

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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4
5 TRANSCRIPT OF PROCEEDINGS
6 Evidentiary Hearing
7 November 29, 2006
8 Jefferson City, Missouri
9 Volume 2

10 In the Matter of the Application)
11 of Ozark Energy Partners, LLC for)
12 a Certificate of Public Convenience) and Necessity to Construct and)
13 Operate an Intrastate Natural Gas) Case No. GA-2006-0561
14 Pipeline and Gas Utility to Serve)
15 Portions of the Missouri Counties)
16 of Christian, Stone and Taney, and)
17 for Establishment of Rates)

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17 KENNARD L. JONES, Presiding,
18 REGULATORY LAW JUDGE.

18

19 JEFF DAVIS, Chairman,
20 CONNIE MURRAY,
21 LINWARD "LIN" APPLING,
22 TERRY JARRETT,
23 COMMISSIONERS.

22

23 REPORTED BY:

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6 FOR: Staff of the Missouri Public
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1 P R O C E E D I N G S

2 JUDGE JONES: We're on the record with
3 GA-2006-0561. My name is Kennard Jones. I'm the
4 Regulatory Law Judge presiding over this matter.

5 At this time we'll take entries of
6 appearances, beginning with Ozark, and you-all don't need
7 to state your full address. That's already in the record.
8 Just your name and who you're representing would be fine.

9 MR. STEINMEIER: Thank you, your Honor.
10 Please let the record reflect the appearance of William D.
11 Steinmeier and Mary Ann (Garr) Young, William D.
12 Steinmeier, PC, appearing on behalf of Ozark Energy
13 Partners, LLC.

14 JUDGE JONES: Thank you, Mr. Steinmeier.
15 From the Staff of the Commission?

16 MS. SHEMWELL: Good morning, and thank you,
17 your Honor. Lera Shemwell representing the Staff.

18 JUDGE JONES: Office of Public Counsel?

19 MR. POSTON: Thank you. Marc Poston on
20 behalf of the Office of the Public Counsel and the public.

21 JUDGE JONES: Southern Missouri Gas?

22 MR. FISCHER: Yes, Judge. Let the record
23 reflect the appearance of James M. Fischer and Larry W.
24 Dority of the law firm of Fischer & Dority, representing
25 Southern Missouri Natural Gas.

1 JUDGE JONES: Missouri Gas Energy?

2 MR. COOPER: Dean L. Cooper from the law
3 firm of Brydon, Swearngen & England, P.C., appearing on
4 behalf of Missouri Gas Energy, a division of Southern
5 Union Company.

6 JUDGE JONES: Is there anyone else present
7 that I haven't called out? Okay. Well, as I'm sure you
8 all have heard off the record, my intention is to take
9 official notice of the proceedings in yesterday and
10 Tuesday's hearing in Case GA-2007 --

11 MS. SHEMWELL: Yes.

12 JUDGE JONES: -- 168. That includes all
13 testimony, so try not to repeat any testimony that's
14 already in that record. It also includes all of the
15 exhibits that were offered and admitted yesterday, and I
16 realize the last exhibit number from yesterday was Exhibit
17 No. 23. Therefore, we'll start today with Exhibit No. 24
18 to avoid any confusion in that regard. We'll also take
19 exhibits in the order that they are offered and admitted.

20 Now, I spoke with Staff's attorney,
21 Ms. Shemwell, about her witness Mark Oligschlaeger going
22 early this morning. I don't know if she spoke with
23 you-all about that. Have you talked to anyone else about
24 that?

25 MS. SHEMWELL: I have, your Honor.

1 JUDGE JONES: And are you all in agreement
2 with either him going first or at some time before noon?

3 MR. STEINMEIER: No objection, your Honor.

4 MR. FISCHER: Judge, as far as I'm
5 concerned from Southern Missouri's perspective,
6 Mr. Oligschlaeger was fully questioned on the topics that
7 we needed to talk to him. We'd waive that cross.

8 MR. STEINMEIER: We would, too, your Honor.

9 JUDGE JONES: I'll probably, once we get
10 him on the stand, ask you if you have questions and then
11 again you'll at that time say you don't have any
12 questions. So you-all don't mind him going first, MGE and
13 OPC?

14 MR. POSTON: No.

15 JUDGE JONES: Okay. Does anyone else have
16 any concerns they'd like to talk about before we present
17 any evidence?

18 MS. SHEMWELL: No, thank you, Judge.

19 MR. POSTON: I didn't know, and this maybe
20 would have been a better question for Judge Lane, is the
21 record from this case also being incorporated into that
22 other case, into the Southern Missouri case?

23 JUDGE JONES: That's a good question.

24 MR. POSTON: I don't recall --

25 JUDGE JONES: What I want to say to that is

1 no, because my purpose for incorporating yesterday's and
2 the day before's record is to avoid duplicative testimony
3 and presentation of evidence. If we were to incorporate
4 this record into his case, we would in some way be --

5 MS. SHEMWELL: Reopening the record.

6 JUDGE JONES: Yeah, we would be adding
7 something that should have come in yesterday basically.
8 And also it would, from a practical standpoint, do an end
9 around the Commissioners' desire not to consolidate these
10 cases. That would be the end all practical effect of
11 that. So the answer to that question is no.

12 MR. POSTON: Okay. Thank you. I wasn't
13 urging that. I just wondered.

14 JUDGE JONES: It's a good question, but no,
15 we won't be. Are there any other concerns?

16 Okay. Next time you see me I'll be back
17 down with the Commissioners, and we'll start with Mark
18 Oligschlaeger. Is that your only witness, Ms. Shemwell,
19 depending on Commissioner questions, I assume?

20 MS. SHEMWELL: We will offer Mr. Straub,
21 Mike Straub for Commissioner questions and for cross.

22 JUDGE JONES: Okay. And then we'll move on
23 to Ozark. How many witnesses do you anticipate,
24 Mr. Steinmeier?

25 MR. STEINMEIER: Your Honor, we anticipate

1 three, with a fourth available.

