

Exhibit No.
Issue: Certified Territory
Witness: Ronald F. Gatz
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Empire District
Case No: GA-2007-0289
Date Testimony Prepared: October 2, 2007

**Before the Public Service Commission
of the State of Missouri**

Surrebuttal Testimony

Of

Ronald F. Gatz

October 2, 2007

SURREBUTTAL TESTIMONY
OF
RONALD F. GATZ
ON BEHALF OF
THE EMPIRE DISTRICT GAS COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO: GA-2007-0289

1 **INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Ronald F. Gatz and my business address is 602 Joplin Street, Joplin,
4 Missouri 64801.

5 **Q. ARE YOU THE SAME RONALD GATZ WHO PREVIOUSLY FILED**
6 **DIRECT AND REBUTTAL TESTIMONY ON BEHALF OF THE EMPIRE**
7 **DISTRICT GAS COMPANY (“EDG” OR “EMPIRE”) IN THIS CASE?**

8 A. Yes.

9 **PURPOSE**

10 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY IN**
11 **THIS CASE?**

12 A. My testimony will address several issues contained in the rebuttal testimony filed
13 by Henry Warren of the Staff of the Missouri Public Service Commission
14 (“Commission”) and Michael Noack on behalf of Missouri Gas Energy (“MGE”).

1 **Q. HAVE YOU REVIEWED THE REBUTTAL TESTIMONY FILED BY**
2 **HENRY WARREN ON BEHALF OF THE STAFF OF THE MISSOURI**
3 **PUBLIC SERVICE COMMISSION IN THIS CASE?**

4 A. Yes.

5 **Q. DO YOU AGREE WITH MR. WARREN’S STATEMENT AT PAGE 4,**
6 **LINE 7 THAT EDG HAS A CERTIFICATE TO PROVIDE GAS SERVICE**
7 **IN SECTIONS 10 THROUGH 12 OF TOWNSHIP 52 NORTH RANGE 35**
8 **WEST?**

9 A. Yes. Mr. Warren, after a review of the past Commission orders dealing with
10 authorized service area in this part of Platte County, came to the same conclusion
11 as we did after our review. EDG holds the certificate in these sections, not MGE.

12 **Q. DO YOU AGREE WITH STAFF WITNESS WARREN’S**
13 **RECOMMENDATION THAT EDG BE GRANTED THE CERTIFICATE**
14 **IN SECTIONS 13, 14, 15, 22, 23 AND 24 IN TOWNSHIP 52 NORTH**
15 **RANGE 35 WEST?**

16 A. Yes.

17 **Q. DO YOU AGREE WITH STAFF WITNESS WARREN’S OBSERVATION**
18 **THAT THE EASTERN PART OF THE EDG SERVICE AREA IN**
19 **SECTIONS 12 AND 13 SHOULD BE REVISED TO ALLOW MGE TO**
20 **SERVE SMALL AREAS OF SUBDIVISION GROWTH FROM**
21 **ADJACENT SECTIONS THAT WERE PREVIOUSLY GRANTED TO**
22 **MGE AND PRECESSORS?**

RONALD F. GATZ
SURREBUTTAL TESTIMONY

1 A. In general, I agree with the concepts proposed by Staff witness Warren and the
2 boundaries he has proposed. I would note that the exact legal description of the
3 boundaries would have to be worked out, and that MGE should be required to
4 formally acknowledge these new boundaries when they are finalized. As I
5 envision it, this would include language in the certificates granted to MGE and
6 EDG that limited MGE's intrusion into EDG's service territory to these defined
7 areas. I just want to make clear to the Commission that the areas in Sections 12
8 and 13 that MGE would be allowed to serve under Mr. Warren's proposal are a
9 small area east of Prairie Creek and North of Fox Creek that provide a natural
10 boundary to avoid duplication of facilities. More specifically, in Section 12,
11 MGE should be limited to serving in the area it is currently serving on Oakmont
12 Drive east of Prairie Creek. This encroachment by MGE into Section 12 occurred
13 several years before EDG acquired the company from Aquila and is the last street
14 in a subdivision that originated in MGE's service area in the adjoining section
15 east. In Section 13, MGE should be limited to serving only the area east of Prairie
16 Creek and North of Fox Creek. Finally, I request that the Commission instruct
17 MGE to formally provide notice to EDG of any future contact it has with
18 developers in areas adjacent to the EDG service area boundaries in Platte County
19 so that EDG can determine where and when future development is occurring
20 along its boundaries, and if such development is expected to encroach into the
21 EDG service area to avoid future intrusions by MGE into the EDG service area in
22 Platte County.

