

**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) Case No. GA-2007-0289
Maintain a Natural Gas Distribution System to Provide)
Gas Service in Platte County, Missouri, as an Expansion)
Of its Existing Certified Area)

**MGE’S PROPOSED FINDINGS OF
FACT AND CONCLUSION OF LAW**

COMES NOW Missouri Gas Energy (MGE) and pursuant to the Commission’s Order, submits its Proposed Findings of Fact and Conclusions of Law.

I. Findings of Fact

1. The Seven Bridges subdivision encompasses sections 11, 12, 13 and 14 of Township 52N, Range 35W of Platte County, Missouri. (Noack Direct, Exh. MGE-1, p. 4).

2. Empire’s predecessor in interest, Aquila, had a custom of not expanding its service territory. (Tr. 200). Aquila met with the developer of Seven Bridges in January 2004 and indicated that it did not have a certificate for Section 13. (Tr. 197). Aquila chose not to expand its service territory into section 13 so that it could serve Seven Bridges. (Tr. 195).

3. The developer of Seven Bridges requested service from MGE in 2004. (Tr. 114). MGE signed a contract to provide service to the development in January 2006. MGE began construction of facilities to serve the first phase of Seven Bridges (Section 12). Shortly after the contract was signed and began serving customers in early 2006. (Noack Direct, Exh. MGE-1, p. 4).

4. MGE is providing safe and adequate gas service to the Seven Bridges (section 12) subdivision. (Tr. 53); (Noack Direct, Exh. MGE-1, p. 5).

5. MGE provides gas service to Seven Bridges through its Leavenworth Supply Line (LSL) which abuts the northern edge of Seven Bridges and is closer than Empire's gas supply. (Noack Rebuttal, Ex. MGE-2, p. 5).

6. There is a need for gas service in sections 13 and 14. (Noack Direct, Exh. MGE-1, p. 3).

7. MGE has the expertise, experience and financial qualifications to provide gas service in sections 13 and 14. (Noack Direct, Exh. MGE-1, p.5).

8. MGE's proposal to serve sections 13 and 14 is economically feasible as it provides margin to the company. (Noack Direct, Exh. MGE-1, p. 5).

9. Empire has no customers in sections 10, 11, 13 and 14 of T52N, R35 and has three customers in section 12. (Tr. 158, 179).

10. Empire has an agreement to serve Copper Ridge subdivision but currently has no customers. Copper Ridge is located at least one-half mile from Seven Bridges. (Tr. 158, 179).

11. In Case No. GA-96-130 and GR-96-285, the Commission ordered MGE and the Staff to cooperate in filing a tariff that set forth MGE's complete service territory. Staff had requested that the Commission order MGE to file such tariffs because MGE's service territory was difficult to identify. (Tr. 116).

12. Aquila has known since 1999 that MGE's tariffs authorized it to serve in certain sections where Aquila also had a CCN. (Tr. 206-207). Neither Aquila nor Empire ever raised this issue with the Commission or its Staff until Empire's intervention in this case on February 21, 2007.

13. MGE or its successors have been providing service to several individual gas customers located near the LSL (sections 10 and 12) and in Empire or Aquila's certificated territory since 1960. (Noack Rebuttal, Exh. MGE-2, p. 5).

II. Authority of Commission; Effect of MGE's Tariff

1. The Commission has the authority to award a certificate of convenience and necessity after utility facilities are constructed. In re Union Electric Company, 1 Mo. P.S.C.3d 332, Case No. EA-92-218 (1992).

2. The Commission cannot order equitable relief such as the sale of MGE's facilities to Empire. Am. Petroleum Exch. V. PSC, 172 S.W.2d 952, 955 (1943).

3. The public interest and convenience are the Commission's chief concerns when determining whether to grant more than one certificate of convenience and necessity within a single certificated area. Osage Water v. Miller County Water Authority, 950 S.W.2d 569, 575 (Mo. App. S.D. 1997).

4. The Commission has the authority to issue a certificate of convenience and necessity to a public utility even though such certificate will overlap with another public utility's area of service. Osage Water v. Miller County Water Authority, 950 S.W.2d 569, 575 (Mo. App. S.D. 1997).

5. MGE's tariff defining its service territory has been effective since May 21, 1997. Under § 386.270 RSMo, MGE's tariff is prima facie lawful and reasonable and has the same force and effect as a statute. State ex. rel Laclede Gas Co. v. PSC, 156 S.W.3d 513, 521 (Mo. App. W.D. 2005). MGE was entitled to rely on its tariff when determining whether it had authority to provide service to customers in sections 10 and 12.