2 JUDGE JONES: And the office of the Public
3 Counsel?

4 MR. POSTON: We have no witnesses.

5 JUDGE JONES: Southern Missouri Gas, how
6 many witness do you have?

7 MR. FISCHER: We have no witnesses.

8 JUDGE JONES: And Missouri Gas Energy?

9 MR. COOPER: No witnesses, your Honor, and
10 additionally, because my client has a stipulation with the
11 applicant in this matter, we would not plan to be present
12 for the duration of the hearing.

13 JUDGE JONES: Okay. On the record, let's
14 go ahead. I don't think I'm out of line by talking about
15 this, but you do realize that the first Stipulation &
16 Agreement that was objected to because it was timely -- a
17 timely objection was made, that agreement is as if it
18 doesn't exist anymore, it just represents the positions of
19 the parties, right?

20 MS. SHEMWELL: Yes.

21 MR. STEINMEIER: That's not how I would
22 express it, your Honor, but it is at least a
23 recommendation of certain parties.

24 MR. FISCHER: Your Honor, I would say, if
25 this would be helpful, that my client, Southern Missouri,

1 that has objected to the stipulation between Staff and
2 Ozark does not have any objection to the Stipulation
3 between Missouri Gas Energy and Ozark related to the
4 service territory issues.

5 JUDGE JONES: Well, this is a position that
6 these stipulations have put the Commission in. The
7 Commission has to either approve the whole Stipulation &
8 Agreement or reject it.

9 MS. SHEMWELL: There are two separate
10 stipulations filed, Judge, the one between Staff and then
11 the one between Staff, OEP and MGE was completely
12 separate.

13 JUDGE JONES: It is completely separate,
14 but it references the one that no longer exists, so we
15 have to approve -- if we approve the whole of that second
16 Stipulation & Agreement, we would be referring to
17 something that now for all practical purposes is null. So
18 I don't understand how the Commission -- that's something
19 you-all might want to think about from a legal standpoint.
20 I suppose -- I don't know. Did Judge Lane order a
21 briefing schedule in his case?

22 MS. SHEMWELL: Yes.

23 JUDGE JONES: That's something then that
24 will have to be discussed in the briefing then. I don't
25 want to -- my point is, I don't want to present that

1 issue. I don't want to get into a legal debate about what
2 conclusions have to be made, but that is something you-all
3 might want to consider because it's certainly on my mind.
4 With that in mind, keep that in mind for your post-hearing
5 briefs. Is there anything else we need to talk about?

6 MR. STEINMEIER: Did you want us to try to
7 start getting some exhibits marked while you're upstairs?

8 JUDGE JONES: No, you don't have to do
9 that. We'll mark them as they're offered.

10 MR. STEINMEIER: We'll have a bunch right
11 away.

12 JUDGE JONES: I only say that because they
13 may not be offered in the order that you have them marked,
14 and then that would create confusion with the numbers at
15 that point. Thanks for bringing that up, though.

16 Okay. We can go off the record and I'll
17 be back with the Commissioners.

18 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

19 JUDGE JONES: I know I told you-all we'd
20 start immediately with evidence, but I assume you want to
21 have some opening statements; is that correct?

22 MR. STEINMEIER: We're prepared to, your
23 Honor.

24 JUDGE JONES: Mr. Steinmeier?

25 MR. STEINMEIER: Sure.

1 COMMISSIONER APPLING: I was just asking
2 whether we are limiting people in their opening
3 statements. I'm just joking.

4 MR. STEINMEIER: I'll do my best to keep it
5 short and sweet, Commissioner.

6 COMMISSIONER APPLING: We do have Christmas
7 coming.

8 MR. STEINMEIER: That's right. May it
9 please the Commission? Good morning. Today is Phase 2 or
10 Case 2 in the hotly contested battle for a certificate to
11 provide natural gas service in the Ozarks. We have been
12 in the hearing room the last two days concerning SMNG's
13 application in these nonconsolidated, nearly consolidated
14 consecutive hearings.

15 Today we present to the Commission the
16 application for certificate of convenience and necessity
17 of our client, Ozark Energy Partners, LLC. Ozark Energy
18 Partners has a passion to bring natural gas to the greater
19 Branson, Hollister area. As I stated on Tuesday morning,
20 Ozark Energy Partners does not aspire to become the next
21 Enron or even the next SMNG. It is not trying to build
22 assets or parent assets or develop an exit strategy.
23 Rather, OEP aspires to finally bring natural gas home, to
24 build it and operate it and to see it through in the long
25 haul in the Ozarks.

1 Dan Epps is the managing director of OEP
2 and he is here today. I think I mentioned the other day
3 that his grandfather as mayor of Branson helped bring
4 Table Rock Dam to fruition, and Dan himself is
5 wholeheartedly committed to bringing natural gas to the
6 Ozarks. His energy and enthusiasm have inspired all of us
7 who have worked with him on this project.

8 In this hearing today, the Commission will
9 hear evidence concerning OEP's creative business and
10 supply strategies designed to specifically and effectively
11 address the sorts of concerns that have been spoken of by
12 Staff about the difficulty of making a startup natural gas
13 utility successful for the long haul.

14 The Commission will see the detailed
15 Branson specific feasibility study of Ozark Energy
16 Partners and have the opportunity to hear from OEP's
17 expert on a unique gas supply strategy that will enable
18 service to be provided more quickly and cost effectively
19 than by using traditional approaches, particularly in the
20 early years of the project.

21 OEP has entered into a Stipulation &
22 Agreement with the Staff in this case, and OEP and Staff
23 together have entered into a Stipulation & Agreement with
24 MGE. There's substantial agreement concerning all of the
25 essential elements of OEP's application with parties other

1 than Southern Missouri Natural Gas.

2 The differences between SMNG and OEP have
3 been the subject of some of the testimony already heard
4 this week in GA-2007-0168. The record of which we
5 understand will be part of the record of the instant case
6 by administrative notice.