1 **Q. HAVE YOU REVIEWED THE REBUTTAL TESTIMONY FILED BY**
2 **MICHAEL NOACK ON BEHALF OF MGE IN THIS CASE?**

3 A. Yes.

4 **Q. DO YOU AGREE WITH MR. NOACK'S GENERAL**
5 **CHARACTERIZATION THAT THERE HAVE BEEN OVERLAPPING**
6 **NATURAL SERVICE TERRITORIES FOR OVER 40 YEARS IN THIS**
7 **PART OF PLATTE COUNTY AND THAT IT HAS NEVER BEEN**
8 **BROUGHT TO THE ATTENTION OF THE COMMISSION UNTIL THIS**
9 **CASE AT PAGE 5 OF HIS REBUTTAL TESTIMONY?**

10 A. No, I do not. Beginning at page 5, line 7 and continuing through line 10 of the
11 rebuttal testimony, Mr. Noack briefly describes the overlapping service territory
12 as though it has been in place and common knowledge to EDG and MGE and
13 duly authorized by the Commission for over 40 years. This is a misleading and
14 inaccurate characterization of the facts.

15 **Q. DO THE SERVICE AREAS OF EDG AND MGE OVERLAP IN PLATTE**
16 **COUNTY AS MR. NOACK INDICATES AT PAGE 5 OF HIS REBUTTAL**
17 **TESTIMONY?**

18 A. No. There is no overlap of the certificates of natural gas distribution service
19 granted to EDG or MGE. It is clear from the past Commission orders that EDG
20 and its predecessors have held the certificate to distribute natural gas in Section
21 12 for many years and that MGE does not have a certificate to distribute natural
22 gas in Section 12.

1 **Q. HAVE YOU NOTIFIED MGE THAT EDG HAS THE AUTHORITY TO**
2 **SERVE GAS CUSTOMERS IN SECTION 12 AND EDG WAS PREPARED**
3 **TO OFFER GAS SERVICE TO THE SEVEN BRIDGES**
4 **DEVELOPMENT?**

5 A. Yes. EDG notified MGE of this when it became clear that the Seven Bridges
6 subdivision was being built in Section 12 and not a Section that MGE had the
7 right to serve. MGE has chosen to ignore EDG and continued to expand its
8 system in Section 12 and into Sections 13 and 14 without regard to its lack of
9 Commission authority to do so.

10 **Q. HAS MGE ATTEMPTED TO PROVIDE GAS SERVICE IN EDG'S**
11 **SERVICE AREA PRIOR TO THE DEVELOPMENT OF SEVEN**
12 **BRIDGES?**

13 A. Yes. MGE has attempted to provide gas service in the EDG service territory in
14 Platte County prior to the current incident with the Seven Bridges development.
15 MGE has encroached in the southeast corner of Section 12 and attempted to
16 provide gas service in Section 6, Township 52, Range 34 W.

17 **Q. DID EDG OR ITS PREDECESSOR BRING ANY OF THESE PRIOR**
18 **INCIDENTS TO THE ATTENTION OF THE COMMISSION?**

19 A. No. When MGE was challenged by Aquila, EDG's predecessor, MGE dropped
20 its expansion plans in Section 6, Township 52, Range 34W of Platte County. This
21 event occurred in 1999. Evidence of this past expansion and Aquila's reaction to
22 it was provided in the direct testimony of EDG witness Teter. The MGE

1 encroachment in the southeast corner of Section 12 is the limited encroachment
2 discussed on page 3 above in response to Mr. Warren.

