

**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.
YG-2008-0691
YG-2008-0703

STAFF RECOMMENDATIONS REGARDING COMPLIANCE TARIFF FILINGS
SHOWING CERTIFICATED SERVICE AREAS

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Recommendations, states as follows:

1. On May 21, 2008, the Commission issued its *Order Directing Staff To File A Recommendation* (Order) not later than June 9, 2008, regarding Missouri Gas Energy's (MGE) compliance tariff filing YG-2008-0691. On May 27, 2008, the Commission issued a similar Order directing the Staff to file its recommendation not later than June 11, 2008, regarding Empire District Gas Company's (EDG or Empire) compliance tariff filing YG-2008-0703.

2. In accordance with ordered paragraph 8 of the Report and Order, both MGE and EDG tariff filings describe the type of certificate of convenience and necessity (CCN) and provide a list of section numbers by township and range where each company has authorization to provide gas distribution service.

3. On June 6, 2008, the Staff filed its motion requesting an extension of time to July 18, 2008 to file its recommendations, informing the Commission that Staff continues its

extensive review of the information contained in both companies' revised tariff sheets, that Staff required additional time to gather and review information relating to both companies' tariffs and that Staff intended to combine both recommendations in one filing.

4. On June 24, 2008, the Commission issued its *Order Granting Staff An Extension Of Time To Evaluate Compliance Filings* setting the filing date for Staff to file its report and recommendations to no later than July 15, 2008.

Background

5. The proceedings in this case have brought to light how the Commission began, in 1997, to show on tariff sheets the certificated service areas granted to MGE by Commission orders using the Township, Range, and Section format. Back then, the Staff and MGE, with approval of the Commission, agreed it was difficult to determine certificated areas by traditional metes and bounds. As a result, the need for establishing clarity in the tariff sheets became preferable to showing all certificated service areas by metes and bounds descriptions or by those certificated only by community name, from over 70 years of CCN orders. Hence, 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.

6. In this proceeding, MGE counsel argued an approved tariff sheet has the full force and effect of law, therefore allowing MGE to rely on its Commission approved tariff for necessary authority to provide service in certain sections not granted by a Commission ordered CCN. The Staff argued, and Public Counsel agreed, the Commission is required by statute to make a specific grant of service authority by Commission order and that a tariff is not sufficient

legal authority for provision of service without a CCN. Ultimately, the Commission issued its decision in its Report and Order resolving the instant controversy on the basis the Commission has the authority to interpret its own orders, which it did. Though the decision cut against Staff's position, the Staff agrees with and supports the proposition that the Commission has the authority to interpret its own orders to achieve a resolution of service territory disputes.

7. In accordance with the Report and Order, both MGE and Empire submitted tariff sheets representing all their service areas in a section, township and range format, not just the 23 sections that are the subject of this case. Therefore, Staff's report and recommendation addresses the broader issue of all tariff sheets listing all certificated sections, and is not limited to the 23 sections resolved by Commission Order.

Empire Recommendation

8. The Staff has reviewed the proposed tariff sheets filed by Empire in its Tariff Filing No. YG-2008-0703 and is of the opinion the tariff sheets were filed in a timely manner and are in compliance with the Commission's Order in Case No. GA-2007-0389. Staff's recommendation is explained in more detail in its Memorandum attached hereto as Appendix A and incorporated by reference.

9. Staff points out ordered paragraph 8 of the Commission's Report and Order requires:

The Empire District Gas Company and Missouri Gas Energy shall file revised tariff sheets with the Commission identifying which types of certificates they have (i.e. transport, line, or service area certificates) in *all of the areas* in which they hold any type of certificate to provide any type of natural gas service. [*emphasis added*]

This ordered paragraph expands the review of certificated sections listed in the filed tariff from 23 sections addressed in this case to include a review and validation of the companies' entire service area.

10. As discussed in above paragraph 5, the utility's listing of certificated areas by sections is a reasonably precise, but not completely accurate method of describing certificated service areas in light of the old way of listing boundaries by metes and bounds descriptions.

11. To avoid unnecessary confusion and complexity in the tariff sheets, the Staff proposed, and Empire adopted, the footnote:

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.

This footnote is placed at the bottom of each of the proposed tariff sheets.

12. Therefore, in the event a future controversy arises concerning detailed boundary questions, the reader of the tariff is on notice the Commission will interpret its own orders to resolve those questions.