7 One important element of OEP's stipulation
8 with Staff is OEP's agreement to language that is
9 vigorously opposed by SMNG in this case concerning the
10 level of which the -- at which the assets of the company
11 would be booked if OEP were to sell them to another owner
12 at less than their net book value.

13 OEP is willing to agree with and abide by
14 such a condition for the simple reason that OEP's vision
15 has never been to build up assets for sale, but rather to
16 build up assets for the purpose of bringing natural gas
17 service to the people of this region and to operate this
18 natural gas utility for the long haul.

19 At the end of the day, we believe that the
20 Commission will see that Ozark Energy Partners presents a
21 fresh outlook on how to bring natural gas to the Ozarks,
22 has a sound and creative Ozarks-specific feasibility study
23 to support this application, and should be the company
24 which receives a conditional certificate of convenience
25 and necessity from this Commission providing it the

1 opportunity to bring natural gas home to the Ozarks.

2 Thank you very much.

3 JUDGE JONES: Opening statement from the
4 Staff of the Commission?

5 MS. SHEMWELL: Good morning, and thank you.
6 May it please the Commission? I'm Lera Shemwell. I'm
7 representing the Staff in this case. Staff believes that
8 Branson is an expensive place to build because of the
9 rock. The Commission has heard about that yesterday.
10 It's a difficult place to build because of the rock in
11 that area. And Staff believes that both companies are
12 somewhat risky.

13 However, Staff understands the desire of
14 growing communities like Branson and Hollister to have
15 natural gas service. The mayor of Branson testified in
16 the case that they're looking for choice for their
17 community, and certainly Staff supports that choice.

18 Staff has entered into an agreement with
19 OEP and will present its Staff Memorandum in Support of
20 the Stipulation & Agreement as its position in this case.
21 We understand that there's been an objection. However,
22 that remains Staff's position in the case is that those
23 conditions are reasonable and appropriate for the
24 Commission to adopt in granting a conditional certificate
25 of convenience and necessity.

1 So our recommendation is that both
2 companies be granted conditional certificates of
3 convenience and necessity. Whichever company can achieve
4 reasonable funding, in other words operating cash from a
5 certificated lender, should be the one that is permitted
6 to proceed in the Branson area. Staff has come to rely
7 upon that as its criteria because we believe that that has
8 been the problem with getting natural gas to the Branson
9 area in the past is the inability to obtain financing.

10 There is a condition that Staff believes is
11 important for the protection of customers in this area,
12 and that is a specific requirement that if the company
13 does not have cost-based rates, then when the company
14 sells, and only under the specific circumstance that the
15 company sells, then those assets should be booked at the
16 sale price, not the original cost.

17 And that's based on Staff's experience in
18 this state that when utility companies go into these small
19 areas, that they do not achieve the conversion rates that
20 they're expecting or the competition from propane is
21 significant, then they sell their assets, and often to
22 sell, they have to sell at a discounted level. That then
23 reduces the risk to the customers, and we believe that
24 that risk should remain on the company or on the
25 shareholders. Then another company can come in, buy and

1 perhaps make a go of it, because their loan payments are
2 not as high, their costs are not as high.

3 We've seen that in most of the smaller
4 systems in the state. Staff is taking a different
5 approach, but this is not a change in policy. Most of the
6 stipulations and agreements entered into, including the
7 one with Southern Missouri Natural Gas when it bought --
8 or, yes, Southern Missouri Gas, was that they would take
9 the risk for the financial viability of the system.

10 Mark Oligschlaeger is happy to discuss why
11 Staff's policy, under that policy we have adopted a
12 different methodology. Also, Mr. Straub is here to
13 support Staff's position on the issues in this case,
14 again, based upon Staff's Memorandum in Support of the
15 Stipulation & Agreement, and we're happy to take
16 questions. Thank you.

17 JUDGE JONES: Any opening statement from
18 the Office of Public Counsel?

19 MR. POSTON: Good morning. May it please
20 the Commission? My name is Marc Poston. I represent the
21 Office of the Public Counsel and the Public, and our
22 concerns in this case are similar to some of the concerns
23 that we expressed in the Southern Missouri Gas, that we
24 want to ensure that consumers are protected from financial
25 risk as Ms. Shemwell talked about.

1 This case is different from the Southern
2 Missouri case in many respects, one difference being that
3 there's no existing customer base to worry about.
4 However, we do have concerns with the impact this could
5 have on Ozark's future customers should Ozark not achieve
6 the conversion and the customer growth that it
7 anticipates. For this reason, we strongly urge the
8 Commission to place all financial risk of this venture
9 onto the shoulders of Ozark's investors and not on the
10 consumers.

11 Under the Commission Section 393.170
12 authority, we believe conditions should be placed on this
13 certificate, if issued, that holds consumers harmless
14 should the business venture fail. And as to the
15 feasibility of Ozark providing safe and adequate service,
16 we withhold our position on that issue until all evidence
17 has been presented in this case. We anticipate addressing
18 this issue and all issues in post-hearing brief should we
19 be given that opportunity. Thank you.

20 JUDGE JONES: From Southern Missouri Gas?

21 MR. FISCHER: Yes, Judge. May it please
22 the Commission? My name is Jim Fischer, and I'm
23 representing Southern Missouri Gas in this proceeding and
24 was, of course, here for the previous two days in the
25 other case as well. This case, though, involves the

1 application of Ozark Energy Partners for a certificate to
2 serve several towns in southwestern Missouri, including
3 Branson and Hollister.

4 My client, Southern Missouri Natural Gas,
5 has a municipal franchise to serve both Branson and
6 Hollister. Ozark on the other hand does not have a
7 municipal franchise to serve Branson. The mayor was here
8 on Tuesday from the city of Branson, and she indicated
9 that she supported Southern Missouri's desire to serve
10 Branson and any additional franchises could only be
11 granted if there was active support by the board of
12 aldermen and a vote of the people of the city of Branson.

13 You've heard Mr. Steinmeier's comments
14 today discussing the virtues of Ozark's plan to serve the
15 communities in southwestern Missouri and the team of
16 people that Ozark has assembled to promote this project.

