

Exhibit No.:  
Issues: Certificate of Convenience  
Witness: Henry E. Warren  
Sponsoring Party: MO PSC Staff  
Type of Exhibit: Surrebuttal Testimony  
Case No.: GA-2007-0289, et al.  
Date Testimony Prepared: October 2, 2007

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY OPERATIONS DIVISION**

**SURREBUTTAL TESTIMONY**

**OF**

**HENRY E. WARREN**

**MISSOURI GAS ENERGY**

**CASE NO. GA-2007-0289, et al.**

**Jefferson City, Missouri  
October 2007**

Staff Exhibit No. 19  
Date 10/25/07 Case No. GA-2007-  
Reporter mv 0289

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

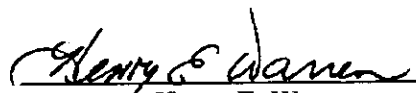
In the matter of the application of )  
Missouri Gas Energy, a division of )  
Southern Union Company, for a certificate )  
of public convenience and necessity )  
authorizing it to construct, install, own, )  
operate, control, manage and maintain a )  
natural gas distribution system to provide )  
gas service in Platte County, Missouri, as )  
an expansion of its existing certified area. )

Case No. GA-2007-0289, et al.

**AFFIDAVIT OF HENRY E. WARREN**

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

Henry E. Warren, of lawful age, on his oath states: that he has participated in the preparation of the following Surrebuttal Testimony in question and answer form, consisting of 8 pages of Surrebuttal Testimony to be presented in the above case, that the answers in the following Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.

  
Henry E. Warren

Subscribed and sworn to before me this 1<sup>st</sup> day of October, 2007.



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

  
Notary Public

My commission expires 9-21-10

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**SURREBUTTAL TESTIMONY**

**OF**

**HENRY E. WARREN**

**MISSOURI GAS ENERGY**

**CASE NO. GA-2007-0289, et al.**

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**SURREBUTTAL TESTIMONY**

**OF**

**HENRY E. WARREN**

**MISSOURI GAS ENERGY**

**CASE NO. GA-2007-0289, et al.**

Q. Please state your name and business address.

A. My name is Henry E. Warren and my business address is P. O. Box 360,  
Jefferson City, Missouri, 65102.

Q. Are you the same Henry E. Warren that submitted Direct and Rebuttal  
Testimony in this case?

A. I am.

Q. Do you wish to make a correction to your rebuttal testimony?

Y. Yes. On page 8, line 5 the word "direct" should be deleted and replaced  
with "rebuttal".

**1. EXECUTIVE SUMMARY**

Q. What is the purpose of your surrebuttal testimony?

A. The purpose is to explain that Missouri Gas Energy (MGE) does not have an  
area Certificate of Convenience and Necessity (CCN) to serve in Platte County T52N,  
R35W, Sections 11 and 12 and that MGE may not rely on an incorrect tariff filing as a  
substitute for obtaining authorization from this Commission to serve Missouri territories.

I also respond to Mr. Noack's argument in his rebuttal testimony that I ignored the  
purpose of and the history behind MGE's tariff sheet No. 6.15 (Noack, rebuttal testimony,  
p.3, line 16).

**2. BACKGROUND OF MGE TARIFF SHEET NO. 6.15**

1  
2 Q. In your direct testimony, did you ignore MGE tariff sheet No. 6.15, the  
3 purpose for the sheet and the history behind the sheet?

4 A. No. In preparing my direct testimony, I did not ignore the tariff sheet, nor  
5 did I ignore the history of the certificated area approved by the Commission for MGE.  
6 However, my review led me to a different conclusion than that of Mr. Noack. Therefore I  
7 did not rely on sheet No. 6.15 as a basis for my testimony. The purpose of my direct  
8 testimony was to clarify what CCN land sections MGE and The Empire District Gas  
9 Company (EDG) have to serve customers. MGE is seeking to serve customers adjacent to  
10 the two land sections T52N, R35W, Sections 13 and 14. MGE and EDG is seeking to  
11 serve customers in the six land sections T52N, R35W, Sections 13, 14, 15, 22, 23, and 24.

12 Q. Do you agree with Mr. Noack's testimony concerning which areas MGE is  
13 authorized to serve?

14 A. No. Only the sections MGE has a Commission Ordered CCN to serve  
15 should be listed on tariff sheet No. 6.15. Mr. Noack testifies MGE may rely on this  
16 inaccurate tariff sheet instead of actually obtaining Commission authorization to serve  
17 customers in certain areas. MGE made the incorrect tariff filing pursuant to the Stipulation  
18 and Agreement in Case No. GR-96-285 which required MGE to file a tariff sheet carefully  
19 defining its certificated area. MGE filed an inaccurate tariff sheet, specifically sheet No.  
20 6.15, which incorrectly included territory for which MGE had not been granted a CCN to  
21 serve.