III. MGE Should Continue to Serve Seven Bridges and Therefore the Commission grants it a CCN.

1. The public interest is served by MGE continuing to serve Seven Bridges. MGE provided service to Seven Bridges in section 12 pursuant to its tariff at the request of the developer. (Noack Direct, Exh. MGE-1, pp.3-4). MGE should not be penalized for providing public utility service pursuant to its tariff, especially when Aquila chose not to expand its service

territory to accommodate Seven Bridges (Tr. 195) and since neither Aquila or Empire filed a complaint with the Commission concerning MGE's tariff.

2. Rather than have Empire ratepayers pay for facilities to serve the Seven Bridges that will duplicate existing MGE facilities (Tr. 158-164) the public interest is best served if MGE continues to serve Seven Bridges.

3. MGE's provision of service in Seven Bridges promotes the public interest as it is more economical than that of Empire and prevents the duplication of services. Empire will have to build new main and service line to serve Seven Bridges at a cost of between \$163,800 to \$190,200. (Tr. 159-164). Moreover, Empire's costs for a primary and secondary feed to Seven Bridges will be more than MGE's because MGE's gas supply is closer to Seven Bridges than Empire's. (Noack Rebuttal, Exh. MGE-2, p. 5).

4. MGE's provision of service to Seven Bridges is superior to Empire's in that customers pay less to receive service from MGE based on usage assumptions used by Staff. (Tr. 242-243).

5. Since there are no Empire customers in sections 10, 11, 13, 14 and three Empire customers in section 12, any safety concerns regarding potential confusion with emergency responders due to MGE serving customers in these sections are minimal. (Tr. 158, 179). In the future, Empire will be serving a subdivision (Copper Ridge) in section 12, but it is over a half mile away from Seven Bridges. (Tr. 158). The Commission finds that the Staff's preference for one LDC per community is not supported by statute or rule (Tr. 236) and contradicts Staff's recommendation that MGE continue to serve the individual customers served by the LSL.

6. The franchise concerns raised by Staff are not an issue that the Commission needs to consider as Seven Bridges is not part of Platte City. (Tr. 239). Should annexation occur,

MGE has indicated that it will obtain a Platte City franchise. (Noack Surrebuttal, Exh. MGE-3, p. 3).

7. The public interest is also served by allowing MGE to continue serving individual customers (those not located in Seven Bridges) in sections 10, 12 and 13. No party has objected to MGE's continuation of service to these customers.

8. MGE meets all of the requirements for a CCN in sections 13 and 14 and also for a CCN in those portions of sections 10 and 12 where it serves individual customers. MGE also meets the requirements for a CCN in the portions of sections 11 and 12 that contain the Seven Bridges subdivision. There is a need for service. As MGE is already serving customers in Missouri, it has the technical, managerial and financial abilities to provide service and since it is already serving Seven Bridges, the service is economically feasible and in the public interest as it will eliminate the duplication of services and take advantage of a closer gas supply than Empire's gas supply.

9. MGE is ordered to revise its tariffs to reflect that it is authorized to provide service inside the boundaries of the Seven Bridges subdivision in sections 10, 11 and 12 of T52N, R35W and to the extent necessary serve the individual customers in sections 10 and 12 that it currently serves from the LSL. MGE shall also revise its tariffs to reflect that it has a CCN for sections 13 and 14 of T52N, R35W. Further, MGE shall revise its tariffs to reflect the removal of sections 1, 2, 3, 4, 5, 6, 7, 8, 9 of T52N, R35W, the removal of sections 1, 2, 3, 4, 5, 6 of T52N, R34W, the removal of sections 1, 12 of T52N, R36W; the removal of sections 4, 5, 6 of T52N, R33W all in Platte County, Missouri.

IV. Denial of Empire's CCN Request in Sections 15, 22, 23, 24 Township 52N, Range 35W.

1. Empire's request for a certificate to provide service in sections 15, 22, 23 and 24 in Township 52N, Range 35W in Platte County, Missouri is denied because there has not been a

request for service in those sections. (Tr. 178). The public interest is better served by letting MGE compete to serve these sections as they develop instead of awarding them to Empire. (Noack Rebuttal, Exh. MGE-2, p. 8).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was emailed to the following counsel this 21st day of December, 2007:

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