17 At my client's request, Mr. Danny Epps will
18 be called as a witness in this case to answer some
19 questions regarding Ozark's qualifications and his own
20 background. It's my understanding that he's the founder
21 and the managing director of Ozark Energy Partners and has
22 promoted a very unique plan to serve these communities.
23 He may be produced, I think, at the end of the day and
24 after we've heard his -- the testimony of his company's
25 consultants.

1 In this case, Ozark's unique plan, or what
2 Mr. Steinmeier called creative supply plan I think, for
3 serving these communities is being kept out of the public
4 view. The primary means of delivering gas to the public
5 has been classified as highly confidential and both
6 Ozark's feasibility study as well as the Stipulation &
7 Agreement that is being entered into between Ozark and
8 Staff.

9 As a result, my client and the general
10 public do not know the fundamental nature of Ozark's plan
11 to serve these areas. Of course, as Southern Missouri's
12 counsel, I do have access and I'm privy to that highly
13 confidential business plan. And I believe it will be
14 important for the Commission to understand just how this
15 -- this -- how this plan is different from what other
16 local distribution companies have done and how it's
17 totally different from anything the Commission has ever
18 certificated. In particular, the safety and the
19 reliability issues that are related to this proposed
20 creative supply plan should be carefully considered by the
21 Commission.

22 Now, under the terms of the Stipulation &
23 Agreement which have been entered into between Ozark and
24 Staff in this case, in the event the Commission grants
25 both OEP and Southern Missouri Natural Gas conditional

1 certificates, whichever company, OEP or Southern Missouri
2 Natural Gas, whichever company completes the specified
3 conditions first will be declared the natural gas
4 operating company.

5 If you look at the stipulation itself, the
6 third condition requires the company to immediately begin
7 construction. However, that definition of what it means
8 to begin construction for OEP is classified as highly
9 confidential in paragraph 6 of the stipulation. As a
10 result, my client and the general public will not know
11 what OEP has to do to fulfill this important condition.

12 We believe that this creative supply plan,
13 the method of delivery of gas to the public that Ozark is
14 proposing in this case should be disclosed to the public
15 so that the public and the cities down in that area are
16 fully informed of the fundamental nature of the service
17 that Ozark's proposing to provide in this case. Thank you
18 very much for your attention and be happy to take
19 questions.

20 JUDGE JONES: And from Missouri Gas Energy?

21 MR. COOPER: Good morning. I represent
22 Missouri Gas Energy here today. MGE has service areas in
23 Barry, Christian, Greene, Lawrence and Stone Counties that
24 are somewhat near OEP's proposed certificated area. MGE
25 has a general interest in these types of cases in avoiding

1 duplication of facilities and safety as to MGE's
2 facilities. Those concerns are somewhat different here
3 than they were in the Southern Missouri Natural Gas case
4 that you heard the last two days because of the nature of
5 the OEP proposal.

6 As Mr. Steinmeier has indicated, MGE has
7 entered into a Stipulation & Agreement with OEP and Staff
8 which would address MGE's interest in this matter, and we
9 would urge you to approve the terms of that agreement if
10 the requested certificate is granted here. Thank you.

11 JUDGE JONES: Thank you. At this time
12 we'll move on to evidence from Staff's witness, Mark
13 Oligschlaeger. Mr. Oligschlaeger, please step forward.
14 Please state and spell your name for the record.

15 THE WITNESS: Mark Oligschlaeger, M-a-r-k,
16 O-l-i-g-s-c-h-l-a-e-g-e-r.

17 (Witness sworn.)

18 JUDGE JONES: Thank you, sir. You may be
19 seated. Ms. Shemwell, do you have questions for
20 Mr. Oligschlaeger?

21 MS. SHEMWELL: Judge, since we're adopting
22 the testimony from the prior hearing, I guess
23 Mr. Oligschlaeger will adopt his testimony and we would --
24 unless the Commission would like to hear more, we will
25 tender the witness for cross.

1 JUDGE JONES: Okay. Commissioner Murray,
2 do you have questions for Mr. Oligschlaeger?

3 COMMISSIONER MURRAY: No, I don't.

4 JUDGE JONES: Commissioner Appling?

5 COMMISSIONER APPLING: Not at this time.

6 JUDGE JONES: Commissioner Jarrett?

7 COMMISSIONER JARRETT: No questions.

8 JUDGE JONES: We'll move on to
9 cross-examination. We didn't talk about a specific order
10 of cross. In that case, I will take Southern Missouri Gas
11 first.

12 MR. FISCHER: Judge, we've already had an
13 extensive conversation with Mark Oligschlaeger on the
14 issues, so we'd waive cross with the understanding that
15 will be incorporated into this record or at least
16 available.

17 JUDGE JONES: It will be.

18 MR. FISCHER: Thank you.

19 JUDGE JONES: Any cross-examination from
20 the Office of Public Counsel?

21 MR. POSTON: Just one question.

22 JUDGE JONES: Go right ahead.

23 MARK OLIGSCHLAEGER testified as follows:

24 CROSS-EXAMINATION BY MR. POSTON:

25 Q. Yesterday when you were testifying, your

1 testimony was more talking about Southern Missouri and how
2 you wanted those conditions to apply to Southern Missouri,
3 and I would assume that for the same reasons you want
4 these -- that condition to apply to Ozark as well, right?

5 A. That is true. There is no different
6 rationale for this condition for the two companies from
7 the Staff's perspective.

8 MR. POSTON: Thank you. That's all.

9 JUDGE JONES: Any cross-examination from
10 Missouri Gas Energy?

11 MR. COOPER: No questions, your Honor.

12 JUDGE JONES: Any cross examination from
13 Ozark Energy Partners?

14 MR. STEINMEIER: No questions, your Honor.

15 JUDGE JONES: Any redirect?

16 MS. SHEMWELL: No, thank you, your Honor.

17 JUDGE JONES: Mr. Oligschlaeger, you may
18 step down.

19 THE WITNESS: Thank you.

20 JUDGE JONES: Why don't we go ahead and
21 take Staff's other witness, just present your whole case?

22 MS. SHEMWELL: Staff would call Mike Straub
23 to the stand.

24 JUDGE JONES: Mr. Straub, will you spell
25 your name for the court reporter, please.

1 THE WITNESS: Yes. S-t-r-a-u-b.

2 (Witness sworn.)

