

**/STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 26th day
of June, 2007.

In the Matter of the Application of Southern Missouri Gas)	
Company, L.P., d/b/a Southern Missouri Natural Gas,)	
for a Certificate of Public Convenience and Necessity)	<u>Case No. GA-2007-0212,</u>
Authorizing It to Construct, Install, Own, Operate, Control,)	<u>et al.</u>
Manage, and Maintain a Natural Gas Distribution System)	
to Provide Gas Service in Lebanon, Missouri.)	

**ORDER DENYING MOTION TO DISMISS OR IN THE ALTERNATIVE
TO STAY PROCEEDINGS**

Issue Date: June 26, 2007

Effective Date: June 26, 2007

On December 6, 2006, Southern Missouri Gas Company, L.P., filed an application for a certificate of convenience and necessity to provide natural gas distribution service to the City of Lebanon, Missouri (Lebanon Application). On December 12, 2006, Southern Missouri Gas filed an application for approval to issue approximately \$10 million in equity capital and \$50 million in notes and other indebtedness in order to finance the proposed expansion of its system into Lebanon. Southern Missouri Gas later filed an application for a certificate of convenience and necessity to provide natural gas service in Houston, Licking, and Mountain View, Missouri. At the request of Southern Missouri Gas and without objection by the other parties, the Commission consolidated the three cases on March 8, 2007. The Missouri Propane Gas Association and Southern Star Pipeline, Inc., were each granted intervention.

On May 16, 2007, the MPGA filed a Motion to Dismiss or in the Alternative to Stay Proceedings. On May 22, 2007, Southern Missouri Gas responded to the motion. On June 13, 2007, Staff filed a recommendation. Staff recommends conditionally granting the certificates but withholding approval of the financing application until Staff has acquired more information. Staff intends to file an additional recommendation in the financing case.

On June 14, 2007, Southern Missouri Gas responded to Staff's recommendation indicating agreement with Staff's recommendations and the issuance of a conditional certificate. Southern Missouri Gas stated that it expects to get the additional information Staff requested for the financing application to Staff within the next 30 – 45 days. In addition, Southern Missouri Gas stated that it desires to begin construction in this construction season and therefore, requests that the Commission take action promptly. No other responses to Staff's recommendation were received. The Commission has set this matter for a procedural conference on June 29, 2007.

In its Lebanon Application, Southern Missouri Gas did not submit its franchise granted by the City of Lebanon as required by Section 393.170.2, RSMo 2000, and 4 CSR 240-3.205(1)(D)(1). Later, it submitted Exhibit F to the application consisting of Ordinance No. 4457 of the City of Lebanon, granting the franchise. The MPGA claims in its motion that this franchise is not final and that the application should either be dismissed or stayed until Southern Missouri Gas has its completed franchise. The basis for the MPGA's motion is that it believes the franchise as granted was not legitimate without a citizen vote. On May 14, 2007, the City of Lebanon passed Ordinance No. 4483 which submits the previous ordinance to a vote on August 7, 2007.

Southern Missouri Gas responded that it believes that no vote of the public is legally necessary and that the original ordinance contains a valid franchise. Southern Missouri Gas further responded that the City of Lebanon scheduled the election only to avoid any further delay that could arise from the threats of litigation from MPGA's counsel. Southern Missouri Gas indicates that the MPGA's motive for filing its motion is to slow or eliminate competition. Southern Missouri Gas further states that the Commission has previously continued to process a case while waiting on a ratification election.¹

The relevant statutes are somewhat confusing and conflicting. Even though an election has been set, it does not appear to be necessary in this circumstance. There is an argument among the parties as to which statute applies.

Missouri Southern Gas believes that Section 88.251² applies. This section sets out the procedures for when *all types* of cities must call a vote to grant a franchise. Section 88.251 requires 25 percent of voters to petition for an election. No such petition was filed regarding this ordinance.

MPGA argues that Section 77.210 applies. This section refers to heating franchises granted by *third class* cities. Section 77.210 states that “[a]n initial privilege or franchise must be approved by a majority of the voters of the municipality voting on the question.” However, this section applies only to the granting of a “franchise for a period of **thirty years**.”³ The franchise in the current case was granted for only twenty years. A third

¹ See, Commission Case Nos. GA-94-127, Southern Missouri Gas' application for a certificate which was approved for Mountain View with the condition that it must be ratified by an election; and GA-95-349, Southern Missouri Gas' application for an extension of authority in which the application was fully processed and approved within ten days of the filing of the final franchise election results.

² All statutory references are to the Revised Statutes of Missouri 2000 unless otherwise noted.

³ Emphasis added.

statute, Section 71.520, is actually the controlling statute in this matter. Section 71.520 authorizes *any city* to grant privileges to utilities for a period of twenty years by ordinance.

In any event, even if the franchise for Lebanon is not yet valid, the Commission may proceed with processing the application. In the past, the Commission has proceeded in this manner and made the grant of the certificate contingent on the ratification election, as Staff recommends in this case. Further, the Lebanon portion of the case is only part of the application. Thus, the Commission shall deny the motion to dismiss or stay the proceedings and shall proceed expeditiously with this case.

IT IS ORDERED THAT:

1. The Motion to Dismiss or in the Alternative to Stay Proceeding filed by the Missouri Propane Gas Association is denied.
2. This order shall become effective on June 26, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

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

Dippell, Deputy Chief Regulatory Law Judge