3 **Q. MR. NOACK AT PAGE 5 OF HIS REBUTTAL TESTIMONY IMPLIES**
4 **THAT FORMAL COMMISSION COMPLAINTS ARE THE ONLY WAY**
5 **TO SORT OUT THIS SORT OF PROBLEM, DO YOU AGREE?**

6 A. No. Using the formal Commission complaint process to sort out service territorial
7 questions should only be used as a last resort as it is expensive and an inefficient
8 use of time, including the Commission's time. It is a much more efficient use of
9 the Commission's resources to require MGE to correct its tariffs to reflect where
10 it has been authorized to provide gas service to avoid territorial disputes and the
11 formal complaint process.

12 **Q. WHEN DID WHAT MGE CLAIMS TO BE AN OVERLAP IN SERVICE**
13 **TERRITORY ARISE?**

14 A. The conflict in EDG and MGE service area descriptions did not arise until MGE
15 filed its incorrect territorial description in 1997, not 40 years ago as Mr. Noack's
16 rebuttal testimony implies at page 5. It does appear that MGE and its predecessor
17 may have served one isolated customer in Section 12 for over 40 years. It is
18 unclear why this service is being provided to this customer, and whether it is the
19 result of an agreement reached to provide an easement for the Leavenworth
20 supply line which was built to serve the airport many years ago. There was no
21 question concerning overlapping service territory in Platte County, until 1997.
22 This problem is not 40 years in the making as Mr. Noack's rebuttal testimony
23 implies, it is less than 10 years in the making. MGE's first attempt to expand into

1 the EDG service territory in this part of Platte County in 1999 was stopped by
2 EDG's predecessor approximately 2 years after the filing of the incorrect
3 territorial descriptions by MGE.

4 **Q. DO YOU AGREE WITH MR. NOACK'S CONTENTION AT PAGE 5,**
5 **LINE 23, THAT THE LOCATION OF THE LEAVENWORTH SUPPLY**
6 **LINE MEANS THE COMMISSION SHOULD GRANT IT A**
7 **CERTIFICATE FOR SECTIONS 13 AND 14?**

8 A. No, I do not. The location of the Leavenworth supply line, which was specifically
9 built to enable the Gas Service Company to supply the Kansas City International
10 Airport in the mid 1950s, has nothing to do with which company should be
11 authorized to provide gas distribution service in Sections 13 and 14 or Sections
12 10, 11 or 12 of Platte County, Missouri.

13 **Q. HAS THE LEAVENWORTH SUPPLY LINE CROSSED THE EDG**
14 **SERVICE AREA FOR MANY YEARS OR WAS IT CONSTRUCTED**
15 **RECENTLY?**

16 A. This supply line was constructed by MGE predecessor The Gas Service Company
17 and has crossed the EDG service area for many years. MGE and its predecessor
18 were prohibited from using this line to serve customers without specific approval
19 from the Commission. Until recent events with MGE, there had been no
20 questions surrounding the service territory in this part of Platte County.

21 **Q. DOES THE LOCATION OF THE LEAVENWORTH SUPPLY LINE**
22 **COUNTERACT PAST COMMISSION ORDER'S CONCERNING**
23 **SERVICE TERRITORY?**

1 A. In my opinion it does not. EDG has the authority from the Commission to
2 provide gas service in Sections 10, 11 and 12, which are adjacent to Sections 13
3 and 14, not MGE. This prior certificate is more important than the location of
4 MGE's Leavenworth supply line, which was designed to supply MGE's
5 authorized service territory near the Kansas City International Airport, not
6 Sections 10, 11 and 12 or enable MGE to expand into service territory it was not
7 authorized to serve, or that had previously been granted to EDG and its
8 predecessors.

