

**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 OF THE EMPIRE DISTRICT GAS COMPANY
TO STAFF RECOMMENDATION**

COMES NOW The Empire District Gas Company (“EDG” or “Empire”),
pursuant to the Commission’s *Order Suspending Compliance Tariff Filings and
Directing Responses* issued on July 17, 2008 (the July 17th Order), and the Commission’s
Order Granting Request for an Extension of Time issued on July 28, 2008 (the July 28th
Order), and for its Response to the Staff’s Recommendation(s) filed herein on or about
July 15, 2008, respectfully states as follows:

1. According to the July 17th Order, the Commission suspended the
compliance tariffs filed in this case by both Empire and MGE to “allow the parties a full
and fair opportunity to respond to Staff’s suggested tariff condition.” Staff’s suggested
tariff condition, as stated in said Order, is that the tariff sheets of both Empire and MGE
which list the companies’ certificated areas contain the following language:

Orders granting the service territory take precedence in any discrepancies
between them and the information listed above. More detail is available in
the orders, and the above should not be relied upon for detailed territory
boundaries.

2. While EDG does not necessarily agree with the Staff recommendation(s) filed herein concerning the compliance tariff filings in their entirety, EDG does agree that Staff's suggested tariff condition as set forth above should be included in the tariffs of **both** EDG and MGE for the reasons set forth below.

3. First, as noted by Staff in its recommendation(s):

the need for establishing clarity in the tariff sheets became preferable to showing all certificated service areas by metes and bound descriptions . . . after 1997, tariff sheets have reflected certificated areas by their section numbers, township and range. Even though the most precise method of description would be to insert all metes and bounds descriptions from all orders in the tariff sheets, doing so would require numerous tariff sheets, plus create confusion and unnecessary complexity.

However, a certificate of convenience and necessity (CCN) issued to a company (perhaps by metes and bounds description) may only cover a portion of a land section, while the company's tariff sheets list its certificated service areas by section. Therefore, Staff's suggested tariff condition is necessary to conform the description of the certificated service areas listed in the company's tariff sheets to the description of the certificated areas granted in the CCN order(s).

4. Second, as also noted in Staff's recommendation(s), in this case MGE argued that it was entitled "to rely on its Commission approved tariff for necessary authority to provide service in certain sections not granted by a Commission ordered CCN." Presumably, MGE could just as easily argue that it was entitled to rely on its Commission approved tariff for the necessary authority to provide service in the entirety of a section of land for which it had only been granted a CCN for a portion of the land section, thereby expanding its certificated territory without receiving a CCN order. Staff's suggested tariff condition is necessary to prevent such an unauthorized expansion

of certificated service territory by acknowledging that the controlling documents are the Commission orders granting the CCNs if any questions arise as to the precise boundaries of the certificated service area.

5. Furthermore, and as recognized in the July 17th Order, there are some sections of land in which MGE is authorized to serve a portion of the section and Empire is authorized to serve another portion of the section, resulting in both companies listing that section in their tariffs. As discussed in paragraph number 4 above, without Staff's suggested tariff condition MGE may argue that it is entitled to rely upon its tariff as authority to serve anywhere within such a land section – including within Empire's authorized territory – without ever receiving a CCN for that portion of the land section. Staff's suggested tariff condition would prevent such unauthorized encroachment by acknowledging that the controlling documents are the Commission orders granting the CCNs if any questions arise as to the precise boundaries of the certificated service area. As noted in Staff's recommendation(s), Empire is willing to include Staff's suggested tariff condition in its tariffs, but MGE apparently is not so willing.

6. In order to prevent these problems in the future, the Commission should order both companies to include Staff's suggested tariff condition, as set forth in paragraph number 1 above. The only alternative appears to be a return to the listing of certificated service areas by metes and bound descriptions in a company's tariffs; however, several years ago the Commission determined it best to change that procedure due to its confusion and unnecessary complexity, and the numerous tariff sheets required for such procedure. Adoption of Staff's suggested tariff condition is a simple solution to the problems set forth above which does not suffer from the flaws that a return to

requiring metes and bounds descriptions in tariffs would entail. As mentioned above, Empire is willing to include Staff's suggested tariff condition in its tariffs, but MGE apparently is not; however, the Commission should order **both** companies to include Staff's suggested tariff condition, because to include such condition in one company's tariffs without including it in the other company's tariffs would result in an "unlevel playing field." As discussed in paragraph 5 above, in some sections of land, both companies are authorized to serve a portion, but not the entirety, of the land section. To include the Staff's suggested tariff condition in one company's tariff but not in the other company's tariff would, under the argument used in this case by MGE, restrict the first company to service in the area(s) for which it has received a CCN by acknowledging that the controlling documents are the Commission orders granting the CCNs, but enable the second company to serve anywhere within the land section by arguing that it is entitled to rely upon its tariffs without regard to the underlying Commission orders granting the CCNs. Therefore, if the Commission does not order MGE to include the Staff's suggested tariff provision, EDG should not be required to include such provision either and should be allowed to remove such provision from its compliance tariff filing if it so desires.

WHEREFORE, Empire respectfully requests that the Commission issue an order requiring both MGE and EDG¹ to include Staff's suggested tariff condition, as set forth in paragraph number 1 above.

Respectfully submitted,

/s/ Jeffrey A. Keevil

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent to counsel for parties of record by depositing same in the U.S. Mail, first class postage prepaid, by hand-delivery, or by electronic mail transmission, this 2nd day of September, 2008.

/s/ Jeffrey A. Keevil

¹ In the case of EDG, this would simply require approval of EDG's compliance tariff filing herein; in the case of MGE, MGE should be ordered to re-file its compliance tariffs with Staff's suggested tariff condition set forth in paragraph 1.