

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
July, 2007.

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, et al.**
Maintain a Natural Gas Distribution System to Provide)
Gas Service in Platte County, Missouri, as an Expansion)
of its Existing Certified Area)

ORDER DENYING MOTION TO STRIKE PORTIONS OF APPLICATION

Issue Date: July 3, 2007

Effective Date: July 3, 2007

On January 31, 2007,¹ Missouri Gas Energy (“MGE”), a Division of Southern Union Company, filed an application with the Missouri Public Service Commission, pursuant to Section 393.170, RSMo 2000, requesting that the Commission grant it authority 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, in Sections 13 and 14, Township 52 North, Range 35 West in Platte County, Missouri.” In its application, MGE included a map showing the sections in which it sought certification and identifying additional surrounding sections in which it claimed it was already certificated. MGE’s plat map demonstrated that it held a certificate to provide service in 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.

¹ All dates throughout this order refer to the year 2007 unless otherwise noted.

On March 13, The Empire District Gas Company (“Empire”) was granted intervention. In its request for intervention, Empire claimed that it, not MGE, had a certificate for Sections 11 and 12 Township 52 North, Range 35 West. Empire further asserted that it already had facilities in Section 12, which is adjacent to Sections 13 and 14 for which MGE is seeking a certificate. Empire also disputed MGE’s claim to have certification in the other sections surrounding sections 13 and 14. Therefore, Empire concluded that MGE was encroaching into its certificated territory, that Empire was fully capable of providing natural gas service to these two sections, and that the facts did not support granting a certificate to MGE.

Ultimately, Empire filed its own application seeking a certificate of convenience and necessity to construct, install, own, operate, control, manage and maintain a system for the provision of natural gas service in the same two sections of land as MGE’s application (Sections 13 and 14, Township 52 North, Range 35 West in Platte County, Missouri). Empire’s application also seeks a certificate for Sections 15, 22, 23 and 24 in the same township and range. Empire further seeks clarification of who has a certificate 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, sections in which both MGE and Empire claim to hold a certificate.

The two cases were consolidated on May 31. A procedural schedule was adopted that culminates in a hearing on October 25-26.

On June 11, MGE filed a motion to strike paragraphs 12, 13, and 14 of Empire’s application. MGE claims that Empire made allegations in these paragraphs that MGE has engaged in the unauthorized construction of distribution facilities in Section 12, Township 52 North, Range 35 West in Platte County. MGE claims that there are no provisions in the

Commission's Rules regarding certificate applications that would allow a party to state a complaint in an application about another utility's alleged violation of statutes.

On June 15, Empire responded. Empire notes that it and MGE dispute who has been certificated to provide service in 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. MGE claims these sections are covered in its tariff and Empire claims it acquired a certificate for these sections when it purchased gas properties from Aquila, Inc. and received Commission approval to provide service in its newly acquired service areas. Both utilities apparently have facilities in Section 12.

Empire asserts that who has certification of the surrounding sections is relevant to the Commission's determination of which utility shall receive certification to provide gas service to sections 13 and 14. Empire contends that MGE should not be granted certification to make extensions of its facilities into new areas if the facilities from which it is extending were unauthorized.

While it is true that MGE's application only pertained to the grant of a certificate in sections 13 and 14, Empire appropriately raised the issue of clarifying which utility has a certificate to provide service in the surrounding sections of land. This issue will need to be addressed by the Commission to provide clarity and to promote the orderly future development of gas service to the public, preventing duplication of facilities and services. This issue was appropriately raised in this case and is properly before the Commission in the context of the certification dispute.

The Commission notes that no formal complaint has been filed by any party in this matter. Consequently, MGE cannot be heard to complain that there is no provision in the Commission's Rules to hear this closely interrelated issue with the issue concerning the granting of certification in the sections adjoining the disputed service areas. Moreover, the

absence of a rule allowing a combination of types of particular cases does not support MGE's assertion that it could not hear a complaint action simultaneously with a certification action.

Commission Rule 4 CSR 240-2.110(3) allows the Commission to consolidate pending actions involving related questions of law or fact. The issues in these cases are related and consolidation was appropriate. The Commission weighed these issues surrounding consolidation when it issued its May 31 order consolidating these two actions. The consolidation effectuated the most efficient use of the Commission's and parties' time and resources for resolving the interrelated issues.

The posture of the consolidated cases, as they currently stand, involves no formal complaint by any party against any other party. If a future complaint action should arise out of the course of these proceedings, then MGE and/or Empire will be given the full measure of due process owed, and either utility, should it be named in a complaint, shall have a full and fair opportunity to avail itself of all appropriate and legitimate defenses to any such complaint.

IT IS ORDERED THAT:

1. Missouri Gas Energy's Motion to Strike Portions of The Empire District Gas Company's Application is denied.

2. This order shall become effective on July 3, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw,
Clayton, and Appling, CC., concur.

Stearley, Regulatory Law Judge