Missouri Gas Energy Recommendation

13. The Staff has reviewed the proposed tariff sheets filed by MGE in its Tariff Filing No. YG-2008-0691 and is of the opinion the tariff sheets were filed in a timely manner, but not all the tariff sheets are in compliance with the Commission's Order in Case No. GA-2007-0389. Staff's Memorandum, attached hereto as Appendix B and incorporated by reference, explains in more detail its recommendation to reject, or in the alternative to suspend, these tariff sheets.

14. Staff has reviewed the land Sections in Platte County on Tariff Sheet No. 6.15 and concurs that MGE has included the land Sections which it is authorized to serve by the Commission's Order, Ordered paragraphs 2 and 3. In addition, MGE has removed the land Sections which it agreed to remove in Ordered paragraph 4. Thus, MGE's tariff sheets are in compliance with Ordered paragraphs 2, 3 and 4.

15. Staff points out ordered paragraph 8 of the Commission's Report and Order requires:

The Empire District Gas Company and Missouri Gas Energy shall file revised tariff sheets with the Commission identifying which types of certificates they have (i.e. transport, line, or service area certificates) in *all of the areas* in which they hold any type of certificate to provide any type of natural gas service. [*emphasis added*]

This ordered paragraph expands the review of certificated sections listed in the filed tariff from 23 sections addressed in this case to include a review and validation of the companies' entire service area.

16. The Staff visited MGE's office and conducted a preliminary review of MGE's certificated service area documentation. This partial review included an examination of tariff Sheet No.'s 6.1, 6.7, and 6.16. From this, Staff identified discrepancies in Buchanan, Howard, and Saline counties. (See Staff's Memorandum, Appendix B).

17. In addition, the Staff renews its proposed footnote, which was adopted by Empire as a way to avoid unnecessary confusion and complexity in the tariff sheets. (See above para.'s 10, 11, and 12). MGE rejected the addition of this footnote:

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.

18. Staff believes MGE should add this footnote on its tariff sheets in order to place the reader of the tariff on notice that, in the event a future controversy arises concerning detailed boundary questions, the Commission will interpret its own orders to resolve those questions.

19. The Commission's rejection or suspension of MGE's tariff sheets causes no impediment to the public because the authority for MGE's certificated service areas comes from the Commission's CCN orders.

WHEREFORE, for the above-stated reasons and for reasons more fully explained in Staff's attached Memorandums, Staff respectfully recommends the Commission issue an order:

(1) approving Empire's tariff sheets in file tracking no. YG-2008-0703, or allow them to go into effect by operation of law, and,

(2) rejecting MGE's tariff sheets in file tracking no. YG-2008-0691, or in the alternative suspending MGE's tariff sheets for a period of 30 days and direct MGE and Staff to meet to discuss whether these matters can be resolved.

Respectfully submitted,

/s/ Robert S. Berlin

Robert S. Berlin
Senior Counsel
Missouri Bar No. 51709

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Missouri Public Service Commission
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 15th day of July 2008.

/s/ Robert S. Berlin

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. GA-2007-0289, et al., Tariff Tracking No. YG-2008-0703
The Empire District Gas Company

FROM: Tom Imhoff, Rate & Tariff Examination Supervisor, Project Coordinator
Henry Warren, Regulatory Economist II

/s/ Thomas Imhoff 07/15/08 /s/ Robert S. Berlin 07/15/08
Energy Department / Date General Counsel's Office / Date

SUBJECT: Staff Recommendation For **Approval** of Tariff Sheets Filed on June 20, 2008 To
Comply With The Commission's ORDER DIRECTING FILING issued February
14, 2008.

DATE: July 15, 2008

On May 22, 2008, The Empire District Gas Company (Empire or Company) of Joplin, Missouri, filed with the Commission four (4) tariff sheets with an issue date of May 22, 2008, and a proposed effective date of June 22, 2008 to be similar to the illustrative Original Sheet Nos. 4-7 attached as Appendix 1 to its application, ordered by the Commission in its REPORT AND ORDER issued February 14, 2008, effective February 24, 2008. These tariff sheets contain revisions of the Original Tariff Sheets containing *Authorized Service Territory – Gas*. On June 26, 2008, Empire extended the requested effective date to July 25, 2008¹, and filed substitute tariff sheets.