3 JUDGE JONES: Thank you, sir. You may be
4 seated. Any direct from Staff?

5 MS. SHEMWELL: Thank you.

6 MIKE STRAUB testified as follows:

7 DIRECT EXAMINATION BY MS. SHEMWELL:

8 Q. Mr. Straub, where do you work?

9 A. For the Missouri Public Service Commission.

10 Q. Have you been involved in this case?

11 A. Yes, I have.

12 Q. Mr. Straub, do you adopt Staff's Memorandum
13 in Support of the Stipulation & Agreement filed in this
14 case as your direct testimony?

15 A. Yes, I do.

16 Q. Do you have any changes or additions to
17 that testimony?

18 A. No, I do not.

19 MS. SHEMWELL: I believe that's all I have.
20 Thank you, Judge.

21 We would offer Staff's Memorandum in
22 Support of the Stipulation & Agreement, the highly
23 confidential and the NP version, as Exhibit 24, either
24 24NP and HC or Exhibit 24 as the HC and 25 as the NP.

25 JUDGE JONES: We'll do 24 as HC and 25 as

1 the public document. Now, do you have that Memorandum
2 with you?

3 MS. SHEMWELL: I beg your pardon?

4 JUDGE JONES: You have that Memorandum?

5 MS. SHEMWELL: Certainly do.

6 (EXHIBIT NOS. 24HC AND 25 WERE MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 MS. SHEMWELL: Judge, we're marking 25 as
9 the NP version?

10 JUDGE JONES: Yes.

11 MS. SHEMWELL: I would offer those
12 documents into evidence.

13 JUDGE JONES: Any objections to Exhibits 24
14 and 25?

15 (No response.)

16 JUDGE JONES: Hearing none, Exhibits 24 and
17 25 are admitted into the record.

18 (EXHIBIT NOS. 24HC AND 25 WERE RECEIVED
19 INTO EVIDENCE.)

20 MS. SHEMWELL: And we'd tender the witness
21 for cross.

22 JUDGE JONES: Any cross-examination from
23 Southern Missouri Gas?

24 MR. FISCHER: Yes, your Honor.

25 CROSS-EXAMINATION BY MR. FISCHER:

1 Q. Good morning, Mr. Straub.

2 A. Good morning.

3 Q. I thought I'd probably be talking to you
4 this afternoon, but let's do it now.

5 A. All right.

6 Q. I just have a few questions I'd like to
7 address to you. As you know, I'm representing Southern
8 Missouri Natural Gas in this proceeding. It was my
9 understanding from your answers in yesterday's proceeding
10 that Staff has really not investigated the backgrounds of
11 the investors in this case but has relied principally on
12 Mr. Cattron's experience; is that true?

13 A. We have not investigated the backgrounds of
14 owners of either Ozark or Southern Missouri, that's true.

15 Q. You wouldn't have looked at, for example,
16 Mr. Epps' experience with natural gas companies?

17 A. What we looked at was filed in an
18 application and feasibility study.

19 Q. Would you have investigated Mr. Hole's
20 background in running a natural gas company?

21 A. Mr. Who?

22 Q. Do you know who Mr. Hole is, H-o-l-e?

23 A. No, I'm sorry, I don't.

24 Q. Did you investigate the background of
25 Mr. Handlin?

1 A. No.

2 Q. Do you know who Mr. Handlin is?

3 A. No, I do not.

4 Q. So Staff didn't really investigate who the
5 investors were going to be in this project?

6 A. The financing plan has not been filed at
7 this time, so no, we have not investigated any of the
8 financing.

9 Q. And would Staff have investigated any of
10 the owners of the company?

11 A. No, we did not.

12 Q. Okay. And if I understood your testimony
13 yesterday, you were comfortable passing on that kind of
14 investigation because the people, the consultants that
15 were brought to the table by the company, Mr. Cattron,
16 Mr. Steinmeier, were known to you; is that right?

17 A. Correct. To my knowledge, I don't know of
18 any instance where the Commission Staff has investigated
19 the personal backgrounds of any utility personnel.

20 Q. Does that include CassTel?

21 A. I don't know about CassTel.

22 Q. Okay. If Mr. Cattron was not employed by
23 Ozark, would you have concerns about the lack of
24 experience that is being brought to the table with this
25 project?

1 A. Well, someone would have to be in place of
2 Mr. Cattron, yes, so the Staff has had extensive knowledge
3 of Mr. Cattron and his abilities as well as the attorney
4 for Ozark.

5 Q. Did you hear Mr. Cattron's testimony in
6 yesterday's proceeding about whether he's going to be
7 employed or not in the future?

8 A. I was in here for his testimony, yes.

9 MR. FISCHER: Judge, I don't know whether
10 that was a confidential part of the record. Maybe I
11 should go in-camera just to ask him to follow up on that.

12 JUDGE JONES: Okay. We will go in-camera.

13 (REPORTER'S NOTE: At this point an
14 in-camera session was held, which is contained in
15 Volume 3, pages 39 through 52 of the transcript.)

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1 CROSS-EXAMINATION BY MR. POSTON:

2 Q. Mr. Straub, on Tuesday I asked you
3 questions about Southern Missouri Gas's application, and
4 you testified regarding conditions that should be placed
5 by the Commission on Southern Missouri's certificate
6 should it be granted one. Do you believe the same
7 conditions should also apply to Ozark Energy's
8 certificate?

9 A. Yes.

10 MR. POSTON: Thank you. That's all I have.

11 JUDGE JONES: Okay. We'll have
12 cross-examination from Missouri Gas Energy?

13 MR. COOPER: No questions.

14 JUDGE JONES: From Ozark Energy Partners?

15 MR. FISCHER: Excuse me. I'm sorry.

16 JUDGE JONES: Go right ahead.

17 MR. FISCHER: I forgot to ask one area of
18 questions. If you'd like for me to go ahead of Ozark, I'd
19 be happy to do that. I apologize. I forgot to ask them.

