intended to provide
18 an isolated farm tap.

19 And the concern is -- it's been brought to light
20 because of this large Seven Bridges subdivision that will
21 bleed into four different sections, two of which neither
22 utility is certificated, and the other two, Empire is
23 properly certificated.

24 COMMISSIONER CLAYTON: So Staff's position,
25 then, is that if there are farm taps, they can keep their

1 farm taps?

2 MR. BERLIN: Yes.

3 COMMISSIONER CLAYTON: And that's in your
4 testimony?

5 MR. BERLIN: Yes, it is.

6 COMMISSIONER CLAYTON: Okay. And so that -- so
7 we're strictly talking about the -- the -- just the
8 subdivision?

9 MR. BERLIN: We're -- we're talking about this
10 subdivision principally. But we're also talking about
11 facilities intended to provide area gas service.

12 COMMISSIONER CLAYTON: Okay. So does that mean
13 that Staff is proposing that there will be overlapping
14 areas of service between two utilities? Namely, in 10, 11
15 and 12, you're suggesting that MGE can go ahead and serve
16 farm tap or existing customers that are there, but they
17 can't serve new customers and that Empire should get those
18 new customers?

19 But if they're in the same section, namely, 11
20 and 12, I take from that that Staff is suggesting
21 overlapping service areas; is that correct?

22 MR. BERLIN: No, it is not.

23 COMMISSIONER CLAYTON: All right. Tell me how
24 that's wrong.

25 MR. BERLIN: All right. Staff -- well, Staff's

1 recommendation is that Empire be granted Sections 13, 14,
2 15, the rest of 14, and then to the south, 22, 23 and 24.
3 And with regard to Section 12, Empire's already serving a
4 subdivision in Section 12.

5 COMMISSIONER CLAYTON: Okay. So, yes, there
6 would be overlapping service territories?

7 MR. BERLIN: There -- if -- if the Commission
8 were to a -- to grant area CCN to MGE in the -- in section
9 12, which they have not applied for, it would have to be
10 defined -- it has to be some way of defining that
11 particular area of service.

12 This -- these CCNs are defined by sections. We
13 would not have two utilities providing --

14 COMMISSIONER CLAYTON: And what about customers
15 of MGE that are in Sections 10, 11 and 12? What happens
16 to those customers?

17 I know the new territory. I mean, I -- do you
18 -- let me ask you this, Mr. Berlin: Don't you think we
19 need to resolve this dispute in 10, 11 and 12 before we
20 get to 13, 14 and the rest of these new areas? Isn't that
21 where the lines are going through?

22 MR. BERLIN: Well, the dispute is who has the
23 area CCN in those sections. Or at least that's the relief
24 asked for by Empire. And so --

25 COMMISSIONER CLAYTON: For 10, 11 and 12, you

1 mean?

2 MR. BERLIN: 10, 11 and 12. There's a total of
3 22 of them, but --

4 COMMISSIONER CLAYTON: But the other ones are
5 not really at issue? I mean, they're at issue, but not in
6 play as much as these three?

7 MR. BERLIN: Right.

8 COMMISSIONER CLAYTON: Because 10, 11 and 12 is
9 the Gateway into this new territory; is it not? Empire's
10 infrastructure will be coming south out of its service
11 territory from above, and I assume so would MGE's service
12 -- service line would either come off of the Leavenworth
13 line or come out of its service territory, correct?

14 MR. BERLIN: Yeah.

15 COMMISSIONER CLAYTON: Maybe you don't know.

16 MR. BERLIN: I don't know exactly. But MGE
17 would have to answer how they would serve it. But it
18 certainly -- certainly is reasonable to assume that they'd
19 serve it through the Leavenworth supply line.

20 COMMISSIONER CLAYTON: So Staff doesn't know how
21 they'd serve those lines?

22 MR. BERLIN: Well, they --

23 COMMISSIONER CLAYTON: How they would serve
24 those areas, isn't that part of the analysis?

25 MR. BERLIN: Yes. It would be served off the

1 Leavenworth supply line.

2 COMMISSIONER CLAYTON: Wouldn't that be relevant
3 question to ask in terms of costs in terms of land
4 disruption to get -- get pipes into the ground in those
5 areas? Isn't that a relevant question to ask?

6 MR. BERLIN: Well, with -- yes. With regard to
7 the facilities that have already been built into the
8 sections for which MGE has a CCN for -- for that area.

9 COMMISSIONER CLAYTON: Okay. Well, let me ask
10 this question one last time, and I'll leave it at that.
11 What do you -- what does Staff think we should do about
12 the customers served by MGE in 10, 11 and 12 where you've
13 got overlapping tariffs? What do we need to do about
14 those customers?

15 MR. BERLIN: Those customers -- and I'm
16 referring to the area's service customers, not the
17 isolated farm taps. Those customers should be served by
18 Empire District Gas.

19 COMMISSIONER CLAYTON: Okay. So those customers
20 -- and you don't know how many those are?

21 MR. BERLIN: The -- I've heard the number of --
22 of between 30 and 60.

23 COMMISSIONER CLAYTON: Okay. And then how many
24 -- how many farm tap customers are there?

25 MR. BERLIN: I've heard five or six.

1 COMMISSIONER CLAYTON: Five or six farm taps?

2 MR. BERLIN: But I'd have to defer to the
3 witness exactly what those numbers are.

4 COMMISSIONER CLAYTON: Okay. So I think you
5 said earlier that you need a certificate to serve a farm
6 tap customer?

7 MR. BERLIN: I believe it's a reasonable
8 condition to be attached to a line certificate if there's
9 no area CCN.

10 COMMISSIONER CLAYTON: Okay. Okay. Thank you,
11 Mr. Berlin.

12 JUDGE STEARLEY: Mr. Berlin, I just have one
13 question for you for clarity.

14 MR. BERLIN: Sure.

15 JUDGE STEARLEY: I believe you mentioned that
16 you didn't believe in the context of this case that the
17 Commission could grant a certificate for Sections 10, 11
18 and 12 to MGE?

19 MR. BERLIN: That is correct.

20 JUDGE STEARLEY: Because they hadn't applied for
21 it?

22 MR. BERLIN: That is -- that is correct.

23 JUDGE STEARLEY: Okay. But isn't part of
24 Staff's position that certain customers receiving service
25 from MGE in these southeast corner Section 12 still be

1 allowed to receive service?

2 MR. BERLIN: Farm taps, yes.

3 JUDGE STEARLEY: Okay. But you're saying --

4 MR. BERLIN: I liken them as farm taps. I can't
5 say for sure that they were farm taps.

6 JUDGE STEARLEY: All right. But you're saying
7 they would need a certificate to provide that service.
8 Can the Commission grant a certificate in this case based
9 upon what you had said earlier where you didn't believe
10 they could grant a certificate in this case?

11 MR. BERLIN: I would -- I would say that the
12 Commission can perhaps do that by attaching a new
13 condition to the line certificates, line certificated
14 sections.

15 JUDGE STEARLEY: Okay. Thank you for that
16 clarity. Are there any other questions?

17 COMMISSIONER MURRYA: May I?

18 JUDGE STEARLEY: Commissioner Murray.

19 COMMISSIONER MURRAY: I'm sorry. Commissioner
20 Appling, did you have --

21 COMMISSIONER APPLING: I have no questions.

22 COMMISSIONER MURRAY: Mr. Berlin, the -- part of
23 Staff's recommendation is to order MGE to sell or abandon
24 facilities, correct?

25 MR. BERLIN: Correct.

1 COMMISSIONER MURRAY: And those would be those
2 that are currently serving the customers in -- well,
3 Section 12 being one of them, and there's another section
4 or two involved in that.

5 But the -- those would be the facilities that
6 are currently serving customers without a certificate; is
7 that correct?

8 MR. BERLIN: That's correct.

9 COMMISSIONER MURRAY: And has anyone had any
10 contact with those customers in terms of this proposal?
11 Do we know what the customers think about this?

12 MR. BERLIN: I know that Mr. Warren has had
13 contact with the developer of Seven Bridges, and he has
14 had contact with a Platte City official. I don't believe
15 that he's had contact with the specific customers.

16 COMMISSIONER MURRAY: And we had no public
17 hearing; is that correct?

18 MR. BERLIN: That is correct.

19 COMMISSIONER MURRAY: All right. And let me
20 ask, Judge, are we going to -- is -- we're going to hear
21 an opening from Public Counsel, too; is that correct?

22 JUDGE STEARLEY: If Mr. Poston is going to offer
23 us.

24 MR. POSTON: I don't have anything prepared. I
25 was going to concur in the position of Staff, but I'd be

1 happy to answer any questions you have.

2 COMMISSIONER MURRAY: All right. My question --
3 only question I guess would be did Public Counsel consider
4 asking for a local public hearing?

5 MR. POSTON: No, we did not.

6 COMMISSIONER MURRAY: Have you heard from
7 anyone?

8 MR. POSTON: No, we have not.

9 COMMISSIONER MURRAY: All right. Thank you.

10 JUDGE STEARLEY: Do you have any additional
11 questions, Mr. Clayton? Commissioner? All right. Thank
12 you, Mr. Berlin. And I'm taking it, Mr. Poston, then, you
13 don't have anything additional for opening remark?

14 MR. POSTON: No, I do not. We concur in the
15 position of Staff. And I do intend to brief the legal
16 issues -- issues that have been raised this morning.

17 JUDGE STEARLEY: All right. Thank you,
18 Mr. Poston. I think at this time, we've been going for
19 almost an hour and a half. We'll take a short break, and
20 we'll come back and start with our -- MGE's first witness.
21 Thank you

22 MR. KEEVIL: How short is short, Judge?

23 JUDGE STEARLEY: Let's make it ten minutes.

24 Okay. We are off the record.

25 (Break in proceedings.)

1 JUDGE STEARLEY: All right. Is everyone back
2 and ready to start? All right. We are back on the
3 record. And we should begin with MGE calling its first
4 witness, which I believe is Mr. Hack.

5 MR. STEINER: That's right.

6 JUDGE STEARLEY: Mr. Hack, if you'd please raise
7 your right hand.

8 ROBERT HACK,
9 being first duly sworn to testify the truth, the whole
10 truth, and nothing but the truth, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. STEINER:

13 JUDGE STEARLEY: Thank you, Mr. Hack. And thank
14 you for using your microphone. Please -- I know that
15 doesn't lean quite all the way back to you, but please try
16 to speak into that. That helps with our recording and
17 with our listeners on the web casting.

18 MR. HACK: I'll try.

19 JUDGE STEARLEY: All right. Thank you. Mr.
20 Steiner, you may proceed.

21 Q (By Mr. Steiner) Please state your name and
22 title.

23 A Robert Hack, H-a-c-k, Chief Operating Officer of
24 Missouri Gas Energy, which is a division of Southern Union
25 Company.

1 Q In your previous position at MGE, were you the
2 attorney that made the tariff filing that the Commission
3 ordered in GA-96-130 and GR-96-285?

4 A Two titles previous to this one, yes.

5 Q Who at Staff worked with you on that tariff
6 filing?

7 A The individual I remember most clearly is
8 Mr. Mack McDuffey.

9 Q What materials did you and Staff use to prepare
10 the new tariff sheets?

11 MR. KEEVIL: Judge, I'm going to object, I
12 believe, to this line of questioning by Mr. Steiner. If
13 they had wanted Mr. Hack to testify, they should have
14 pre-filed written testimony by him.

15 My understanding is that Mr. Hack is appearing
16 here today under subpoena from the Staff. And I don't
17 know exactly where Mr. Steiner is going with all of these
18 questions for Mr. Hack. But if they're trying now to get
19 in direct testimony, which should have been prefiled, I --
20 I object to that.

21 MR. STEINER: Your Honor, he's listed as our
22 witness. He was subpoenaed. That's correct. And he does
23 not have direct testimony. And I think it's appropriate
24 since he is our witness that he give some direct.

25 MR. BERLIN: Judge, let me weigh in on that. I

1 subpoenaed Mr. Hack to appear. He was not listed as a
2 witness for MGE. He is on the witness list as a result of
3 the subpoena.

4 JUDGE STEARLEY: All right. Is it Staff's
5 position that Mr. Hack cannot offer direct testimony as
6 well as Mr. Keevil's objection?

7 MR. BERLIN: I -- I believe that Mr. Steiner may
8 appropriately redirect Mr. Hack or recross because I will
9 cross-examine Mr. Hack. Mr. Hack is an adverse witness.

10 JUDGE STEARLEY: Mr. Steiner?

11 MR. STEINER: I believe that we do have the
12 right to ask questions after Mr. Hack is cross-examined.
13 But since he is listed as our witness, we should be able
14 to ask him questions as we see fit as well.

15 JUDGE STEARLEY: Mr. Keevil, do you want to --

16 MR. KEEVIL: It's that last portion of what
17 Mr. Steiner said that I would disagree with. I would
18 agree that they would have the right to do redirect after
19 Mr. Berlin and I and Mr. Poston and perhaps yourself.

20 But it's entirely inappropriate for MGE to
21 attempt to do direct, live direct, on the witness stand
22 when Mr. Hack had every opportunity -- he's their COO.
23 They could have pre-filed direct testimony pursuant to the
24 Commission's rules and the order, the scheduling order in
25 this case.

1 They did not do so. And to allow them or to
2 attempt -- for them to attempt to do so now is in
3 violation of both the Commission's rule on prefiled
4 testimony as well as the -- your own order, which directed
5 that the testimony of the witnesses should be done in
6 pre-filed fashion -- fashion to avoid surprise at the
7 hearing, which is exactly what this would result in if
8 Mr. Steiner is allowed to do direct examination of
9 Mr. Hack at this time.

10 MR. STEINER: But we -- we didn't ask Mr. Hack
11 to be here. It was Staff that did that. They --

12 JUDGE STEARLEY: That's -- that's correct. And
13 I believe Mr. Berlin has addressed that. Before I rule
14 here, I do want to advise counsel at their tables to, also
15 -- to please be sure your microphone is on because we've
16 gotten some feedback that it is difficult to hear you.

17 So I'm going to sustain the objection. The
18 direct testimony could have been offered in a prefiled
19 format as directed by the Commission prior to the hearing.
20 And with that, we will move to examination by Staff in the
21 order of cross-examination.

22 Mr. Steiner, you will have the opportunity for
23 redirect at the completion of that --

24 MR. STEINER: Thank you.

25 JUDGE STEARLEY: -- questioning. And -- and

1 with that and the order of cross, we will begin with you,
2 Mr. Berlin.

3 CROSS-EXAMINATION

4 BY MR. BERLIN:

5 MR. BERLIN: Yes, Judge. Are we going to use the
6 podium or --

7 JUDGE STEARLEY: Your choice, Mr. Berlin, as
8 long as we can hear you well with your microphone.

9 MR. BERLIN: Thank you. Judge, I'm going to in
10 my cross-examination of Mr. Hack, refer to some exhibits,
11 and I would like to approach the witness and provide him
12 the premarked exhibits.

13 JUDGE STEARLEY: You certainly may.

14 MR. BERLIN: Do you have a copy?

15 MR. POSTON: Just the deposition is all I have.

16 MR. STEINER: I have a copy. Thanks.

17 MR. BERLIN: I have a copy.

18 MR. POSTON: Thanks.

19 Q (By Mr. Berlin) All right, Mr. Hack, this
20 morning, I'd like to discuss with you Case No. 12,632, and
21 this is a case dating back to 1955. It is a gas service
22 company case. Can you remember that we talked about this
23 case last week during deposition?

24 A Yes.

25 Q And Gas Service Company is a predecessor of MGE,

1 correct?

2 A Correct.

3 Q Now, for ease of understanding, in my
4 questioning today, I'll refer to MGE, the successor
5 company. Is that all right with you?

6 A You will refer to MGE, the successor company as
7 what?

8 Q As the company with -- that 12,632 provided
9 certain certificates to as opposed to the Gas Service
10 Company.

11 A I'll work with you.

12 Q All right. Thank you. And as you've indicated,
13 you're familiar with this case. And are you familiar that
14 there are three Commission orders in this case?

15 A I don't know that that's all, but I do remember
16 there are at least three.

17 Q If you will turn to Staff Exhibit 7, you'll see
18 the first order dated May 24th, 1955. Now, this order
19 granted MGE the authority to construct, operate, maintain
20 a 10-inch pipeline to supply natural gas to the
21 Mid-Continent Airport. Would you agree with that?

22 A It appears that order of paragraph 2 on page 9
23 of Staff Exhibit 7 indicates that, Mr. Berlin.

24 Q And the Mid-Continent Airport is now Kansas City
25 International Airport; is that right?

1 A It goes by a number of names.

2 Q But they're one in the same?

3 A Mid-Continent, KCI are the same.

4 Q And the pipeline referred to in this order is

5 also called the Leavenworth supply line?

6 A I believe that is correct.

7 Q Now, if you will, please, I'd like to direct
8 your attention to the section map that is now marked Staff
9 Exhibit No. 2. I have a copy of it right behind you, and
10 I also have a copy on the -- the easel to my right. You
11 may have a copy -- an 8 by 11 copy of it as well in the
12 earlier exhibits.

13 Now, we discussed this map for quite some time
14 during deposition. Do you remember that?

15 A Yes.

16 Q And when you look at this map, do you see that
17 dark blue line in the middle of this map, this section
18 map?

19 A That runs --

20 Q It runs west to east.

21 A -- a westerly direction from Interstate 29
22 through a number of sections, correct. And -- that's my
23 understanding that that's the Leavenworth -- a
24 representation of the Leavenworth supply line.

25 Q All right. And moving -- let's move from west

1 to east on that dark blue line, the Leavenworth supply
2 line. Now, that line starts at Section 12, and that's
3 Township 52 North, Range 36 West and moving east from 12,
4 we see that the line passes through sections of Township
5 52 North, Range 35 West, Section 7, 8, 9, 10, 11, 12 and
6 on through sections at Township 52 North, Range 34 West,
7 Sections 7, 8, 9, 10 and appearing to terminate in Section
8 15 just south of 10. Would you agree that's a reasonable
9 a approximation of the Leavenworth supply line?

10 A I have no reason to dispute that.

11 Q And the order in -- in the first order in case
12 12,632 grants MGE a line certificate?

13 A The 1955 order. That is correct.

14 Q I'm looking at the second order modifying the
15 May 24th, 1955, order. This is Staff Exhibit 8. This
16 order is dated June 2nd, 1955. It does two things. Would
17 you agree the order reaffirms the line certificate granted
18 to MGE in ordered paragraph No. 1?

19 A Ordered Paragraph No. 1 of the June 2, 1955,
20 order contains quoted language from ordered Paragraph No.
21 2, which I presume is from the previous order.

22 Q And it grants or reaffirms the line certificate
23 granted to MGE?

24 A With the proviso that it -- that it grants a
25 12-inch pipe rather than a 10-inch pipe.

1 Q Yes. That's the second thing that the order
2 does is that it permits MGE to construct, operate and
3 maintain the 12-inch line instead of a 10-inch line.

4 Now, here is the third and last order of this
5 case, 12,632. This order is dated December 18th, 1956.
6 If you look at Staff Exhibit 9, you will find that third
7 order.

8 Now, this order authorizes MGE to construct and
9 operate and maintain connecting lines to its pipeline.
10 And the connecting lines are to supply gas to MGE's
11 distribution system in its certificated area; is that
12 correct? If you refer to ordered paragraph 1 of page 3 of
13 that order.

14 A Yes. The order speaks to gas service which was
15 a predecessor of Missouri Gas Energy. That is correct.

16 Q And so MGE is -- is granted the authority to use
17 that Leavenworth supply line to provide gas distribution
18 service to Platte, Woods and Gladstone and in a
19 certificated area. Wouldn't you agree?

20 A Correct.

21 Q Now, let move forward from 1956 a few years up
22 to 1997. And I'd like to discuss with you your Tariff
23 Filing No. 9700571. You'll find -- excuse me -- you filed
24 that particular tariff on February 20th, 1997. And you
25 should find that in Staff Exhibit No. 10. Are you there?

1 A The letter is dated February 20. It looks like
2 it was actually filed February 21st, 1997.

3 Q And you were the senior attorney for MGE in
4 1997?

5 A Correct.

6 Q And before that at some time, you were also
7 General Counsel of the Public Service Commission?

8 A That is correct.

9 Q And so you are familiar with MGE's tariff filing
10 970051?

11 A I am -- I have a recollection of it, that it
12 occurred more than ten years ago. Yes, sir.

13 Q And the purpose of MGE filing this tariff was,
14 and I quote, "To clarify the geographic boundaries of its
15 service area," unquote. Would you agree with that?

16 A Yes.

17 Q And then you sent another letter to the
18 Commission on April 10th of 1997. And, again, you refer
19 to the tariff sheets. And I quote, "Which describe the
20 company's service area," unquote. That can be found in
21 the first sentence on Staff Exhibit 11. Would you agree
22 with that?

23 A Yes.

24 Q And then you sent a cover letter dated April
25 11th, 1997, to the Commission. And this letter had an

1 attachment with it. And your cover letter tells the
2 Commission, "The attachment lists the orders that MGE used
3 in preparing the tariff filing." Now, you'll find that at
4 Staff Exhibit 12.

5 A I sent the letter to Mr. McDuffey, not to the
6 Commission itself. But, otherwise, yes.

7 Q And you agree that you represented to the
8 Commission that you used Case No. 12,632 dated May 24th,
9 1955?

10 A That was represented in the letter to
11 Mr. McDuffey. That is correct.

12 Q Now, surely, Mr. Hack, as Senior Attorney for
13 MGE, you reviewed the orders listed on your attachment
14 before you sent the letter?

15 A Certainly.

16 Q And, certainly, you would believe, Mr. Hack, as
17 Senior Attorney, that your representations to the
18 Commission be truthful?

19 A Absolutely.

20 Q And on May 14th, 1997, the Commission addressed
21 MGE's tariff filing in its utility Operations Division
22 routing slip. MGE's tariff filing contained tariff sheets
23 to clarify the geographic boundaries of its service area.
24 Would you agree with that?

25 A That's what it says.

1 Q And after the Commission approved this filing,
2 Mack McDuffey of the Staff of the Commission faxed the
3 two-page routing slip to you; is that right?

4 A This certainly indicates that. I have no reason
5 to think otherwise.

6 Q And you did receive these filings?

7 A It's in our file in -- in Kansas City, so yes.

8 Q And if you look at page 2 of this routing slip,
9 there is a handwritten statement at the bottom of the
10 routing slip. And if you can't find it, I think you'll
11 find that handwritten statement located just above your
12 name on the fax transmittal. Do you see it?

13 A Yes.

14 Q Now, please read along with me, and I'll -- I'll
15 read it. That statement says, and I quote, "The purpose
16 of this filing is to show the company's current service
17 area and does not expand to any area that it currently
18 does not serve," unquote. Did I read that correctly?

19 A It appears so. Yes.

20 Q The Commission did not grant MGE new service
21 territory as a result of this filing, did it?

22 A The Commission approved the tariff filing which
23 set forth geographic boundaries of MGE's service
24 territory.

25 Q Well, that's not the question I asked. I asked

1 did the Commission grant MGE new service territory as a
2 result of this tariff filing?

3 MR. STEINER: I'm going to object. I don't
4 think he's established that the handwritten note was done
5 by the Commission.

6 JUDGE STEARLEY: Mr. Berlin?

7 MR. BERLIN: No. 1, Judge, I will provide a
8 witness, Mr. Mike Straub, who made that handwritten
9 notation at the direction of the Commission. And the test
10 -- his testimony, in his pre-filed testimony, he has
11 addressed that. And I think that it's pertinent because
12 we are trying to interpret this tariff.

13 JUDGE STEARLEY: All right. Mr. Steiner?

14 MR. STEINER: I think he just admitted that the
15 Commission didn't write that. And his questions are
16 asking what the Commission did in this approval of the
17 tariff routing slip. And that would leave -- my objection
18 still stands. He hasn't established that the Commission
19 wrote this sentence.

20 JUDGE STEARLEY: Mr. Berlin?

21 MR. BERLIN: It is in pre-filed testimony of
22 Mike Straub, Staff's witness, that he wrote that statement
23 at the direction of the Commission. And he will testify
24 to that again today. And my question is -- is, I think,
25 pretty straightforward.

1 And to get Mr. Hack's understanding into the
2 purpose of this tariff filing, whether that was to grant
3 new service territory or merely to show territory -- or
4 reflect territory that the company represents that it --
5 that it -- that it has. Mr. --

6 JUDGE STEARLEY: I believe you can ask the
7 question if you qualify who the author of the statement
8 is.

9 MR. BERLIN: Okay.

10 Q (By Mr. Berlin) All right. Mr. Hack, in the
11 pre-filed testimony of Mike Straub, Staff's witness,
12 Mr. Straub filed his testimony because this tariff filing
13 has come into dispute and is at issue today.

14 And Mr. Straub -- and you can look at the
15 initials below. There's an M and what appears to be an S.
16 That would appear to be Mike Straub. But it is in his
17 pre-filed testimony. And the purpose he has filed
18 pre-filed testimony is to explain this particular utility
19 division routing slip and how that statement came to be.

20 And he also explained who directed him to write
21 that, which was one of the Commissioners. It is in the
22 pre-filed testimony. And he will testify to that today.

23 MR. STEINER: Is that a question, your Honor?

24 JUDGE STEARLEY: Yeah. I am -- I am sorry. You
25 lost me there. I thought I gave you permission, Mr.

1 Berlin, to ask Mr. Hack the question, just clarifying your
2 question with regard to the appropriate author of that
3 statement.

4 You're going to have Mr. Straub on the stand
5 later. He can certainly provide -- and you're going to be
6 admitting his pre-filed testimony as well. And he can
7 provide any clarification as to that when he's on the
8 stand. But --

9 MR. BERLIN: All right. I -- perhaps can I ask
10 this a little bit differently?

11 JUDGE STEARLEY: By all means.

12 Q (By Mr. Berlin) Mr. Hack, was it your intention
13 from this tariff filing to add to the service area of MGE?

14 A The purpose, as we discussed earlier and is
15 stated in the letter, was to clarify -- it was to clarify
16 MGE's then existing service territory. And I think that
17 is clear from the handwritten note, which appears to be
18 initialed by Mr. Straub.

19 It is also clear from page 1 of that tariff
20 routing slip that the Staff was well aware that the
21 certificates included in the review of the service
22 territory included transmission certificate.

23 If you look at paragraph 3 the front page of
24 that tariff routing ship, it says, Staff and company have
25 reviewed certificates of convenience and necessity (CCN),

1 cases and company service orders in the development of the
2 proposed tariff sheets.

3 The CCN cases were granted in either a
4 transmission or service area certificate making
5 development of service area stated in metes and bounds
6 format very difficult.

7 The Staff was well aware that -- that the cer --
8 a transmission service certificate was included in the
9 areas that were reviewed.

10 Q Well, then, wouldn't you agree with me that the
11 Commission did not grant MGE new service territory as a
12 result of this tariff filing?

13 A The -- the tariff filing clarified and defined
14 MGE's service territory. That's what it did. I -- what I
15 -- what I have trouble understanding is the question of
16 new. New when? New beyond what? Additional where?

17 What -- what -- what we were asked to do and what we
18 did was work with the Staff, review dozens of orders,
19 review scores of facilities maps, try to ascertain where
20 the facility's maps and the orders provided authority,
21 provided existing service advice, draw the -- the -- the
22 township range and sections around those areas.
23 And that's how we filed the tariffs. And that's what was
24 approved. And that's what I told you during the
25 deposition last week. It stays the same.

1 Q And you also told me that you reviewed Case
2 No. 12,632?

3 A I did.

4 Q Okay. Did you intend this tariff filing to
5 grant new area CCNs to MGE?

6 A What we intended was to define the existing
7 service territory as it existed in 1997.

8 Q So the answer is no?

9 A I can tell you the purpose of it. I don't know
10 that I can -- can answer that question. I know we have
11 facilities serving customers in at least Sections 10 and
12 12 in 1997.

13 Q Now, Mr. Hack, did MGE intend to gain new
14 service territory by listing its line certificate sections
15 with its area CCNs?

16 A We were -- we were trying to -- to put a puzzle
17 together at the direction of the Commission that was made
18 at the recommendation of the Staff.

19 We serve in at least 20 to 25 counties. We have
20 8,000-plus miles of main. We have 500,000-plus service
21 lines. We have -- I don't know how many orders you're
22 listing on this sheet, but 40 to 50 orders that we had to
23 look at to try and define the service territory.

24 MGE, at the time we made this tariff filing, had
25 been in existence in Missouri for three years. Many of

1 these orders were over 50 years old at the time.

2 Q Okay. Mr. Hack, you're really not answering my
3 question. I'm --

4 A I'm telling you what we tried to do, Mr. Berlin.

5 Q Okay. I'm asking as to MGE's intention of this
6 tariff filing that you made with the Commission in 1997.
7 Did you intend to gain new service territory by listing
8 line certificates, line certificates that were granted to
9 you in 12,0632, to list them in this tariff as area CCNs?
10 Was that your intention?

11 A The intention was to define our service
12 territory.

13 MR. POSTON: Judge, I have an objection. This
14 witness is being asked yes or no questions, and he's not
15 answering yes or no. I just ask that he be ordered to --
16 to answer yes or no to yes or no questions. Thank you.

17 MR. STEINER: He's asked his intent and he's
18 given his intent at least three times.

19 JUDGE STEARLEY: I believe Mr. Hack has been
20 answering the question. Although it's correct when asked
21 a yes or no question, you should answer in the form of the
22 question that's being asked.

23 MR. KEEVIL: Well, Judge, I can honestly say,
24 then, that I don't know whether that last answer was a yes
25 or no.

1 MR. BERLIN: I didn't hear a yes or no, Judge.

2 JUDGE STEARLEY: Mr. Hack, I will direct you to
3 answer that last question yes or no. If you need for me
4 to have the court reporter read it back to you or
5 Mr. Berlin repeat it, I will do so.