Staff Recommendation

The Staff has reviewed the proposed tariff sheets, and is of the opinion that they were filed in a timely manner and are in compliance with the Commission's Order in Case No. GA-2007-0289.

Ordered paragraph 8 states, "The Empire District Gas Company and Missouri Gas Energy shall file revised tariff sheets with the Commission identifying which types of certificates they have (i.e. transport, line, or service area certificates) in all of the areas in which they hold any type of certificate to provide any type of natural gas service."

Staff's position is that this paragraph in the Order requires Empire to review the entirety of these tariff sheets depicting service areas and verify that they have certificates for every section listed in these tariff sheets and to indicate what type of certificate they have for each section listed. Consequently, no section should appear in a Company's tariff sheet for which it does not have a certificate. It is Staff's position that the Commission's Order makes Empire responsible for the accuracy of these tariff sheets and any discrepancy between Commission's Orders in Certificate of Convenience and Necessity Cases and these tariff sheets violates the Commission's Order in this Case.

¹ Empire originally filed Tariff Tracking No. YG-2008-0703 with an issue date of May 23, 2008 and an effective date of June 22, 2008. That filing was withdrawn in compliance with ORDER GRANTING STAFF AN EXTENSION OF TIME TO EVALUATE COMPLIANCE FILINGS.

Subsequent to Empire filing their tariff sheets, Staff began a review of the tariff sheets and submitted data requests asking the Company to submit verification of the sections. The time available before the Staff recommendation as ordered did not allow a thorough verification of all the land sections in all the tariff sheets.

In response to the Empire objection to Staff's Data Request, Staff suggested that Empire add this footnote to the Empire tariff sheets depicting service areas by section, "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." Staff finds this footnote an appropriate alternative to the Company responding to the Data Request asking for thorough documentation of the sections listed in the tariff, because there is an acknowledgement that the controlling documents are the Commission's Orders granting the service areas if any question arises as to the precise boundary of the service area. Empire agreed to include this footnote in their tariff sheets containing land sections in their *Authorized Service Territory – Gas* and filed substitute tariff sheets containing the footnote.

The Staff therefore recommends that the Commission issue an order approving the following proposed tariff sheets, as filed on May 22, 2008, and substituted on June 26, 2008, to become effective on July 25, 2008, as requested by Empire or permit the tariff sheets to go into effect by operation-of-law:

P.S.C. MO. No. 2

- First Revised Sheet No. 4 canceling Original Sheet No. 4
- First Revised Sheet No. 5 canceling Original Sheet No. 5
- First Revised Sheet No. 6 canceling Original Sheet No. 6
- First Revised Sheet No. 7 canceling Original Sheet No. 7

The Staff has verified that this Company is not delinquent on any assessment or the filing of its annual report. The Staff is not aware of any other matter pending before the Commission that affects or is affected by this tariff filing.

cc: Roger W. Steiner
Jeffrey A. Keevil
Lewis Mills

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

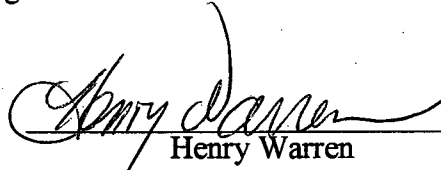
In the matter of the application of)
 Missouri Gas Energy, a division of)
 Southern Union Company, for a)
 certificate of public convenience and)
 necessity authorizing it to construct,)
 install, own, operate, control, manage)
 and maintain a natural gas distribution)
 system to provide gas service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

Case No. GA-2007-0289, et al
 YG-2008-0703

AFFIDAVIT OF HENRY WARREN

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Henry Warren, of lawful age, on oath states: that he has participated in the preparation of the foregoing written memorandum, to be presented in the above case; that the information in the attached written report was given by Empire District Gas Company (Empire); that he has knowledge of the matters set forth in such memorandum; and that such matters are true to the best of his knowledge and belief.


 Henry Warren

Subscribed and sworn to before me this 15th day of July, 2008.



