

# 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 ) **Case No. GA-2007-0289, et al.**  
Authorizing it to Construct, Install, Own, Operate, ) Tariff No. YG-2008-0691  
Control, Manage and Maintain a Natural Gas ) Tariff No. YG-2008-0703  
Distribution System to Provide Gas Service in Platte )  
County, Missouri, as an Expansion of its Existing )  
Certified Area )

### **ORDER APPROVING THE EMPIRE DISTRICT GAS COMPANY'S COMPLIANCE TARIFF FILINGS**

Issue Date: September 30, 2008

Effective Date: October 15, 2008

#### **Background**

On February 14, 2008,<sup>1</sup> the Commission issued its final Report and Order ("Order") in this matter bearing an effective date of February 24. In ordered paragraph 8 of that order, the Commission directed Missouri Gas Energy ("MGE")<sup>2</sup> and The Empire District Gas Company ("Empire") to file revised tariff sheets 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. The Commission set a deadline of May 26 for the filing of the revised tariff sheets.<sup>3</sup>

On May 23, in its attempt to comply with the Commission's Order, Empire submitted proposed revisions to its P.S.C. MO. No. 2 tariff sheets. The filing was

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<sup>1</sup> All dates throughout this order reference the year 2008 unless otherwise noted.

<sup>2</sup> MGE's Compliance tariffs were approved on September 11, 2008 to take effect September 24, 2008. See EFIS Docket Number 119, *Order Approving Missouri Gas Energy's Compliance Tariff Filings*. EFIS is the Commission's Electronic Filing and Information System.

<sup>3</sup> See *Order Setting Deadline for Tariff Filings*, issued February 26, 2008.

assigned Tariff Tracking No. YG-2008-0703 and the revised tariff sheets had an effective date of June 22.

The Commission directed its Staff to review the revised tariff sheets and file a report and recommendation as to whether Empire was in compliance with the Commission's Order. On June 6, Staff filed a motion for an extension of time to complete its recommendations concerning these compliance tariffs. Staff stated that extensive review was required in order for it to provide its recommendations and Staff requested that the deadline for the recommendations be extended until July 18.

Because Staff requested an extension beyond the effective dates of the submitted tariffs, and because Staff did not request the Commission to suspend the tariffs while it completed its evaluation, the Commission directed Empire to respond to Staff's request. Empire responded and voluntarily extended the effective date of its tariff until July 22.<sup>4</sup>

With the effective date extended, the Commission granted Staff's request for the extension of time; however, given that Empire's extension was only until July 22, the Commission only granted Staff an extension of time for its recommendation until July 15 so the Commission would have sufficient time to suspend the tariff if it was not in compliance with the February 14 Order.

#### **Staff's Initial Recommendation and Tariff Suspensions**

On July 15, Staff filed its recommendation. Staff adopted the position that the Commission's Order makes Empire responsible for the accuracy of its tariff sheets and that any discrepancy between Commission's Orders granting Certificates of

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<sup>4</sup> Both companies filed substitute tariff sheets reflecting the revised effective dates.

Convenience and Necessity (“CCNs”) and the Commission-approved tariff sheets would violate the Commission’s Order. To account for Staff’s interpretation of the Commission’s Order, Staff believed that the compliance tariffs should include two additional sentences that would allow Commission orders granting CCNs to take precedence over Commission-approved tariffs. Based upon that recommendation, Empire filed substitute tariff filings on June 26,<sup>5</sup> which included the following two sentences recommended by Staff:<sup>6</sup>

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.

Based upon Empire complying with Staff’s suggested condition, it recommended that the Commission should approve Empire’s compliance filing containing the suggested language.

When reviewing the compliance filings, the Commission concluded that Staff had elected to address a broader issue in its recommendation than was encompassed in the Commission’s February 14 Order, and because of Staff’s initial recommendation concerning the compliance filings the Commission suspended the compliance tariffs filed by both Empire and MGE to allow the parties a full and fair opportunity to respond to Staff’s suggested tariff condition.<sup>7</sup> The tariff filings were suspended until October 1.

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<sup>5</sup> The issue date appearing on the tariff filings was June 25, 2008.

<sup>6</sup> See EFIS Docket Number 109, *Staff Recommendations Regarding Compliance Tariff Filings Showing Certificated Areas*, filed July 15, 2008.

<sup>7</sup> Section 393.150, RSMo 2000, authorizes the Commission to suspend tariffs submitted by a gas corporation for a period of 120 days plus six months. The Commission’s July 17, 2008 suspension order set September 4, 2008 as the deadline for requesting a hearing concerning Staff’s original proposal for inclusion of this language. No party requested a hearing on this issue within the deadline set by the Commission.

## **Empire's Second Substitute Tariff Sheets and Staff's Current Recommendation**

Staff is no longer seeking the additional language it had suggested in its July 15 recommendation, and the Commission approved MGE's compliance tariff filings without the additional language.<sup>8</sup> On September 2, Empire filed a pleading stating that if MGE is not required to include this additional language that it should not be required to include it.<sup>9</sup> Consequently, on September 11, the Commission issued an Order Directing Filing and Recommendation, providing Empire the opportunity to revise its tariff filings to remove the two sentences that Staff had initially recommended needed to be included. On September 15, Empire filed substitute tariff sheets removing the two sentences at issue and on September 19, Staff filed its recommendation that the tariff filings should be approved.

The Commission has reviewed Empire's substitute compliance tariff filings and Staff's recommendation. The Commission finds Empire's tariff filings to be in compliance with the Commission's February 14 Order and will approve them to become effective on October 15.

### **IT IS ORDERED THAT:**

1. The compliance tariff sheets issued by The Empire District Gas Company on September 15, 2008, bearing the effective date of October 15, 2008 and assigned tariff number YG-2008-0703, are approved to become effective on October 15, 2008.

The tariff sheets approved are:

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#### **P.S.C. MO. No. 2**

#### **First Revised Sheet No. 4, canceling Original Sheet No. 4**

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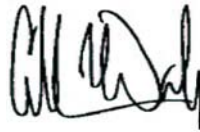
<sup>8</sup> See Footnote Number 2.

<sup>9</sup> Empire also asserted that it believed Staff's original recommendation should be followed and that the additional language should be included in the tariff filings.

**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**

2. This order shall become effective on October 15, 2008.
3. This case shall be closed on October 16, 2008.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale  
Secretary

( S E A L )

Harold Stearley, Senior Regulatory Law Judge,  
by delegation of authority pursuant to  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 30th day of September, 2008.