6 MR. HACK: Either way. That way I'll know what
7 I'm asking.

8 JUDGE STEARLEY: Mr. Berlin, do you want to
9 repeat the question?

10 MR. BERLIN: Sure.

11 Q (By Mr. Berlin) Did MGE intend to gain new
12 service territory by listing its line certificate sections
13 with its area CCNs?

14 A The answer is no. The intent was to clarify our
15 existing service territory.

16 Q Now, Mr. Hack, you -- you are principally -- or
17 the principal manager in charge of the LDC; is that right?

18 A Today, yes.

19 Q And you've also been Senior Attorney for an LDC,
20 MGE?

21 A That is correct.

22 Q Now, does an LDC have a duty to be honest with
23 the Commission in its filings?

24 A Certainly.

25 Q Does an LDC have a duty to be honest with the

1 public that it serves?

2 A Absolutely.

3 Q And is an LDC responsible for the accuracy of
4 the information that it puts on its tariff sheets?

5 A In the first instance, absolutely.

6 Q And so MGE is responsible for accuracy of the
7 information it puts on its tariff sheets?

8 A Many of the tariff sheets that get approved are
9 not our proposal. So to say that we are to -- to suggest
10 that MGE or any company is entirely responsible for the
11 content of its tariff sheets is an over-statement.

12 The tariffs -- tariff sheets are proven -- are
13 proposed in the first instance typically by the company.
14 We, like virtually every company, I expect, makes every
15 effort to ensure that the contents of those tariff sheets
16 are accurate.

17 We answer questions about those tariff
18 sheets. And -- and, ultimately, they're either approved
19 as proposed, rejected or approved as modified.

20 Q So the answer, if I understand is that, yes, MGE
21 is responsible for the accuracy of the information that it
22 puts on its filed tariff sheets?

23 A On the proposed tariff sheets, that's correct.

24 Q Mr. Hack, was this tariff filing a compliance
25 tariff filing?

1 A It was -- it was proposed in compliance with a
2 Commission directive, and it was made in a rate case
3 order. It was not a, quote, rate case compliance tariff
4 filing in kind of the term of art sense of the word.

5 Q Would you call it a normal tariff filing?

6 A Yes. That's, in fact, what it's called in the
7 -- in the cover letter.

8 Q Okay. Now, let's move forward a couple of years
9 from 1997 to 1999. Now, in 1999, you were still Senior
10 Attorney for MGE; is that right?

11 A No.

12 Q What --

13 A My title was VP of Pricing and Regulatory
14 Affairs at that time.

15 Q Okay. In August of 1999?

16 A Yes.

17 Q And in 1999, do you recall Dean Cooper of the
18 law firm Brydon, Swearngen & England sending you a letter
19 dated August 12th of 1999?

20 A Yes.

21 Q And you can see that as Staff Exhibit 14 in your
22 packet. And you may recall that Mr. Keevil discussed this
23 letter with you at last week's deposition.

24 A It was discussed.

25 Q Now, Mr. Cooper at that time represented

1 Empire's predecessor, Missouri Public Service, correct?

2 A He certainly has -- appears to have authored the
3 letter on their behalf.

4 Q And this letter was about Platte County?

5 A That is correct.

6 Q And do you remember receiving this letter?

7 A This letter, too, was in our files. So, yes.

8 Q Mr. Cooper tells you in this letter that he had
9 looked at your proposal?

10 A That's what the letter says.

11 Q And your proposal to Empire, or Empire's
12 predecessor, was to make an agreement on two sections of
13 territory?

14 A That is what the letter says.

15 Q And those sections are Section 6 of Township 52
16 Range 34 and Section 1, Township 52, Range 35; is that
17 right?

18 A That's what the letter says.

19 Q And in this letter, Mr. Cooper tells you that
20 only Commission Case No. 12,632 issued on May 24th of 1955
21 describes MGE's service territory near that area.

22 A I don't follow you.

23 Q Well, let's look at Staff Exhibit 14 of this
24 letter. You'll see that Mr. Cooper says in a sentence in
25 the middle of paragraph 2, and I will quote, "To search

1 for MGE's certificate, I reviewed the Platte County cases
2 listed in your e-mail to me of August 3, 1999. Of those
3 cases, only Commission Case No. 12,632 issued May 24,
4 1955, describes territory near the area in question."

5 Is that a fair reading of that sentence in the
6 letter made to you?

7 A That's what it says.

8 Q And Mr. Cooper also tells you that MGE's 1955
9 case gives its sections to the immediate east and south of
10 the sections that MGE was seeking to make an agreement; is
11 that right?

12 A There's a sentence that includes reference to
13 the immediate east and south. That is correct.

14 Q And so, in fact, didn't Mr. Cooper tell you that
15 Sections 1 and 6 belonged to Empire?

16 A Mr. Cooper also asked for what we were relying
17 on for our authority to serve in the area, and I told him
18 that we had approved sheets that set forth those sections.

19 Q Is it your understanding Mr. Cooper told you
20 that Sections 1 and 6 belonged to Empire? And by Empire,
21 I mean its predecessor.

22 A Yes.

23 Q Okay. And after you received Mr. Cooper's
24 letter, MGE did not expand into Section 6 or Section 1; is
25 that right?

1 A I don't believe we ever had an agreement with
2 the developer or customer to do so. That is correct.

3 Q Is this letter the reason why MGE did not pursue
4 expansion into Section 6 and 12 -- and 1?

5 A I believe the reason -- no. I believe the
6 reason we didn't do so is because we didn't have an
7 agreement with the customer or developer to take our
8 services.

9 Q Were you part of MGE's decision to not go into
10 Section 6 and 1?

11 A I honestly don't recall us making a decision not
12 to go into Section 6 and 1. My recollection is that the
13 issue just faded away.

14 Q Now, did MGE not expand into Sections 6 and 1
15 because you learned MGE had no CCN for these sections?

16 A No.

17 Q And, Mr. Hack, you -- you knew all of this back
18 in 1999, the contents of this letter?

19 A I knew all of this. I'm not sure I understand
20 what you mean, Mr. Berlin.

21 Q All that Mr. Cooper has conveyed to you in his
22 letter of August 12th, 1999.

23 A I certainly read the letter. Yes.

24 Q And you -- you must have understood it, correct?

25 A Yes, I did.

1 Q So you knew that your 1997 tariff sheets
2 included Section 6, Township 52, Range 34 and Section 1,
3 Township 52, Range 35? You knew that?

4 A Yes. And I told him that.

5 Q But he also told you that you didn't have a CCN
6 for both sections because, as he just covered, he
7 indicated to you that only Case No. 12,632 addresses MGE's
8 area sections in that area to the south and to the east?

9 A I don't disagree with that.

10 Q Now, Mr. Hack, I'd like to talk with you a
11 little bit about Sections 11 and 12, Township 52 North and
12 Range 35 West. Now, you became the Chief Operating
13 Officer of MGE in January 2006?

14 A Correct.

15 Q In a January 6th, 2006, MGE signed a contract
16 with the developer of Seven Bridges subdivision. Is that
17 right? I found it in Mr. Noack's direct.

18 A I can't verify the exact date, but I know it was
19 early 2006.

20 Q Okay.

21 A We had been working with him for some period of
22 time before then.

23 Q And Seven Bridges is a large subdivision that is
24 planned in four phases; is that right?

25 A I don't know how many phases its planned in.

1 It's -- it's a subdivision of -- of some magnitude.

2 Q Okay. Well, this first phase begins in Section
3 12, Township 52 North, Range 35 West. And the other
4 phases will take -- will take in or grown into Sections
5 12, 11, 13 and 14.

6 Let's look at the section map which is Staff
7 Exhibit 2. It's on the easel, and it's also right behind
8 you. And look at those sections in question. Do you have
9 your map?

10 A I'm looking at it.

11 Q Okay. Now, in this case, MGE has applied for a
12 CCN for Sections 13 and 14, correct?

13 A That is correct.

14 Q But MGE also began serving customers in the
15 first phase of Seven Bridges in Section 12 in early 2006?

16 A That is correct. Pursuant to the authority set
17 forth in our tariff.

18 Q Now, for MGE to serve Seven Bridges in Section
19 12, MGE must have facilities there, correct?

20 A Yes.

21 Q But MGE can produce no CCN for Section 12?

22 A No. The only -- what we relied upon for our
23 service there is the tariff sheet, 6.15.

24 Q So the answer is MGE cannot produce a CCN for
25 Section 12?

1 A We don't have an order granting a -- or an area
2 certificate to Section 12 beyond the tariff sheet that's
3 set forth in our tariff.

4 So there's no -- we have -- we have a
5 certificate for the transmission line that runs through
6 Section 12. We have tariff saying it's part of our
7 service territory. We don't have an order saying, You
8 have an area certificate to serve Section 12.

9 Q And you have no CCN order for Section 11?

10 A Same situation.

11 Q Okay. Now, Mr. Hack, isn't it odd that MGE is
12 seeking only CCN for two of the four sections covered by
13 Seven Bridges subdivision?

14 A No. We thought -- we thought we were authorized
15 to serve, and we think we're authorized to serve in
16 Sections 11 and 12. So why would we ask for something
17 that we think we already have?

18 Q Now, you can agree with me that Case 12,632 gave
19 you a line certificate in Sections 11 and 12?

20 A Yes.

21 Q And you know what a line certificate is?

22 A I do.

23 Q And you also know what an area certificate is?

24 A I do.

25 Q Okay. Do you see -- let's look at -- at the

1 section map again here. Do you see Section 12? Can you
2 locate that on your map?

3 A I see it.

4 Q Section 12 is directly south of Section 1, is it
5 not?

6 A Yes.

7 Q And Section 1 was the subject of Mr. Cooper's
8 letter to you? Yes. We just talked about Section 1 and
9 Section 6.

10 A I remember talking. What I don't -- I get mixed
11 up on the township/range issues. But, yeah, it looks --
12 that looks correct.

13 Q Okay. And that -- that Section 1 is -- is the
14 same section as I indicated earlier addressed in the 1999
15 letter to you. That Section 1, MGE did not expand into,
16 did it?

17 A No, we didn't.

18 Q Now, looking from Section 12 to the west, do you
19 see the next-door neighbor, Section 11?

20 A Yes.

21 Q And MGE, I understand, has built facilities in
22 Section 11?

23 A Yes.

24 Q And with this unsettling information conveyed to
25 you in the 1999 letter by Mr. Cooper, did it ever occur to

1 you to review area CCN orders?

2 A No.

3 Q So it didn't occur to you to review the 1955
4 case, Case No. 12,632?

5 A No.

6 Q Now, did Mr. Copper's 1999 letter to you tip you
7 off that MGE had a problem with its tariff sheets?

8 A The tariff sheets, no.

9 Q And so MGE never did apply for a CCN for
10 Sections 11 and 12 of Township 52 North, Range 35 West?

11 A We have not done so in this proceeding. And I
12 don't believe MGE has ever done so in any other proceeding
13 because we believe, based on the tariff, that we have
14 authority to serve there based on our service territory.

15 Q So based on your recent -- on your recent
16 memory, MGE has not applied for a CCN in Section 11 of
17 Township 32 North, Range 35 West.

18 A We've not made a -- no. That's correct.

19 Q Now, let's go forward a few years. Actually,
20 one year from 2006 to 2007. On January 31st of 2007,
21 you'd agree that MGE initiated this case when it filed its
22 application for CCN for Sections 13 and 14, Township 52
23 North, Range 35 West?

24 A Yes.

25 Q Now, surely, Mr. Hack, you must have had MGE

1 review Empire CCN orders before filing this application?

2 A I don't think so.

3 Q So you don't remember whether or not MGE
4 reviewed Empire's CCN orders before filing your
5 application?

6 A I don't believe we looked at them.

7 Q But you must have had MGE conduct a review of
8 its CCN orders.

9 A We looked at our tariff.

10 Q And you didn't look at your CCN orders?

11 A No.

12 Q Now, Mr. Hack, you have a great deal of
13 experience in gas utility law and operations. And with
14 your many years in the regulatory field, would you
15 consider it the best practice for MGE or any LDC to first
16 check CCN orders before filing for a new area CCN?

17 A If -- no. If you have a tariff that sets forth
18 your service territory, your service territory boundaries,
19 you should be able to rely on the tariff. And -- and
20 that's what we did.

21 Q Even if you find out that tariff contains wrong
22 information?

23 A We have, in this case, upon the controversy
24 arising looked at in detail the certificate orders, and
25 we've made a proposal to essentially revise our tariff

1 sheets to eliminate the overlap between the two
2 territories, which would take -- which would then -- which
3 would, I think, completely eliminate the overlap and limit
4 the MGE service territory to that which it built in
5 reliance on its filed approved and lawful tariffs.

6 Q Would you -- would you agree that it's -- it's a
7 good or maybe even prudent business practice for an LDC to
8 check its CCN orders before committing investments into a
9 new area?

10 A We're accustomed to being able to rely on
11 Commission tariffs. The -- the number of orders that make
12 up the overall service territory is -- is significant.

13 Once we got the tariff sheets approved
14 describing our service territory, which was the purpose of
15 the filing to begin with, we relied on the tariffs for an
16 understanding of where our service territory began and
17 ended.

18 Q So MGE does not rely on its CCN orders?

19 A Once -- not once we got the tariff sheets
20 approved. No.

21 Q And MGE doesn't rely on its CCN orders when made
22 -- or informed of the fact that there is an issue with
23 regard to certificated -- area certificated sections as a
24 result of Case No. 12,632?

25 A I disagree with that. We've -- we've responded

1 in an appropriate way in this case.

2 MR. BERLIN: Staff has no further questions of
3 this witness. Thank you, Mr. Hack.

4 JUDGE STEARLEY: Thank you, Mr. Berlin.

5 Cross-examination, Office of Public Counsel?

6 MR. POSTON: Just one.

7 CROSS-EXAMINATION

8 BY MR. POSTON:

9 Q When did you first become aware of the
10 discrepancy between the areas listed in your tariff and
11 the areas listed in the CCN orders?

12 A The only time I recall ever looking at it, it
13 was limited to the -- the two sections described in the
14 August '99 letter.

15 MR. POSTON: Okay. Thank you.

16 JUDGE STEARLEY: Thank you, Mr. Poston.

17 Cross-examination by Empire, Mr. Keevil.

18 CROSS-EXAMINATION

19 BY MR. KEEVIL:

20 MR. KEEVIL: So this is sad, but I'm too fat to
21 fit between the exhibit and the podium, so I'm going to
22 have to walk over here.

23 Q (By Mr. Keevil) Good morning, Mr. Hack.

24 A Hello.

25 Q I think Mr. Berlin actually covered most of the

1 questions that I was going to ask you, so forgive me if I
2 seem to be jumping around here.

3 MGE is currently providing service to customers
4 in Section 10 and Section 12 of Township 52 North, Range
5 35 West in Platte County, correct?

6 A That is my understanding, at their request.

7 Q And included among those customers, at least in
8 Section 12, would be customers in what has been referred
9 to as the Seven Bridges subdivision, correct?

10 A That is correct. That may also bleed over into
11 Section 11.

12 Q Okay. So I'm taking it those are residential
13 service customers; is that correct?

14 A That's my understanding. Although, in looking
15 at the -- the photos, it looks like there may be a
16 clubhouse of some sort that probably isn't residential.

17 Q Okay. MGG is not claiming that Commission
18 authorization is not required in order for MGE to provide
19 the service it is providing in those sections, is it?

20 A No.

21 Q Okay.

22 A Otherwise, we would not have sought authority in
23 Sections 13 and 14.

24 Q When did you become aware that both MGE and
25 Empire claimed to have authority to serve Section 12 of

1 Township 52 North, Range 35 West?

2 A To the best of my recollection, it was late in
3 the summer of 2006.

4 Q Okay. I apologize. I forgot to bring that with
5 me. We talked about this a little bit during your
6 deposition last week, Mr. Hack.

7 In -- in connection with a question and answer
8 that I just asked you and you answered, late 2006, do you
9 have a copy of a letter in your file from Empire to MGE
10 dated October 20th, 2006, in which Empire requested from
11 MGE a copy of any order which grants MGE a Certificate of
12 Convenience & Necessity for Section 12, Township 52 North,
13 Range 35 West?

14 A I don't have my file with me, but I remember a
15 letter to that effect around that time.

16 Q Okay. And at your deposition, I believe you had
17 your file with you, is that correct, and --

18 A Yes.

19 Q -- you were able to -- you were able to refer to
20 your file and the letter --

21 A Yes.

22 Q -- at the deposition?

23 A Yes.

24 Q And do you have the file here today or you just
25 don't have it with you on the witness stand?

1 A I have pieces of the file. I'm not sure I have
2 the whole file.

3 Q Okay.

4 MR. KEEVIL: I'd like to mark this as Empire
5 Exhibit 6.

6 Q (By Mr. Keevil) Mr. Hack, I've handed you a
7 copy of what's been marked Empire Exhibit 6. And I
8 recognize that this was a fax copy, so feel free to ignore
9 the fax printing at the top and bottom of the pages there.

10 But, otherwise, do you recognize this as a copy
11 of the letter to Empire -- or excuse me -- to MGE from
12 Empire dated October 20th, 2006?

13 A This look like it. Yes.

14 MR. KEEVIL: Okay. Judge, I'd offer Empire
15 Exhibit 6 into the record.

16 JUDGE STEARLEY: Any objections to the admission
17 of Empire Exhibit No. 6? Hearing none --

18 MR. STEINER: Your Honor, it doesn't look like
19 it's signed.

20 JUDGE STEARLEY: I'm sorry.

21 MR. STEINER: So I'm not sure it was actually
22 ever sent, although I know Mr. Hack said it looked like
23 it.

24 MR. KEEVIL: It's true this is not signed,
25 Judge. But it is a -- it's Empire's filed copy of the

1 letter. Mr. Hack's already said he received -- or he has
2 a copy in his file back in Kansas City which he referred
3 to at the deposition and that this represents a copy of --
4 of that letter other than the fact that isn't signed.

5 JUDGE STEARLEY: Mr. -- Mr. Steiner?

6 MR. STEINER: Well, if it isn't signed, I'm not
7 sure that Mr. Hack knows that it was sent. So I guess I
8 renew my objection.

9 JUDGE STEARLEY: Mr. Keevil, if you'd like to
10 lay a bit more foundation with Mr. Hack, why don't you do
11 so?

12 MR. KEEVIL: Well, Judge, Mr. Hack has already
13 said that this looks like a copy of the letter, other than
14 the fact that it isn't signed, that he has a copy of this
15 letter in his file back in Kansas City. He had a copy of
16 it at his deposition.

17 Q (By Mr. Keevil) Do you agree with all those
18 statements, Mr. Hack?

19 A I received -- I recall receiving -- or us
20 receiving a letter from Empire authored by Mr. Teter
21 around this time. What I can't tell you is if this is --
22 is -- I can't tell you is if this is the letter we
23 received.

24 Q Well, the fact that it is or isn't signed
25 wouldn't affect that, would it, Mr. Hack?

1 A I don't know.

2 Q So you would identify this letter based on the
3 handwriting signature of Mr. Teter rather than the content
4 of the letter?

5 A I would compare the letter that was -- that I
6 had to this one, including the signature, to see if it was
7 the same letter.

8 Q Including the body of the letter to see if it
9 was the same letter?

10 A Yeah.

11 Q Do you have the -- your copy of the letter here
12 with you today?

13 A I -- not up here I don't. I don't know if I
14 have it on -- you know, in the papers on my desk or not.

15 MR. STEINER: Your Honor, we are doing some
16 checking. It looks like it is the letter, so I'll
17 withdraw the objection.

18 JUDGE STEARLEY: Withdraw your objection? All
19 right. Very good. Are there any other objections to
20 Empire Exhibit No. 6? Hearing none, it shall be admitted
21 and received into evidence.

22 (EDGC Exhibit No. 6 was offered and admitted
23 into evidence.)

24 Q (By Mr. Keevil) Mr. Hack, after receiving this
25 letter requesting a copy of an order granting MGE a

1 certificate for Section 12, service area certificate for
2 Section 12, was MGE able to provide such an order to
3 Empire?

4 A No. We told them we built the facilities
5 pursuant to the obligations of our tariff.

6 Q Okay. Now, Mr. Berlin asked you several
7 questions about the -- I believe it has been marked here
8 this morning by Mr. Berlin as Staff Exhibit 14, which is a
9 letter from Dean Cooper to you dated August 12th, 1999.
10 Do you recall those questions, Mr. Hack?

11 A I recall there were questions.

12 Q Okay.

13 A I don't recall the questions exactly.

14 Q That's good enough. We'll get -- we'll get into
15 those.

16 MR. KEEVIL: I don't remember if Mr. Berlin had
17 this exhibit admitted. But I would -- I would -- if
18 Mr. Berlin did not --

19 JUDGE STEARLEY: Mr. Berlin has not offered any
20 of his exhibits into evidence at this time.

21 MR. BERLIN: Judge, I did -- that is a
22 housekeeping task that I -- I need to accomplish here.
23 And if you'd like me to do it now, I could do it now. Or
24 if you'd prefer --

25 JUDGE STEARLEY: I don't know that it needs to

1 be offered now for Mr. Keevil to refer to it for his
2 questioning, so --

3 MR. KEEVIL: Well, it might be --

4 JUDGE STEARLEY: Unless you would like it in
5 evidence now.

6 MR. KEEVIL: I was going to say, Judge, I'm
7 going to offer it if he doesn't, so -- since it's labeled
8 as his exhibit.

9 JUDGE STEARLEY: All right. Very well. Staff
10 Exhibit No. 14 has been offered into evidence. Are there
11 any objections to the admission of Staff Exhibit No. 14?

12 MR. STEINER: No, your Honor.

13 JUDGE STEARLEY: Hearing none. It shall be
14 admitted and received into evidence.

15 (Staff Exhibit No. 14 was offered and admitted
16 into evidence.)

17 Q (By Mr. Keevil) Now, Mr. Hack, I don't want to
18 repeat all of the questions that Mr. Berlin asked you
19 about this letter. But if MGE knew on the basis of this
20 letter at least by August 12th or -- or shortly thereafter
21 when it was received by MGE, if you knew by mid August of
22 1999 that there was an issue regarding overlapping plains
23 of service authority between what was at that time
24 Missouri Public Service, the predecessor to Empire Gas,
25 and MGE, the dispute between Missouri Public Service and

1 MGE. Did MGE do anything to resolve that dispute or
2 correct its tariff?

3 A No. As I said earlier, the issue just faded
4 away.

5 Q Okay. Mr. Hack, during your deposition for this
6 case taken on October 15th, you were asked several
7 questions concerning Sections 7, 8, 9, 10, 11 and 12 of
8 Township 52 North, Range 35 West in Platte County. In
9 fact, I might refer to -- do you have a copy of your
10 deposition?

11 A No.

12 Q Well, then I won't refer to your deposition. I
13 -- I have a copy of it, however. Do you agree that during
14 your deposition -- and you may have already answered this
15 in response to Mr. Berlin earlier this morning, but I just
16 want to make sure. Do you agree that during your
17 deposition you indicated that aside from the tariff
18 approval process that occurred in 1997 --

19 MR. STEINER: What page are you on, Jeff?

20 MR. KEEVIL: Page 19.

21 Q (By Mr. Keevil) Starting over. Do you agree
22 that during your deposition you indicated that aside from
23 the tariff approval process that occurred in 1997, you do
24 not believe that there is any Commission order in
25 existence that provides MGE an area certificate for

1 Sections 7 through 12 of Township 52 North, Range 35 West?

2 A And I'm sorry. Is the question do I agree that
3 I said that in the deposition?

4 Q Well, that's not intended to be a quote, but
5 that's the substance of what you said during the
6 deposition. Do you agree?

7 A Yeah.

8 Q Do you agree with that again today?

9 A Yes.

10 Q So whether you said it during your deposition or
11 not, do you agree with that statement?

12 A I do.

13 Q Okay.

14 A I want to make sure I know the question I'm
15 answering, though.

16 Q You give me far too much credit for being
17 tricky, Mr. Hack. Do you agree that a local gas
18 distribution company cannot obtain a service area
19 Certificate of Convenience & Necessity simply by
20 submitting a new tariff listing a new service area?

21 A I don't know -- I truly don't know. And that's
22 the situation sort of we have right here today. We -- we
23 -- you know, if -- if I was to answer the question today
24 and I know, for example, Section 15 is outside our service
25 territory, I would agree. I would answer that question in

1 the affirmative.

2 I cannot just file a tariff sheet and -- and get
3 new service territory. What complicates things today --
4 well, in 1997 is -- and the Commission orders directing us
5 to make the tariff filing reflect this, was that it was
6 very difficult for anybody to know what MGE's service
7 territory was at the time.

8 And that was the purpose of the tariff filing.
9 There was no intent to, quote, grow the service territory.
10 It was an attempt to identify and define, clarify what the
11 boundaries were.

12 Q Okay. Mr. Hack, if I could stop you there. I
13 believe this was a yes or no question. Let me -- perhaps
14 I need to re -- phrase it a different way.

15 Can a local gas distribution company submit a
16 new tariff listing a new service area in order to obtain a
17 Certificate of Convenience & Necessity?

18 A I don't believe so.

19 Q I'm sorry. I honestly didn't hear your answer.

20 A I don't believe so.

21 Q Okay. And that's -- that's the same thing you
22 said during your deposition. I just wanted to get around
23 to that. Your first answer was wrong. I wanted to give
24 you a chance to get back to the deposition answer. Do you
25 agree that the expansion of service territory occurs

1 through the Certificate of Convenience & Necessity or CCN
2 process?

3 A Yes.

4 MR. KEEVIL: Judge, again, I don't believe
5 Mr. Berlin offered them as exhibits, and -- and, frankly,
6 what I was going to do was ask the Commission to take
7 official notice of those old gas service orders. But if
8 Mr. Berlin is going to offer I believe it's Staff Exhibits
9 7, 8 and 9, then I wouldn't need to ask you to take
10 official notice.

11 However, I do have one question for Mr. Berlin
12 regarding one of those exhibits before he does that.
13 Where did that thing go? Exhibit 9. It's got a -- all
14 that stuff attached to it. Was that attached to the
15 order?

16 MR. BERLIN: Yeah. Yeah. It's part of the
17 order.

18 MR. KEEVIL: Okay.

19 MR. BERLIN: Judge, perhaps now might be a good
20 time, to save Mr. Keevil from having to do what I need to
21 do, if I could take care of this matter and -- and enter
22 into evidence the exhibits that I have addressed so far
23 this morning through my opening statement and my
24 examination of Mr. Hack.

25 JUDGE STEARLEY: And those would be Exhibits

1 Staff --

2 MR. BERLIN: I would like to enter into --

3 JUDGE STEARLEY: Yes. 1 through -- 1 through
4 15. Is that --

5 MR. BERLIN: I would like to enter into evidence
6 Exhibits 1 through 15, recognizing that the Commission has
7 just accepted Staff Exhibit 14 into evidence.

8 JUDGE STEARLEY: All right. Are there any
9 objections to the admission of Exhibits 1 through, it
10 would be 13, and Staff Exhibit 15?

11 MR. STEINER: Well, your Honor, 15 is some topog
12 -- photographs. I'm not sure I have an objection, but I
13 don't think any foundation has been laid as to who took
14 the photographs or --

15 JUDGE STEARLEY: There -- there is not. Do you
16 intend to lay some foundation for those, Mr. Berlin, with
17 one of your witnesses?

18 MR. BERLIN: I do, Judge. I will do that with
19 Mr. Warren.

20 JUDGE STEARLEY: Okay. Why don't we take that
21 up when Mr. Warren is on the stand? I'm just looking at
22 Staff Exhibits 1 through 13 at this time.

23 MR. BERLIN: And, Judge, I would also like to
24 offer into evidence Staff Exhibit 16, which is the
25 deposition that Mr. Keevil is referring to. It is the

1 deposition with the deposition exhibits.

2 JUDGE STEARLEY: Okay. Let's -- let's take up 1
3 through 13. First, are there any objections to the
4 admission of Staff Exhibits 1 through 13?

5 MR. STEINER: No.

6 JUDGE STEARLEY: Hearing none, they shall be
7 received and admitted into evidence.

8 (Staff Exhibits 1 through 13 were offered and
9 admitted into evidence.)

10 MR. KEEVIL: And 14 was already admitted into
11 evidence?

12 JUDGE STEARLEY: 14 was already received. Yes.
13 That's correct, Mr. Keevil. Looking at Staff Exhibit 16,
14 the deposition, are you wishing to offer that at this
15 time, Mr. --

16 MR. BERLIN: Yes, Judge. And according to court
17 rule, it permits that I am asking that the Commission
18 enter this deposition with its exhibits into evidence.

19 JUDGE STEARLEY: All right. Any objections to
20 the admission of the deposition?

21 MR. STEINER: No.

22 JUDGE STEARLEY: Hearing none, it, too, will be
23 admitted and received into evidence.

24 (Staff Exhibit No. 16 was offered and admitted
25 into evidence.)

1 JUDGE STEARLEY: And, Mr. Keevil, have you
2 concluded your cross-examination?

3 MR. KEEVIL: Well, that's what I was just
4 checking, Judge. I think with the -- I think with the
5 admission of all of those exhibits, surely somewhere in
6 there, that covered everything I planned to cover. Yes.
7 I'm done, Judge. Thank you.

8 JUDGE STEARLEY: All right. Thank you,
9 Mr. Keevil. Questions from the Bench, beginning with
10 Commissioner Murray.

11 THE COURT REPORTER: Excuse me. I need to
12 change paper.

13 JUDGE STEARLEY: All right. I hate to interrupt
14 you, but we do need to pause for just a couple moments.
15 Our stenographer needs to change paper for her machine.
16 So how long will it take you, Monnie?

17 THE COURT REPORTER: Just a few minutes.

18 JUDGE STEARLEY: Okay.

19 (Break in proceedings.)

