

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

**RESPONSE TO MGE’S MOTION TO STRIKE
PORTIONS OF APPLICATION**

COMES NOW The Empire District Gas Company (“EDG”) by and through the undersigned counsel, and pursuant to 4 CSR 240-2.080, respectfully submits the following Response to MGE’s Motion to Strike Portions of Application:

1. In Case No. GA-2007-0289, Missouri Gas Energy (“MGE”) has requested the Commission grant it a certificate for Sections 13 and 14, Township 52 North, Range 35 West in Platte County, Missouri.

2. On May 30, 2007, EDG filed an Application in Case No. GA-2007-0457 in which EDG requested an order from the Commission (a) granting it a certificate of convenience and necessity to construct, install, own, operate, control, manage and maintain a system for the provision of natural gas service to the public pursuant to its approved rates, rules and regulations (as the same may change from time to time as provided by law) in Sections 13, 14, 15, 22, 23 and 24, Township 52 North, Range 35 West in Platte County, Missouri; (b) clarifying precisely where MGE is currently certificated in Platte County, ordering MGE to file corrected tariffs reflecting only its certificated area in Platte County, ordering MGE to transfer its distribution facilities in

areas of Platte County in which it is not certificated to EDG at net book value and ordering MGE to cooperate fully with EDG in the transfer of customers affected to EDG so as to minimize any potential service impact; (c) consolidating this case with Case No. GA-2007-0289; and (d) making such further orders and granting such further relief as the Commission deems necessary and appropriate.

3. By Order dated May 31, 2007, the Commission consolidated Case No. GA-2007-0289 and Case No. GA-2007-0457, and denominated Case No. GA-2007-0289 as the lead case.

4. In its Application which initiated Case No. GA-2007-0289, MGE claimed that it “already has a certificate from the Commission to serve adjacent sections 11 and 12 in that same Township and Range [adjacent to Sections 13 and 14, Township 52 North, Range 35 West in Platte County, Missouri]” and according to the map attached to its Application as Appendix A, MGE also claims to have a certificate from the Commission for sections 1, 2, 3 and 10 in that same Township and Range and for sections 4, 5 and 6 in Township 52 North, Range 34 West in Platte County, Missouri. Presumably, if granted a certificate to serve sections 13 and 14, MGE would extend its facilities from one of these sections of land to serve sections 13 and 14.

5. However, EDG disputes that MGE has a certificate from the Commission for sections 1, 2, 3, 10, 11 and 12 in Township 52 North, Range 35 West and sections 4, 5 and 6 in Township 52 North, Range 34 West, in Platte County, Missouri. As stated in EDG’s Application to Intervene in Case No. GA-2007-0289, EDG believes that it, and not MGE, has a certificate from the Commission for sections 1, 2, 3, 10, 11 and 12 in Township 52 North, Range 35 West and sections 4, 5 and 6 in Township 52 North, Range

34 West, in Platte County, Missouri, as set forth in the Commission's decision in Case No. 13,172.

6. On or about June 11, 2007, MGE filed its Motion to Strike Portions of Application (the "Motion"), in which MGE requested the Commission strike all unauthorized provision of service allegations against MGE contained in EDG's Application which initiated Case No. GA-2007-0457. In its Motion, MGE admits that it is currently serving customers in section 12.

7. In its Motion, MGE notes that "In this docket the Commission will determine which company will be granted a certificate to serve sections 13 and 14." If one company (EDG) has been lawfully authorized by certificate granted by the Commission to serve the sections of land adjacent to these sections of land and the other company (MGE) has not been so authorized, EDG submits that the Commission must take that into consideration in making the determination regarding which company should receive the new certificate. MGE should not be authorized to make *extensions* of its facilities into a new area if the facilities from which it is *extending* were not authorized in the first place. Therefore, what MGE refers to as the "unauthorized provision of service allegations against MGE" in EDG's Application are clearly relevant and proper in EDG's certificate Application, as they relate directly to the respective companies' ability to serve – that is to say, lawfully serve. Accordingly, the Commission should not grant MGE's Motion to strike.

8. In its Motion, MGE points to a tariff sheet which it claims grants it the authority to serve section 12¹, and attached the tariff to its Motion. However, MGE is

¹ EDG recognized in its Application that MGE's tariff listed this section of land. However, EDG submits that having an incorrect tariff on file does not grant MGE a certificate.

unable to point to any Commission Order granting it a certificate of convenience and necessity to serve this section of land; at least, MGE did not attach any such certificate Order to its Motion or even refer to a Commission case granting a certificate. The tariff itself does not grant a certificate in the absence of an order granting a certificate; the tariff is merely to reflect the area for which a certificate has been granted, and in this instance appears to simply be incorrect.

9. In its Motion, MGE also claims that it has been serving customers in section 12 since **May** 2006, and **alleges that** nothing prevented Empire from filing a complaint against MGE last year when MGE **began** serving customers and that **EDG** waited until MGE's Application was filed in this case to take any action to address MGE's unauthorized provision of service. MGE's allegations are misleading – and wrong – for several reasons. First of all, EDG did not complete its purchase of its gas properties from Aquila until **June** 1, 2006. Second, **EDG** had discussions with MGE in **August** 2006 and met with MGE in **October** 2006 in an attempt to resolve this matter. At that time, MGE was asked to provide a Commission Order granting **MGE a** certificate for section 12, which MGE never provided – and to this date has not provided. **Therefore**, MGE's attempt to portray **EDG** as doing nothing to rectify this situation until now is patently incorrect.

10. **EDG** submits that the Commission should be informed of and made aware of what MGE **refers to** as the “unauthorized provision of service allegations against MGE”. As set forth in **EDG's** Application, given **the** confusion and conflict caused by MGE's erroneous tariff **description**, and to **prevent** further confusion and conflict arising in the future regarding this matter, **the** Commission should take this opportunity to clarify

precisely where MGE is currently certificated in Platte County; order MGE to file corrected tariff sheets that reflect only its certificated service area in Platte County; order MGE to transfer its distribution facilities in areas of Platte County in which it is not certificated to EDG at net book value; and order MGE to cooperate fully with EDG in the transfer of customers affected to EDG so as to minimize any potential service impact.

WHEREFORE, for all of the reasons set forth above, the Commission should issue an order denying MGE's Motion to Strike Portions of Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing was sent to the following by depositing same in the U.S. Mail first class postage paid, by hand-delivery, or by electronic transmission, this 15th day of June, 2007.

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