20 JUDGE JONES: It's too late. You lose out
21 on your opportunity to ask questions. No. Go right
22 ahead. You can ask.

23 MR. FISCHER: Thank you, Judge, I
24 appreciate that accommodation.

25 FURTHER CROSS-EXAMINATION BY MR. FISCHER:

1 I forgot to ask you about your Stipulation. I just had an
2 area of questions I wanted to ask you about related to
3 those conditions. Do you have that Stipulation in front
4 of you, Mr. Straub?

5 A. Yes.

6 Q. Let's turn to page --

7 MR. STEINMEIER: Your Honor, we -- I'm
8 sorry, Counsel, we are no longer in-camera; is that
9 correct?

10 JUDGE JONES: No, we are not.

11 MR. STEINMEIER: Thank you.

12 MR. FISCHER: Thanks for reminding me on
13 that.

14 BY MR. FISCHER:

15 Q. Let's turn to page 3 of the Stipulation,
16 under the service territory section, the last full
17 sentence there before we get into the conditions, it says,
18 in the event the Commission grants both OEP and SMNG
19 conditional CCNs, whichever company, OEP or SMNG,
20 completes the following will be the natural gas operating
21 company. Do you see that?

22 A. Yes.

23 Q. Then it goes on to list some conditions.

24 Is it your understanding that whoever completes --

25 whichever company completes these conditions first would

1 be the only company to get a full CCN?

2 A. No. It isn't first. It's whichever
3 company can complete all these requirements.

4 Q. So you could have two companies that, if
5 they both completed those, they would both have full
6 certificates from Staff's perspective?

7 A. No. They would both be given the
8 opportunity to continue the process of getting the
9 financing and every -- and fulfilling these requirements,
10 and then the Commission and Staff would review those and
11 issue one CCN to one of the utilities.

12 Q. Well, that's what I was asking. Isn't it
13 true that whoever completes the conditions, they will have
14 the opportunity to be the natural gas company?

15 A. They will have the opportunity, yes.

16 Q. And would the other company have the
17 opportunity to complete the conditions and also be a
18 certificated company?

19 A. Yes.

20 Q. So we could have two companies digging up
21 the streets in Branson?

22 A. No.

23 Q. Well, the first condition there is, A, the
24 company needs to make a showing that it's secured
25 financing for the proposed area; correct?

1 A. Correct.

2 Q. And then the second condition is that it
3 complies with the other conditions in the stipulation,
4 right?

5 A. Correct.

6 Q. And then whichever company can immediately
7 begin necessary construction?

8 A. Yes.

9 Q. And then the last one is, fulfilled all
10 appropriate necessary authorizations for the purposes of
11 providing natural gas in its requested -- in its requested
12 and commissioned authorized service territory?

13 A. That's correct.

14 Q. Okay. So whichever company can meet those
15 conditions, including financing, then they would be
16 eligible to be -- have the full certificate, right?

17 A. They would be eligible, correct.

18 Q. Do they have to come back in and request
19 that from the Commission?

20 A. Yes. The Commission would need to issue an
21 Order granting them a full certificate and not approving
22 the other company's certificate. I was looking for -- on
23 page 16 of the Stipulation & Agreement, it has what the
24 stipulation is requesting.

25 Q. Well, that I guess is one of my fundamental

1 questions, whether there could be two full certificates
2 granted or not under the way the Staff is proceeding with
3 this Stipulation?

4 A. No, there cannot.

5 Q. So it's whoever meets these conditions
6 first and then come backs in and asks the Commission to
7 grant them a full certificate?

8 A. Whenever either company meets these
9 conditions, they would be required to come back in and
10 receive an Order from the Commission granting them a full
11 certificate and -- I can't think of the word, not
12 approving the other company's certificate. So there would
13 be an opportunity for both companies.

14 Q. Is that stated somewhere in the Staff's
15 Stipulation?

16 A. Well, that's what I was looking for, and I
17 thought it was, yes.

18 Q. Well, I thought it might be implied by that
19 statement that in the event the Commission grants both
20 companies a conditional certificate, whichever one
21 completes the following will be the natural gas company.
22 That's what I was trying to understand, if that's the
23 Staff's intention.

24 A. It's Staff's intention that both companies
25 still have the opportunity to complete these, and at that

1 time then the Commission would be required to issue an
2 Order granting one company a CCN and not approving the
3 other company's CCN.

4 Q. And that third condition, can immediately
5 begin necessary construction, is it your understanding
6 that you do need to have a full CCN in order to begin
7 construction?

8 A. Yes.

9 Q. Now, if we turn to page 4 of the
10 Stipulation, paragraph 6 says -- and we're in open
11 session, so I'm not going to get into the confidential
12 material, but it says construction will be defined in the
13 systematic building of, and then there's something that's
14 highly confidential, and distribution systems. These
15 facilities must be under aggressive construction program
16 as described in the company's feasibility study in order
17 to serve customers as quickly as possible; is that right?

18 A. Correct.

19 Q. So as far as OEP is concerned, it would
20 have to begin construction of those highly confidential
21 facilities; is that right?

22 A. You said they will have to begin?

23 Q. In order to comply with that condition?

24 A. Once they've been granted the certificate,
25 they have to be -- they have to begin a systematic

1 construction of the facilities, correct.

2 Q. They have to immediately begin construction
3 under that condition, isn't that the way the --

4 A. Correct.

5 Q. -- Staff's Stipulation is set up?

6 A. Yes.

7 Q. Now, since that -- since that is highly
8 confidential, my client won't know what the other
9 company's expected to do, will it?

10 A. I would assume you will know.

11 Q. But I can't tell my client, can I?

12 A. No, you can't.

13 Q. Do you think the cities that are granting
14 certificates and franchises to Ozark would have any
15 interest in what type of facilities might be required to
16 be constructed to get a certificate?