20 JUDGE STEARLEY: All right. We are proceeding
21 with questions from the Bench for Mr. Hack. Commissioner
22 Murray?

23 COMMISSIONER MURRAY: Thank you.

24 CROSS-EXAMINATION

25 BY COMMISSIONER MURRAY:

1 Q Good morning, Mr. Hack.

2 A Hello.

3 Q How many customers does MGE serve in Section 12?

4 A Today, I believe the answer is about 40.

5 Q And then you serve approximately 20 others in
6 another --

7 A There's -- I think there -- there may be a
8 handful in Section 11 and a handful in Section 10. The
9 bulk of the Seven Bridges subdivision that is currently
10 being served, as I understand it, is in Section 12. And
11 that's something like 39 customers.

12 Q All right. My next question, how did MGE come
13 to serve those customers?

14 A The -- the developer reached out and contacted
15 us, I believe as early as 2004, worked with us, executed a
16 facilities extension agreement.

17 You know, we do -- did all the customary stuff
18 of getting work orders in process and contracts signed.
19 And then we began installing facilities in -- after we
20 signed the contract in January of '06.

21 They were installed, as I understand it, by May
22 of '06. And then customers have since contacted us to
23 turn their service on or off as the case may be.

24 Q Some have contacted you to turn their service
25 off?

1 A If they move. Sure.

2 Q Bu not to switch to another --

3 A No.

4 Q -- provider?

5 A No.

6 Q Are -- are those customers in Platte City?

7 A No.

8 Q Okay. You do -- do you have customers in Platte

9 City?

10 A No.

11 Q All right. Are any of the areas where these

12 approximately 60 customers are being served, are any of

13 them in areas that require a franchise agreement?

14 A No.

15 Q Are the --

16 A I don't believe so. If -- if they are, then we

17 have one. I know we don't have one with Platte City. But

18 I don't know whether it would be another -- another town

19 nearby.

20 Q To your knowledge, how many customers does EDG

21 serve in Section 12?

22 A Oh, boy. I don't -- I don't know. It would be

23 limited, I think, to the Copper RIdge subdivision, which

24 was to the -- the northern part of that section. But I

25 don't know how many.

1 Q Now, the tariff sheets that are -- that are in
2 question here that MGE claims provide all of the authority
3 that it needs to serve the disputed sections, who prepared
4 those tariff sheets?

5 A I did.

6 Q And if you didn't have to look at your CCNs --
7 I'm sorry. The microphone was going under. If you did
8 not have to look at your CCNs to prepare those tariffs, to
9 what did you make reference?

10 A We looked at the orders, certificate orders,
11 merger orders, acquisition orders. There was four
12 notebooks, three-ring binder full of the orders we looked
13 at. Many of those orders were very old. So that was the
14 first thing they looked at.

15 We tried to map out those orders. Some of those
16 orders speak to authority to serve a municipality and
17 environments, for example. They don't set out in
18 geographic area.

19 So as we were pulling the whole filing together
20 -- and this was discussed with Mr. McDuffey and our
21 offices at least once, perhaps twice, we overlaid the maps
22 we developed through the orders with maps of existing
23 facilities at the time so that we could identify and
24 define what we understood the Commission's directive was,
25 which was to define our existing service area.

1 Through that combination, we haven't been able
2 to find those maps, those facilities maps. They were
3 massive. They're bigger than -- than that chart over
4 there on the easel.

5 Through the combination of those work products,
6 we pulled together the listing of township, range and
7 section numbers, including those set forth on 6.15. They
8 were included in the tariff filing that was ultimately
9 approved or took effect.

10 Q And the reason that the Commission ordered MGE
11 to prepare those tariffs, those clarifying tariffs, what
12 was the reason that --

13 A The -- the reason was that the Staff had
14 recommended we do it because our service territory was
15 difficult to identify.

16 Q And was that because Empire had been inquiring,
17 or do you know?

18 A No. No. It was -- this had -- that whole
19 initiative had nothing to do with Platte County, but had
20 to do with -- with the entire service area from, you know
21 -- across the whole state, basically. And I think it was
22 just the Staff was -- had been looking -- trying to
23 identify what our service territory was.

24 We are a company that is a product of many
25 acquisitions and mergers over the years, and it was just

1 hard to go back and look at the orders and see exactly
2 what -- what the -- you need to know where to look. You
3 don't look at one company. You had to look at gas service
4 advice companies, city service companies, municipal
5 companies.

6 It was -- it was a very challenging task to try
7 and put this together. It was -- the reason it was done
8 was because it was hard for somebody to take a look and
9 say, Well, what is the service territory?

10 Q And did you receive any objections from Staff to
11 those tariffs that were submitted?

12 A You know, we -- we walked Mr. McDuffey through
13 the process at our offices at least once, and I'm thinking
14 he may have been there twice. I don't recall, honestly,
15 if we made any amendments to the as-filed tariffs.

16 But, ultimately, he was okay. He recommended
17 approval of the tariff filing, and he specifically
18 referenced in that routing slip that there was at least
19 one transmission certificate in the orders reviewed.

20 Q And were there any objections filed to those
21 tariffs?

22 A No. There never have been.

23 Q Now, it appears that the case that's being made
24 -- or at least alleged that MGE has expanded -- acted to
25 expand its territory by filing the tariffs. If -- if we

1 were to find that the tariff filings are not sufficient to
2 indicate MGE's territory or authority to serve those
3 territories, would it be appropriate for us to condone the
4 -- what would have amounted to an expansion of territory
5 through a tariff filing?

6 A What -- what we have tried to do was to comply
7 with an order of the Commission. In this case, we have
8 taken a hard look and -- and, you know, our -- what our
9 kind of fundamental position here in this case is that we
10 built the facilities to serve the Seven Bridges
11 subdivision under the authority of and at the requirement
12 of our tariff, which sets forth Section 12 as a part of
13 our service territory.

14 We have, through this -- this process of this
15 case, proposed in recognition of what I think I've
16 testified to earlier today that those sections where we
17 haven't built any facilities or we don't have any
18 facilities or customers or where the facilities -- where
19 the CCN is limited to a line certificate that we take all
20 of that area out of our territory and that we -- we,
21 quote, make the revisions to put things right.

22 But what we're asking is that in that process
23 the Commission, in the exercise of its judgment, give
24 credence to the sanctity basically of the tariff process
25 that we relied on in building facilities to serve Seven

1 Bridges subdivision and that the public interest really is
2 served by us being able to rely on those tariffs.

3 We didn't hide anything. We didn't construct
4 anything under cover of night. We didn't, you know, hide
5 Order No. 12,632. It was listed in the orders we relied
6 on.

7 And the -- the -- you know, we're sitting here
8 trying -- trying to come to an accommodation that makes
9 sense to our customers, to Empire's customers and to the
10 process.

11 And, you know, there was never any intent to
12 sneak one by anybody. We were -- it wasn't our idea to
13 clarify the service territory to begin with. We were just
14 trying to comply with Commission order.

15 Q Now, you were aware, I assume, that Empire had a
16 certificate for Section 12?

17 A Oh, I -- when? I -- I don't know that I was or
18 -- or if I -- or if I -- if I wasn't. We were looking at
19 things, really, from -- from our perspective back in 1997.

20 Q Well, let me ask you this: At the time that you
21 were approached by the developer for the Seven Bridges
22 subdivision, were you aware at that time that Empire held
23 a certificate?

24 A No. No. I'm sorry.

25 Q Were you ever aware that Empire was -- or at

1 what point in time did you become aware that Empire was
2 contesting your service to that subdivision?

3 A The late -- after the facilities had already
4 been built. Late summer of '06.

5 Q And that was the first indication?

6 A That was -- yes.

7 Q Okay. And did you -- did you have any
8 discussion with the developer regarding whether MGE was
9 the only company to which -- that the developer had
10 approached for service?

11 A Not that I recall.

12 Q To your knowledge today, do you know if the
13 developer approached Empire?

14 A I don't know.

15 Q And in that the customers -- the approximately
16 39 customers in Seven Bridges and then a handful of other
17 customers will be affected -- or may be affected by what
18 is done in this case, do you know if those customers have
19 any knowledge of this proceeding?

20 A I don't know. I don't know. Our -- our
21 proposal is to leave things the status quo for those
22 customers.

23 Q And it's my understanding, also, that there is a
24 proposal that -- I guess at Staff's recommendation that
25 you be ordered to transfer or abandon your facilities to

1 serve the customers in Seven Bridges, but that where you
2 are serving some other customers, if Empire chooses not to
3 serve them, that you be allowed to continue to serve those
4 customers. Is that your understanding?

5 A My impression, and I haven't combed through the
6 testimony in detail, is that both Empire and the Staff are
7 concerned about Seven Bridges, not about the handful of
8 other customers who have been served.

9 Q So if we did what -- at least what I understand
10 is being recommended by Staff, and I guess by Empire as
11 well, would allow some duplication of service within a --
12 within a particular section. Is that the way you
13 understand it to the extent that you're serving within a
14 section and Empire doesn't choose to serve those people?

15 A Yes. Yes. This is a very rural area. You know,
16 the -- there's -- there's not many people up here right
17 now.

18 Q So it -- I'm assuming that the most -- the
19 customers that are the most cost effective to serve would
20 be those in the Seven Bridges area?

21 A Yes.

22 Q And that will encompass Sections 12, 13 and 14?

23 A And a little bit of Section 11, as I understand
24 it.

25 COMMISSIONER MURRAY: Thank you. I think that's

1 all I have.

2 MR. HACK: Thank you.

3 JUDGE STEARLEY: Mr. Hack, just a couple
4 questions.

5 CROSS-EXAMINATION

6 BY JUDGE STEARLEY:

7 Q Regarding the Seven Bridges area, and I believe
8 the testimony is indicated that once MGE discovered it was
9 moving into Sections 13 and 14 that's going to apply for a
10 CCN for that area?

11 A That is correct.

12 Q Okay. Has there been a significant investment
13 in infrastructure in those areas already?

14 A Before --

15 Q For MGE.

16 A Before we ceased construction there?

17 Q Yes.

18 A As I understand it, it was about 300 yards of
19 main, which would be something on the order of -- not
20 significant, though. Not -- you know, not huge, 13, 14.

21 Q Is it your understanding that these are the
22 facilities that Empire and Staff are requesting that you
23 be made to abandon --

24 A No. I think they would --

25 Q -- or convey?

1 A -- suggest that it's like -- anything within
2 Seven Bridges subdivision, not just 12 and 13, but 11 and
3 12, too.

4 Q And does that, in total, amount to a significant
5 amount of infrastructure?

6 A Certainly, it's more than the 300 yards or so
7 that are in Sections -- I think it's Section 13. But I
8 would -- I can't tell you. I mean, it would be a factor
9 of probably ten. So it's -- it -- it would -- it would
10 hurt, yes.

11 JUDGE STEARLEY: All right. That's all the
12 questions I have. Mr. Steiner, you may do redirect.

13 MR. KEEVIL: Can we get recross based on Bench
14 questions, Judge?

15 JUDGE STEARLEY: I'm sorry. You're absolutely
16 correct, Mr. Keevil. I'm jumping the gun here. We will
17 do a round of recross. And we will begin with Staff.
18 Mr. Berlin?

19 RE CROSS EXAMINATION

20 BY MR. BERLIN:

21 Q Mr. Hack, Commissioner Murray asked you some
22 questions regarding your tariff. And I believe that you
23 told her that MGE relies on its tariff; is that right?

24 A We do.

25 Q I think you even said that MGE places great

1 emphasis on relying on its tariff; is that right?

2 A Not only do we rely on it. It's -- it's a
3 lawful document that -- that governs our activities, our
4 customers' activities, yes.

5 Q Now, does MGE place an equal amount of effort or
6 reliance on its CCN orders from the Commission?

7 A Once those -- the service territory was defined,
8 as I testified in my deposition, those, in our mind, were
9 assumed into the tariff filing. So we refer to the tariff
10 as the source document, not the CCNs after April or May of
11 1997.

12 Q So you didn't answer my question. But you --
13 you don't consider the CCN order as a source document for
14 the formulation of a tariff?

15 A It was the source document, but it was subsumed
16 once the tariff was approved now.

17 Q Do you -- do you rely on your CCN orders from
18 the Commission?

19 A Yes.

20 MR. BERLIN: No further questions.

21 JUDGE STEARLEY: All right. Thank you.

22 Commissioner Clayton has joined us, and he wishes to ask
23 Mr. Hack some questions.

24 COMMISSIONER CLAYTON: I apologize for being out
25 of the office. I'm trying to do too many things at once.

1 CROSS-EXAMINATION

2 BY COMMISSIONER CLAYTON:

3 Q Welcome back, Mr. Hack.

4 A Thank you.

5 Q How many -- how many customers does MGE
6 currently serve in Sections 10, 11 and 12?

7 A Something -- I -- something on the order of 50.

8 Q And are those -- can you -- can you break those
9 50 customers out to be defined in categories like farm tap
10 customers or full-blown distribution system customers? Is
11 there a way to describe them?

12 A Yeah. I think so. As I understand the
13 situation, which is not -- not too much detail, the Seven
14 Bridges subdivision, we currently serve 39 customers with
15 a -- you know, a full-fledged distribution system, main,
16 services, feeder line into the main.

17 And that's primarily in Section 12, but also
18 perhaps some part of Section 11. And that feeder line
19 comes off the Leavenworth supply line. The -- then we
20 serve a handful of customers, I believe, in Sections 10
21 and 12 directly off of the Leavenworth supply line.

22 The -- I would not call them farm tap customers.
23 Those, I would characterize as coming off interstate pipe
24 facilities. But they're like farm tap customers.

25 Q And interstate or intrastate pipeline --

1 pipeline facilities?

2 A Interstate.

3 Q That is, the Leavenworth line is an interstate?

4 A No. I would call farm tap customers as being

5 served directly off the interstate pipelines.

6 Q Okay. You're defining what farm tap means?

7 A Right.

8 Q Your customers, though, would not be farm tap.

9 They would be just -- they may have a line that comes

10 directly off that -- that Leavenworth line, but they're

11 treated the same as any other tariff customer?

12 A Right. It looks -- it's probably just a service

13 line off of the lateral.

14 Q Okay. And their arrangement is no different.

15 The customer's arrangement with the company is no

16 different --

17 A Than a regular customer.

18 Q Yeah. Okay. Okay. And are there -- are there

19 any other categories?

20 A No.

21 Q And you said you had 39 at Seven Bridges. That

22 would mean 11 --

23 A Roughly. And that's -- and that's quite a

24 magnitude, yeah.

25 Q Okay. Can you give me -- can you give me an

1 idea of how long those customers have been served by MGE
2 or its predecessor? Do they go back to 1960?

3 A I think one of the customers served off the
4 Leavenworth supply line goes back that far. Whether it's
5 the same customer or not, it's probably the same premise.

6 Some of the other of the handful of folks who
7 are directly off the Leavenworth supply line go -- I think
8 there's a '94 one. There's one in the '80s. There's one
9 in '02. Just kind of an assortment.

10 I would guess it's just customers saw us looking
11 at our facilities, whether it's, you know, leak surveying
12 or maintaining the facilities, ask for service and we
13 accommodated them.

14 The customers in Seven Bridges have been served
15 since the construction activities ceased, I believe, in
16 May of 2006.

17 Q So Seven Bridges is only about a year and a half
18 old?

19 A Correct.

20 Q If you look at the -- the map that's over here
21 -- and I wish -- I don't know if it's marked as an
22 exhibit, Judge. The map that's sitting in front of us, in
23 the blue-green area, I think is the MGE service area.

24 A The lower right-hand quadrant.

25 Q Maybe you'd prefer to call that turquoise.

1 Would that make --

2 A Aquamarine, perhaps?

3 Q Aquamarine. Are you more comfortable with that?

4 JUDGE STEARLEY: That is Staff Exhibit 2?

5 Q (By Commissioner Clayton) Staff Exhibit 2.

6 Thank you, Judge. In the aquamarine section, can you give
7 me an idea how many different communities are served by
8 MGE?

9 A I -- I -- I have no idea. The -- I really
10 don't. You know, there's -- there's development along
11 I-29 and 435. The -- and development has been pushing up
12 and around the airport for some time now.

13 But -- but I -- I'm not intimately familiar with
14 the area. We have customers there, more than -- you know,
15 more than a handful.

16 Q You moved to Kansas a long time ago, right?
17 Yeah. Where is the airport? Where is the airport on this
18 map?

19 A The airport is to -- it's right off of I-29. So
20 Section 7 there in the aquamarine --

21 Q Yeah.

22 A -- I think the airport is right in that -- that
23 neck of the woods.

24 Q Okay.

25 A Okay.

1 Q Okay. So -- so it's -- so it's safe for me to
2 assume that -- that most of the customers -- most of the
3 50 customers served by MGE have not been there since --
4 have not been customers of MGE or Gas Service since 1960?

5 A Correct.

6 Q Basically, it's one or two going back that far.
7 And then it's been spotty. And then Seven Bridges is
8 where the bulk of the customers are located?

9 A Yes.

10 Q And those customers came online within the last
11 year and a half, two years, two and a half years, roughly?

12 A Since -- since May. We -- we inked our deal
13 with the developer in January of '06 and started
14 construction activities thereafter and began serving, as I
15 understand it, in May of '06.

16 Now, we have been working with a developer for
17 some time before that, perhaps as much as a year and a
18 half.

19 COMMISSIONER CLAYTON: Okay. I don't think I
20 have any other questions. Thank you, Mr. Hack.

21 MR. HACK: Thank you.

22 JUDGE STEARLEY: Thank you, Commissioner,
23 Mr. Berlin, since Commissioner Clayton has asked a few
24 questions, do you have anything more for recross?

25 MR. BERLIN: Yes. Just -- just a couple of

1 questions.

2 RECROSS EXAMINATION

3 BY MR. BERLIN:

4 Q Mr. Hack, Commissioner Clayton asked you how
5 many customers MGE has in Sections 10, 11 and 12. Do you
6 recall that question and your answer?

7 A Yes.

8 Q But you -- you said, I believe, that MGE has
9 about 50 customers in Sections 10, 11 and 12. Is that
10 right?

11 A That's what I said.

12 Q Okay. And about 39 in Seven Bridges?

13 A That's what I said.

14 Q Okay. If you look at Section 12 and you look at
15 the far southern, eastern corner of that -- and it's --
16 and it's reflected pretty well on the topographic map,
17 which is marked Staff Exhibit 6, and there is a creek and
18 a flood plain on that -- that separates that far
19 southeastern corner of Section 12. Do you know what I'm
20 referring to? If it -- it -- if -- if it's -- if it's
21 helpful, I could put up the topographical map.

22 JUDGE STEARLEY: Or else give Mr. Hack a copy so
23 he can refer to it.

24 Q (By Mr. Berlin) Mr. Hack, do you have a copy of
25 Staff Exhibit 6 before you?

1 A No.

2 MR. BERLIN: Okay. I'm just looking for one
3 extra copy, Judge. Just a second.

4 JUDGE STEARLEY: He can -- he can utilize mine
5 as long as you give it back to me.

6 MR. BERLIN: Oh, okay.

7 Q (By Mr. Berlin) Okay. Mr. Hack, looking at
8 Staff Exhibit 6, which is a topographical map, and looking
9 at Section 12 -- and you can see that the number 12 is
10 just to the east of the green circle that encompasses the
11 Seven Bridges developement.

12 A I see that.

13 Q And do you see Prairie -- Prairie Creek? It may
14 not be named -- well, it is named on the topographical
15 map. Do you see how it kind of separates the southeastern
16 corner of Section 12?

17 A Is that the blue thing here?

18 Q That would be the blue line.

19 A Yes. It appears to be.

20 Q Okay. Now, in that far eastern corner -- well,
21 let me go back. Section 12 is -- we have talked a great
22 deal about Section 12. But the section that is directly
23 east of Section 12 is part of MGE's certificated area,
24 correct?

25 A We believe Section 12 is, too.

1 Q Well, that's -- you know, that -- I'm just
2 wanting to try to draw a boundary here at -- we know we
3 have a dispute on Section 12. How many of the balance of
4 the customers are served at the end of Oakmont Drive in
5 the far southeastern corner?

6 A I don't -- I don't know.

7 Q Would you agree that Oakmont Drive is -- is a
8 street -- part of a subdivision development that incurred
9 into th southeast corner?

10 A I don't know.

11 MR. BERLIN: I have no questions -- further
12 questions

13 JUDGE STEARLEY: Okay. Thank you, Mr. Berlin.
14 Recross, Office of Public Counsel. Mr. Poston?

15 MR. POSTON: Thank you.

16 RECROSS EXAMINATION

17 BY MR. POSTON:

18 Q I believe you testified that you already have
19 facilities in Section 13; is that correct?

20 A Yes.

21 Q And do you have facilities in Section 14?

22 A I don't know if we did or not.

23 Q Are you serving customers in either 13 or 14?

24 A I don't know that question -- the answer to that
25 question either.

1 Q Is it customary for MGE to extend facilities
2 into an area where you have no CCN authority or no list of
3 that area in your tariff?

4 A No.

5 Q And under what authority have you extended
6 facilities into these areas?

7 MR. STEINER: I'm going to object. I don't
8 think Commissioner Clayton asked anything about 13 and 14.

9 MR. POSTON: Commissioner Murray did. I'm
10 sorry. She questioned where customers were served,
11 Sections 10, 11 and 12. I'm expanding on that and upon
12 his testimony that they were serving facilities -- or they
13 have facilities in Section 13, which they have no CCN for.

14 JUDGE STEARLEY: Mr. Steiner?

15 MR. STEINER: I believe Commissioner Murray did
16 talk about 13, so I'll let this go on for a little bit.

17 JUDGE STEARLEY: All right. Would you please
18 repeat your question, Mr. Poston.

19 Q (By Mr. Poston) Okay. I was asking under what
20 authority has MGE extended facilities into Section 13.

21 A It was a mistake. We didn't see the line that
22 didn't exist in the field. When we discovered we had
23 facilities in an area where we didn't have authority set
24 forth in the tariff, that's when we filed the application.

25 Q Okay. And then did you cease extending

1 facilities at that -- at that time?

2 A Yeah.

3 Q And you testified that you had 39 customers in
4 Seven Bridges. How many of those customers have been
5 added since late summer of '06 when you stated you first
6 became aware of Empire's claim to Section 12?

7 A I have no idea.

8 Q Have customers been added since that time?

9 A I don't know.

10 Q Do you know if MGE ceased extending facilities
11 and adding customers after late summer '06?

12 A If -- if we -- if somebody needs service in
13 Section 12 and they call us, we'll serve them.

14 MR. POSTON: That's all I have. Thank you.

15 JUDGE STEARLEY: All right. Thank you,
16 Mr. Poston. Mr. Keevil, recross?

17 MR. KEEVIL: Very briefly, your Honor.

18 RECROSS EXAMINATION

19 BY MR. KEEVIL:

20 Q Mr. Hack, Commissioner Murray asked you whether
21 there was any objection filed to the 1997 MGE tariff, and
22 I believe your answer was no. Do you recall that, sir?

23 A Yes.

24 Q Do you agree that when that tariff was filed, it
25 was assigned File No. 9700571?

1 A 9700571. Correct.

2 Q Okay. Do you also agree that the tariff was
3 approved -- I believe Mr. Berlin asked you questions
4 earlier today about this. The -- do you agree that this
5 tariff was approved pursuant to the routing slip process
6 shown by one of Mr. Berlin's exhibits? It's also Schedule
7 2 to Mr. Strong's rebuttal testimony.

8 My -- my question, I guess, Mr. Hack, is you
9 agree it was approved pursuant to a routing slip?

10 A There is a routing slip. The check -- Staff
11 recommended approval with an X. Commission action was
12 checked approved. And then the -- the subject tariff
13 sheets were put into MGE's official tariff book here at
14 the Commission with an approved effective date that I
15 believe -- I don't even know what the date was. But --
16 so --

17 Q Okay.

18 A I'm not intimately -- I don't -- you know, it
19 looks -- the answer is yes, that's what it looks like.

20 Q So there was no official, formal contested case
21 ever opened regarding the approval or disapproval of these
22 tariffs, correct?

23 A The tariffs probably took effect by operation of
24 law. Yeah.

25 Q So you would agree there was no case open?

1 A I don't -- I haven't looked at that. I don't --
2 I honestly don't know one way or the other.

3 Q Well, you said you -- you think they probably
4 just took effect by operation of law, though?

5 A Correct.

6 MR. KEEVIL: Okay. Nothing further, Judge.
7 Thanks.

8 JUDGE STEARLEY: All right. Thank you,
9 Mr. Keevil. Now, Mr. Steiner, redirect?

10 MR. STEINER: Hold on just a minute, your Honor.

11 JUDGE STEARLEY: All right.

12 MR. STEINER: Thank you, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. STEINER:

15 Q Mr. Hack, I believe you were asked questions
16 about the process that was used to file the tariffs in
17 question. Do you recall that?

18 A Yes.

19 Q Was this a lengthy process?

20 A As I recall it, it took about three months to --
21 from beginning to end.

22 Q How many hours do you think it took?

23 A I believe that the MGE personnel spend at least
24 200 hours pulling the data, looking at facilities,
25 generating facilities maps, comparing the orders of the

1 facilities maps, deriving the tariff sheets, working with
2 Mr. McDuffey to explain all the materials, at least once
3 at our offices, perhaps twice.

4 Q And I believe you were asked questions about
5 MGE's reliance after the tariff was approved. What people
6 in the MGE organization would rely on these tariffs after
7 they were approved?

8 A Well, I -- everybody. But, primarily, the folks
9 out in the field who are -- whose responsibility it is to
10 site the facilities and, you know, work with developers to
11 ascertain whether we, you know, can meet their service
12 needs and if -- if we have to ask for additional service
13 territory, then we typically tell them it's going to take
14 a little while.

15 And we have on occasion, you know, had to expand
16 our service territory, usually in southwest Missouri, but
17 I think we have another application pending in Carrollton,
18 Missouri, right now.

19 Q Mr. Keevil was asking about the approval
20 process. Did MGE copy the parties in the Case GR-96-285
21 of this tariff filing? Do you know?

22 A I honestly don't know. There were a number of
23 parties to that case, including Utilicorp, Missouri Public
24 Service, MO-Pub, then became Aquila.

25 Q And that was the case -- one of the cases that

1 ordered MGE and Staff to compile this tariff list; is that
2 correct?

3 A Yes.

4 Q And when you compiled the tariff that was
5 ordered by the Commission, you worked with Staff, and you
6 looked at more than just the CCN and merger orders; is
7 that correct?

8 A Yes. Yes. We looked at -- you know, the first
9 thing we had to do was find the orders for any number of
10 different companies. Once we pulled all the orders
11 together that we thought we could find, you know, we
12 mapped those out.

13 Then we -- for a sanity check, we compared what
14 -- what was the product of the orders, which in many cases
15 was pretty vague, you know, that the City of X and
16 environments. Two, then existing facilities maps which
17 would show where our facilities were relative to the areas
18 we could identify by the orders.

19 And it's with that combination of work products
20 that we -- that we came up with the -- with the -- the
21 township, range and section numbers and the tariff sheet.

22 MR. STEINER: I don't have anything further.

23 Thank you.

24 JUDGE STEARLEY: All right. Thank you,
25 Mr. Steiner. Mr. Hack, I'd like to thank you for your

1 testimony today. You may step down. But you will not be
2 finally excused just in case the Commissioners might
3 decide they should ask some additional questions for you
4 later.

5 MR. HACK: I will be heading to a parent/teacher
6 conference. I can leave my cell number or something like
7 that. But if I need to come back tomorrow, I can do so.

8 JUDGE STEARLEY: That is fine. And if anything
9 needs to be done tomorrow, we -- we can always set up a
10 phone in here and take your testimony by phone.

11 MR. HACK: Okay. Thank you very much.

12 JUDGE STEARLEY: Thank you, Mr. Hack. At this
13 -- this time, it looks like it might be a good time for us
14 to break for lunch. And why don't we all be back here at,
15 let's say, about 20 or quarter till two? And we'll resume
16 with Mr. Noack, I believe, MGE's second witness.

17 (Break in proceedings.)

18 JUDGE STEARLEY: All right. We are back on the
19 record. And we are picking up with MGE's witness, Mr.
20 Noack. Mr. Noack, if you'd please raise your right hand.

21 MICHAEL NOACK,
22 being first duly sworn to testify the truth, the whole
23 truth, and nothing but the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. STEINER:

26

1 JUDGE STEARLEY: Have a seat. Mr. Steiner, you
2 may proceed.

3 MR. STEINER: Thanks.

4 Q (By Mr. Steiner) Please state your name and
5 where you work for the record.

6 A Michael Noack, N-o-a-c-k. I'm the Director of
7 Pricing and Regulatory Affairs for Missouri Gas Energy in
8 Kansas City, Missouri.

9 Q Did you cause to be prepared your direct,
10 rebuttal and surrebuttal testimony that has been marked as
11 MGE 1, MGE 2 and MGE 3 respectively?

12 A Yes, I did.

13 Q Do you have any changes or corrections to that
14 testimony?

15 A I have two minor changes. Both are in MGE 3, my
16 surrebuttal testimony. The first change is on the very
17 first page were in the title that says rebuttal testimony,
18 and it should say surrebuttal testimony. And the second
19 change is on page 4 on line 10. The year 1998 should be
20 1997. That's all.

21 Q With those changes, is the information contained
22 in MGE Exhibit 1, MGE Exhibit 2 and MGE Exhibit 3 true and
23 correct to the best of your knowledge, information and
24 belief?

25 A Yes, it is.

1 MR. STEINER: I would tender the witness for
2 cross-examination. And I would ask that MGE 1, MGE 2 and
3 MGE 3 be admitted into the record.

4 JUDGE STEARLEY: All right. Are there any
5 objections to Exhibit MGE 1 through 3? Hearing none, they
6 shall be received and admitted into the record.

7 (MGE Exhibit Nos. 1, 2 and 3 were offered and
8 admitted into evidence.)