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


 Notary Public

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. GA-2007-0289, et al., Tariff Tracking No. YG-2008-0691
Missouri Gas Energy, a Division of Southern Union Company

FROM: Tom Imhoff, Rate & Tariff Examination Supervisor, Project Coordinator
Henry Warren, Regulatory Economist II

/s/ Thomas Imhoff 07/15/08 /s/ Robert S. Berlin 07/15/08
Energy Department / Date General Counsel's Office / Date

SUBJECT: Staff Recommendation For **Rejection/Suspension** of Tariff Sheets Filed on June 20, 2008 To Comply With The Commission's ORDER DIRECTING FILING issued February 14, 2008.

DATE: July 15, 2008

On May 20, 2008, Missouri Gas Energy, a Division of Southern Union Company (MGE or Company) of Kansas City, Missouri, filed with the Commission nineteen (19) tariff sheets with an issue date of May 20, 2008, and a proposed effective date of June 20, 2008 to be similar to the illustrative Original Sheets Nos. 6, 6.1 – 6.16, 7, and 8 attached as Appendix 1, ordered by the Commission in its REPORT AND ORDER (Order) issued February 14, 2008, effective February 24, 2008. These tariff sheets contain revisions of the Original Tariff Sheets containing *Index of Certificated Areas and Maps of Certificated Areas*. On June 20, 2008, MGE extended the requested effective date to August 1, 2008¹.

Staff Recommendation

The Commission's Energy Department Staff (Staff) has reviewed the proposed tariff sheets, and is of the opinion that they were filed in a timely manner, but not all the tariff sheets are in compliance with the Commission's Order in Case No. GA-2007-0289.

Staff has reviewed the land Sections in Platte County on Tariff Sheet No. 6.15 and concurs that MGE has included the land Sections which it is authorized to serve by the Commission's Order, Ordered paragraphs 2 and 3, and has removed the land Sections which it agreed to remove in Ordered paragraph 4 and thus are in compliance with Ordered paragraphs 2, 3 and 4.

Ordered paragraph 8 requires, "The Empire District Gas Company and Missouri Gas Energy shall file revised tariff sheets with the Commission identifying which types of certificates they have (i.e. transport, line, or service area certificates) in all of the areas in which they hold any type of certificate to provide any type of natural gas service."

Staff's position is that this paragraph in the Order requires MGE to review the entirety of these tariff sheets depicting service areas and verify that they have certificates for every section listed in these tariff sheets and to indicate what type of certificate they have for each section listed. Consequently,

¹ MGE originally filed Tariff Tracking No. YG-2008-0691 with an issue date of May 20, 2008 and an effective date of June 20, 2008. That filing was withdrawn in compliance with ORDER GRANTING STAFF AN EXTENSION OF TIME TO EVALUATE COMPLIANCE FILINGS.

no section should appear on a Company's tariff sheet for which it does not have a certificate. It is Staff's position that the Commission Order makes MGE responsible for the accuracy of these tariff sheets and any discrepancy between Commission Orders in Certificate of Convenience and Necessity Cases and these tariff sheets violates the Commission's Order in this Case.

Subsequent to MGE filing their tariff sheets Staff began a review of the tariff sheets and submitted data requests asking the Company to submit verification of the sections. The time available before the Staff recommendation as ordered did not allow a thorough verification of all the land sections in all the tariff sheets.

In response to the MGE objection to Staff's Data Request, Staff suggested that MGE add this footnote to the MGE tariff sheets depicting service areas by section, "*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.*" Staff finds this footnote an appropriate alternative to the Company responding to the Data Request asking for thorough documentation of the sections listed in the tariff, because there is an acknowledgement that the controlling documents are the Commission's Orders granting the service areas if any question arises as to the precise boundary of the service area. Empire agreed to include this footnote in their tariff sheets containing land sections in their *Authorized Service Territory – Gas* and filed substitute tariff sheets containing this footnote.

MGE responded they would not include the footnote in these tariff sheets and that the only discrepancy in these tariff sheets was in the Platte City area and that had been corrected in compliance with other parts of the Order in this Case. MGE invited Staff to come to the MGE offices and review the documentation for these tariff sheets. Subsequently, Staff visited the MGE office on June 30, 2008, and conducted a preliminary review of the MGE documentation.