17 MS. SHEMWELL: Judge, I'm going to object.
18 That requires speculation.

19 JUDGE JONES: Objection sustained.

20 BY MR. FISCHER:

21 Q. Do you think the general public would have
22 an interest in that topic?

23 MS. SHEMWELL: Again, I'm going to make the
24 same objection.

25 JUDGE JONES: Objection sustained.

1 BY MR. FISCHER:

2 Q. Why is the Staff concerned in paragraph 14
3 that the company, Ozark Energy, actually, that it owned as
4 opposed to renting or leasing all assets?

5 MS. SHEMWELL: I am concerned here, and I
6 will caution Mr. Straub about the HC nature of some of
7 this, so if you feel the need, we can close, I'm sure.

8 THE WITNESS: Okay. Staff is concerned
9 because we -- there was discussion about leasing these
10 facilities. Staff wanted the company to have the
11 investment in these facilities in order to give them a
12 rate base or to give them a base to have more investment
13 in the facilities and make it more attractive to a
14 potential buyer should the company not be able to continue
15 operation.

16 BY MR. FISCHER:

17 Q. It will have rate base in the form of
18 distribution system, however, even if it doesn't have
19 these facilities under ownership?

20 A. Correct.

21 Q. But you would prefer that it be -- that the
22 company actually own this?

23 A. All of the facilities, correct.

24 Q. Wouldn't that tend to increase the capital
25 expenditure requirements for the company to get into

1 business?

2 A. Yes, it would.

3 Q. Has the Staff done any investigation at all
4 about the likelihood of getting financing for this kind of
5 a system?

6 A. That is one of the reasons why we put the
7 conditions on the financing. We didn't want to limit
8 anybody's ability to pursue all avenues and the process of
9 getting natural gas into the requested service areas.
10 Staff believes financing is the issue in this case, and in
11 both cases, because other companies have requested
12 certificates and have requested to serve that area but
13 have been unable to serve it, all other reasons that
14 Staff's aware of is financing, and that is why Staff has
15 put the financing burden in this Stipulation. We don't
16 want to put anyone in a position of eliminating them from
17 the possibility of providing service before we get to that
18 point because that point is -- has been the problem in the
19 past.

20 MR. FISCHER: Could we go in-camera for a
21 minute?

22 (REPORTER'S NOTE: At this point, an
23 in-camera session was held, which is contained in
24 Volume 3 of the transcript, pages 62 through 66.)

25

1 CROSS-EXAMINATION BY MR. STEINMEIER:

2 Q. Mr. Straub, is it your understanding from
3 the testimony you heard in the case the last two days, the
4 0168 case, that the 20 employees projected for SMNG in the
5 service area, weren't the majority of those going to be
6 for construction?

7 A. I heard that as testimony, yes.

8 Q. And they did not include a local general
9 manager for the Branson area, do you recall?

10 A. I do not recall that.

11 Q. You've heard testimony and, you know,
12 before the hearing, that SMNG plans to build a 35-mile,
13 what they describe as a lateral from around -- from Aurora
14 to Branson, and that that lateral will cost probably from
15 18 million to \$25 million. Does Staff have any concerns
16 about the economic risk of serving this market, having to
17 make that kind of investment before serving a single
18 customer?

19 MR. FISCHER: Your Honor, I'm going to
20 object to that. I was prohibited from getting into the
21 Ozark case in our case, and I think this clearly goes to
22 whether the Southern Missouri Natural Gas plan is feasible
23 or in the public interest, and that should have been asked
24 yesterday or the day before.

25 JUDGE JONES: I have discussed that with

1 Judge Lane, and I will sustain that objection.

2 BY MR. STEINMEIER:

3 Q. Mr. Straub, you were in a number of
4 meetings with Ozark Energy Partners personnel discussing
5 this application over approximately the last year; isn't
6 that correct?

7 A. That's correct.

8 Q. At least three different meetings that I
9 can recall quickly offhand?

10 A. Several. I don't remember how many.

11 Q. Do you remember that at least two of those
12 meetings involved Ozark's expert witness on supply issues?

13 A. Yes.

14 Q. And you see that expert in the hearing room
15 today?

16 A. Yes, I do.

17 MR. FISCHER: Is that the highly
18 confidential witness, Judge?

19 MR. STEINMEIER: That's who I'm referring
20 to. Since we're not in-camera, I thought I'd pose the
21 question that way and keep it clean.

22 BY MR. STEINMEIER:

23 Q. Here's my question: Were members of the
24 gas safety Staff of the Commission present in each of
25 those meetings?

1 A. Yes, they were, and not only the gas safety
2 Staff, but several areas of Staff were in all of those
3 meetings.

4 Q. And Mr. Straub, you've seen a number of
5 other applications over the years for prospective natural
6 gas utilities wanting to serve the greater Branson area;
7 is that correct?

8 A. There have been several. I don't recall
9 how many.

10 Q. Have you ever seen the particular supply
11 proposal that OEP is proposing here before?

12 A. No, I haven't.

13 Q. Would you agree that OEP has met with --
14 met with Staff and have worked with Staff to try to meet
15 concerns raised by Staff?

16 A. Yes.

17 Q. Would you agree that the conversion rates
18 used by Ozark Energy Partners in its feasibility study are
19 conservative?

20 A. Compared to the -- to others, they were
21 more conservative than others.

22 Q. And compared to other applications to serve
23 the region you've seen, how do you like OEP's chances?

24 A. Of? OEP's chances of?

25 Q. Succeeding.

1 A. As I indicated earlier, the chance to
2 succeed in my view and in Staff's view, is really -- all
3 comes down to the financing aspect. As -- even regarding
4 the feasibility studies, the feasibility studies are a
5 useful tool. They have assumptions in them, and you can
6 only replace those assumptions with other assumptions. So
7 then it becomes a discussion of whose assumptions are
8 better than someone else's assumptions. You don't know
9 the final facts until it's too late, until it's over.