9 JUDGE STEARLY: And we will begin
10 cross-examination of the Staff. Mr. Berlin.

11 CROSS-EXAMINATION

12 BY MR. BERLIN:

13 Q Good afternoon, Mr. Noack. Good to see you
14 again.

15 A Good afternoon, Mr. Berlin.

16 Q Now, I know that you have been working for some
17 time for MGE, and you appear at the Commission regularly
18 in many types of cases. So this afternoon I have a few
19 questions regarding your role and your responsibilities at
20 MGE.

21 And if you would, please state again, how long
22 have you been employed by MGE?

23 A Since July of 2000 -- the year 2000, so a little
24 over seven years.

25 Q And could you please restate your current job

1 title?

2 A Director of Pricing & Regulatory Affairs.

3 Q So have you been in that position since July of
4 2000?

5 A I was -- I came to work for MGE as a Manager of
6 Pricing & Regulatory Affairs. And then probably three
7 years ago, I became Director.

8 Q You've been involved in Pricing & Regulatory
9 Affairs since you joined the company?

10 A I've been doing essentially the same job the
11 whole time, just change in title.

12 Q Okay. And if you could, please explain a little
13 bit more about your responsibilities and duties in your
14 current position.

15 A Well, I'm primarily a liaison between the
16 company and the Commission. When a rate case needs to be
17 filed, it's my responsibility to prepare that filing and
18 to prepare direct testimony and exhibits, prepare data
19 requests for the other parties, if necessary, as it
20 relates to things like the PGAs.

21 Any case where -- where data requests are
22 involved, I am usually the point person where data
23 requests will be sent to me. And I will get them
24 responded to, find the right person to respond to. If a
25 change in a tariff sheet needs to be made, I'm generally

1 the one that would file that with the Commission.

2 Q Okay. And is Mr. Hack your supervisor?

3 A Mr. Hack is -- being the COO of the company now,
4 yes, he would be. I don't have -- no one took his spot
5 when he left being Vice President of -- of Regulatory
6 Affairs.

7 Q So how long has Mr. Hack been your supervisor?

8 A I've worked for Mr. Hack since I went to work at
9 MGE in -- in 2000.

10 Q And so you do what Mr. Hack tells you to do?

11 A Essentially. I mean, I -- I do the things I
12 need to do and -- and not always with -- you know, I don't
13 always have to report to Mr. Hack, but yes.

14 Q Okay.

15 A If he asks me to do something, I do it. Yes.

16 Q Okay. Have you filed any CCN or Certificate for
17 Convenience & Necessity applications with the Commission?

18 A I've probably filed in the neighborhood of eight
19 to ten, probably, yes.

20 Q And so aside from this case -- and I think you
21 may have addressed it earlier -- or someone did. Do you
22 have any other CCN cases pending before the Commission?

23 A We have one that is -- has been filed in Carroll
24 County that is pending. But what's going to happen with
25 that case is kind of up in the air right now.

1 Q So given your experience, particularly at MGE in
2 gas utility regulation since 2000, it would be safe to say
3 that you were well-versed in the CCN application process?

4 A I know what the requirements generally are, that
5 need to be met to file a CCN application, yes.

6 Q And that -- and LDC in Missouri is required by
7 statute to file an application for CCN to serve new
8 territory. Would you agree with that?

9 A If we aren't already certified to -- in that
10 section, yes.

11 Q And for the LDC to serve a new territory, the
12 Commission must grant that LDC authority to serve, and it
13 does so in the form of a CCN by way of order. Would you
14 agree with that?

15 A Yes.

16 Q And with regard to this case, did you
17 participate in the preparation of filing of MGE's
18 application?

19 A This particular application, GA-2007-0289?

20 Q That's -- yes.

21 A Yes, I did.

22 Q And did you do this at Mr. Hack's direction?

23 A No. I did this -- it was probably more at the
24 direction of our -- our plant people that we're working --
25 delaying the distribution system around Seven Bridges

1 area.

2 They came to me and said, It looks like the next
3 phase is getting ready to go, and we need to be certified.

4 Q And in MGE's application, we understand MGE is
5 seeking a CCN for Sections 13 and 14?

6 A Correct.

7 Q And can you identify in looking at Section 13
8 and 14 on what is marked Staff Exhibit 2 the section map?

9 A I see them. They're just to the right of the
10 little box that has MGE Leavenworth supply line in it,
11 just to the right of it.

12 Q Okay. And if MGE is granted a CCN, area CCN,
13 for 13 and 14, is it -- is it true that no other gas
14 utility can serve in those sections?

15 A I believe so. Yes.

16 Q And if -- if the Commission were to grant you a
17 CCN for Sections 13 and 14, then MGE would be the
18 exclusive gas supplier to those sections?

19 A I would assume so. Yes.

20 MR. KEEVIL: Your Honor, I just have a question.
21 I hate to interrupt Mr. Berlin and Mr. Noack. Did -- did
22 I hear Mr. Noack to say Section 13 and 14 were to the
23 right of the box that says MGE Leavenworth supply line?

24 JUDGE STEARLEY: I believe that was his
25 testimony.

1 A You need to be looking at the same -- same
2 picture that I'm looking at, Mr. Keevil. There was --

3 Q (By Mr. Berlin) I recognize that you're looking
4 at the blow-up version of Staff Exhibit 2. So I'll --
5 I'll use my laser pointer here to point to Section 14. Do
6 you see that?

7 A Oh, I'm sorry. Yes. I was looking at the other
8 13 and 14. Excuse me.

9 Q Okay. And then 13 right next to it?

10 A Yes.

11 Q All right. And those are in --

12 A To the left of the -- of the box it says.

13 Q Yes. To the left of the large, you know, shaded
14 area that represents MGE's certificated area?

15 A Yes.

16 Q All right. And for the record, I would note
17 that Mr. Noack is referring to Sections 13 and 14 in
18 Township 52 North, Range 35 West.

19 And so, Mr. Noack, if -- if these two sections,
20 Sections 13 and 14 are granted to MGE, would it be
21 appropriate for MGE to add those sections to MGE's tariff
22 sheet?

23 A Yes.

24 Q And, conversely, it would not be appropriate to
25 add Sections 13 and 14 to MGE's tariff without a CCN from

1 this Commission?

2 A That's correct.

3 Q Now, for ease of understanding, when I refer to
4 Empire in some of the questions I have, will you accept
5 that I'm also referring to Empire's predecessor companies?

6 A Yes.

7 Q With regard to service areas that are near and
8 around Platte City, were you ever involved in discussions
9 with Empire or its predecessor, Aquila?

10 A No.

11 Q Were you involved in any communications with
12 Empire regarding service area near or around Platte City?

13 A Not until this -- this case.

14 Q Okay. Now, as part of your preparation for the
15 filing of this application case, did -- did you or anyone
16 working for you review CCN orders for service areas around
17 Platte City?

18 A No. It had already been reviewed for that 1997
19 filing.

20 Q When did you learn that MGE had no CCN for the
21 adjacent Sections 11 and 12, that is the Sections 11 and
22 12 that involve the Seven Bridges subdivision?

23 A Probably about the time -- I can't remember
24 exactly who was around, if it was around the time that
25 first letter in October of 2006 went to Mr. Hack or if it

1 was after the filing -- after I was doing the filing,
2 actually making the filing in -- in January of '07. But
3 it was within that two to three-month period.

4 MR. BERLIN: All right. Thank you, Mr. Noack.
5 I have no further questions.

6 JUDGE STEARLEY: Thank you, Mr. Berlin.
7 Cross-examination by the Office of Public Counsel,
8 Mr. Poston.

9 MR. POSTON: Thank you.

10 CROSS-EXAMINATION

11 BY MR. POSTON:

12 Q Good afternoon. Can you tell me why MGE in 1997
13 listed the areas where it was not certificated when the
14 Commission was specifically requesting only description of
15 MGE certificate -- certificated service area? Why did
16 this happen?

17 A Repeat the question one more time, Mr. Poston.

18 Q In 1997 when -- when MGE assembled the
19 description of its service areas, why did it list areas
20 where it was not certificated? Why did that happen?

21 A Well, being I wasn't there in 1997 my -- my
22 understanding of the process was that --

23 MR. KEEVIL: Judge, if I could cut him off right
24 there. He wasn't there in '97, so that's pretty much the
25 end of the answer, it seems to me.

1 JUDGE STEARLEY: He seems to have answered the
2 question, from my perspective as well --

3 MR. POSTON: That's fine.

4 JUDGE STEARLEY: -- without speculating.

5 MR. POSTON: That's fine. Thank you.

6 Q (By Mr. Poston) When did you personally first
7 become aware of the discrepancy between the service areas
8 listed in MGE's tariff and the service areas listed in the
9 Commission's CCN orders?

10 A Again, I think -- as I told Mr. Berlin, it was
11 somewhere in the two or three-month period from October of
12 '06 into January of -- of '07 when -- when I put the
13 application together.

14 Q And how many of the customers that have been
15 connected in the Seven Bridges subdivision were added
16 after this time?

17 MR. STEINER: I'm sorry. Interject. What time
18 are you talking about? The --

19 Q (By Mr. Poston) After you first learned that
20 there was this discrepancy.

21 A I don't know when the actual customers were -- I
22 don't know the dates of the connections of -- of these
23 customers, any of them. The -- the distribution system
24 was completed in June of '06. And as -- as the houses
25 were built, they were connected.

1 Q So are customers still being connected today?

2 A We aren't building any more infrastructure. But
3 within the distribution system where we -- where we are,
4 there probably are service lines being added, yes.

5 Q Okay. And in this case, MGE is seeking a CCN to
6 serve Sections 13 and 14 that have been discussed,
7 correct?

8 A Correct. I mean, 13 would be both Seven
9 Bridges. But, also, coming from the east, it's the
10 subdivision is Oakview -- or the Lakes at Oakmont, Phase 8
11 is going to extend into Section 13, I believe.

12 And so we need certification there to -- to
13 complete that phase.

14 Q And why haven't you simply filed to amend your
15 tariffs to include these sections rather than file a CCN
16 -- or CCN?

17 A Well, because the CCN is the way that it gets
18 done.

19 MR. POSTON: Thank you. That's all.

20 JUDGE STEARLEY: Thank you Mr. Poston.

21 Cross-examination from Empire. Mr. Keevil?

22 MR. KEEVIL: I have no questions, Judge.

23 JUDGE STEARLEY: All right. Thank you,

24 Mr. Keevil. I have no questions either, so I don't

25 imagine there will be any recross from questions from the

1 Bench. Redirect, MGE. Mr. Steiner.

2 MR. STEINER: Give me a moment, please. I don't
3 have any redirect. Thank you.

4 JUDGE STEARLEY: All right. Thank you.
5 Mr. Noack, thank you for your testimony. You may step
6 down. But at this time, you will not be finally excused
7 just in case the Commissioners should have some questions
8 for you at a later time.

9 MR. NOACK: Thank you, your Honor.

10 JUDGE STEARLEY: Mr. Keevil, I believe that
11 brings us to your witnesses.

12 MR. KEEVIL: Yes, your Honor. I would call
13 Mr. Dan Klein.

14 JUDGE STEARLEY: Mr. Klein, if you would
15 please raise your right hand.

16 DAN KLEIN,
17 being first duly sworn to testify the truth, the whole
18 truth, and nothing but the truth, testified as follows:

19 DIRECT EXAMINATION

20 BY MR KEEVIL:

21 JUDGE STEARLEY: Thank you. You may be seated.
22 And, Mr. Keevil, you may proceed.

23 MR. KEEVIL: Thank you, Judge.

24 Q (By Mr. Keevil) Would you please state your
25 name for the record, sir?

1 A Daniel Klein.

2 Q By whom are you employed and in what capacity?

3 A I'm Director of Engineering for the Empire
4 District Gas Company.

5 Q Are you the same Dan Klein who has caused to be
6 filed in this case the pre-filed direct testimony of Dan
7 Klein?

8 A Yes, I am.

9 Q I believe that has been marked as Empire
10 Exhibit 1. Is that your understanding?

11 A Yes, it is.

12 Q Do you have any changes or corrections you need
13 to make to that testimony at this time?

14 A No, I do not.

15 Q If I were to ask you the questions set forth in
16 the -- Empire Exhibit 1, would your answers today be the
17 same as set forth therein?

18 A Yes, they would.

19 Q And are the answers true and correct to the best
20 of your knowledge, information and belief?

21 A Yes, they are.

22 MR. KEEVIL: Judge, I would offer Empire Exhibit
23 1 into the record and tender Mr. Klein for
24 cross-examination.

25 JUDGE STEARLEY: All right. Are there any

1 objections to the admission of Empire Exhibit 1? Hearing
2 none, it shall be received and admitted into evidence.

3 (EDGC Exhibit No. 1 was offered and admitted
4 into evidence.)

5 JUDGE STEARLEY: We shall start with
6 cross-examination with Staff. Mr. Berlin?

7 CROSS-EXAMINATION

8 BY MR. BERLIN:

9 Q Good afternoon, Mr. Klein.

10 A Good afternoon.

11 Q I only have a few questions, I believe. You are
12 the Director of Engineering?

13 A That's correct.

14 Q And have you been present from the very
15 beginning of this hearing today?

16 A Yes, I have.

17 Q And you may have heard many questions with
18 regard to how such a -- if -- if Em -- if Empire is
19 granted its CCN for the areas that are currently being
20 served by MGE, are you able to address any questions with
21 regard to that?

22 MR. KEEVIL: Judge, I'm going to -- I hate to do
23 this to Mr. Berlin. I'm going to have to object because
24 Empire already has a CCN for two of the sections currently
25 being served by MGE and seeking a CCN for additional

1 sections. I'm not sure which sections Mr. Berlin is
2 talking to. And he only referred there in his question to
3 sections in which Empire is seeking a CCN, I believe.

4 JUDGE STEARLEY: Mr. Berlin, would you like to
5 rephrase?

6 MR. BERLIN: Well, yes. I'll -- I'll rephrase
7 that.

8 JUDGE STEARLEY: Okay.

9 Q (By Mr. Berlin) My question goes to the
10 particular sections that Empire has a CCN granted by the
11 Commission and those sections where MGE already has
12 facilities in place and providing service to customers.

13 Is the provision of service within your
14 certificated area, the engineering issues that -- that are
15 involved in that, is that something that is part of your
16 job to look at?

17 A Yes, it is.

18 Q Are you familiar with the MGE facilities that
19 have been built in Empire's sections? And I believe those
20 are Empire's Sections 10, 11 -- I'll have to look at --
21 look at the map.

22 Let me rephrase. Are you familiar at all with
23 MGE's facilities that it has built in Empire's
24 certificated Sections 10, 11 and 12, which, for the
25 record, are in Township 52 North, Range 35 West?

1 A I am somewhat familiar with them. Yes.

2 Q Could those facilities be used by Empire if
3 Empire gets what is asked for from the Commission, which
4 is that MGE be directed to abandon or sell those
5 facilities to Empire?

6 A Yes. We could use specifically the facilities
7 in the Seven Bridges subdivision very easily.

8 Q How easily could that happen? Could you kind of
9 walk me through how that could take place?

10 A Sure. Empire District Gas Company currently
11 serves a subdivision just east of Route N, which basically
12 splits Section 12 from north to south. And our facilities
13 are currently on the east side of Route N serving that
14 Copper Ridge subdivision that's been mentioned earlier.

15 Missouri Gas Energy's facilities that serve the
16 Seven Bridges subdivision extend north along Route N to a
17 point basically across the road, across Route N from the
18 Copper Ridge subdivision. So, practically speaking, all
19 we'd have to do is cross Route N with an extension of our
20 existing polyethylene main and tie it into MGE's existing
21 polyethylene main, and then we could initiate service
22 through their -- through those facilities.

23 Q And can you address what such a transition might
24 look like for a customer in Seven Bridges that is already
25 receiving gas from MGE?

1 A Sure. Once we notify the customers of the --
2 the impending transition, really all that we would have to
3 do is exchange meters at the home.

4 And that particular process would basically
5 consist of turning the customer off, removing the existing
6 MGE meter, placing our meter and then relighting the
7 service, which, typically would take less than 30 minutes.

8 MR. BERLIN: Thank you, Mr. Klein. I have no
9 further questions.

10 JUDGE STEARLEY: Thank you, Mr. Berlin.
11 Cross-examination, Office of Public Counsel?

12 MR. POSTON: No, thank you.

13 JUDGE STEARLEY: MGE?

14 MR. STEINER: Yes.

15 CROSS-EXAMINATION

16 BY MR. STEINER:

17 Q Good afternoon, Mr. Klein.

18 A Good afternoon.

19 MR. STEINER: May I approach, your Honor?

20 JUDGE STEARLEY: Yes, you may.

21 Q (By Mr. Steiner) Mr. Klein, I'm handing you a
22 document marked as the Seventh Set of Data Requests to
23 Empire. If you'd look at Question 29 -- do you see that?

24 A Yes, I do.

25 Q Did you prepare the response to that question?

1 A Yes, I did.

2 Q Could you read the question and read the last
3 three lines of the response?

4 A The question is, Please provide the number of
5 customers (all classes) that EDG has in each of the
6 following sections. 1, 2, 3, 10, 11 and 12 in Township 52
7 North, Range 35 West and Sections 4, 5 and 6 in Township
8 52 North, Range 34 West in Platte County, Missouri.

9 And the last three lines of the response are, In
10 Section 12, Township 52 North, Range 35 West, three
11 residential, no commercial. Sections 2, 3, 10 -- pardon
12 me -- 11. In Township 52 North Range 35 West, we have
13 zero customers. Sections 4, 5 and Township 52 North,
14 Range 34 West, we have zero customers.

15 Q Thanks. Now, Mr. Berlin was talking to you
16 about installing facilities to serve Seven Bridges. And
17 you answered on the assumption that you can use MGE's
18 facilities. Do you recall that?

19 A Yes.

20 Q I want to take you through if you were not able
21 to use MGE facilities. How far would Empire have to
22 install facilities to serve Seven Bridges?

23 A The -- would need to extend our main
24 approximately a half a mile to the entrance of the Seven
25 Bridges subdivision and then follow the utilities within

1 the subdivision to serve the -- serve the customers.

2 Q So the facility is a main? Is that -- is that
3 what you said?

4 A The main would extend down from our existing
5 main to the entrance of the subdivision. Yes.

6 Q Would Empire have to cause -- cross the
7 Leavenworth supply line to do that?

8 A Yes, we would.

9 Q I'm going to refer you to a map. Do you
10 recognize that document?

11 A Yes, I do.

12 Q Did you prepare that document?

13 A It was at my direction. Yes.

14 Q Was this in response to a MGE data request?

15 A It was in response to a data request. I don't
16 recall if it was MGE's or Staff's. Yes.

17 Q Okay. So what you just told me is -- looking at
18 Section 12 on this document --

19 A Yes.

20 Q -- is that where you would begin to install main
21 to go down to Seven Bridges? Is that --

22 A That's correct. The southern -- it's virtually
23 the center of Section 12.

24 Q And would you have to retain right-of-way to
25 install that main?

1 A We would -- no, we wouldn't have to typically
2 acquire right-of-way. We would use the county utility
3 easement.

4 Q And how much would this installation of main
5 facilities cost to reach Seven Bridges?

6 A I would have to do a cost estimate to determine
7 that.

8 Q Could you do that?

9 A I could.

10 Q Can you do it now? Can you give me a ballpark?

11 A Typically, installing a 4-inch main, there's a
12 -- there's a number of factors, but it would fall within a
13 range of ten to \$15 of lineal foot to install a main to
14 serve that area.

15 Q And then lineal foot, you'd have a half mile of
16 lineal foot -- feet; is that correct?

17 A That's correct.

18 Q So how many lineal feet are in a half mile?

19 A 2640, I believe.

20 Q That's good. So if Empire is not able to use
21 MGE's facilities, the cost of installing main is a cost
22 that Empire would incur to provide service to Seven
23 Bridges; is that correct?

24 A Could you repeat that question?

25 Q If Empire is not able to use MGE's facilities,

1 the cost that you just described would be a cost that
2 Empire would incur in order to provide service to Seven
3 Bridges; is that correct?

4 A The -- if Empire was not allowed to use the
5 existing --

6 Q That's correct.

7 A -- Missouri Gas Energy facilities, yes, we would
8 have to install new facilities.

9 Q Okay. Then if -- once you get to Southern
10 Bridges subdivision, assuming you are not able to use
11 MGE's facilities in the subdivision, what would you have
12 to install there?

13 A We would have to install the mains and services
14 to serve those customers.

15 Q Do you know how much main and services you would
16 have to install?

17 A Based on the density or -- of the potential
18 customers or, basically, the layout of the subdivision,
19 yes, I'd have to look back at my notes. But we have run
20 some of those numbers.

21 Q Can you look back at your notes?

22 A Sure. In my direct testimony, I -- I do mention
23 that for every what we would anticipate hundred new lots
24 in that subdivision, approximately 9,500 feet of main
25 would be required to serve those customers.

1 Q But what about serving established homes? Would
2 that same figure apply for every 100 established homes?

3 A Yes. Plus the cost of the service.

4 Q And can you give me an estimate of how much that
5 would cost?

6 A It's -- it's -- it was in our application in my
7 direct testimony.

8 Q What is that?

9 A Generally, our service installation is about
10 \$550 per customer.

11 Q And then what would it cost for main?

12 A Approximately -- to serve the first 100 homes,
13 around \$78,000.

14 Q And then is it an additional 78,000 for the next
15 100 homes?

16 A No. It would be about \$44,000.

17 Q What about the next 100 homes?

18 A Approximately \$44,000.

19 Q What about the next 100 homes?

20 A It would be the same.

21 Q All the way till the subdivision is filled up;
22 is that correct?

23 A On average, yes.

24 Q Now, again, we're assuming that you're not able
25 to use MGE facilities. Are there any other facilities

1 that you would have to build in order to serve Seven
2 Bridges besides the ones you just mentioned?

3 A Well, as the -- as the subdivision develops, we
4 would evaluate the -- our infrastructure and make any
5 adjustments necessary to serve it, yes.

6 Q So what additional facilities would you be
7 talking about?

8 A At this point, I don't know. It would depend on
9 how the subdivision was built out.

10 Q Is it -- what are some potential additional
11 facilities you would have to build? What category of
12 facilities are we talking about?

13 A Typically, mains.

14 Q Mains?

15 A Additional mains. Yes.

16 Q I think you talked in your testimony somewhere
17 about looping facilities. Do you recall that?

18 A I do. Yes.

19 Q Is that something that you would have to build
20 in order to serve Seven Bridges?

21 A Not initially. But long-term, potentially.

22 Q Why do you need to -- why would you need to
23 build -- possibly build looping facilities?

24 A To provide a secondary flow into the subdiviison
25 for its -- it's typically for consistency of service and

1 to support the -- the subdivision. It's typically a
2 safety issue. We want to make sure we have a -- a second
3 feed into most areas.

4 Q And so on that map that you're looking at, where
5 would those looping facilities come from, if they had to
6 be built?

7 A Typically, from the north.

8 Q Can you narrow it down to any sections on that
9 map?

10 A I would just say in the area of the -- of the
11 north -- northern portions of Section 11 and possibly
12 Section 12.

13 Q And what are your cost estimates for looping
14 facilities?

15 A Typically, the same as -- as any other main
16 installation.

17 Q And what was that again? I can't remember.

18 A Around ten to \$15 a foot.

19 Q If you installed -- if you had to install
20 facilities to use Seven Bridges and you were not able to
21 use MGE facilities, would you need to dig up streets to do
22 that?

23 A No. Typically, not streets.

24 Q Would you put the distribution facilities
25 underneath the street?

1 A Yes.

2 Q Is the cost of putting facilities underneath the
3 street built into the cost estimates of main and service
4 that you gave me earlier?

5 A Yes. In that average cost.

6 Q On page 6 of your testimony --

7 MR. STEINER: Before I do that, your Honor, I
8 would like to mark the map that Mr. Klein has been
9 referring to as MGE 4 and introduce it into the record.

10 JUDGE STEARLEY: Very well. It is so marked.
11 And are there any objections to admission into the record
12 of Exhibit MGE 4? Hearing none, it shall be received and
13 admitted into evidence.

14 (MGE Exhibit No. 4 was offered and admitted into
15 evidence.)

16 Q (By Mr. Steiner) We were on page 6, and I
17 wanted to ask you about your statement that on Line 4 to
18 5, MGE has refused to give -- given us -- give us the
19 information associated with these customers. Do you see
20 that?

21 A I do.

22 Q Now, didn't MGE indicate that its customer
23 information was highly confidential and that Empire could
24 review it in its offices?

25 A I'm not sure.

1 MR. KEEVIL: It's not the same thing.

2 MR. STEINER: Well, let me ask him, Jeff.

3 Q (By Mr. Steiner) What information were you
4 looking for in this question?

5 A Typically, their -- their customer count and
6 their cost of investment for the -- the installation of
7 the facilities.

8 Q Can you provide me where you asked MGE for
9 customer count?

10 A I don't have it in front of me. But I believe
11 we did that with a data request during the course of this
12 -- this case.

13 Q Well, I have them all here. Let's go through
14 them. I'm handing you a data request we -- MGE received.
15 I believe this is Nos. 1 through 6. Those are just the
16 questions, not the responses.

17 A I believe it would have fallen under this Data
18 Request No. 6.

19 Q Do you want to look at the others, 7 through 15?

20 A Data Request No. 15 --

21 Q 15?

22 A -- supports it as well. Yes. We were looking
23 for the net book value of the facilities owned by MGE in
24 those sections. And the information provided to us is,
25 MGE has objected. That information has not been computed

1 and is not readily available.

2 Q So does that Data Request 15 ask for customer
3 counts?

4 MR. KEEVIL: Your Honor, I would object to that
5 question. I believe in response to an earlier question,
6 Mr. Klein indicated that investments in facilities was one
7 of the items that he sought -- Empire sought. And,
8 clearly, that data request response relates to investment
9 in facilities of the sections in question.

10 MR. STEINER: Your Honor, the -- his response
11 says, MGE has refused give us the information associated
12 with these customers. I don't hear anything about
13 customer counts. I hear book value of facilities.

14 MR. KEEVIL: Well, if you look at the question,
15 the question says, Does this level of investment include
16 the investment? That's what the data response request he
17 just referred -- the witness referred to refers to.

18 MR. STEINER: But the -- the question says
19 necessary to serve the customers. And then he says, Has
20 not given this information associated with these
21 customers.

22 JUDGE STEARLEY: I'm going to overrule the
23 objection. You can answer the question, Mr. Klein. If
24 you'd like Mr. Steiner to repeat it, he may do so, or we
25 can read it back from the court reporter.

1 MR. KLEIN: Okay. I'd like it read back,
2 please.

3 Q (By Mr. Steiner) I'm just -- my question is,
4 have we -- has MGE not provided to you the customer
5 information you need to determine the level of investment
6 necessary to serve the customers currently in Section 12,
7 13 and 14?

8 A I don't think we ever asked for the customer
9 counts specifically. We asked for the level of
10 investment.

11 Q Okay. And that level of investment question is
12 Question 15, I think you said?

13 A Yes, sir.

14 Q Okay.

15 JUDGE STEARLEY: Do you have additional cross?

16 MR. STEINER: I'm sorry. I was just getting
17 organized. I do. I've lost my questions.

18 Q (By Mr. Steiner) Mr. Klein, do you know where
19 the Seven Bridges development is located?

20 A Yes, I do.

21 Q Have you been there?

22 A Yes, I have.

23 Q Is the development close to a highway?

24 A It is on the west side of State Route N.

25 Q Can you see the development from the road?

1 A From Route N, yes.

2 Q Is there a large sign advertising its location?

3 A There is a sign at the entrance.

4 Q When did you first become aware of the Seven

5 Bridges subdivision?

6 A A month or two after I was hired by Empire

7 District Gas Company.

8 Q And when was that date?

9 A June of 2006.

10 Q And before that date of hiring, did you work for

11 Aquila?

12 A No, I did not.

13 Q Where did you work?

14 A Black & Veatch Engineering. I should say

15 immediately. I had previously worked for Aquila.

16 Q Right. I was going to get to that. So you do

17 have -- you have worked at Empire -- excuse me. You have

18 worked at Aquila in the past; is that correct?

19 A Yes, sir.

20 Q What -- were any of your jobs similar to what

21 you do today at Empire?

22 A yes.

23 Q What was that position?

24 A Throughout my career at Aquila, I served in

25 several engineering and engineering management roles

1 between -- I guess it was January of 1995 through July of
2 2001.

3 Q And then in 2001, you went to work at Black &
4 Veatch; is that right?

5 A I was self-employed for a period of time. And
6 then I actually went back to Aquila for a year and served
7 in the Electric Regulatory Department.

8 Q What year was that?

9 A That was June of 2004 through June of 2005.

10 Q Then you were hired by Empire; is that correct?

11 A No. Then I went to work for Black & Veatch for
12 one year.

13 Q Forgot about that.

14 A And I went to work for Empire in June of '06.

15 Q Okay. Let's focus on your time at Aquila when
16 you were -- from January of '95 to July of 2001.

17 A Yes.

18 Q I believe you said you had engineering
19 responsibilities during that time?

20 A That's correct.

21 Q Did you work on getting gas provided to new
22 developments?

23 A Yes.

24 Q What other things would you have worked on
25 during that time?

1 A The engineering and design of a series of new
2 pipeline installations in Missouri, Kansas and Colorado.

3 Q Okay. I want to focus on your work in that
4 period in the Missouri -- in the state of Missouri.
5 During that time, did you work on any new projects -- or
6 on any projects involving new customers in Sections 10,
7 11, 12 of 52 North, 35 West?

8 A No, I did not.

9 Q During that time at Aquila, were you ever aware
10 of Aquila refusing to provide service to a -- new service
11 pursuant to a customer request?