Staff examined MGE tariff sheets and Commission Orders in Buchanan County (Sheet No. 6.1), Howard County -- Armstrong and Fayette (Sheet No. 6.7), and Saline County from Marshall to Slater (Sheet No. 6.16). Staff's preliminary review found the following discrepancies:

- 1) In Buchanan County Staff found a typographical error where three sections from Clay County were listed in Buchanan County.
- 2) In Howard County whole sections were listed around Armstrong where the metes and bounds descriptions only included small parts of these sections.
- 3) For the city of Fayette, in Howard County, MGE only has a certificate for the community, but includes in Tariff Sheet No. 6.7 land sections in and around the city. At least two of these sections were likely too far outside Fayette to include any customers, but Staff has not been able to verify this.
- 4) In Saline County, Staff found that MGE was in violation of Commission Supplemental Order in Case No. 15,176 by not eliminating several sections near Marshall from its service area.
- 5) In Saline County there are some other sections near Marshall where MGE is authorized to serve part of the section and Empire serves another part of that section resulting in both Companies listing that section in their tariff.

The situations in these three counties illustrate the limitations of these tariff sheets, the need for a

thorough review by the company, the need to revise the tariff sheets to correct the aforementioned errors and any other discrepancies that are found upon further review, and reasons why it is appropriate to include the proposed footnote on the MGE tariff sheets.

It is Staff's position that until MGE agrees to these remedies, that the tariff sheets filed do not comply with the Commission's Order in this case. The Staff therefore recommends the Commission issue an order rejecting/suspending the following proposed tariff sheets, as filed on June 20, 2008, bearing an effective date of August 1, 2008. The purpose of the rejection/suspension is to allow MGE to make corrections mentioned above, add the footnote proposed above, further review the accuracy of the tariff sheets, and for Staff and MGE to try to resolve any other issues. Commission suspension of these tariff sheets creates no impediment to the public because the Company's CCN orders provide the most accurate and precise service area descriptions.

P.S.C. MO. No. 1

Third Revised Sheet No. 6 canceling Second Revised Sheet No. 6
First Revised Sheet No. 6.1 canceling Original Sheet No. 6.1
First Revised Sheet No. 6.2 canceling Original Sheet No. 6.2
Fourth Revised Sheet No. 6.3 canceling Original Sheet No. 6.3
First Revised Sheet No. 6.4 canceling Original Sheet No. 6.4
First Revised Sheet No. 6.5 canceling Original Sheet No. 6.5
First Revised Sheet No. 6.6 canceling Original Sheet No. 6.6
Fourth Revised Sheet No. 6.7 canceling Third Revised Sheet No. 6.7
First Revised Sheet No. 6.8 canceling Original Sheet No. 6.8
First Revised Sheet No. 6.9 canceling Original Sheet No. 6.9
First Revised Sheet No. 6.10 canceling Original Sheet No. 6.10
First Revised Sheet No. 6.11 canceling Original Sheet No. 6.11
First Revised Sheet No. 6.12 canceling Original Sheet No. 6.12
Second Revised Sheet No. 6.13 canceling First Revised Sheet No. 6.13
Third Revised Sheet No. 6.14 canceling Second Revised Sheet No. 6.14
Second Revised Sheet No. 6.15 canceling First Revised Sheet No. 6.15
First Revised Sheet No. 6.16 canceling Original Sheet No. 6.16
First Revised Sheet No. 7 canceling Original Sheet No. 7
Second Revised Sheet No. 8 canceling First Revised Sheet No. 8

The Staff has verified that this Company is not delinquent on any assessment or the filing of its annual report. The Staff is not aware of any other matter pending before the Commission that affects or is affected by this tariff filing.

cc: Roger W. Steiner
Jeffrey A. Keevil
Lewis Mills

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

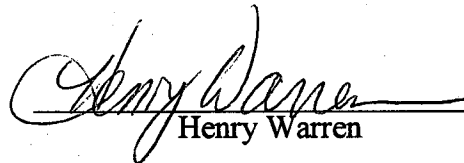
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Case No. GA-2007-0289, et al
 YG-2008-0691

AFFIDAVIT OF HENRY WARREN

STATE OF MISSOURI)
) ss
 COUNTY OF COLE)

Henry Warren, of lawful age, on oath states: that he has participated in the preparation of the foregoing written memorandum, to be presented in the above case; that the information in the attached written report was given by Missouri Gas Energy (MGE); that he has knowledge of the matters set forth in such memorandum; and that such matters are true to the best of his knowledge and belief.


 Henry Warren

Subscribed and sworn to before me this 15th day of July, 2008.



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


 Notary Public