22 In its application in this case, Mr. Noack misconstrues the purpose for which MGE  
23 filed sheet No. 6.15, claiming MGE has a CCN to serve Sections 11 and 12 because these

Surrebuttal Testimony of  
Henry E. Warren

1 sections are included on the tariff sheet. A careful examination of the history of the CCNs  
2 granted MGE does not include these sections. On February 21, 1997, MGE filed tariff  
3 sheet No. 6.15 in a tariff filing designated as tariff filing No. 9700571.

4 Finally, Mr. Noack takes the incorrect position that MGE is not responsible for the  
5 accuracy of its tariff sheets. Equally incredible is Mr. Noack's assertion that MGE's filing  
6 error in tariff sheet No. 6.15 could extend MGE's certificated territory without MGE filing  
7 for a CCN. Mr. Noack takes the position that a utility may rely on an erroneous tariff  
8 instead of filing an Application with the Commission for authorization to serve a particular  
9 area counter to the Commission's requirements in 4 CSR 240-2.060. That is, Mr. Noack  
10 asserts an incorrect tariff filing could substitute for a CCN.

11 Q. In an April 11, 1997 letter concerning tariff filing No. 9700571, Mr. Hack,  
12 representing MGE stated, "Per your request, attached is a list of orders that MGE used in  
13 preparing the above-referenced tariff filing." (Schedule 2-25, Straub Rebuttal). Do you take  
14 issue with this statement?

15 A. Yes. In Mr. Hack's April 11, 1997 letter to Staff, which accompanied tariff  
16 filing No. 9700571, Mr. Hack stated that he based the tariff filing on Commission Orders in  
17 Case No. 12,632. This is a misstatement because the tariff includes areas not granted in  
18 any Commission order. A careful review of the Orders listed indicates that the  
19 Commission did not grant MGE a certificate to serve customers in twenty-two Platte  
20 County sections which MGE included in tariff sheet No. 6.15.

21 The Commission's Order in Case No. 12,632 contained CCNs and listed the  
22 sections in the vicinity of Platte City and the Kansas City International (MCI) Airport to be  
23 served by MGE's predecessors and by EDG's predecessors. In these two orders cited by

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Henry E. Warren

1 Mr. Hack, the Commission did not grant MGE a CCN to serve twenty-two Platte County  
2 sections erroneously included in tariff sheet No. 6.15.

3 Q. How does your direct testimony differ with how Mr. Noack characterizes  
4 the sections listed in MGE tariff sheet No. 6.15?

5 A. Section VIII, Certificated Areas, in the Commission approved Stipulation  
6 and Agreement in Case No. GR-96-285, states, "MGE has committed to file tariff sheets  
7 with metes and bounds descriptions and maps showing certificated service areas in the  
8 State of Missouri by February 28, 1997." (p. 80) (Schedule 3 in Commission Staff (Staff)  
9 Witness Michael Straub's rebuttal testimony).

10 MGE erred when, in its tariff filing, it listed territory in tariff sheet No. 6.15 which  
11 it had no authority to serve.

12 Q. Did MGE accurately interpret the Commission's orders when it listed the  
13 sections in Platte County in tariff sheet No. 6.15?

14 A. No. In my direct testimony I reviewed the Orders in Case Nos. 12,632 and  
15 13,172 to determine what territory the Commission has authorized MGE and EDG to serve  
16 in the vicinity of Platte City and the MCI Airport in Platte County. In Schedule 2 of my  
17 rebuttal testimony, I show the sections the Commission has actually authorized MGE to  
18 serve and the sections EDG has been authorized to serve. I did not include the twenty-two  
19 Platte County sections MGE erroneously included as certificated territory in tariff sheet No.  
20 6.15 (Schedule 1, Warren rebuttal).

21 Q. Is listing a section in tariff sheet No. 6.15 equivalent to the Commission  
22 authorizing a CCN to serve that section?

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1           A.     No. Staff witness Michael Straub explains in his surrebuttal testimony in  
2 this case the procedures required to obtain a CCN to serve a land area.

3           Q.     Is MGE primarily responsible for their tariff?

4           A.     Yes. Commission rule 4 CSR 240-13.010 (4) "A *utility* shall adopt rules  
5 governing its relations with customers and applicants for service which are consistent with  
6 this chapter. The rules shall be part of a utility's tariffs. ..." (Emphasis added)

7           Q.     If MGE is primarily responsible for its tariff, can MGE, as Mr. Noack  
8 claims, ignore its lack of Commission authorization to serve Sections 11 and 12?