12 A No.

13 Q Did you ever design facilities to serve the
14 Seven Bridges subdivision?

15 A In our application for the added service
16 territory in Sections 13, 14, 15, 22, 23 and 24 of 52
17 North, 35 --

18 Q You're talking about this case?

19 A Yes. West. Yes.

20 Q Did you do -- did you to similar work any time
21 previous to this case?

22 A No.

23 Q Did anyone ever talk to you about what it would
24 take to serve Seven Bridges subdivision during that time
25 period between July of '95 and July 2001?

1 A No.

2 Q Did you -- did anyone ever talk to you about
3 what it would take to serve any developments in Sections
4 13 and 14 of 52 North, 35 West during that '95 to 2001
5 time frame?

6 A Not before 2001. No.

7 Q And what about after 2001?

8 A Yes.

9 Q Would that be the work you did on behalf of the
10 application that we're here today about?

11 A Yes.

12 Q Any other -- would you have been involved in any
13 other work to serve subdivisions in 13 and 14?

14 A No. Not specifically.

15 Q If -- either in Aquila or in Empire, if -- if
16 the company is aware that a development is on the horizon,
17 are you aware of how the company is made aware of such
18 things?

19 A Typically, a builder will contact the -- the gas
20 company requesting service.

21 Q Who would they contact?

22 MR. KEEVIL: What -- I object. What company are
23 we talking about?

24 MR. STEINER: I said both Aquila and Empire.

25 Q (By Mr. Steiner) If there are differences,

1 please explain those in your answer.

2 A Could you repeat the question, the initial
3 question?

4 Q Well, you said a developer would contact the
5 company if they had a proposed new development.

6 A Uh-huh.

7 Q Who at -- let's start with Aquila. Who at
8 Aquila would they have contacted when you were there?

9 A Typically, the area supervisor.

10 Q And who would that have been during your time
11 there?

12 A Which time frame are you referring to?

13 Q '95 to 2001.

14 A That would depend specifically on the area,
15 where the -- the new facility was going to be located.

16 Q I'm just talking about -- I'm just talking about
17 Missouri.

18 A That would, again, depend on the location. We
19 serve eight different service center areas, so it would be
20 the manager in charge of that particular service center
21 area.

22 Q Is there a service center area associated with
23 this Platte County area that we're speaking about today?

24 A Yes.

25 Q Who was that person?

1 A Which time frame?

2 Q '95 to 2001.

3 A I don't know exactly who that would have been.

4 Q Was there more than one service manager?

5 A I don't know.

6 Q Can you recall any of their names?

7 A Quite honestly, no. I didn't work that closely
8 with the service center managers in that area.

9 Q Well, after a service center manager got a
10 request from a developer, how would it make its way to you
11 to design potential facilities?

12 A They would either place us, you know, directly
13 in contact with the developer or gather the information
14 for the proposed subdivisoin layout and potential
15 equipment that's going to be installed in the homes, and
16 we would use that to design our mains and -- and come up
17 with a cost estimate to serve that area.

18 Q And I think you testified that a service manager
19 request never came to you with the developer wanting
20 service in Sections 10, 11, 12 and 13 and 14; is that
21 correct? This is during the '95 to 2001 time frame.

22 A They wouldn't have contacted me directly because
23 I didn't have responsibility for that area in that
24 capacity. Somebody else within Aquila would have.

25 Q Who would that have been?

1 A Steve Teter, typically.

2 Q So they would have -- the request would have
3 went to the service manager from the developer, correct?

4 A Yes.

5 Q Then it would have went to Steve Teter? Is that
6 what you're saying?

7 A Yes, sir. He was the State Engineer for a
8 portion of that period of time.

9 Q Then where would it have gone?

10 A Depending on the level of investment, the upper
11 management of the company would -- would have approved
12 that particular expansion if it was large enough. If it
13 was below certain amounts, the local authority would
14 approve that particular expansion.

15 Q Who would be the upper management during this
16 time frame that would have been made that -- those
17 decisions?

18 A The two -- pre-2001 time frame?

19 Q Yes.

20 A I would have to -- I don't recall right now.

21 Q Okay.

22 A I'd have to research it.

23 Q Okay. Who would have been the local authority?

24 A That, again, I don't -- I don't remember. I
25 would have -- I would have to look that up.

1 Q Okay. So this process that you've just
2 described where a seller would contact a service manager,
3 the service manager would contact Steve Teter. And
4 depending upon the investment, the decision to build the
5 facility would go to either upper management or local
6 authority. Is that present in Empire today?

7 A Yeah. A similar kind of hierarchy does exist
8 within Empire.

9 Q Okay. What would be the differences in Empire?

10 A I -- I don't quite understand the question, I
11 guess.

12 Q Are there any differences -- does the request
13 from a developer go to a service manager at Empire?

14 A Yes. Typically, yes.

15 Q Then does the service manager go to Steve Teter?

16 A No. Well, it -- it may be Steve Teter. It
17 could be me. We're both in management positions within
18 the company. And -- and the service center managers
19 report to Steve Teter.

20 But with regards to developing cost estimates or
21 reviewing cost estimates, both Steve and I have
22 collaborated on -- on approving those or at least
23 reviewing them.

24 Q So you would be the local authority? Or would
25 you be upper management?

1 A Probably a bridge between local authority and
2 upper management. I'm -- I'm a step above the local
3 management.

4 Q Okay. And this process that you described,
5 would it be any different if the developer was building a
6 development outside of Aquila's service territory?

7 A Sure.

8 Q How would it be different?

9 A If -- if we didn't have authority to serve those
10 customers, we would typically try to secure that before we
11 serve that particular customer.

12 Q So the request would go to a service manager?

13 A Yes.

14 Q And then it would go to Steve Teter?

15 A Or me.

16 Q How about back on the Aquila? I was back on the
17 Aquila chain.

18 A Okay.

19 Q I think those went to Steve Teter?

20 A Steve Teter or the -- the engineer responsible
21 for that area. When I mentioned his name, he, for a
22 period of that time, served in that capacity. The
23 engineers review the cost estimates or prepare them.

24 Q Okay. So there could be service requests that
25 go through the service manager, again, we're talking about

1 Aquila, that didn't go to Steve Teter?

2 A Potentially, yes.

3 Q Would they normally go to Steve Teter?

4 A They would normally go to an engineer to be
5 reviewed and -- for accuracy. And the cost or the
6 feasability of the subdivision would then be determined.

7 Q So when did -- when did Steve Teter get
8 involved, then?

9 A During the engineering of -- and design of the
10 facility.

11 Q Okay.

12 A And this is pre-2001.

13 Q That's right. Mr. Klein, the -- your
14 application has also -- is seeking a CCN for Sections 15,
15 22, 23 and 24; is that correct?

16 A Yes.

17 Q Can you tell me what facilities are going to be
18 built in those sections?

19 A Not specifically. No.

20 Q Do you have any requests for service in those
21 sections?

22 A No. Not specifically.

23 MR. STEINER: Thank you for your time.

24 JUDGE STEARLEY: Thank you, Mr. Steiner.

25 Questions from the Bench. Commissioner Clayton?

1 CROSS-EXAMINATION

2 BY COMMISSIONER CLAYTON:

3 Q I have just a few questions, and I'm not sure if
4 you're the right witness.

5 A Sure.

6 Q So bear with me. And I apologize if there's
7 another witness that will address these -- these facts for
8 Empire.

9 Can you tell me how many customers Empire serves
10 in Sections 10, 11 and 12 on this map, in the areas where
11 the Seven Bridges subdivision goes through?

12 A We don't have any customers in Section 10 or 11
13 currently. We have three existing distribution customers
14 in Section 12 and have initiated service to the Copper
15 Ridge subdivision in Section 12. And, currently, there
16 are two homes under construction in that subdivision.

17 Q What's the size of that subdivision? What's the
18 potential for -- how many lots?

19 A There are at lease two phases to it and, I
20 believe, around 70 homes.

21 Q And when were those customers -- when did you
22 get to those customers, get the gas to the door for the
23 three existing customers in 12?

24 A The first customer in Section 12 was served
25 approximately September of 1995.

1 Q Okay. And is that -- the other two customers
2 would have been close to that or --

3 A Shortly after that. Yes, sir.

4 Q So like '90s, not within the last seven years?

5 A It would have been, yes, the late '90s.

6 Q Okay. Okay. And you're not providing any
7 service in the Copper Ridge subdivision at this time?

8 A We have installed the main, but we don't have
9 any active customers there yet.

10 Q Does Copper Ridge fall entirely within Section
11 12?

12 A Yes, sir. It's in the east half of Section 12.

13 COMMISSIONER CLAYTON: I don't think I have any
14 other questions. Thank you.

15 MR. KLEIN: You're welcome.

16 CROSS-EXAMINATION

17 BY JUDGE STEARLEY:

18 Q All right. Mr. Klein, I believe you had read
19 earlier from a data request that Mr. Steiner showed you
20 regard to these customer counts, and you just reiterated
21 part of that testimony to Mr. Clayton.

22 And I -- I would like to ask, for clarity, in
23 going up immediately north of Section 10, Section 3 --
24 it's 52 North, 35 West, I believe -- it was also said that
25 Empire has no customers there at this time --

1 A That's correct.

2 Q -- is that correct? And then jumping over to T
3 52 North to R-34 West, Sections 4 and 5, Empire has no
4 customers there; is that correct?

5 A Yes, sir. That's correct.

6 Q Okay. For Sections 1 of T-52 North, R-35 West,
7 do you know how many customers Empire would have in that
8 section?

9 A Not by memory. I'd have to look at the answer
10 to that data request.

11 Q Okay. Would there be another one of Empire's
12 witnesses here today that could perhaps answer that
13 question?

14 MR. KEEVIL: This --

15 JUDGE STEARLEY: Or perhaps --

16 MR. KEEVIL: Is this the data request?

17 JUDGE STEARLEY: Mr. Keevil is going to supply
18 us with that information.

19 A Yes. When I initially read the data request, I
20 was asked to read the last three lines. The -- the first
21 two lines of our response are in regards to Section 1, and
22 we have 163 residential customers and no commercial. And
23 in Section 6, we have 680 residential customers, excuse
24 me, and 51 commercial customers.

25 Q Okay. And what about Section 2?

1 A We don't have any customers in Section 2
2 presently.

3 Q And is it my understanding from your testimony
4 with regards to sections 15, 22, 23 and 24 of T-52 North,
5 R-35 west that at this time there are no requests for
6 services?

7 A That is correct. Yes.

8 Q Okay. And -- and so Empire is not serving
9 anyone? They have no requests for services in those four
10 sections at this time?

11 A That is correct.

12 Q Okay. Are you aware of any developments going
13 into those four sections at this time?

14 A I'm not aware of any large developments, no.

15 JUDGE STEARLEY: Q All right. Those are all
16 the questions I have. Recross based on questions from the
17 Bench, beginning with Staff. Mr. Berlin?

18 MR. BERLIN: No questions, Judge.

19 JUDGE STEARLEY: Office of Public Counsel.
20 Mr. Poston?

21 MR. POSTON: No questions.

22 JUDGE STEARLEY: MGE. Mr. Steiner?

23 RE CROSS EXAMINATION

24 BY MR. STEINER:

25 Q Mr. Klein, are you aware of any small

1 developments in those sections?

2 A No.

3 MR. STEINER: That's all I have.

4 JUDGE STEARLEY: Redirect, Empire. Mr. Keevil?

5 MR. KEEVIL: Thank you, Judge. Very briefly.

6 REDIRECT EXAMINATION

7 BY MR. KEEVIL:

8 Q Now, Mr. Klein, picking up with the Judge and
9 Mr. Steiner just touched on regarding Sections 15, 22, 23,
10 24 of Township 52 North, Range 35 west, if you haven't
11 received any service requests, why did Empire request
12 those sections in its certificate of application in this
13 case?

14 A We view those sections as the -- the logical
15 progression of the growth of the Platte City area and --
16 and anticipate significant residential growth there and
17 desire to serve those customers.

18 Q Mr. Steiner asked you at one point whether you
19 would have to -- if you were not -- if Empire was not able
20 to use the existing MGE facilities in Section 12 in order
21 to serve the Seven Bridges subdivision whether Empire
22 would have to dig up the streets to serve Seven Bridges.
23 And I believe your answer was no; is that correct?

24 A Yes. That's correct.

25 Q But I believe you also indicated that the lines

1 would be put under the street, correct?

2 A Yes, sir.

3 Q Okay. Now, I think I know the answer to this.

4 But just for the record and the laymen among us that will
5 read this, can you explain to me how you're going to put
6 the lines under the streets without digging up the
7 streets?

8 A We would employ one of a number of different
9 called trenchless technologies to basically bore and
10 install the facilities under the road without disturbing
11 the surface of the road.

12 Q You have also mentioned the proximity of MGE's
13 facilities in Section 12 to Empire's facilities in Section
14 12. And I believe you said that MGE's facilities
15 currently extend north from Seven Bridges to -- or almost
16 to the Copper Ridge subdivision; is that correct?

17 A Yes. That's correct.

18 Q When was that extension made by MGE?

19 A I believe it was done at the same time they
20 installed the mains in Seven Bridges.

21 Q But Empire has the deal with the developer to
22 serve Seven Bridges? Is that -- or Copper Ridge. Excuse
23 me. Is that correct?

24 A Yes. That's correct.

25 MR. KEEVIL: Thank you, Judge. That's all I

1 have.

2 JUDGE STEARLEY: All right. Thank you,
3 Mr. Keevil. Mr. Klein, you may step down, and thank you
4 for your testimony. You will not be finally excused as a
5 witness, however, just in case the Commissioners would
6 have some additional questions for you.

7 MR. KLEIN: Thank you.

8 MR. KEEVIL: Judge, I hate to ask this. I
9 always forget. Did I offer his testimony, and was it
10 received? I think I did.

11 JUDGE STEARLEY: Actually, I do not have it
12 checked here as being offered.

13 MR. KEEVIL: I thought I recalled offering it.
14 If I didn't, I would like to.

15 JUDGE STEARLEY: Maybe I did and I didn't write
16 it down. But just to make sure it's clear in the record,
17 are you offering Mr. Klein's testimony?

18 MR. KEEVIL: Yes. It would be Empire Exhibit 1.

19 JUDGE STEARLEY: Empire 1. Are there any
20 objections to the admission of Empire's Exhibit No. 1?
21 Hearing none, it shall be received and admitted into
22 evidence.

23 (EDGC Exhibit No. 1 was offered and admitted
24 into evidence.)

25 MR. KEEVIL: Thank you.

1 JUDGE STEARLEY: And you may call your next
2 witness, Mr. Keevil.

3 MR. KEEVIL: Judge, we would call Mr. Steve
4 Teter.

5 JUDGE STEARLEY: Mr. Teter, if you'd please
6 raise your right hand.

7 STEVEN TETER,
8 being first duly sworn to testify the truth, the whole
9 truth, and nothing but the truth, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. KEEVIL:

12 JUDGE STEARLEY: Thank you. You may be seated.
13 And, Mr. Keevil, you may proceed.

14 MR. KEEVIL: Thank you.

15 Q (By Mr. Keevil) Would you please state your
16 name for the record, sir?

17 A Steve Teter.

18 Q By whom are you employed?

19 A Empire District Gas Company.

20 Q And what position do you hold?

21 A I'm the Director of Operations.

22 Q Now, are you the same Steve Teter who has
23 pre-filed written testimony in this -- direct testimony in
24 this case?

25 A I am.

1 Q And I believe that testimony has been marked as
2 Empire Exhibit 2. Is that your understanding?

3 A Yes, it is.

4 Q Do you have any changes or corrections you would
5 like to make to that testimony at this time?

6 A I do not.

7 Q If I asked you today the questions contained in
8 your testimony, would your answers be the same as set
9 forth therein?

10 A Yes, they would.

11 Q And are those answers true and correct to the
12 best of your information, knowledge and belief?

13 A Yes, they are.

14 MR. KEEVIL: Judge, with that, then, I would
15 offer Empire Exhibit 2 and tender the witness for
16 cross-examination.

17 JUDGE STEARLEY: Are there any objections to the
18 admission of Empire's Exhibit No. 2? Hearing none, it
19 shall be received and admitted into evidence.

20 (EDGC Exhibit No. 2 was offered and admitted
21 into evidence.)

22 JUDGE STEARLEY: And we shall start with
23 cross-examination with Staff. Mr. Berlin?

24 CROSS-EXAMINATION

25 BY MR. BERLIN:

1 Q Good afternoon, Mr. Teter. Mr. Teter, in your
2 prefiled testimony, did you address -- well, let me back
3 up a minute. Have you been present during this entire
4 hearing today?

5 A Yes, I have.

6 Q And have you heard the discussion that I had
7 with Mr. Hack about a letter sent by Mr. Cooper who
8 represented Empire's predecessor in 1999? Are you
9 familiar with any of the circumstances surrounding that
10 letter?

11 A Yes, I am.

12 Q Now, in 1999, what was your position?

13 A I was Director of Operations for Missouri gas
14 operations for Aquila.

15 Q And, Mr. Teter, at that time, did you
16 participate in any discussions with regard to the proposal
17 that Mr. Cooper refers to in his letter to Mr. Hack?

18 A I did not.

19 Q Can you tell me what your understanding is of
20 that particular --

21 MR. STEINER: I'm going to object. This is
22 veering into friendly cross. He's already said he did not
23 participate.

24 JUDGE STEARLEY: Mr. Berlin?

25 MR. BERLIN: Judge, there's -- first of all,

1 there is no prohibition against what is termed "friendly
2 cross" unless that's set forth in an order of the
3 Commission.

4 Second, Mr. Teter did address an incident in
5 1999 with respect to Missouri Gas Energy in his pre-filed
6 testimony. And I'm entitled to ask questions to
7 understand that particular event.

8 MR. STEINER: It's my understanding the
9 Commission is not in favor of friendly cross. I was not
10 aware of if they were not -- that that was not a valid
11 objection.

12 MR. BERLIN: It's certainly a valid objection,
13 Judge, if you issue an order that has -- that denies the
14 parties of what is termed "friendly cross-examination."

15 JUDGE STEARLEY: I don't believe any such order
16 was issued. But I do believe the Commission discourages
17 friendly cross-examination.

18 With regard to Mr. Teter's testimony and the
19 question just asked and answered, are these the same
20 incidences, or did Mr. Teter's answer just disconnect
21 those -- those two items? And we can read back that
22 question if you like.

23 But I believe part of Mr. Steiner's objection
24 was he wasn't familiar with that letter.

25 MR. BERLIN: Well --

1 MR. STEINER: Or the proposal discussed in the
2 letter.

3 MR. BERLIN: Well, let me rephrase the question,
4 then, Judge.

5 JUDGE STEARLEY: All right. Go ahead and
6 rephrase and start again.

7 Q (By Mr. Berlin) Mr. Teter, are you familiar
8 with MGE seeking to serve into Empire's certificated
9 Sections 1 and 6?

10 A Yes, I am.

11 Q Were you involved in any kind of decision-making
12 or conversations with respect to that?

13 A Yes, I was.

14 Q Did MGE install or build facilities into
15 Sections 1 or 6?

16 A They did not.

17 Q Were you involved in your duties at that time
18 with Aquila in providing service to those particular
19 sections?

20 A Yes, I was.

21 MR. BERLIN: I have no further questions.

22 JUDGE STEARLEY: Thank you, Mr. Berlin.

23 Cross-examination the Office of Public Counsel.

24 Mr. Poston?

25 MR. POSTON: Thank you.

1 CROSS-EXAMINATION

2 BY MR. POSTON:

3 Q When I was questioning the MGE witnesses, I was
4 trying to determine how many customers and how many
5 facilities were added following your contact to MGE
6 letting them know that they were encroaching on your
7 service territory. So my question to you is, at the time,
8 I believe September '06 when you -- I believe you said you
9 contacted MGE, do you know how many facilities -- how many
10 customers and facilities have been added by MGE since that
11 time?

12 A I have no specific number.

13 MR. POSTON: Thank you. That's all.

14 Q (By Mr. Poston) I'm sorry?

15 A You're referencing in Section 12?

16 Q Yes. Yes. Section 12.

17 A (Witness nods head.)

18 MR. POSTON: Thank you. That's all.

19 JUDGE STEARLEY: All right. Thank you,
20 Mr. Poston. MGE, Mr. Steiner?

21 CROSS-EXAMINATION

22 BY MR. STEINER:

23 Q Thank you. Good afternoon.

24 A Hi.

25 Q Mr. Teter, what's your current position?

1 A I'm Director of Operations for Empire District
2 Gas Company.

3 Q And what are your duties as Director of
4 Operations?

5 A I just oversee the day-to-day management of the
6 operations of the company.

7 Q And I believe Mr. Klein indicated that with
8 respect to service requests from developers or anyone that
9 wants new service would go through a service manager; is
10 that correct?

11 A We have -- we have service center managers in
12 our local offices. There are five large area managers
13 that -- that report to me that would field inquiries about
14 service in those areas.

15 Q And one of those service managers has
16 responsibility for this Platte County, Platte City area;
17 is that correct?

18 A Yes.

19 Q What's that person's name?

20 A David Roche (ph.).

21 Q And when your field staff -- or when Mr. Roche
22 or his peers are determining the extent of Empire's
23 service territory in response to Commission -- response to
24 customer requests, developer requests, would those
25 individuals refer to Empire's tariff to determine where

1 Empire serves?

2 A I think Mr. Roche is familiar with the sections
3 listed in the tariff. And he's also familiar with the
4 sections contained in our certificate to serve our -- oh,
5 or that Platte City area.

6 Q What about the other individuals that are
7 service managers? Would they refer to the tariffs?

8 A This would recip -- they would -- they would
9 refer to the tariffs. And if there was a question, they
10 would go to the documentation from our certified
11 territory.

12 Q Do they have that at their desks?

13 A Not readily. No.

14 Q Before joining Empire, were you the Director of
15 Gas Operations at Aquila?

16 A Yes, I was.

17 Q Were your duties similar to those that you just
18 told me about as Gas Op -- Gas Operations Manager for
19 Empire?

20 A Yes, they are.

21 Q Now, on page 3 of your testimony, you indicated
22 that you became aware of a subdivision called Seven
23 Bridges in 2004. That's at line 17. It was -- it was in
24 the planning stages of that development. Do you see that?

25 A Yes, I do.

1 Q Did you get the information regarding the Seven
2 Bridges plans from a service manager?

3 A Actually, in this case, I got it from a
4 marketing representative that worked for Aquila.

5 Q And who was that?

6 A A gentleman by the name of Dan Smith.

7 Q And was that a normal way for you to receive
8 information about sub -- new subdivisions?

9 A Not normally. Normally, I'll get them from the
10 service center manager. But this was so preliminary, I
11 got it from a marketing rep.

12 Q And I believe you indicated that the plans that
13 you saw were that the construction would take place in
14 Sections 13 and 14 of 52 North 35 West; is that correct?

15 A That's not exactly correct. I did not see any
16 plans. All I got was information from Mr. Smith. And he
17 basically -- he indicated to me that the Seven Bridges
18 development was going to take place in Section 13.

19 Q Not 14?

20 A Not -- not to my recollection. No.

21 Q And did you propose filing an application for a
22 certificate so you could serve Seven Bridges at that time?

23 A No, we did not.

24 Q Did you discuss the possibility of filing a
25 certificate so you could serve Seven Bridges?

1 A Not really. No.

2 Q What -- to what extent did you discuss the
3 possibility of getting a certificate?

4 A We did not discuss that.

5 Q What did you discuss?

6 A Basically -- basically, what I discussed with
7 Mr. Smith is, well, let's keep an eye on it. And if the
8 situation changes or expands and gets into Section 12,
9 which we do serve, we want to be involved in it.

10 So, basically, it was just to tell Mr. Smith
11 keep your eye on the development and we'll see how it
12 progresses.

13 Q And did Mr. Smith keep his eye on the
14 development?

15 A To my knowledge, he did.

16 Q Did he let you know when the development was
17 being built in Section 12?

18 A No, he did not.

19 Q So you're saying that you alone made the call
20 not to pursue a certificate in Section 13 so that you
21 could potentially serve Seven Bridges?

22 A I made -- I made the decision that we wouldn't
23 pursue it.

24 Q Is Seven Bridges a large -- were the plans for
25 Seven -- Seven Bridges for a large subdivision?

1 A At that time, I did not have a map. I did not
2 know the scope of the development.

3 Q What did the individual tell you about the
4 development?

5 A That it could be possibly a two or 300 lot
6 subdivision.

7 Q Is that something that Aquila would be
8 interested in serving at that time?

9 A We didn't -- we didn't want to file for -- to
10 expand our territory at that time.

11 Q When you say we, are you speaking of yourself or
12 someone else?

13 A The marketing group, Dan Smith.

14 Q Okay. There's Dan Smith. Who else is in the
15 marketing group making that decision?

16 A I -- at that time, I can't recall many of the
17 names.

18 Q And why did you not want to -- why did you make
19 that decision not to file -- not to proceed with thinking
20 about filing a certificate in Section 13?

21 A Basically, because we didn't know the scope of
22 the development at that time.

23 Q Did you contact the developer?

24 A No, I did not.

25 Q Did the marketing manager contact the developer?

1 A Yes. I think he did.

2 Q And do you know what that person told the man --
3 the developer?

4 A Like I -- like I said before, the -- the basic
5 part of the development would be in Section 13.

6 Q But what did the Aquila person tell the
7 developer of Seven Bridges?

8 A That we didn't have a certificate to serve
9 Section 13.

10 Q Did he say that he was interested in serving
11 Seven Bridges?

12 MR. KEEVIL: I'm going to object to this. It's
13 -- it's irrelevant, No. 1. We're talking about Aquila,
14 not Empire. We're talking about what someone other than
15 Mr. Teter supposedly said to someone else, which I think
16 is hearsay, and it's irrelevant.

17 JUDGE STEARLEY: Mr. Steiner?

18 MR. STEINER: It's not irrelevant. We're
19 looking at the development that's in question here and why
20 that development couldn't get service from Aquila, and
21 that's a direct bearing on why they chose MGE, which is
22 why we're here today.

23 JUDGE STEARLEY: I will overrule the objection
24 and allow the question.

25 A Would you restate it, please?

1 Q (By Mr. Steiner) What did the service -- the
2 marketing manager tell the developer of Seven Bridges
3 about why Aquila did not want to serve in Section 13?

4 A I do know know what he told the developer of
5 Seven Bridges. I know what I told the marketing
6 representative that I talked to. I told him that we
7 didn't have a certificate to serve Section 13.

8 Q Was there a problem with Aquila having adequate
9 service gas -- gas supply to serve outside of its
10 territory?

11 A No.

12 Q Was there a problem with Aquila being able to
13 fund expansion of mains to serve Seven Bridges in Section
14 13 -- the Seven Bridges plan in Section 13?

15 A No.

16 Q How do you know there wasn't a problem?

17 A None of the work orders that I've submitted for
18 approval from upper management were ever turned down
19 because of that.

20 Q So what you're saying is Aquila has filed to
21 serve developments outside of its service territory to
22 serve other developments; is that correct?

23 A No. I didn't -- I didn't say that.

24 Q Okay. Has Aquila filed outside of its service
25 territory -- did Aquila file certificates in sections

1 outside of its service territory to serve developments
2 during the time you were Director of Gas Operations?

3 MR. KEEVIL: I'm going to object to that as a
4 misstatement of virtually everything. Aquila wouldn't be
5 the one filing certificates in the first place?

6 A Excuse me. An application for a certificate.
7 We filed applications in the south central part of
8 Missouri to serve the Rolla, Salem area.

9 Q (By Mr. Steiner) So it was common if there was
10 a development that looked attractive to Aquila that was
11 going to take place outside of the certificated area for
12 Aquila to file a certificate to serve that area; is that
13 correct?

14 MR. KEEVIL: Objection. Misstates what the
15 witness just said. I don't remember anything about
16 anything being common in Mr. Teter's answer.

17 Q (By Mr. Steiner) Was it uncommon --

18 A Yes. It was uncommon.

19 Q -- to file for a certificate in a section that
20 Aquila didn't serve?

21 A In my career, the only time that I can recall
22 doing it was in that southern -- south central part of
23 Missouri expansion. Yes. It was not a common thing for
24 us to do.

25 Q And so the sole reason why you did not pursue

1 any negotiations with -- further negotiations or further
2 investigation of a potential Seven Bridges facility in
3 Section 14 was it was outside of your service territory?

4 A Yes.

5 Q Now, are you familiar with the application that
6 Empire filed in this case?

7 A Somewhat. Yes.

8 Q Now, I believe in -- it's requesting service in
9 Section 15, among others. I think we heard Mr. Klein say
10 there are no requests for service in those sections; is
11 that correct?

12 A Not to my knowledge. No.

13 Q So does this demonstrate a difference in the
14 philosophy of Empire and Aquila with regard to filing
15 certificates for new territories?

16 A I think Empire wants to grow the business and
17 serve new customers. Yes.

18 Q And Aquila did not want to do that?

19 A It was not our custom at Aquila to go and seek
20 an -- an expansion of our certified territory.

21 Q During your time at Aquila, are you aware of the
22 company ever telling any other developers that it was not
23 interested in serving them outside of -- because the
24 development was outside of Aquila territory?

25 A Yes.

1 Q Where were those instances at?

2 A We've -- we've had several small communities or
3 small operations request service. And due to feasibility
4 studies, magnitude, we didn't expand our service
5 territory.

6 Q Were any of those in the Platte City, Platte
7 County area that we're talking about today?

8 A No.

9 Q While you were at Aquila, did you speak to the
10 developer of Seven Bridges, I believe it's the Bark
11 family?

12 A No, I have not.

13 Q Have you ever spoken to any of the developers of
14 Seven Bridges in your capacity at Empire?

15 A No, I have not.

16 Q Okay. Let's now talk about your current
17 position with Empire. How did you become aware that MGE
18 was serving Seven Bridges?

19 A Our local supervisor informed me of that. Our
20 local supervisor in Platte City.

21 Q And what's that person's name?

22 A David Roche.

23 Q And I believe your testimony says that was the
24 July or August of 2006?

25 A Yeah. It was in the summer of '06.

1 Q Now, I think we've heard testimony from
2 Mr. Klein that Seven Bridges is next to Highway N. You
3 can see it from the road; is that correct?