9 **Q. DO YOU AGREE WITH MR. NOACK'S STATEMENT AT PAGE 6, LINE**
10 **7 THAT EMPIRE'S REQUEST THAT MGE CORRECT ITS SERVICE**
11 **TERRITORY DESCRIPTIONS IN ITS TARIFF WOULD UNFAIRLY**
12 **PENALIZE MGE?**

13 A. No. The correction of MGE's tariff does not unfairly penalize MGE.
14 Furthermore, MGE should not be allowed to provide gas service to customers in
15 EDG's service territory without authority from the Commission to do so.

16 **Q. DO YOU AGREE WITH MR. NOACK'S STATEMENT AT PAGE 6,**
17 **BEGINNING ON LINE 12, THAT NEITHER EDG OR ITS**
18 **PREDECESSOR SHOWED ANY INTEREST IN SERVING CUSTOMERS**
19 **IN THIS AREA FOR MANY YEARS?**

20 A. No, I do not. As I have mentioned previously in testimony in this case, EDG
21 contacted MGE immediately about serving the Seven Bridges subdivision when it
22 became apparent that it was located in EDG's service territory. MGE has simply
23 ignored EDG, past Commission certificate orders and continued to expand into

1 the territory granted to EDG and its predecessor. MGE is now trying to use what
2 appears to be an expansion that was never authorized by the Commission, as a
3 boot strap to further expand its interests in EDG's service area and an area
4 adjacent to EDG's service area.

5 **Q. DO YOU AGREE WITH MR. NOACK'S CONTENTION AT PAGE 6,**
6 **LINE 23 THAT EDG IS RECOMMENDING THAT DUPLICATE**
7 **FACILITIES BE USED TO SERVE THE CUSTOMERS IN SEVEN**
8 **BRIDGES?**

9 A. No. EDG has recommended that the Commission require MGE to sell its
10 facilities located in EDG's certificated area or abandon the facilities. This would
11 eliminate any duplication of facilities. In the event that MGE will not sell its
12 facilities to EDG, EDG has indicated that it will construct new distribution
13 facilities to serve these customers and MGE should be made to either abandon or
14 remove its facilities. In either event, there will be no duplication of facilities as
15 MGE would not be providing natural gas service under either event

16 **Q. DO YOU AGREE WITH MR. NOACK'S CONTENTION BEGINNING AT**
17 **PAGE 7, LINE 17, THAT THE COMMISSION SHOULD DENY EDG'S**
18 **REQUEST FOR A CERTIFICATE IN SECTIONS 15, 22, 23 AND 24, AND**
19 **LET MGE COMPETE FOR A CERTIFICATE IN THE FUTURE DUE TO**
20 **THE LOCATION OF ITS LEAVENWORTH SUPPLY LINE?**

21 A. No. The location of the Leavenworth supply line has nothing to do with which
22 company, EDG or MGE should be authorized to supply natural gas service in
23 these sections. As EDG indicated in its direct testimony, these sections are

RONALD F. GATZ
SURREBUTTAL TESTIMONY

1 expected to develop in the future, the Platte County development plan includes
2 them and they are adjacent to the existing EDG service area. By granting EDG a
3 certificate to serve these sections, the Commission would provide for continuity in
4 the authorized gas service provider, and avoid the conflict that has arisen in this
5 case.

6 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY AT THIS**
7 **TIME?**

8 A. Yes, it does.

AFFIDAVIT

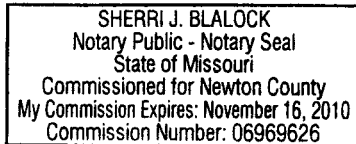
STATE OF MISSOURI)
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COUNTY OF JASPER)

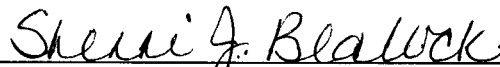
On the 2nd day of October 2007, before me appeared Ronald F. Gatz, to me personally known, who, being by me first duly sworn, states that he is the Vice President & Chief Operating Officer of The Empire District Gas Company and acknowledged that he has read the above and foregoing document and that the statements therein were prepared by him or under his direction and are true and correct to the best of his information, knowledge and belief.



Ronald F. Gatz

Subscribed and sworn to before me this 2nd day of October 2007.





Notary Public

My commission expires: Nov. 16, 2010.