

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

In the Matter of the Application of Ozark)
Energy Partners, LLC for a Certificate of)
Convenience and Necessity to Construct)
and Operate an Intrastate Natural Gas)
Pipeline and Gas Utility to Serve Portions)
of the Missouri Counties of Christian,)
Stone and Taney, and for Establishment of)
Utility Rates.)

Case No. GA-2006-0561

**STAFF’S MOTION TO MODIFY ORDER TO FILE STAFF RECOMMENDATION
AND TO ESTABLISH PREHEARING CONFERENCE**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and moves, pursuant to § 386.490, that the Commission modify its Order directing Staff to file a Staff Recommendation in this matter on September 5, 2006, and in lieu of that requirement, establish a prehearing conference. In support of its Motion, Staff states:

1. On June 30, 2006, Ozark Energy Partners, LLC filed an application for a certificate of convenience and necessity to construct and operate an intrastate natural gas pipeline and gas utility to serve portions of Christian, Stone and Taney counties.

2. As permitted by the Commission’s rule at 4 CSR 240-3.205 (2),¹ Ozark Energy Partners, LLC did not file:

(A) A legal description of the area to be certificated (4 CSR 240-3.205(1)(A) 3.);

(B) A plat drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps issued by the Missouri Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch (4 CSR 240-3.205(1)(A) 4.);

(C) A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the

¹ “If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.”

number of customers, revenues and expenses during the first three (3) years of operations (4 CSR 240-3.205(1)(A) 5.);

(D) A description of the route of construction and a list of all electric and telephone lines of regulated and nonregulated utilities, railroad tracks or any underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross (4 CSR 240-3.205(1)(B) 1.);

(E) The plans and specifications for the complete construction project and estimated cost of the construction project or a statement of the reasons the information is currently unavailable and a date when it will be furnished; (4 CSR 240-3.205(1)(B) 2.); and

(F) Plans for financing (4 CSR 240-3.205(1)(B) 3.).

3. Before the Commission may grant the Applicant's request for a certificate of convenience and necessity to construct a gas plant, the Commission is required by § 393.170 RSMo. (2000) to determine whether the Applicant has obtained the necessary franchises, and whether the project is necessary and convenient for the public interest. That section also permits the Commission to impose necessary conditions on the grant of authority:

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary...

In accord with this sub-section, the Commission may grant Applicant's request if, after hearing, it determines that the certificate is necessary or convenient for the public interest. In construing the term "necessary or convenient," the Court has stated that "the term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that [the] service would be an improvement justifying its cost."² In the *Intercon Gas* case, the Court of Appeals further construed this statutory section and noted several criteria for evaluation of the necessity and convenience of the proposed project:

² *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm'n.* 848 S.W.2d 593, 597(Mo.App. 1993)(citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973).

Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. *State ex rel. Public Water Supply Dist. No. 8 v. Public Serv. Comm'n*, 600 S.W.2d 147, 154 (Mo.App.1980). The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. *State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n*, 527 S.W.2d 390, 394 (Mo.App.1975). Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. *Id.* at 392.

848 S.W.2d 593, 597 – 598. After defining and interpreting the meaning of the phrase “necessary or convenient,” the Court of Appeals indicated that it is up to the Commission to decide “when the evidence indicates the public interest would be served.” *Id.*

4. To make an informed recommendation whether the Commission should approve or reject Ozark Energy Partners, LLC’s application as directed by the Commission in its *Order and Notice* of July 5, 2006 in this matter, Staff will require the information listed in paragraph two of this pleading. The information is relevant to the analysis Staff will perform relating to the convenience and necessity of the proposed systems and the role of the public interest in this case.

5. Staff has commenced discovery in this case to obtain information, including (but not limited to) the information listed in paragraph two above, that it believes is necessary to provide the Commission with an informed recommendation. However, Staff does not expect that discovery will be completed in time for Staff to submit a fully informed recommendation by the date the Commission has directed it to do so, September 5, 2006.

6. Moreover, in response to the Commission’s *Order and Notice* of July 5, 2006, Missouri Gas Energy, Alliance Gas Energy Corporation, and Southern Star Central Gas Pipeline, Inc. have all filed timely motions to intervene. The Commission has not yet ruled on these companies’ applications to intervene.

7. Accordingly, Staff requests that, in lieu of the requirement to file a Staff Recommendation on September 5, 2006, the Commission establish an early prehearing conference so the Commission, parties and potential parties may explore the best and most efficient means of proceeding in this case. The Commission's rule at 4 CSR 240-2.090(4) provides that any party may petition the Commission to hold a prehearing conference at any time prior to the hearing.

8. The Commission may modify its *Order and Notice* under the authority of Section 386.490.3 RSMo. (2000), which provides that orders or decisions of the Commission "shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission...."

WHEREFORE, Staff requests that the Commission abrogate its prior Order that Staff file a Staff Recommendation in this matter on September 5, 2006 and in lieu of that requirement, establish an early prehearing conference.

Respectfully submitted,

/s/ David A. Meyer

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 11th day of August 2006.

/s/ David A. Meyer