4 A Yes.

5 Q Have you seen Seven Bridges?

6 A Yes, I have.

7 Q Why did it take David Roche so long to let you
8 know about Seven Bridges?

9 MR. KEEVIL: Objection. So long from when?

10 Q (By Mr. Steiner) MGE began --

11 JUDGE STEARLEY: Yes. Please rephrase,
12 Mr. Steiner.

13 Q (By Mr. Steiner) MGE began construction shortly
14 after January of 2006. I believe it said it was complete
15 -- the installations were completed in the May of 2006
16 time frame. We're talking about a subdivision that's next
17 to a highway.

18 MR. KEEVIL: We're also talking about a gas
19 system that was closed off by Empire June 1st --

20 MR. STEINER: Is that an objection, Mr. Keevil?

21 MR. KEEVIL: -- '06.

22 Q (By Mr. Steiner) Do you konw why it took so
23 long?

24 MR. KEEVIL: Again, so long from when? I object
25 to the form of the question.

1 MR. STEINER: From --

2 JUDGE STEARLEY: All right. Please clarify
3 Mr. Steiner, for the time frame one more time.

4 Q (By Mr. Steiner) MGE was complete -- had
5 completed its build-out in May of 2006. Daniel Roche
6 didn't recognize that there was construction going on by
7 MGE in Seven Bridges until July -- well, July or August of
8 2006. Do you know why it took from May to July to
9 discover --

10 A There could be a variety of reasons that he
11 didn't realize that. He may not have driven down Route N
12 during that period. Nobody contacted the office to
13 request service. Those could be some of the reasons.

14 Q Okay.

15 A For all he knew, Seven Bridges could have
16 decided to go all electric and saw the development, not --
17 not raise any questions.

18 Q Okay. I -- I think your attorney would probably
19 appreciate it if you wait until I ask a question, but
20 thank you.

21 MR. KEEVIL: His attorney would appreciate it if
22 you wouldn't tell him what his attorney would appreciate.

23 MR. STEINER: Sorry to step on your toes, Jeff.

24 Q (By Mr. Steiner) So Mr. Roche informed you in
25 July or August of 2006 that the Seven Bridges development

1 was underway in Section 12; is that correct?

2 A Yes, he did.

3 Q And did he tell you anything else at that time?

4 A Not that I recall.

5 Q So I believe, then, September 6th of 2006, you
6 sent an e-mail to MGE's Vice President of Field operations
7 asking him to investigate this matter; is that correct?

8 A Yes.

9 Q Did you speak to anyone at Empire between the
10 conversation with Mr. Roche and the date of the e-mail?

11 A I believe that I discussed it with Mr. Gatz and
12 Mr. Klein.

13 Q Do you recall what those discussions were?

14 A Just general -- just general items about it.

15 Q Did they give you any instructions?

16 A No.

17 Q I'm going to hand you what has been marked as
18 Empire Exhibit 6. Did you send that letter to Mr. Holcomb
19 of MGE?

20 A Yes, I did.

21 Q And in that letter, I think you establish a
22 November 4th, '06, deadline for MGE to produce a
23 certificate?

24 A Yes.

25 Q Did MGE produce a certificate?

1 A Not to my knowledge.

2 Q Why did not you go to Staff or the Commission at
3 that time?

4 A I think we were -- I think we were trying to see
5 if -- if -- if MGE truly had a certificate it the area.

6 Q So even though the letter says that there's a
7 deadline, you were still willing to negotiate?

8 A We -- I don't think we were ever willing to
9 negotiate. Any -- any portion or any thought of the idea
10 that we didn't have the right and the certificate to serve
11 customers in Section 12, that was never part of any
12 negotiation.

13 Q Okay. You were still willing to wait for
14 evidence of a certificate?

15 A Yes.

16 Q I've got to take you back to your Aquila days.
17 Let me get that exhibit back from you. On page 2 of your
18 testimony, you reference a 1999 event involving Oak Creek
19 subdivision.

20 A Uh-huh.

21 Q And you were the Director of Missouri Gas
22 Operations at that time; is that right?

23 A Yes, I was.

24 Q And I think you may have answered this, but were
25 you involved in discussions with MGE?

1 A Not directly. No.

2 Q How were you involved?

3 A I became -- I became aware of MGE's intentions
4 to serve Oak Creek subdivision in Section 6 by one -- by
5 one of our -- by our local representative in Platte City.

6 I did a little -- you know, certainly looked at
7 our tariff and found the case that gave us the certificate
8 to serve Section 6.

9 And at that point, I -- I made -- certainly, I
10 didn't want MGE to encroach on our certified territory.
11 So I talked to -- gave this information to our rates --
12 Director of Rates, Mr. Bob Andorf, for Aquila. And then
13 he proceeded to have Mr. Cooper send this letter to
14 Mr. Hack.

15 Q Did you understand the basis of MGE's position
16 was that it had authority pursuant to its tariff?

17 A I -- I didn't support that, but I probably
18 understood what -- what he said.

19 Q That's all I'm asking you. Did you understand
20 that that was MGE's position?

21 A Yes.

22 Q And did you check MGE's tariffs at this time?

23 A No.

24 Q Did you have anybody at Aquila check the
25 tariffs?

1 A Yes.

2 Q Check MGE's tariffs?

3 A Uh-huh.

4 Q Do you know what they found?

5 A I was of the -- I was of the understanding that
6 they were -- that those nine sections were included in
7 their tariff.

8 Q Besides the Oak Creek subdivision event that we
9 just talked about, were you aware of MGE providing service
10 in any other areas that Aquila claims as its service
11 territory? This is during your Aquila tenure.

12 A No.

13 Q You had no knowledge of MGE providing service to
14 customers along the Leavenworth supply line?

15 A Not really. No.

16 Q Did you have some knowledge?

17 A No. Not until recently.

18 Q I'm just talking about your time at Aquila.

19 A Yes.

20 Q Your testimony is you had no knowledge of MGE
21 providing service to customers along the Leavenworth
22 supply line?

23 A No.

24 MR. KEEVIL: Objection. Asked and answered.

25 MR. STEINER: He said not really, your Honor.

1 I'm trying to get what not really means.

2 JUDGE STEARLEY: You can clarify that.

3 A No. I wasn't aware of how in -- in those
4 sections being served off the Leavenworth supply line.

5 Q (By Mr. Steiner) What about businesses in those
6 sections?

7 A I was not aware.

8 MR. KEEVIL: Exactly how many people is MGE
9 serving off the Leavenworth supply line, Mr. Steiner?

10 MR. STEINER: Is that an objection?

11 JUDGE STEARLEY: I believe that's a rhetorical
12 question. But it's Mr. Steiner's turn to ask questions
13 right now.

14 Q (By Mr. Steiner) Mr. Teter, were you involved
15 in the effort to sell Aquila's gas property in Missouri?

16 A Yes, I was.

17 Q And what were you -- what were your duties
18 during this effort?

19 A Mainly -- mainly to just ask questions as to the
20 integrity and quantity of the system as -- you know, as
21 far as number of services, feet of main, general
22 information, technical information.

23 Q Are you saying that you provided technical
24 information to potential buyers of the Aquila gas
25 property?

1 A We attended sessions with -- with buyers. And
2 they asked questions about the system, and I was there to
3 answer it.

4 Q Did you provide any information regarding MGE's
5 provision of service -- attempted provision of service in
6 the Oak Creek incident to any potential buyers?

7 A Not to my knowledge.

8 Q Did you provide any information regarding MGE
9 whatsoever?

10 A Not to my knowledge.

11 Q Did Seven Bridges come up in these informational
12 meetings with potential buyers?

13 A I can't recall that. No.

14 Q Who else was at these meetings on behalf of
15 Aquila?

16 A Ivan Bankas (ph.) was. He was the Vice
17 President of Operations for Missouri and Kansas.

18 Q Anyone else?

19 A Steve Hanna was there. And his -- I'm not
20 exactly sure what his title was at the time.

21 Q And while you were at Empire -- excuse me.
22 While you were at Aquila, did you speak to anyone at
23 Empire regarding MGE's provision of service in Aquila's
24 service territory?

25 A Not to my knowledge.

1 MR. STEINER: Thank you, Mr. Teter.

2 JUDGE STEARLEY: All right. There are no
3 questions for you from the Bench, Mr. Teter, so we'll go
4 to redirect with Empire. Mr. Keevil?

5 MR. KEEVIL: None, your Honor.

6 JUDGE STEARLEY: All right. Thank you,
7 Mr. Teter, for your testimony. You may step down. But
8 you are not finally excused just in case the Commissioners
9 decide they have a question for you.

10 MR. TETER: Thank you.

11 MR. BERLIN: Judge?

12 JUDGE STEARLEY: Yes.

13 MR. BERLIN: Would it be appropriate to take a
14 short break right now?

15 JUDGE STEARLEY: I was just going to suggest
16 that myself. And prior to us going on break, let me ask
17 the parties, if we have three witnesses remaining, do the
18 parties believe we will finish today?

19 MR. KEEVIL: It's up to Mr. Steiner, Judge.

20 MR. STEINER: I have about the same amount of
21 questions for each of the remaining witness that I have
22 been having so far.

23 JUDGE STEARLEY: Okay. If we need to go past
24 five or six into the evening, is that acceptable to the
25 parties? We do have tomorrow reserved, and I know there's

1 probably people here who need to make plans.

2 MR. KEEVIL: Actually, Judge, that would be my
3 reference.

4 MR. BERLIN: Mine, too.

5 MR. KEEVIL: Go ahead and get it done today.

6 MR. BERLIN: Absolutely.

7 JUDGE STEARLEY: Mr. Berlin?

8 MR. BERLIN: I'm agreeable to that, Judge.

9 JUDGE STEARLEY: All right. Mr. Poston?

10 MR. POSTON: That's fine. I may have to leave,
11 but I don't mind if you continue without me. I don't have
12 any more questions.

13 MR. STEINER: I may have to leave, too.

14 JUDGE STEARLEY: All right. Very well.

15 MR. KEEVIL: Obviously, you don't have to leave,
16 Steiner.

17 JUGDE STEARLEY: Let's go ahead and take about a
18 ten-minute recess, and we'll resume with testimony from
19 Mr. Gatz.

20 (Break in proceedings.)

21 JUDGE STEARLEY: All right. We are back on the
22 record with Empire's witness, Mr. Ron Gatz, taking the
23 stand. If you'd please raise your hand, Mr. Gatz.

24 RONALD GATZ,
25 being first duly sworn to testify the truth, the whole

1 truth, and nothing but the truth, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. KEEVIL:

4 JUDGE STEARLEY: Thank you. Be seated. And,
5 Mr. Keevil, you may proceed.

6 MR. KEEVIL: Thank you, Judge.

7 Q (By Mr. Keevil) Would you please state your
8 name for the record, sir?

9 A Ron Gatz.

10 Q By whom are you employed and in what capacity?

11 A Employed by the Empire District Electric Company
12 as Vice President, Chief Operating Officer of Gas
13 Operations.

14 Q Now, are you the same Ron Gatz who has caused to
15 be filed in this case direct testimony, rebuttal testimony
16 and surrebuttal testimony?

17 A Yes.

18 Q And I believe your direct testimony has been
19 marked as Empire Exhibit 3, your rebuttal as Empire
20 Exhibit 4 and your surrebuttal as Empire Exhibit 5. Is
21 that your understanding?

22 A Yes.

23 Q Turning first to your direct testimony, did you
24 have any changes or corrections you wish to make to that?

25 A I do have one change I would like it make on

1 page 11, line 8. It should read Sections 10, 11, 12, 13
2 and 14.

3 Q All right. Turning to your rebuttal testimony,
4 do you have any changes or corrections you would like to
5 make?

6 A Yes. I have one correction. On page 4, line
7 13, we should delete a reference to Section 6.

8 Q And that would be Section 6 of Township 52
9 North, Range 33 West?

10 A That's correct.

11 MR. BERLIN: Where -- where is that again,
12 please?

13 A Page 4, line 13.

14 MR. BERLIN: And you're only deleting the six
15 from that line, correct?

16 A That's correct.

17 Q (By Mr. Keevil) All right. Turning to your
18 surrebuttal testimony, do you have any changes or
19 corrections you wish to make?

20 A Yes. On page 5, lines 16 and 20, it refers to
21 Township 52. And in both cases, that should read 52
22 North.

23 Q All right. Now, with those changes or
24 corrections, if I were to ask you the questions contained
25 in Exhibit -- Empire Exhibit 3, Empire Exhibit 4 and

1 Empire Exhibit 5, if I were to ask you those questions
2 today, would your answers be the same as contained
3 therein?

4 A Yes.

5 Q And are those answers true and correct to the
6 best of your information, knowledge and belief?

7 A Yes.

8 MR. KEEVIL: Judge, with that, I would offer
9 Empire Exhibit 3, Empire Exhibit 4 and Empire Exhibit 5
10 into the record.

11 JUDGE STEARLEY: Any objections to Empire
12 Exhibits 3 through 5? Hearing none, they shall be
13 received and admitted into the record.

14 (EDGC Exhibit Nos. 3, 4 and 5 were offered and
15 admitted into the record.)

16 JUDGE STEARLEY: I would tender Mr. Gatz for
17 cross examination, then, your Honor.

18 JUDGE STEARLEY: Okay. Cross-examination, start
19 with Staff. Mr. Berlin?

20 CROSS-EXAMINATION

21 BY MR. BERLIN:

22 Q Good afternoon, Mr. Gatz. I have a question for
23 you regarding something you put in, and I believe it's in
24 your direct testimony, where you address the financing of
25 expansion.

1 A Yes.

2 Q Are -- are you addressing the financing of
3 expansion in your existing sections or the sections that
4 you are applying for a CCN?

5 JUDGE STEARLEY: Mr. Berlin, could you please
6 point to that part of the testimony for us?

7 MR. BERLIN: That is --

8 A Are you referring to page scene?

9 Q (By Mr. Berlin) Yes.

10 A Line 17?

11 Q It is addressed on page 7 at line 17.

12 A The reference, Mr. Berlin, is to capital
13 required to expand into the sevice territory being
14 requested, which would be 13, 14, 15 -- is it 22, 23 and
15 24?

16 Q Okay. Now, with regard to the sections just
17 north of that, Sections 11 and 12, which are certificated
18 -- for which Empire has an area of certificate of service,
19 would you be using internally generated funds to finance
20 any expansion in those areas?

21 A Yes. We -- in both cases, whether it's the new
22 certificated area or existing area, we would use
23 internally generated funds.

24 Q And, Mr. Gatz, I have probably only one other
25 question. And I -- I may fumble through it, but it's only

1 because I -- I don't quite understand how it's done
2 between an LDC and a developer.

3 But can you -- can you tell me how -- if Empire
4 is given the areas that it has requested by the
5 Commission, if it's -- if it's granted those sections, how
6 would -- how would Empire approach the developer of Seven
7 Bridges?

8 Recognizing Seven Bridges will involve two areas
9 that Empire's already certificated and two areas that
10 you're requesting, can you explain how Empire would
11 approach that developer for me?

12 A We would make contact and request a -- a
13 meeting, probably most likely in his office because that
14 would be more convenient for him. And we would explain
15 the authorization to serve that would have been issued.

16 And we would solicit information about the scope
17 of the development so that we would get the technical
18 information required to design and spec the service.

19 Then we would attempt to work with him and MGE
20 to transition existing customers in an orderly manner
21 that's not disruptive to the customer. And we would make
22 a proposal to the developer to continue to extend services
23 in that subdivision.

24 Q Would the developer lose money as a result of
25 that?

1 MR. STEINER: This is friendly cross, your
2 Honor. I'm going to object.

3 MR. BERLIN: Judge, it is not friendly cross,
4 No. 1. We are a party to this case. And we -- I -- we
5 believe that the -- the Commission needs to know how such
6 a transaction would take place. And it's -- it is why
7 we're here today.

8 JUDGE STEARLEY: Yeah. I'm going to overrule
9 that objection in that I believe this goes to the public
10 interest analysis that the Commission is going to have to
11 do.

12 However, asking about the developer, I'm not
13 sure if that's not calling for speculation on the part of
14 this witness.

15 So, Mr. Gatz, if that's a question you can
16 answer from personal knowledge, you may go ahead and
17 answer. But if it's a question that you don't know the
18 answer to, you can simply say you don't know.

19 A Thank you. Would you repeat the question, then,
20 please?

21 Q (By Mr. Berlin) Yes. Mr. Gatz, I'm -- I'm
22 trying to understand -- and my -- my assumption is that
23 the Commission grants you the sections that you have
24 asked, specifically -- asked in your application to -- to
25 be granted. What I'm specifically focusing in on are

1 Sections 13 and 14 that will include the development known
2 as Seven Bridges subdivision.

3 And we understand now Seven Bridges is located
4 as well in -- and will be located in your -- Empire's
5 Section 11 and is currently building in Empire's Section
6 12.

7 So my -- my question goes to how does Empire
8 address with the developer the issue of any funds that may
9 have been paid by the developer? Ultimately what I'm
10 trying to understand is does the developer lose money if
11 the -- if the Commission went and decided this way? Or is
12 the developer -- is this a seamless transaction to the
13 developer, seamless transition to the developer?

14 MR. STEINER: Again, this calls for speculation.

15 MR. BERLIN: I -- you know, I disagree, Judge,
16 because Mr. Gatz has a very senior position with the
17 Empire District. And he -- it is quite possible he may
18 know the answer. If he doesn't, I'd like him to tell me.

19 JUDGE STEARLEY: I -- I believe, like I had said
20 earlier, to the extent he may have some personal knowledge
21 of that, you're free to answer the question.

22 A It is my opinion that the developer does not
23 have to lose money in this kind of a transition. I think
24 it was in Mr. Noack's testimony that construction advance
25 was made. That construction advance that's partially

1 refundable as it's referred to can be transferred as the
2 infrastructure could be transferred. And the developer
3 could be made whole under the same kinds of contract
4 agreements that they have in place now.

5 In the alternative, they could be refunded to
6 the developer. And whether we would require one as we do
7 our economic feasibility in regard to contracting would be
8 independent of their current position.

9 MR. BERLIN: I -- I have no further questions,
10 Judge.

11 JUDGE STEARLEY: All right. Thank you,
12 Mr. Berlin. Cross-examination by OPC?

13 MR. POSTON: No questions. Thank you.

14 JUDGE STEARLEY: MGE, Mr. Steiner?

15 MR. STEINER: Thank you.

16 CROSS-EXAMINATION

17 BY MR. STEINER:

18 Q Good afternoon.

19 A Good afternoon.

20 Q Your -- what's your position at Empire?

21 A I am Vice President of Empire District Electric,
22 which is the parent company to Empire District Gas.

23 Q Okay.

24 A And I'm Chief Operating Officer of that gas
25 division.

1 Q Okay. And were you in charge of due diligence
2 for the acquisition of the Aquila gas property?

3 A I was.

4 Q And the timeline was -- for that was as this --
5 correct me if I'm wrong, Aquila announced it was selling
6 the business in March of 2005?

7 A I would have said February, but that's close.
8 Yes.

9 Q And is it also correct that Empire was a
10 finalist in the bidding process?

11 A Yes.

12 Q And is it correct that the asset purchase
13 agreement was signed on September 21st, 2005?

14 A Yes.

15 Q So was your due diligence completed before
16 September 21st, 2005?

17 A Yes.

18 Q And you had a duty to your shareholders to
19 investigate Aquila's assets; is that correct?

20 A That's correct.

21 Q And those assets included Aquila's certificate;
22 is that correct?

23 A That's correct.

24 Q In your investigation, was the fact that MGE was
25 already serving customers in Sections 10 and 12 of

1 Aquila's territory ever discussed?

2 A No, it wasn't.

3 Q On page 6 of your surrebuttal -- let me see if I
4 can get a line reference. You speak about the -- MGE's
5 limited encroachment in the southeast corner of Section
6 12?

7 A Yes.

8 Q Were you made aware of this in your due
9 diligence?

10 A No.

11 Q Did you inquire of Aquila about the extent of
12 the certificate that Empire was purchasing?

13 A Aquila had, in their data room, available for
14 review tariffs and copies of certificate orders for the
15 various locations, including this one.

16 And they had a copy of Case No. 13172 in the
17 data room, which outlined the certificates that have been
18 charted on the map.

19 JUDGE STEARLEY: Excuse me, Mr. Gatz. Just for
20 clarity, when you said including this one, were you
21 referring to Section 12?

22 A Including the Platte City area.

23 JUDGE STEARLEY: Including -- okay.

24 A Which would be the sections that are noted on
25 the map, which is Exhibit 2 or something.

1 JUDGE STEARLEY: All right.

2 Q (By Mr. Steiner) Did Aquila give you a copy of
3 the 1999 letter from Missouri Public Services attorneys to
4 MGE? We've discussed it here today.

5 A They did not.

6 Q I'm handing you what's marked -- been marked as
7 Staff Exhibit 14. And what you just said is Aquila did
8 not provide that letter to you during your due diligence?

9 A That's correct.

10 Q I believe you mentioned that there was a data
11 room during your due diligence; is that correct?

12 A There was an electronic data room.

13 Q And you indicated that Aquila's tariffs were in
14 that data room; is that correct?

15 A That's correct.

16 Q And part as part of your due diligence, did
17 anyone check MGE's tariff -- tariffs?

18 A We did not.

19 Q Did you ask Aquila at any time before the
20 closing about pending transactions with developers for gas
21 service to new subdivisions?

22 A I don't believe so.

23 Q Was Seven Bridges ever discussed with Aquila at
24 any time before closing?

25 A No.

1 Q If you'd go to page 6 of your surrebuttal, at
2 line 7 through 20 -- excuse me -- 17 through 20, what
3 evidence do you have that the service being provided in
4 Section 12 is the result of an agreement for an easement?

5 A That was my speculation because of the age and
6 the timing of the proximity to when the line would have
7 been built.

8 Q I believe you also state that a complaint case
9 is more expensive than requiring -- requiring MGE to
10 correct its tariffs. Do you remember making that
11 statement? I'll try to find you a line reference.

12 MR. KEEVIL: Same page, line 6.

13 Q (By Mr. Steiner) What -- would Empire have to
14 hire a lawyer to file a complaint?

15 A We would. Yes.

16 Q Would you have a lawyer investigate and file a
17 complaint?

18 A We would assist with the investigation, but they
19 would likely be the one to file.

20 Q Would that attorney conduct discovery?

21 A Probably.

22 Q Would Empire be involved in the filing of
23 testimony?

24 A Yes.

25 Q Would there be a hearing?

1 A I don't know the answer to that.

2 Q Would the Commission reach a decision either by
3 means of a hearing or by means of no hearing?

4 A I assume to conclude a case, they would have to
5 reach a decision. Yes.

6 MR. STEINER: Your Honor, could you just give me
7 a minute?

8 JUDGE STEARLEY: Certainly.

9 Q (By Mr. Steiner) Did -- we were speaking about
10 the letter to Rob Hack from Missouri Public Service's
11 attorneys. Did Aquila ever give you that letter outside
12 of the due diligence process?

13 A Aquila never gave me the letter. Mr. Teter, who
14 now -- who works for us as of June 1 when the closing
15 occurred, had a file copy, and he provided me with a copy
16 of that letter.

17 Q You said that was after the closing?

18 A That's correct. After we were told by
19 Commissioner Roche that Aquila was -- or MGE was serving
20 in -- Seven Bridges in Section 12 in late July, early
21 August.

22 MR. STEINER: Thank you. I have nothing
23 further.

24 JUDGE STEARLEY: Thank you, Mr. Steiner. And
25 there are no questions from the bench. Any redirect?

1 MR. KEEVIL: No, your Honor.

2 JUDGE STEARLEY: All right. Thank you for your
3 testimony, Mr. Gatz. You may step down, but you will not
4 be finally excused just in case --

5 MR. GATZ: Thank you.

6 JUDGE STEARLEY: -- the Commissioners should
7 have additional questions.

8 MR. KEEVIL: Judge, do you show Empire Exhibits
9 1 through 6 now as being received?

10 JUDGE STEARLEY: I do. I show them being
11 received and admitted.

12 MR. KEEVIL: Thank you.

13 JUDGE STEARLEY: Okay. MR. Berlin, I believe
14 that brings us to your witnesses.

15 MR. BERLIN: I guess, Judge, the Staff calls
16 Mr. Henry Warren.

17 JUDGE STEARLEY: Okay. Mr. Warren, if you'd
18 please raise your right hand.

19 HENRY WARREN,
20 being first duly sworn to testify the truth, the whole
21 truth, and nothing but the truth, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BERLIN:

24 JUDGE STEARLEY: Thank you. You may be seated.
25 Mr. Berlin, you may proceed.

1 Q (By Mr. Berlin) Mr. Warren, for the record,
2 would you please state how you are employed and in what
3 capacity?

4 A I'm a Regulatory Economist with the Rates &
5 Tariffs section of the Energy Department of the Missouri
6 Public Service Commission.

7 Q And how long have you been in that position?

8 A Let's see. I believe about ten years.

9 Q Mr. Warren, if you would, please move your
10 microphone closer. Okay. Mr. Warren, in this matter, did
11 you cause to be prepared pre-filed testimony that is
12 direct pre-filed testimony, rebuttal pre-filed testimony
13 and surrebuttal pre-filed testimony?

14 A Yes.

15 Q And you prepared this pre-filed testimony in a
16 question and answer format; is that correct?

17 A Yes, I did.

18 Q Mr. Warren, at this time, do you have any
19 corrections to make to your pre-filed testimony?

20 A Yes, I do.

21 Q Okay. Go ahead.

22 A All right. I believe the -- I have a -- let's
23 see. The first correction is in rebuttal testimony on
24 page 4, line 17 and -- where it says Schedule 5 should be
25 corrected to asked Schedule 6.

1 And in my surrebuttal testimony and -- let's
2 see. Get the first one here. Yes. On page 2, line 10
3 where the sentence starts MGE and EDG, the MGE and should
4 be deleted so it should just read EDG is seeking to serve
5 customers in the six sections.

6 And then on page 7, Line 2 the word west --
7 where it says west side, that word there should be east.

8 Q What line?

9 A Line 2. So it would read east side of sections
10 12 and 13.

11 MR. STEINER: What line and what page?

12 A Page 7, surrebuttal.

13 Q (By Mr. Berlin) Mr. Warren, do you have any
14 other corrections or changes that need to be made to your
15 pre-filed testimony?

16 A I have one more, please. On that same page,
17 down at line 7, in the paren -- parenthetically where it
18 says Schedules 8 and 9, the word rebuttal, a comma should
19 be inserted in front of schedules so it would read
20 Rebuttal Schedules 8 and 9.

21 Q And does that complete the changes or
22 corrections you wish to make to your pre-filed testimony?

23 A That's -- yes. That's the ones I'm aware of.

24 MR. BERLIN: And I just want to check to make
25 sure that Warren direct testimony is Staff Exhibit 17,

1 Warren rebuttal is Staff Exhibit 18 and Warren surrebuttal
2 is Staff Exhibit 19. And that --

3 JUDGE STEARLEY: That's the way I have them
4 reflected as being.

5 Q (By Mr. Berlin) And, Mr. Warren, if I were to
6 ask you the same questions, if -- that are asked in your
7 pre-filed testimony, would your answers be the same today?

8 A Yes.

9 Q And is the information that you -- contained in
10 your direct, your rebuttal and your surrebuttal testimony
11 true and correct to your best information, knowledge and
12 belief?

13 A Yes.

14 Q Now, Mr. Warren, I had handed out earlier an
15 exhibit that was pre-marked Staff Exhibit 15, which
16 contains five pages of photographs of the -- what appears
17 to be the Seven Bridges subdivision. Are you familiar
18 with that?

19 A Yes, I am.

20 Q And, Mr. Warren, did you take these photographs?

21 A Yes, I it.

22 Q And is the information that you place next to
23 each photograph true and correct to your knowledge,
24 information and belief?

25 A Yes, it is.

1 Q And there are no changes you wish to make to
2 Staff Exhibit 15, are there?

3 A No.

4 MR. BERLIN: Okay. Judge, Staff moves to --
5 into evidence Staff Exhibit 15, which are the five pages
6 of photographs, and Staff Exhibit 17, Mr. Warren's direct
7 testimony, 18, rebuttal testimony, and 19, surrebuttal
8 testimony.

9 A Excuse me. I would like to make one correction.

10 Q Go ahead.

11 A Okay. On page 5, I did not -- this is a map
12 that I -- an image that I acquired from -- as it says on
13 it, Mapquest. It's not one that I -- that I took so --

14 Q But you did -- you obtained the photograph?

15 A Yes. That's right. I obtained this off the
16 Internet.

17 Q All right.

18 MR. STEINER: I had a question about that
19 particular page. Was -- I understand that you --
20 Mr. Warren, you put the -- box in white that says street
21 layout, Seven Bridges Development. Do you see that?

22 A Yes. That's my -- yes. That's true. I added
23 that to the -- to the image along with the information on
24 the right side.

25 MR. STEINER: But you did not draw those white

1 streets in; is that correct?

2 A That is correct. That was from the -- that was
3 available on the image itself.

4 MR. KEEVIL: Judge, I also had a couple of
5 questions on this exhibit. Mr. Warren, I am trying to
6 determine -- some of these photographs appear to be Seven
7 Bridges subdivision. Others appear to be Oakmont Estate.
8 And then some, for example, page 3, I don't know -- can
9 you explain -- okay. Like page 1, those are Seven Bridges
10 photographs, correct?

11 A That's correct.

12 MR. KEEVIL: Page 2 is also Seven Bridges
13 photographs, correct?

14 A Correct.

15 MR. KEEVIL: Okay. Page 3, where -- where are
16 those?

17 A All right. If I can use one of the exhibits
18 that we have here -- well, actually, let's -- let -- can
19 we refer to page -- page 5, please, the -- the aerial
20 view?