9           A.     No. MGE may not rely on the mistake it made in its tariff sheet No. 6.15 to  
10 serve in an area in which it does not have a CCN.

11          Q.     Because MGE does not have a CCN to serve in Sections 11 and 12, and  
12 MGE does not have Commission authorization to serve Sections 11, 12, 13 and 14 from the  
13 Leavenworth Supply Line, would it be logical or practical for the Commission to grant  
14 MGE a CCN to serve in Sections 13 and 14?

15          A.     No. It would not be logical for the Commission to grant MGE a CCN to  
16 serve in Sections 13 and 14 under these circumstances. The Commission should not permit  
17 MGE to benefit from its error and its violation of the Commission's rules.

18          Q.     How many customers is MGE currently serving in the Seven Bridges  
19 subdivision south of Platte City in Sections 11, 12, 13 and 14?

20          A.     According to Mr. John Barth, one of the developers of Seven Bridges,  
21 approximately sixty homes are occupied; and there is a clubhouse and some model homes  
22 with natural gas.

23



**3. STAFF RECOMMENDATION**

Q. Does Mr. Noack's rebuttal testimony change Staff's recommendations in this case?

A. No. Staff's recommendations have not changed. The Commission approved Stipulation and Agreement in Case No. GR-96-285 specifies that MGE list only those sections it has a CCN to serve. The sections in which MGE is authorized to maintain and operate its Leavenworth Supply Line (MGE LSL) should not be listed in tariff sheet No. 6.15.

Because MGE tariff sheets contain locations where it does not have an area CCN, the Commission should order MGE to revise its tariff sheets to list only those areas where it has a CCN to serve customers.

Specifically, tariff sheet No. 6.15 and No. 8 in the MGE tariff need to be revised to conform to Commission orders in Case No. 12,632. Only sections in Platte County around the MCI Airport contained in the Commission Order should be listed for natural gas distribution. Sections which contain the MGE LSL, west of T52N, R34W, Section 7 should not be listed for gas distribution. Any sections not authorized in Case No. 12,632 for distribution in the vicinity of Platte City and the MCI Airport should be removed from MGE tariff's Index and Map of certificated areas. Staff acknowledges that MGE does have a CCN from the Commission to serve other areas in southern and northern Platte County.

On the basis of the existing CCN to serve customers in sections 10, 11, and 12 of T52N, R35W, the franchise agreement between EDG and Platte City and the Annexation Agreement between Platte City and Kansas City; I recommend that a CCN be issued to

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1 EDG to serve customers in Sections 13, 14, 15, 22, 23, and 24 in T52N, R35W, with the  
2 exception of two areas on the west side of Sections 12 and 13 where MGE customers are  
3 on the ends of streets. As previously noted in my rebuttal testimony, MGE service has  
4 incurred into Section 12 at the end of Oakmont Drive and in Section 13 at the end of NW  
5 126<sup>th</sup> Street. If development continues on 122<sup>nd</sup> and 123<sup>rd</sup> Streets, there may be another  
6 incursion into Section 13 along these streets, as they extend west to Prairie Creek  
7 (Schedules 8 and 9). It is reasonable, under these circumstances, to allow Prairie Creek  
8 to be the boundary between MGE on the east side and EDG on the west side, and Fox  
9 Creek to be the boundary with MGE on the north side and EDG on the south side in  
10 Sections 12 and 13 (rebuttal, Schedule 9).

11 Q. How would this impact the customers currently served by MGE in  
12 sections 11 and 12?

13 A. Customers should not be harmed. MGE is serving about sixty customers  
14 in the Seven Bridges subdivision. The Commission should order MGE to facilitate a  
15 seamless transition from MGE service to EDG service for these customers.

16 MGE is also serving a few customers along the MGE LSL. If EDG does not want  
17 to extend service lines to these customers, MGE should continue to serve them, but no  
18 additional MGE customers should be added absent Commission authorization. The  
19 Commission should order MGE to file an application for this authorization. If MGE is  
20 using the MGE LSL to serve any customers outside the areas authorized by Commission  
21 Orders, it should apply to the Commission for authorization to serve those customers.

22 Q. What would be the difference in an annual gas bill for a typical customer of  
23 MGE compared to an EDG customer using the same amount of natural gas?

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1           A.     From June 2006 through June 2007 the estimated bill for an MGE customer  
2     using 860 CCF (CCF=100 cubic feet) is \$1,023.64, and for EDG in the Southern system, a  
3     customer using the same number of CCFs has an estimated bill of \$1,161.33, or 13%  
4     higher for EDG customer. Because EDG has a lower monthly customer charge than MGE,  
5     customers using less natural gas in the heating season would have less of an increase.

6           Q.     Does this conclude your surrebuttal testimony?

7           A.     Yes, it does.