21 MR. KEEVIL: Okay.

22 A Whoa. And I will -- or maybe I will go ahead
23 and -- I think I'll go ahead and --

24 MR. BERLIN: Mr. Warren, we'll move the easel
25 over there to assist.

1 A Oh, okay. Kind of set this so -- I don't know
2 if we can get this so everyone can see it or not. But --
3 okay. I'll get here where -- okay. I would first refer
4 you to page 5 of the exhibit. It's the aerial view.

5 And on the bottom of that, I have labeled 126th
6 Street culdesac. And it -- it appears that it's a -- an
7 area that's -- you know, that's being excavated.

8 I think in this -- this -- this photograph is an
9 older photograph, and it doesn't show any -- you know, an
10 actual street there. And then just north of that, where
11 it says Oakmont Estates culdesac, that shows a street and
12 the houses.

13 And those -- those -- those are what are shown
14 -- let's see -- in the -- the 126th Street is on -- is on
15 page 3. And then the Oakmont is on page 4.

16 MR. KEEVIL: Okay.

17 A And then on the topographical map, those --
18 those appear -- this is -- once again, 126th street is on
19 this -- this area. And that Oakmont is this area. On the
20 -- they are -- they are -- this is Prairie Creek here, the
21 -- the stream that's shown.

22 And so this is between the end of these streets
23 and -- and Seven Bridges. And I'll be discussing the --
24 the importance of those later if that clarifies what those
25 are.

1 MR. KEEVIL: Yes, it did. Thank you.

2 JUDGE STEARLEY: All right. With the additional
3 clarifications, let me take up Exhibit 15 first. Are
4 there any objections to the admission of Staff Exhibit 15
5 teen? Hearing none, it shall be received and admitted
6 into evidence.

7 (Staff Exhibit No. 15 was offered and admitted
8 into evidence.)

9 JUDGE STEARLEY: Any objections to the admission
10 of Staff's Exhibit 17 through 19? Hearing none, those
11 shall be admitted and received into evidence.

12 (Staff Exhibits 17, 18 and 19 were offered and
13 admitted into evidence.)

14 MR. BERLIN: Judge, Staff tenders the witness
15 for cross-examination.

16 JUDGE STEARLEY: Cross-examination with OPC.
17 Mr. Poston?

18 MR. POSTON: No questions. Thank you.

19 JUDGE STEARLEY: Empire, Mr. Keevil?

20 CROSS-EXAMINATION

21 BY MR. KEEVIL:

22 Q Just a clarification question here, Mr. Warren.
23 At the risk of having Mr. Steiner object to this being
24 friendly cross, it really isn't.

25 Referring back to your pictures of -- Staff

1 Exhibit 15 and page 3 and 4 and 5, does the section line
2 that separates Section 12 from Section 13 run between
3 Oakmont Estates and 126th Street culdesac?

4 A Yes, it does. As you can -- as you can see,
5 this -- and this is also in my rebuttal test -- rebuttal
6 testimony. This -- if you need -- but, yes, this -- this
7 -- I'm pointing to the section line that separates 12 from
8 13.

9 And it's roughly -- there's a -- a -- some kind
10 of -- kind of a valley in between these -- these two.

11 MR. KEEVIL: Okay. Thank you. That's all I
12 have.

13 JUDGE STEARLEY: Cross-examination, MGE.
14 Mr. Steiner.

15 MR. STEINER: Thank you.

16 CROSS-EXAMINATION

17 BY MR. STEINER:

18 Q Good evening, Mr. Warren.

19 A Good evening.

20 Q On the Staff Exhibit 15, Photo 1, 2, 3 -- were
21 those taken from County Road N?

22 A Well, let's see. The one on the bottom of page
23 1 was actually taken from the road before -- north --
24 north of the entrance to Seven Bridges.

25 The -- the one on the top of page 1 was taken

1 turning -- that's -- in the entry to Seven Bridges just
2 turning off of Highway N.

3 And then the -- the ones on page 2 were -- once
4 again, the -- the top one is taken a little further in --
5 the -- to Seven Bridges. This is somewhat still in the
6 entry -- in the -- the entrance. And the landscaping
7 that's in the foreground is part of the -- the entryway
8 landscaping.

9 And then the one of the clubhouse is further
10 into the subdivision the one at the bottom.

11 Q I'm not asking about the clubhouse.

12 A Okay.

13 Q Did you take Photos 1, 2 and 3 from your car?

14 A They were taken from the vehicle -- the -- the
15 pickup of the City -- City Administrator of Platte City.

16 Q Okay. So you would agree with me that Photo 1,
17 2 and 3 could be seen from County Road N?

18 A I believe one -- the ones on page 1 could be
19 seen from there. I'm not certain that the -- the ones on
20 page 2 could be seen from N.

21 Q I'm not asking about Photo 4, just Photo 3.

22 A I -- I'm not sure if it -- it it could -- if it
23 -- if it could be seen from Highway N or not because this
24 is -- you know, it's some -- a little bit into the
25 entrance of Seven Bridges. And I'm just not sure if that

1 would show up from the road given the -- the landscaping
2 around the entryway.

3 Q Okay. Would you go to page 3 of your rebuttal?
4 And there you talk about the CCN for the Leavenworth
5 supply line?

6 A Yes.

7 Q And you indicate that the CCN limits the use of
8 the Leavenworth supply line to supply the sections around
9 the MCI airport?

10 A Yes.

11 Q Wasn't the Leavenworth supply line limited, as
12 you depict, due to the concerns expressed by the City of
13 St. Joe regarding the sufficiency of the gas supply?

14 A I am not sure that that was the total reason the
15 Commission limited the service.

16 Q Was it one of the reasons?

17 A It's my understanding by the -- by the time the
18 final -- by the time the third and final order was issued
19 in this case that the supply to St. Joe was no longer an
20 -- an issue in the case.

21 It's my -- my understanding that the reason that
22 the -- the supply line was limited was because it passed
23 through territory certificated to Empire or its
24 predecessor and that because of that that the Commission
25 wanted to make clear what areas could be served by that

1 supply line.

2 Q Okay. Are you a member of the Commission's Gas
3 Safety Department?

4 A No, I'm not.

5 Q Do you have any formal gas safety training?

6 A No, I do not.

7 Q Page 5 of your rebuttal, line -- start at 9.
8 You indicate that Gas Safety Department has a preference
9 that there should only be one LCD in the community to
10 avoid confusion among emergency responders. Do you see
11 that?

12 MR. KEEVIL: LCD?

13 Q (By Mr. Steiner) LDC.

14 A Oops. Yes. Yes.

15 Q Where is this preference located? Is it in a
16 rule?

17 A I don't believe it's in a rule.

18 Q Is it in a statute?

19 A I don't believe it's in a statute.

20 Q What do you mean by the term "community?"

21 A I would -- I mean, a -- an -- well, I would
22 guess an incorporated area and its surroundings.

23 Q So a city and its surroundings?

24 A I believe that would be the -- yes.

25 Q On page 5, you also indicate because there is a

1 natural barrier between the Oakmont subdivision and the
2 other subdivision served by Empire, there are less safety
3 concerns. Do you see that?

4 A Yes.

5 Q Is the natural barrier requirement found in the
6 Commission rules and regulations?

7 A I'm not aware of that.

8 Q Is it found in any statute?

9 A I'm not aware of that.

10 Q Do all the borders between gas utilities have
11 natural barriers between them?

12 A I don't believe they do.

13 Q Can you give me an example of a natural boundary
14 between service territories of Missouri gas companies?

15 A I don't -- I'm -- no, I can't recall one at the
16 moment.

17 Q Okay. Could you go to Schedule 8 of your
18 rebuttal testimony?

19 A Yes. Excuse me.

20 Q There you have Section 12, which has Copper
21 Ridge in it. Do you see that?

22 A Yes.

23 Q And to the right of that is Section 7. Do you
24 see that?

25 A Yes.

1 Q Is Section 7 MGE certificated territory?

2 A Yes, it is.

3 Q Is Section 6, above Section 7, is that Empire
4 certificated territory?

5 A Yes, it is.

6 Q Is there a natural boundary between those two
7 sections?

8 A Not that I'm aware of.

9 Q Now, you also recommend that if Empire does not
10 wish to serve MGE's existing customers along the
11 Leavenworth supply line, they should remain an MGE
12 customer, do you not?

13 A Yes. I was referring to the isolated customers
14 that we were shown in -- during the technical conference
15 in Sections 11 and -- I believe they were -- well,
16 possibly 10 and 11 and 12. I can't remember exactly
17 where. They were in close proximity to the Leavenworth
18 supply line.

19 Q So if your recommendation would be adopted by
20 the Commission, there would be a few customers served off
21 of Leavenworth supply line by MGE in Section 12, which
22 contains the Copper Ridge subdivision of Empire? Do you
23 see that?

24 A Well, I think what I said is that -- if -- if --
25 if Empire did not choose at this time to extend service to

1 those customers that rather than having them have gas
2 service discontinued that it would be more equitable to
3 let them continue to be served by MGE.

4 Q Okay. And is there a natural barrier between
5 those customers if they're served by MGE and Empire?

6 A Well, there is -- there is, I would say,
7 distance. I don't know that I -- I don't know of any
8 specific natural barriers.

9 Q Okay are the rules about the proper distance
10 between the customers of one gas utility and another gas
11 utility?

12 A No. Not that I -- I'm not aware of those rules.

13 Q Is Seven Bridges part of Platte City?

14 A No, it is not.

15 Q Is Copper Ridge part of Platte City?

16 A It's not -- not -- it is not in the -- in the
17 city limits of Platte City. I might point out --.

18 Q That's -- that's all I -- that's all I needed.

19 A Okay.

20 Q But you would consider Copper Ridge and Seven
21 Bridges to be in the same community; is that correct?

22 A Yes, I would.

23 Q On page 5 of your surrebuttal at the end, 20 --
24 line 20 to 22, you say you spoke to John Bark, one of the
25 developers of Seven Bridges?

1 A Yes.

2 Q Did he provide you with any information besides
3 the number of customers?

4 A Yes. I -- well, I guess I had a -- a
5 conversation with him about the development.

6 Q On -- we'll stay on that page 5 of your
7 surrebuttal. You cite Commission Rule 4 CSR 240-13.010.
8 Do you see that?

9 A Yes.

10 Q Does that chapter deal with tariff filings by
11 utilities?

12 A That's my understanding.

13 Q I'm going to hand you a copy of that rule. If
14 you would point out that section for me that deals with
15 tariff filings by utilities?

16 A Let's see. Yes. It's under the first heading
17 of General Provisions.

18 Q Okay. And why --

19 A As I've indicated, Item No. 4.

20 Q Okay. And that says A utility should adopt
21 rules governing its relations with customers and
22 applicants for services which are consistent with this
23 chapter. Is that the section you believe is relevant?

24 A Yes.

25 Q Okay. I believe the title page lists the

1 sections of this chapter. Do any of those sections of
2 this chapter deal with tariff filings by utilities?

3 A Well, it deals with the -- the service, the
4 building practices for residential customers of electric,
5 gas and water utilities. And those are, as a general
6 provision, described that -- that, you know, those are to
7 be characterized in the company's -- in the -- in the
8 tariffs as it says in -- in this Section 4.

9 Q Okay. Page 4 of your rebuttal, line 20 --

10 A Yes.

11 Q -- what is the subdivision that you're referring
12 to that MG -- Empire serves?

13 A I'm -- Copper -- I believe -- yes. I'm
14 referring to Copper Ridge.

15 MR. STEINER: Okay. Thank you. I have no
16 further questions.

17 JUDGE STEARLEY: All right. Thank you,
18 Mr. Steiner. Mr. Warren, I have a couple questions from
19 the Commissioners for you.

20 CROSS-EXAMINATION

21 BY JUDGE STEARLEY:

22 Q And I know you are a Regulatory Economist, but
23 you've apparently done some reviewing of tariffs; is that
24 correct?

25 A Yes.

1 Q Are you familiar with any situation where the
2 Commission has granted multiple certificates to different
3 companies like this in overlapping territories?

4 A No. I'm not familiar with a situation where the
5 Commission has granted overlapping territories.

6 Q Okay. Are you aware of anything that would
7 prohibit the Commission from granting certificates
8 overlapping in this manner?

9 A No, I'm not.

10 Q And I believe your -- your testimony also
11 included some information regarding cost of service; is
12 that correct?

13 A Yes.

14 Q And by your -- and I would have to find the
15 specific part of your testimony where you were saying it
16 would be more expensive for the customers to receive
17 service from Empire as opposed to MGE. Let's see. I
18 believe that's in your surrebuttal, page 7 seven and 8.

19 A Yes. Okay. Thank you. Yes. For the specific
20 amount of gas that I -- I specified, which is 866 -- I'm
21 sorry -- 860 cubic feet -- or it's 100 cubic -- CCFs.

22 Q And why did you choose the number of customers
23 using 860 CCF?

24 A That was a -- I believe that was a number that
25 was from information I -- I had that was typical of a

1 residential customer in the Kansas City area of Missouri
2 gas -- gas energy.

3 I'm trying to remember the -- the basis --
4 anyway, that's -- that seemed to be a -- that -- that was
5 a typical -- typical customer in -- typical residential
6 customer and their usage for a -- during the year for this
7 area.

8 Q All right. Do you have an opinion in terms of
9 what's the long-term solution that's most in the public
10 interest in this case?

11 A It would be my opinion that the Commission
12 should uphold the certificates -- the certificate --
13 certificated area of Empire and that the sections that are
14 shown in the MGE tariff that do not have certificates
15 should not be upheld.

16 And as a result of that, the sections requested
17 by MGE should be denied, and the sections requested by
18 Empire should be -- should be awarded, and that this would
19 be in the -- in the overall public interest of the people
20 of the State of Missouri.

21 Q All right. And -- and you are not an attorney,
22 are you, Mr. Warren?

23 A No, sir.

24 Q So you -- you could not comment to the
25 Commission with regard to a proper legal remedy for the

1 Commission in terms of correcting what would be incorrect
2 tariff listings, could you?

3 A No, sir.

4 JUDGE STEARLEY: All right. Thank you. That's
5 all the questions from the Bench. Recross based on
6 questions from the Bench, beginning with Office of Public
7 Counsel. Mr. Poston?

8 MR. POSTON: No, thank you.

9 JUDGE STEARLEY: Empire. Mr. Keevil?

10 MR. KEEVIL: Thank you, Judge.

11 RECROSS EXAMINATION

12 BY MR. KEEVIL:

13 Q Mr. Warren, very briefly here, the Judge was
14 just asking you some questions about your calculations. I
15 believe they're in your surrebuttal testimony at the top
16 of page 8 where you talk about the difference in cost of
17 service between Empire and MGE.

18 And I believe you indicated that it would be
19 more expensive to receive service from Empire. My
20 question, I guess -- my first question is, are your
21 calculations here which are shown on page 8 based on last
22 year's gas prices?

23 A They're -- they're based on the -- yes. They --
24 they would be based on prices that were in effect as -- as
25 it's in my answer between June 2006 and June 2007.

1 Q Okay. And then that would be, then -- they
2 would be based on, at least in Empire's case, last year's
3 purchase gas adjustment factor -- PGA factor?

4 A Yes.

5 Q Okay. Are -- are you aware, Mr. Warren, that
6 earlier this week, in fact, Empire filed to reduce its PGA
7 factor by 20 percent?

8 A I -- yes. I was aware of that because I was
9 asked to do a -- a calculation of -- to project bills for
10 the 2007/2008 heating season.

11 Q And what would that do to this calculation shown
12 on the top of page 8 of your surrebuttal testimony?

13 A Well, in effect, it would change it. And I
14 believe Missouri Gas Energy's filed a PGA as well. And as
15 I -- if I could elaborate for just a moment, as I stated
16 in the last sentence of my answer, that because Empire has
17 a -- a lower monthly customer charge that if we were
18 calculating this for a -- a lower -- I'll say a very --
19 you know, a much lower usage that -- that there could
20 possibly -- there would -- I think there would be a
21 crossover point where it would probably become cheaper for
22 an Empire customer than an MGE customer.

23 MR. KEEVIL: Thank you. No further questions.

24 JUDGE STEARLEY: Thank you, Mr. Keevil. MGE,
25 Mr. Steiner?

1 MR. STEINER: No questions.

2 JUDGE STEARLEY: Any redirect?

3 MR. BERLIN: Yes, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. BERLIN:

6 Q Mr. Warren, is it common for all LDCs to have
7 service territories that are next to each other?

8 A That is not a common situation.

9 Q Do you recall that Mr. Steiner asked you about
10 -- or had some questions regarding natural barriers?

11 A Yes.

12 Q Can you -- can you tell me what the role of a
13 natural barrier means or might mean with regard to
14 differentiating service territories?

15 A Well, in the -- I guess in a -- in a general
16 context where section lines might not be the most, I was
17 trying to say, economical or -- or feasible method of
18 dividing up territory -- dividing up territory that a
19 natural barrier might be a more feasible way of dividing
20 up -- dividing up the -- establishing the boundary between
21 two gas service areas.

22 Q Mr. -- Mr. Warren, is -- with regard to your
23 rebuttal Schedule 9, and I -- I believe it is Staff
24 Exhibit No. 6 --

25 A Yes.

1 Q -- can you please point to Prairie Creek -- I'm
2 sorry -- Prairie Creek in Section 12?

3 MR. STEINER: I'm going to object. I don't
4 think I asked any questions about this exhibit.

5 MR. BERLIN: Judge, he did ask quite a few
6 questions with regard to the import of a natural boundary.

7 JUDGE STEARLEY: I believe that's correct. I
8 will overrule the objection. You may answer the question.

9 A Yes. This is -- on this Section 12, the Section
10 12 is it noted by this 12 here. And Prairie Creek is the
11 -- kind of the blue-green -- well, the flood plain is the
12 bluer part. And the -- the creek itself is -- is kind of
13 more of an evergreen line in here.

14 Q Does Oakmont -- will Oak -- do you -- are you
15 aware of any development that will extend into the flood
16 plain and the creek?

17 A No.

18 Q So is it your opinion that a natural boundary
19 could be a good dividing line between LDCs?

20 A Yes.

21 Q Would such a natural boundary eliminate any
22 confusion as to service areas?

23 A Yes. It could eliminate confusion, especially
24 given the -- in the specific example we're talking about
25 because this MGE certificate -- the subdivision MGE serves

1 sits to the east of Section 12. And this area is an --
2 just an extension of a street.

3 This is a culdesac at the end of that street.
4 So what we're proposing is -- rather than using the
5 section line to divide the subdivision and having this end
6 of the street served as -- as would be legally, it is in
7 section -- in -- in the section certificated to Empire
8 that it would be more feasible and economical for -- to
9 allow this incursion and allow MGE to serve the whole sub
10 -- the whole subdivision, including this culdesac, which
11 is in Empire's service area.

12 Q Now, the rationale that you just described, does
13 that also apply to MGE's incursion into section -- a small
14 portion of Section 13 at the end of northwest 126th
15 Street?

16 A Yes. It's the same -- the same logic.

17 MR. BERLIN: And, Judge, I -- and just for the
18 record, I'd like to state that this is Staff Exhibit 6,
19 and I believe it is Schedule 8. I may have misspoken
20 eralier. But it is Schedule 8 of Mr. Warren's rebuttal.

21 MR. STEINER: Looks like Schedule 9.

22 MR. KEEVIL: Yeah. It's nine.

23 MR. BERLIN: It may be as a result that this
24 schedule was used in a deposition, and so there was a
25 different deposition number. But -- oh, let me back up a

1 minute.

2 MR. KEEVIL: Let the record --

3 MR. BERLIN: I stand corrected. It is
4 Mr. Warren's Schedule 9, and it is premarked as Staff
5 Exhibit 6, which has already been admitted into evidence.

6 MR. KEEVIL: And let the record reflect that
7 Mr. Steiner and I agreed on that.

8 Q (By Mr. Berlin) Just a couple more questions.
9 You were asked some from the Bench with regard to -- and I
10 believe Mr. Steiner asked you some as well with regard to
11 Seven Bridges and Copper Ridge.

12 Is the Seven Bridges subdivision and the Copper
13 Ridge subdivision within the annexation area contemplated
14 by Platte City?

15 A Yes. Let me find my --

16 Q And is Seven Bridges and Copper Ridge, are they
17 within Empire District Gas's certificated area in Section
18 12?

19 A Well, the part of Seven Bridges, it is the part
20 that's in Sections 11 and 12. And as has been discussed,
21 there is a small incursion into Sections 13 and 14 that is
22 -- that is not.

23 And to clarify your -- your question, I would
24 refer to Schedule 7, which is the annexation plan of
25 Platte City.

1 MR. BERLIN: All right. Thank you, Mr. Warren.

2 I have no further questions.

3 RECROSS EXAMINATION

4 BY JUDGE STEARLEY:

5 Q Mr. Warren, I -- I have an additional question
6 for you. You -- in response to Mr. Keevil's question, you
7 mentioned that Empire this week had filed to reduce their
8 PGA factor.

9 A Yes.

10 Q And did I also hear you say that MGA -- MGE has
11 also filed a new PGA?

12 A Yes.

13 Q And --

14 A Well, let me -- have -- my -- I -- I don't know
15 -- I was given a number. I don't know if it was
16 preliminary or filed. I might inquire of Mr. Imhoff as to
17 whether that's been filed or not.

18 Q Okay. Do you know if that PGA filing reduces
19 MGE's PGA factor?

20 A I -- I cannot recall at this moment. I'm sorry.

21 JUDGE STEARLEY: Okay. I'm -- any other
22 redirect based on the question I just asked?

23 MR. BERLIN: No.

24 MR. POSTON: No.

25 JUDGE STEARLEY: Hearing none, I believe that

1 concludes the questioning for you, Mr. Warren. So you may
2 step down. I'd like to thank you for your testimony. You
3 will not be finally excused at this time just in case the
4 Commissioners should decide to have some additional
5 questions for you.

6 MR. WARREN: All right.

7 JUDGE STEARLEY: Mr. Berlin, you may call your
8 next witness.

9 MR. BERLIN: Thank you, Judge. Staff calls Mr.
10 Mike Straub.

11 JUDGE STEARLEY: Mr. Straub, if you'd please
12 raise your right hand.

13 MICHAEL STRAUB,
14 being first duly sworn to testify the truth, the whole
15 truth, and nothing but the truth, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BERLIN:

18 JUDGE STEARLEY: Thank you, Mr. Straub. You may
19 be seated. And, Mr. Berlin, you may proceed.

20 Q (By Mr. Berlin) For the record, Mr. Straub,
21 would you please state your name and how you're employed?

22 A My name is Michael W. Straub. And I'm employed
23 as a part-time employee of the Missouri Public Service
24 Commission.

25 Q And in what capacity are you employed now?

1 A As a part-time employee. I do not have a job
2 title.

3 Q All right. Mr. Straub, how long have you been
4 employed, whether full-time or part-time, by the Missouri
5 Public Service Commission?

6 A With the exception of about six months in 2000,
7 I've been employed here since August of 1970.

8 Q And, Mr. Straub, did you cause to be prepared in
9 this matter rebuttal and surrebuttal testimony, pre-marked
10 Staff Exhibits 20 and 21?

11 A Yes, I did.

12 Q And do you at this time have any changes or
13 corrections you would like to make to that testimony?

14 A No, I do not.

15 Q Mr. Straub, if today I were to ask you the --
16 the same questions that are asked in your testimony, would
17 your answers be the same to your best information,
18 knowledge and belief?

19 A Yes, they would.

20 MR. BERLIN: Judge, the Staff tenders
21 Mr. Straub.

22 JUDGE STEARLEY: Are you going to offer Exhibits
23 20 and 21 into evidence?

24 MR. BERLIN: Yes, your Honor. I apologize for
25 overlooking that. I to wish to offer into evidence Straub

1 rebuttal listed and marked as Staff Exhibit No. 20 and
2 Straub surrebuttal testimony pre-marked as Staff Exhibit
3 21 into evidence.

4 JUDGE STEARLEY: Okay. Any objection?

5 MR. STEINER: Yes, your Honor. I object to
6 Straub rebuttal page 4, lines 16 to 20, as being
7 inadmissible hearsay.

8 Mr. Straub is explaining why he wrote a sentence
9 on a routing slip. He indicates the sentence is the
10 result of discussions he had with Commissioners.

11 Mr. Straub indicates that the Commission
12 Chairman asked that he add a sentence at the end of the
13 routing slip. These are inadmissible hearsay statements
14 because they are out of court statements offered to prove
15 the truth of the matter asserted.

16 They do not have any exception to the hearsay
17 rule. These statements are being offered to establish the
18 sentence was written by Mr. Straub's at the Commission's
19 direction.

20 MGE has no way to determine if these statements
21 were, in fact, made by the Commission because they're
22 hearsay.

23 JUDGE STEARLEY: Mr. Berlin, would you like to
24 respond?

25 MR. BERLIN: I -- yes, Judge. No. 1, it has

1 already been established that this routing slip was faxed
2 to Mr. Hack and that Mr. Hack placed it in MGE's file.
3 And that statement has been there since this tariff was
4 approved in 1997.

5 Also, Mr. Straub is presented today to testify
6 as to what may have -- what was the intention of the
7 Commission at the time when it approved this tariff.

8 Mr. Straub had conversations directly with
9 Commissioners at an agenda meeting when the Commission
10 approved this tariff filing. And this tariff filing is
11 the tariff filing that MGE is relying on for its
12 certificated service area.

13 So Mr. Straub's testimony is very important to
14 establish whether the Commission intended to grant MGE new
15 certificate service territory or whether it did not intend
16 to do so.

17 JUDGE STEARLEY: Okay. Well, I believe the
18 admitted piece of evidence you're referring to speaks for
19 itself. I believe Mr. Steiner's objection goes to whether
20 or not the statement by Mr. Straub is being admitted for
21 the truth of the matter. It's an out of court statement.
22 Did you have a specific response to his hearsay objection?

23 MR. STEINER: Your Honor, I'm not -- I would
24 just like to add, I'm not disputing Mr. Straub wrote it.
25 I'm disputing that he -- his assertion that the Chairman

1 handed them the filing and asked that he add a sentence at
2 the end of the routing slip. That's an out of court
3 statement by the Chairman of the Commission. That's hear
4 say.

5 MR. KEEVIL: Judge, if I could weigh in on this
6 for just a second.

7 JUDGE STEARLEY: By all means, Mr. Keevil.

8 MR. KEEVIL: I believe Mr. Steiner said a moment
9 ago that the statement was written to show -- or excuse
10 me. This portion of the testimony is meant to show that
11 the statement was written on the routing slip by
12 Mr. Straub at the Commission's direction. That's not
13 hearsay. That is why he wrote it.

14 The -- because it's not being offered -- if
15 Mr. Steiner's characterization of it is correct, then it's
16 not being offered for the truth of the matter asserted
17 necessarily showing why Mr. Straub wrote it.

18 And I also think that it probably falls within
19 the state of mind exception of Mr. Straub showing why he
20 took the action he took at the time he took it.

21 MR. STEINER: It has to be the state of mind of
22 the person making the statement, which would be the
23 Commissioner, not Mr. Straub with that exception.

24 MR. BERLIN: The statement was written and made
25 by Mr. Straub. Mr. Straub has, as he will testify, made

1 that statement. And he put his initials there, and I
2 believe, dated it. And is Mr. Straub is here.

3 JUDGE STEARLEY: Right. I don't believe
4 Mr. Straub's statement is --

5 MR. BERLIN: It's as to why he made that
6 statement.

7 JUDGE STEARLEY: -- is the question. Right. I
8 believe the issue is whether or not the Chairman asked him
9 to make the statement, if that is, in fact, a hearsay
10 remark on the part of Mr. Straub.

11 MR. BERLIN: Let me just say that I think
12 Mr. Keevil touched on it in that Mr. Straub was directed
13 to write a statement. And I believe that the statement is
14 Mr. Straub's statement.

15 Why did Mr. Straub make that statement is why he
16 is here today to testify.

17 JUDGE STEARLEY: Well, I understand which
18 statement is Mr. Straub's. I'm talking about lines 19
19 through 20 where it states, The Commission asked that I
20 add a sentence at the end of the energy routing slip
21 reflecting my response.

22 I -- I don't believe there's an issue with
23 Mr. Straub's addition or written statement, which he's
24 initialed on there.

25 MR. STEINER: That's correct. That's line 15.

1 I'm not objecting to that.

2 MR. BERLIN: Could you -- go ahead, Judge,
3 please just so I can sort through and find out exactly
4 what lines you're speaking of.

5 JUDGE STEARLEY: Sure. Rebuttal, page 4, lines
6 19 and 20. The statement reads, After the discussion, the
7 Chairman handed me the filing and asked that I add a
8 sentence at the end of the energy routing slip reflecting
9 my response.

10 MR. BERLIN: Okay. Judge, I guess I don't quite
11 understand how that's hearsay. I -- what --

12 JUDGE STEARLEY: It's a comment about the
13 Chairman's statement, not the statement that he added to
14 the routing slip. It's a statement stating what the
15 Chairman asked him to do. And I believe that's where
16 Mr. Steiner's objection lies.

17 MR. STEINER: That's right.

18 JUDGE STEARLEY: Now, Mr. Keevil, if you
19 wouldn't mind repeating for me why you think that falls
20 within a hearsay exception?

21 MR. KEEVIL: Well, for one -- for one thing, I
22 -- I think it shows -- I guess -- I guess you lost me
23 there a little bit, also.

24 You're saying that Mr. Steiner's objection is
25 going to the fact that Mr. Straub states that the Chairman

1 handed him a filing and asked that he add a sentence -- I
2 guess I'm like Mr. Berlin now. I don't see how that's
3 hearsay because it explains why Mr. Straub did something.

4 It's not -- it's not the statement itself that
5 you're -- Mr. Steiner apparently is taking issue with, the
6 statement on the routing slip. It's why it is put there.
7 And why it was put there was not hearsay.

8 JUDGE STEARLEY: Not -- I believe Mr. Steiner's
9 objection --

10 MR. STEINER: The statement --

11 JUDGE STEARLEY: -- is that this statement
12 claims that the Chairman directed Mr. Straub to put the
13 written statement in -- on that routing slip.

14 MR. STEINER: He asked that I --

15 JUDGE STEARLEY: It involves the Chairman's
16 statement.

17 MR. KEEVIL: But -- but it's not the Chairman's
18 statement, truth or falsity of the chairman. The
19 Chairman's statement is supposedly -- Mr. Straub put this
20 on the routing slip. Perhaps the -- perhaps the Chairman
21 misspoke. Perhaps that's how Mr. Straub understood the
22 Chairman.

23 I mean, the -- this -- I don't -- again, I don't
24 how this is -- is hearsay. Maybe I'm just missing it.
25 But I don't think it's being offered to show the truth or

1 falsity that the Chairman -- of the -- the truth or
2 falsoty of whatever it was the Chairman told Mr. Straub.

3 MR. STEINER: It's being -- it's being -- it's
4 in the testimony to show that Mr. -- that the Chairman
5 asked him to add a sentence at the end of the routing
6 slip. That's the truth or the falsity of the sentence as
7 being introduced to support Mr. Straub's contention nthat
8 he did add the sentence at the request of the
9 Commissioner.

10 MR. KEEVIL: And the fact that Mr. Straub
11 apparently added a sentence at the request of the
12 Commissioner -- I think this sentence of Mr. Straub's
13 testimony goes to show Mr. Straub's state of mind and why
14 -- explains why he did what he did.

15 MR. STEINER: But it only does that by showing
16 -- by using an out of the court statement by the
17 Commissioner. Add a sentence, Mr. Straub, at the end of
18 the routing slip.

19 MR. BERLIN: Judge, he was directed to write a
20 statement. And I think going back ten years or more, he
21 is the only individual -- the person who made the
22 statement who can say why he made the statement, how did
23 that statement come about, and what role he played in that
24 particular filing.

25 MR. STEINER: We don't know that without the

1 hearsay.

2 JUDGE STEARLEY: The statement can come into the
3 record as exhibiting the motive or intent from
4 Mr. Straub's writing of the statement.

5 It cannot be viewed by the Commission as
6 establishing that this was official Commission action
7 directed by the Chairman because that, in that respect,
8 would be a hearsay statement.

9 So I will allow the statement into the record
10 for the limited purpose of demonstrating why Mr. Straub
11 added his remarks into the record, but not for the truth
12 of the matter as to whether or not the Commissioners, as a
13 body or the Chairman as an individual, directed it.

14 In terms of it being hearsay with that regard,
15 it will be in the record, and the Commission can -- that
16 can go to its weight and credibility when they're
17 evaluating it.

18 MR. STEINER: Thank you, your Honor.

19 JUDGE STEARLEY: Okay. Any other objections --

20 MR. STEINER: No, your Honor.

21 JUDGE STEARLEY: -- to this exhibit? Okay.

22 With that one objection sustained, Staff's Exhibit -- No.
23 20 and 21 will be received and admitted into the record.

24 (Staff Exhibit Nos. 20 and 21 were offered and
25 admitted into evidence.)

1 JUDGE STEARLEY: And is Mr. Straub now tendered
2 for cross?

3 MR. BERLIN: Yes, Judge. We tender Mr. Straub
4 for cross-examination.

5 JUDGE STEARLEY: Thank you, Mr. Berlin.
6 Cross-examination by the Office of Public Counsel?

7 MR. POSTON: No questions.

8 JUDGE STEARLEY: Empire, Mr. Keevil?

9 MR. KEEVIL: No questions, Judge.

10 JUDGE STEARLEY: Gee, Mr. Steiner.

11 MR. STEINER: Thank you.

12 CROSS-EXAMINATION

13 BY MR. STEINER:

14 Q Good afternoon. Good evening, Mr. Steiner.

15 A Good evening.

16 Q Mr. Straub, once a tariff is approved, does it
17 become law?

18 A It becomes effective.

19 Q When a tariff is in effect, does the company
20 have any discretion as to whether it will comply with it?

21 A Not in my opinion.

22 Q What would happen to a company if it chose not
23 to follow its approved tariff?

24 A Depending on the circumstances, but probably a
25 Staff complaint would at some point be filed.

1 Q Would you go to your surrebuttal, please?

2 A Okay.

3 Q Page three, line 12 to 15. There you say that,
4 Any section listed in the index of certificated areas in
5 which MGE did not have a CCN to serve were approved in
6 error by the Commission. Is that correct?

7 A Yes.

8 Q So it's Staff's position that when a tariff with
9 an error is approved, any new filing that revises the
10 tariff and eliminates the error should be filed by the
11 company?

12 A There are -- that is one option. Yes.

13 Q And Staff would support such a filing; is that
14 correct?

15 A If it was -- if it agreed that it was an error.
16 Yes.

17 Q And if a utility's rates reflected a rate --
18 excuse me. If a utility tariffs reflected a rate that was
19 different than what the Commission authorized, Staff would
20 support that utility's filing of a new tariff with the
21 authorized rate; is that correct?

22 A Yes. And to give you an example, in a case of
23 compliance filing with a report and order, it appointed
24 the values or customer charge or per unit charges
25 incorrectly stated on the tariff and has gone into effect

1 and discovered at a later date, then, yes, the companies
2 would make a 30-day tariff filing, and the Staff would
3 recommend that that filing be approved.

4 Q Mr. Straub, what if the error is not discovered
5 by the company or Staff? Does the tariff approved in
6 error still remain in effect?

7 A Yes.

8 Q If the error is discovered but the tariff is not
9 changed, does the tariff remain in effect?

10 A Yes, it does.

11 Q Was MGE the first gas utility to file tariffs
12 defining its service territory?

13 A One of the first. I don't remember if they were
14 the first one.

15 Q Do all Missouri gas utilities have tariffs
16 defining their service territory?

17 A I haven't looked at all the tariffs in the last
18 seven years, so I can only speak to when I was in that
19 department. And at that time, not all companies had a
20 definable service territory in their tariff.

21 Q Did Staff try to get those companies that did
22 not have a define -- definable service territory to file
23 tariffs reflecting a definable service territory?

24 A Yes.

25 Q MGE's Tariff Sheet 6.15 is still in effect; is

1 that correct?

2 A Yes.

3 Q Does that tariff sheet reference the orders
4 granting ing MGE a certificate?

5 A No.

6 Q I believe in your testimony you describe the
7 tariff approval process in Case No. 9700571; is that
8 correct?

9 A Yes. Is that in my rebuttal?

10 Q I think it's in both, but did Mack -- Mr. Mack
11 McDuffey work with MGE in determining what to file in that
12 case?

13 A Yes, he did.

14 Q Did you supervise Mr. McDuffey at that time?

15 A Yes, I did. I don't remember the extent to
16 which Mr. McDuffey may have worked with MGE prior to the
17 filing of the tariff. It may have all been after the
18 filing.

19 Q In your preparation for this testimony, did you
20 ask Mr. McDuffey?

21 A No, I didn't.

22 Q If you would go to your -- page 6 of your
23 rebuttal --

24 A Okay.

25 Q -- you state either the company filing the

1 tariff or the Staff have the ability to bring a tariff to
2 the attention of the Commission. Is that what you say?

3 A What line are you on?

4 Q Sorry about that. I believe it's line 21 and
5 22.

6 A Okay. I see it.

7 Q So you state either the company filing a tariff
8 or the Staff have the ability to bring a tariff to the
9 attention of the Commission, right?

10 A That's correct.

11 Q Can another utility also bring a complaint
12 concerning a different utility's tariff?

13 A I would assume so.

14 Q Did Staff review Tariff Sheet 6.15 after it was
15 approved by the Commission?

16 A After it was approved?

17 Q Immediately after. Yes.

18 A In 1997.

19 Q That's correct.

20 A No. When you say review it, did we review it
21 after the fact? Reviewed it before the fact or before the
22 approval? After the approval, it just went through the
23 normal routing process of being placed in the tariffs and
24 mailed to the company.

25 Q Mr. Straub, does Staff field questions from the

1 public as to who can provide utility service in a
2 particular area?

3 A Yes.

4 Q If a utility has a list of certificated
5 territories in its tariff, doesn't Staff look at the
6 tariff to respond to any questions of this nature?

7 A Yes.

8 Q If you would, go to page 2 of your surrebuttal.

9 A Okay.

10 Q There at lines 15 and 16, you mentioned Rule
11 240-3.205.

12 A Yes.

13 Q Do you know when that rule came into existence?

14 A Originally, no, I do not.

15 Q Would it surprise you if I said 2003?

16 A Right under that, current one, you're correct,
17 2003. But right under that in fine print are the original
18 authorities with the series of years listed. Now, I don't
19 know if this exact rule was in effect during '97 or not.

20 Q Okay. On page 4 of your rebuttal, is it --
21 rebuttal, you talk lines 1 through 8, I believe, about the
22 reason why companies were requested to describe their
23 service areas in their tariffs. Do you see that?

24 A Yes.

25 Q It was required by rule at that time; is that

1 correct?

2 A That's what the routing slip indicated from the
3 Staff, which is this particular rule. So if you look at
4 Schedule 2 -- 2-1 attached to that, the first sentence of
5 that routing slip indicates that the Commission Rule 4 CSR
6 24002.060 requires metes and bounds description of the
7 certificated service area.

8 So based on that, I would assume -- whether it's
9 this exact one that we're looking at today or not, I'm not
10 sure. But there was one in effect at that time.

11 Q So you believe at this time there was a rule
12 that required a metes and bounds description of -- of a
13 certificated service area; is that correct?

14 A Yes. Based on this.

15 Q Was the purpose of the rule to make it easier to
16 determine where a utility had service territory?

17 A I don't know if that was the purpose of the
18 rule. But it was definitely the purpose of Staff's desire
19 to put the description -- service area descriptions in the
20 tariff.

21 Then -- and I -- and still to this day, we have
22 a lot of instances where there's uncertainty on service
23 areas and who is allowed or required to serve in areas.
24 And so the purpose of this was to put something in the
25 tariff that would give us some degree of knowledge in the

1 utility -- in the service areas of the affected utilities.

2 And it wasn't just gas utilities. It was also
3 electric utilities. And it goes back to where we would
4 get complaints and they would say who -- or the customers
5 would call and say, Well, who is my service provider,
6 whether it be for electric or gas.

7 And at that time, there was a lot of territorial
8 infringes on the electric side with cooperatives versus
9 investor-owned as well. So this was all part of the
10 process to try to get some definite or definitive
11 information on service areas in the -- the tariffs of each
12 of the affected utilities.

13 MR. STEINER: Thank you, Mr. Straub. That's all
14 I have.

15 JUDGE STEARLEY: Okay. Mr. Straub, I have a
16 couple questions for you from the Commissioners.

17 MR. STRAUB: Sure.

18 CROSS-EXAMINATION

19 BY JUDGE STEARLEY:

20 Q Are you aware of any instance, in your
21 experience, where the Commission has given multiple
22 certificates where it be overlapping service territory?

23 A I've heard that question asked before, and I've
24 thought about it a great deal. And I have not looked
25 recently. And I just cannot remember -- remember an

1 instance where we would have investor-owned regulated
2 utilities overlapping.

3 Now, there have been several instances of
4 regulated versus non-regulated utilities overlapping.

5 Q Okay. Are you aware of any instances where
6 overlapping tariffs have been granted?

7 A Other than this one, I'm not aware of any.

8 Q And it's -- I believe in your testimony you've
9 stated that this tariff can be corrected by a simple
10 filing of correction on the part of the company; is that
11 correct?

12 A That that's correct. If they -- if they believe
13 that the tariff was approved in error, they definitely
14 have the ability to make a 30-day tariff filing.

15 Q And you're not an attorney; is that correct?

16 A That's correct.

17 Q So you cannot comment on the legal authority of
18 of the Commission to effect such a tariff, correct?

19 A That's correct.

20 Q Okay. The company can voluntarily do it?

21 A Or the Staff could file a complaint against the
22 company to get the company to do it if Staff was so moved.
23 So those are the two options.

24 Q Okay. And in this instance, Staff did not file
25 a complaint?

1 A Staff has not filed a complaint as of this date.
2 That's correct. Staff is reviewing the '97 filing, and
3 that does remain a possibility down the road.

4 Q Okay. Do you have any explanation -- there are
5 -- there are more than just nine overlapping sections in
6 this tariff. I believe there's a total of 22 --

7 A Yes.

8 Q -- which Staff has stated is in error. Do you
9 have any explanation why or how that slipped past Staff's
10 review?

11 A I wish I did. And I -- and I must say it is
12 embarrassing. But -- but at the same time, you've got to
13 keep in mind that there are 2900 sections. And just to
14 give you a reference of what a section is, that's a square
15 mile.

16 So there are 2900 square miles of MGE service
17 territory all on the western side of the state. So it's
18 an encumbering process to -- to get that together.

19 And, yes, that wasn't Staff's brighter moment by
20 missing that. But it's very understandable to see how
21 something like that can happen, especially in the case of
22 where you have the supply line sections.

23 We've talked a lot about the different types of
24 certificates, whether it's an area certificate or a line
25 certificate. But we need to keep in mind that there is

1 more than one kind of line certificate.

2 We have a line certificate that allows customers
3 -- utilities to serve based off of a line extension. And
4 then we have the line certificate where it simply allows
5 the transmission of the facilities through an area that's
6 not in service area of the affected companies.

7 So it could have easily looked at those sections
8 where the Leavenworth supply line is, and -- and I can
9 understand how those would have mistakenly got included as
10 service area because if you had to read 79 orders, by the
11 time you get to No. 79, you're probably a little blurry.

12 And you -- you just see, okay, I see those
13 sections. And so I can understand how those sections got
14 -- got into the tariff.

15 The other sections that are not located where
16 the supply line is is a little more difficult to
17 understand. And it's -- it's even more difficult to
18 understand how Staff missed it.

19 I do know, also, in a lot of other instances,
20 especially historically, more than ten years ago, when the
21 Commission would grant a service area to a utility,
22 whether it be a gas or an electric utility, in most
23 instances, it would grant to a gas utility as an example
24 to the City of Sedalia and surrounding area. So there was
25 always a dispute or a question as to really what

1 surrounding area meant.

2 Well, we all know that it means -- if it's close
3 to Sedalia and the company can provide service, then
4 that's the surrounding area. So there will be instances
5 where there will be sections listed on MGE's tariff that
6 it will be difficult to find a CCN for.

7 And it would be in those types of CCN cases
8 where they would simply refer to the area as the rural
9 area is another good example or surrounding area.

10 And we even have gas utilities that have been
11 granted an entire county. So that's pretty easy when it's
12 an entire county. But I guess what I'm getting at is --
13 is I know this on the surface is -- appears serious. And
14 it is.

15 But on the other hand, it's -- compared to the
16 magnitude of what we're dealing with, it's -- you know,
17 we've got a very small section of the state or of MGE's
18 service area where we're -- where we've discovered this
19 problem, which is why the Staff is reviewing the '97
20 filing and making sure that if there are other instances
21 like this that we can address those before it results in
22 in type of case.

23 Q Okay. And do I understand the process correct
24 that MGE, the company, worked with Staff in determining
25 which areas to include in its tariff?

1 A I know they did work with Staff, and they did
2 work with Mr. McDuffey. I wish I could tell you that I
3 remember everything about this filing. But, honestly, the
4 only thing I remember about this -- I remember two things
5 about this filing.

6 One, the rate case where we wanted to get this
7 into effect, where we wanted to get this taken care of
8 because MGE is one of the -- geographically, one of the
9 largest gas utilities. So I remember that.

10 And then I remember writing the sentence that
11 we've all discussed simply because that was a very unique
12 instance to add a sentence to the routing slip. So I do
13 remember that.

14 The interaction that I may have had with
15 Mr. McDuffey during the filing, I'm -- I'm a total blank
16 on. And -- and what I would go on now is simply that --
17 what the tariff filing indicates in the routing slip.

18 Q Okay. Do you have any opinion or thoughts on
19 whether or not MGE would have in any way acted in bad
20 faith in trying to put their tariffs together in working
21 with Staff?

22 A I -- I don't have any information that -- that I
23 could make a judgment on whether it was in bad faith. I
24 had assumed that they made it in good faith, which is what
25 allowed me to write that sentence. Had I believed that

1 the filing would have granted additional service area or
2 that there were questionable sections, I would have
3 addressed those.

4 I thought all the sections were reviewed. And I
5 -- and I still think all of the orders and sections were
6 reviewed. And -- and I just simply cannot explain it.
7 But -- but as far as good faith, I really have nothing --
8 I choose to believe that the error was in good faith, but
9 I have no proof one way or the other.

10 JUDGE STEARLEY: All right. Thank you, Mr.
11 Straub. Have recross based on questions from the Bench,
12 beginning with OPC?

13 MR. POSTON: Yes. Thank you.

14 RECROSS EXAMINATION

15 BY MR. POSTON:

16 Q You just testified that there was two options to
17 correct the tariff. You said the company can make a
18 30-day filing or the Staff could file a complaint.

19 But not being an attorney, you wouldn't be able
20 to testify as to whether a legal argument could be made
21 regarding a third option, where the Commission itself can
22 direct such a tariff correction; is that -- is that true?

23 A Correct.

24 MR. POSTON: Thank you. That's all.

25 JUDGE STEARLEY: Thank you, Mr. Poston. Recross

1 from Empire. Mr. Keevil?

2 MR. KEEVIL: Yes. Very briefly.

3 RECROSS EXAMINATION

4 BY MR. KEEVIL:

5 Q Mr. Straub, I believe you stated that in
6 response to a question from the Judge that there are no
7 other instances of MGE's tariffs where this sort of thing
8 has happened.

9 However, Staff is currently in the process of
10 reviewing all of the other area of MGE's tariff to
11 determine, if, in fact, there are other similar problems.

12 How -- how can both those be -- in other words,
13 you don't know whether there are other problems in their
14 tariff or not, did you?

15 A That's correct. All I -- the only problems I'm
16 aware of are what we're dealing with today.

17 Q And you also, in response to a question from the
18 Judge, indicated that many years ago sometimes the
19 Commission would issue certificate orders that said,
20 Sedalia and surrounding areas or some city in surrounding
21 area.

22 The orders in this case, which I believe
23 Mr. Berlin has introduced into evidence as Staff Exhibits
24 7, 8 and 9, have you had a chance to look at those?

25 A I don't have them before me. But I have looked

1 at them.

2 Q Okay. So those are -- you would recognize those
3 as the order granting MGE's predecessor its territory,
4 which we're talking about here today?

5 A Correct.

6 Q Okay. Now, is it true that we're not talking
7 about one of these orders that said, somewhere and
8 surrounding area, or some somewhere and the environs or
9 something like that, are we?

10 A We are not. You are correct.

11 Q It's very specific in those orders what land
12 sections, townships and ranges MGE and its predecessor
13 were being authorized to serve, is it not? It's very
14 clear?

15 A That's true. That's correct. It is very clear.

16 MR. KEEVIL: Okay. No further questions.

17 JUDGE STEARLEY: Thank you, Mr. Keevil. MGE?

18 MR. STEINER: Thanks.

19 RE CROSS EXAMINATION

20 BY MR. STEINER:

21 Q Mr. Straub, you said that Staff was
22 investigating MGE's tariffs. Is Staff investigating any
23 other gas company's tariffs for similar problems?

24 A Well, right now, all I'm aware of is the MGE.
25 We're just going to go back through '97 and make sure that

1 -- that we have everything correctly listed on the
2 tariffs. And that's a start. So I don't know what the
3 process will be after that.

4 Q I believe you also testified in response to some
5 Bench questions that there were two options. The Staff
6 could file a complaint. The company could make a 30-day
7 filing to fix a tariff. Isn't there another option that
8 an outside entity like another utility could file a
9 complaint?

10 A I would assume everybody could -- any -- whoever
11 could legally file a complaint, yes. And I wouldn't know
12 what entity would qualify. So -- so whoever could file a
13 complaint would have that option. Yes.

14 MR. STEINER: Okay. That's all I have. Thank
15 you.

16 JUDGE STEARLEY: Okay. Thank you, Mr. Steiner.
17 Redirect, Mr. Berlin?

18 MR. BERLIN: Just a minute, Judge, please.
19 Judge, Staff has no further questions of -- of this
20 witness with regard to redirect.

21 JUDGE STEARLEY: All right. Thank you,
22 Mr. Berlin. Mr. Straub, thank you for your testimony.
23 You may step down. The Commissioners have not directed
24 any additional questions to me, so you are finally excused
25 as a witness as are all the other witnesses who appeared

1 today.

2 And we'll need to take up a few housekeeping
3 items here before we adjourn. I'm assuming the parties
4 are wanting to do post-hearing briefs and forgo closing
5 statements. Would I be correct?

6 MR. KEEVIL: Yes, judge. I think briefs instead
7 of closing argument would be the way to go.

8 MR. STEINER: Could I interject? I had an MGE
9 4, which was the Klein map. Was that offered and
10 admitted?

11 MR. BERLIN: I see it --

12 MR. KEEVIL: I think it was.

13 MR. STEINER: It was.

14 MR. BERLIN: -- it was offered.

15 MR. STEINER: It was admitted?

16 JUDGE STEARLEY: Exhibit MGE 4 was admitted and
17 received into evidence.

18 MR. STEINER: Thank you.

19 JUDGE STEARLEY: That's what I have. In fact, I
20 have on my sheet that all offered exhibits have been
21 received into evidence. The one with -- one with an
22 objection sustained, which was Exhibit 20, I believe. All
23 others came in without objection sustained. So check --

24 MR. KEEVIL: Everything offered had been
25 received. Was everything marked received?

1 JUDGE STEARLEY: Everything -- everything marked
2 as far as -- I have Staff Exhibits 1 through 21 admitted
3 and received, with the one objection sustained,
4 Mr. Straub's rebuttal.

5 I have MGE 1 through 4 admitted and received,
6 Empire 1 through 6 admitted and received and no exhibits
7 offered by OPC. Does that match your list?

8 MR. KEEVIL: Looks -- looks right to me.

9 JUDGE STEARLEY: Okay. The transcript should be
10 available in ten business days. Is that correct, Monnie?

11 THE COURT REPORTER: Yes.

12 JUDGE STEARLEY: Roughly November 8th or 9th.
13 Typical briefing schedule, 20 days after transcripts are
14 filed.

15 MR. KEEVIL: Judge, I -- just for personal
16 selfish reasons, this may also apply to other attorneys
17 here, but I am in the process of the briefing schedule in
18 the KCPL rate case, which I think the reply brief --
19 Mr. Steiner is in the case. He can correct me if I'm
20 wrong. I think reply briefs are due the 15th of November.
21 So if whatever you set here can take that into account, I
22 would certainly appreciate it.

23 JUDGE STEARLEY: Well, the earliest we'd be
24 looking at if we get transcripts on the 8th would be
25 around the 28th of November. We can allow a few more days

1 if the parties need it, certainly.

2 MR. BERLIN: Judge, I would ask that we -- we
3 allow a few more days if the other attorneys agree to
4 that.

5 JUDGE STEARLEY: Let me look on the calendar
6 here.

7 MR. STEINER: How about until January? I have a
8 KCPL merger. I was kidding. I was kidding. I have no
9 objection to more days.

10 JUDGE STEARLEY: Well, tentatively, we can go to
11 the following week if you'd like, say, Friday, December
12 7th. Or is that too far back?

13 MR. BERLIN: That's not too far back for Staff.

14 MR. KEEVIL: Fine with me.

15 MR. STEINER: The further, the better for me.

16 JUDGE STEARLEY: Okay. And just the one round
17 of briefs. No reply briefs?

18 MR. STEINER: That's fine with me.

19 JUDGE STEARLEY: The parties --

20 MR. BERLIN: Staff agrees.

21 JUDGE STEARLEY: Pardon?

22 MR. BERLIN: Staff agrees with that.

23 JUDGE STEARLEY: The parties are welcome to file
24 Proposed Findings of Fact and Conclusions of Law, but I'm
25 not going to require it. Okay. Are there any other

1 matters we need to take up before we adjourn?

2 MR. KEEVIL: Judge, may I ask why you decided to
3 just do one round of briefs? I'm not sure whether -- is
4 there some reason there or --

5 MR. STEINER: I did a whole Empire -- I did all
6 kinds of rate cases with one round of briefs. We ought to
7 be able to do this.

8 JUDGE STEARLEY: The Commission has been
9 generally preferring one round of briefs.

10 MR. KEEVIL: That's a good enough explanation
11 for me, then.

12 JUDGE STEARLEY: Okay. Are there any other
13 matters we need to take up before we adjourn today?

14 MR. KEEVIL: No.

15 JUDGE STEARLEY: Well, hearing none, the
16 evidentiary hearing in Cases GA-2007-0289 consolidated
17 with GA-2007-0457 is hereby adjourned. Thank you all very
18 much.

19 MR. STEINER: Thank you, your Honor.

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1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI)
) ss.
4 COUNTY OF OSAGE)

5

6 I, Monnie S. VanZant, Certified Shorthand Reporter,
7 Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal on October 30, 2007.

18

19

20

21 _____
Monnie S. VanZant, CSR, CCR #0539

22 Registered Professional Reporter

23

24

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1	I N D E X	
2		PAGE
3	Opening Statement by Mr. Steiner	
4	Opening Statement by Mr. Keevil	27
5	Opening Statement by Mr. Berlin	42
6		
7	WITNESS: ROBERT HACK	PAGE
8	Direct-Examination by Mr. Steiner	65
9	Cross-Examination by Mr. Berlin	72
10	Cross-Examination by Mr. Poston	99
11	Cross-Examination by Mr. Keevil	114
12	Cross-Examination by Commissioner Murray	123
13	Recross Examination by Judge Stearley	124
14	Cross-Examination by Commissioner Clayton	126
15	Recross Examination by Mr. Berlin	131
16	Recross Examination by Mr. Poston	133
17	Recross Examination by Mr. Keevil	135
18	Redirect Examination by Mr. Steiner	137
19		
20	WITNESS: MICHAEL NOACK	PAGE
21	Direct-Examination by Mr. Steiner	141
22	Cross-Examination by Mr. Berlin	142
23	Cross-Examination by Mr. Poston	149
24		
25		

1 I N D E X (CONTINUED)

2	WITNESS: DAN KLEIN	PAGE
3	Direct-Examination by Mr. Keevil	152
4	Cross-Examination by Mr. Berlin	154
5	Cross-Examination by Mr. Steiner	157
6	Cross-Examination by Commissioner Clayton	179
7	Cross-Examination by Judge Stearley	180
8	Recross Examination by Mr. Steiner	182
9	Redirect Examination by Mr. Keevil	183

10

11

12	WITNESS: STEVE TETER	PAGE
13	Direct Examination by Mr. Keevil	186
14	Cross-Examination by Mr. Berlin	188
15	Cross-Examination by Mr. Poston	191
16	Cros-Examination by Mr. Steiner	191

17

18

19	WITNESS: RONALD GATZ	PAGE
20	Direct Examination by Mr. Keevil	212
21	Cross-Examination by Mr. Berlin	188
22	Cross-Examination by Mr. Steiner	219

23

24

25

1	I N D E X (CONTINUED)	
2	WITNESS: HENRY WARREN	PAGE
3	Direct Examination by Mr. Berlin	225
4	Cross-Examination by Mr. Keevil	232
5	Cross-Examination by Mr. Steiner	233
6	Cross-Examination by Judge Stearley	241
7	Recross Examination by Mr. Keevil	244
8	Redirect Examination by Mr. Berlin	246
9	Recross Examination by Judge Stearley	250
10		
11	WITNESS: MICHAEL STRAUB	PAGE
12	Direct-Examination by Mr. Berlin	251
13	Cross-Examination by Mr. Steiner	261
14	Cross-Examination by Judge Stearley	268
15	Recross Examinaoin by Mr. Poston	274
16	Recross Examination by Mr. Keevil	275
17	Recross Examination by Mr. Steiner	276
18		
19	Reporter's Certificate	282
20		
21		
22		
23		
24		
25		

1	E X H I B I T S			
2	STAFF			
3	EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
4	1	Map	112	112
5	2	Map	112	112
6	3	Map	112	112
7	4	Map	112	112
8	5	Map	112	112
9	6	Map	112	112
10	7	Report & Order	112	112
11	8	Order Modifying Report & Order	112	112
12	9	Report & Order	112	112
13	10	2/20/97 Letter	112	112
14	11	4/10/97 Letter	112	112
15	12	4/11/97 Letter	112	112
16	13	Routing Slip	112	112
17	14	8/12/99 Letter	106	106
18	15	Photographs	232	232
19	16	Deposition & Attachments	112	112
20	17	Direct Testimony of Henry Warren	112	112
21	18	Rebuttal Testimony of Henry Warren	112	112
22	19	Surrebuttal Testimony of Henry Warren	112	112
23				
24				
25				

1	E X H I B I T S (CONTINUED)			
2	STAFF			
3	EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
4	20	Rebuttal Testimony of Michael Straub	260	260
5	21	Surrebuttal Testimony of Michal Straub	260	260
6	EDGC			
7	EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
8	1	Direct Testimony of Daniel Klein	154	154
9	2	Direct Testimony of Steven Teter	187	187
10				
11	3	Direct Testimony of Ronald Gatz	214	214
12				
13	4	Rebuttal Testimony of Ronald Gatz	214	214
14	5	Surrebuttal Testimony of Ronald Gatz	214	214
15				
16	6	10/20/06 Letter	104	104
17	MGE			
18	EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
19	1	Direct Testimony of Michael Noack	142	142
20	2	Rebuttal Testimony of Michael Noack	142	142
21				
22	3	Surrebuttal Testimony of Michael Noack	142	142
23	4	Map	165	165
24	(All exhibits were retained by the Missouri Public Service Commission.)			
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