10 So the feasibility study is used as a tool
11 to get the financing, and in Staff's view the financing is
12 the obstacle to overcome. The delivery mechanism of OEP
13 is unique, and I think it probably gives OEP the ability
14 to get gas in the region first, or the fastest I should
15 say, once they've received their -- a certificate, but as
16 far as the overall ability or long-term chances, I think
17 -- I think both companies have a high degree of risk to
18 them.

19 MR. STEINMEIER: Thank you very much. No
20 further questions, your Honor.

21 JUDGE JONES: Commissioner Murray, any
22 questions?

23 COMMISSIONER MURRAY: I have a few, Judge.
24 Thank you.

25 QUESTIONS BY COMMISSIONER MURRAY:

1 Q. Good morning, Mr. Straub.

2 A. Good morning.

3 Q. Do you have any concerns that the
4 feasibility study did not include Branson?

5 A. Yes, we did. They are -- the reason it
6 didn't include Branson, that I've been told, is because
7 they do not have a certificate for Branson. Branson is a
8 large portion of the service area. Staff's thought on OEP
9 and Branson is that if Southern Missouri or the -- was
10 unable to get the necessary financing and be a provider,
11 but OEP would be, then the Branson franchise would
12 probably come in later.

13 MR. STEINMEIER: Your Honor, if I could
14 just point out an apology to Commissioner Murray?

15 COMMISSIONER MURRAY: That's fine.

16 MR. STEINMEIER: We're taking the witnesses
17 out of order, and so we've taken Staff before Ozark has
18 actually presented its case, and the Commission will hear
19 information about why Branson is not considered in the
20 feasibility study that I think will help clarify some
21 things.

22 MS. SHEMWELL: Let me also note that
23 Mr. Straub can be available. He will be here today. So
24 if the Commission chooses to change the order, that will
25 not inconvenience Staff in any way.

1 BY COMMISSIONER MURRAY:

2 Q. Mr. Straub, this -- has this method being
3 proposed here by Staff been actually used before where
4 we've had two potential providers coming in seeking CCNs
5 for the same location and Staff has taken the position
6 that, grant both of them conditionally until the
7 conditions are fulfilled by the first one?

8 A. This is new. It's a learning process. We
9 have not done this in the past, primarily because we
10 haven't been put in a position where we've had two
11 suppliers that want to go in to a new area simultaneously.

12 Q. Do you think -- do you have any concern
13 that there being two conditional CCNs in existence for the
14 same locations, that that would impede either or both
15 parties' ability to obtain financing?

16 A. That's very possible, and yes, we have
17 thought that, but we don't -- we didn't know, but at the
18 same time, we didn't want to prematurely eliminate one of
19 the companies based on something other than its financing
20 abilities because the financing has been in the past, as
21 I've indicated, the big hurdle that no one seems to have
22 been able to overcome.

23 So we've wanted to have that issue as -- we
24 wanted to have both companies available and to give them
25 the opportunity to obtain that financing. It would be

1 unfortunate if Staff recommended the certificate go to one
2 of the companies and then they not be able to achieve
3 their financing; however, the other one may have. So what
4 we've done is we've put the process back at least another
5 few years in order to start the process over again of
6 another company applying to serve the area.

7 And we really thought long and hard about
8 this proposal.

9 It seemed to be the best opportunity to keep both
10 companies in the running long enough for them to both
11 achieve the possibility of being able to serve the area.
12 We didn't want to continually go through the process of
13 having utilities file applications for the area and have
14 them fall through a couple of years later and then start
15 it over again, and we've been on that cycle for probably
16 the last ten years or so.

17 At least the last Ozark application, not
18 this Ozark, it was a previous Ozark, to serve the Branson
19 area was filed when I was still the assistant manager of
20 our gas rates department, and that fell through. So here
21 we are seven years down the road, we still haven't gotten
22 gas in the Ozark area and we're still in the process of
23 trying to find the company that can pull this off.

24 So we're very hopeful that, even though
25 this system that Staff realizes has flaws, hopefully it's

1 the best system available at the time, and one of these
2 two companies will be in a position to get gas in that
3 area.

4 Q. And isn't there a significant cost involved
5 in putting all of the documentation together that would be
6 required to obtain financing and also the necessary
7 franchises?

8 A. Absolutely, there is. And I think we heard
9 testimony yesterday from one of the witnesses, the cost of
10 securing financing, and it was hundreds of thousands of
11 dollars, if I remember correctly, and you are right. But
12 there again, do we -- in the past we required that before
13 they even filed for a certificate, and the loan companies
14 and supply companies were saying, hey, get your
15 certificate and then come, because of those expenses.

16 But because we had two companies that have
17 applied, we still have that obstacle to overcome, and we
18 don't want to eliminate one of the companies prematurely.

19 Q. But if we were to conditionally approve
20 both, would we not be ensuring then that one company would
21 be expending large sums of money unnecessarily?

22 A. That's true. Well, whatever the financing,
23 whatever the cost associated with the financing are,
24 that's correct. And I guess that the companies have the
25 option of making the determination if they want to do that

1 or not. Had -- had we not had two applicants, this would
2 have been the same process as the last one, to where we
3 would have had the conditional certificate on financing
4 and hopefully they may or may not have developed down the
5 road.

6 But now that we have two, as I keep saying
7 this over and over, and I know it's repetitive, but it is
8 extremely important, that we not eliminate a company
9 before we've exhausted all the possibilities of
10 developing -- of them developing the necessary financing
11 and resources they need to to make the company a go.

12 Q. But isn't -- I keep struggling with the
13 idea that if anyone is to make that decision, wouldn't it
14 be the Public Service Commission to evaluate which would
15 be the company that would be better able and better
16 qualified to serve the area?

17 A. That is the function of the Commission,
18 yes, I agree. In the past the applicants, various
19 applicants have been in the position of being able to
20 provide service. Southern Missouri Gas Company in this
21 case is an existing gas utility. So we do know that they
22 are capable of providing gas service in the area. The
23 other company, Ozark in this case, is locally, I guess I
24 say at this point, locally owned, and it has hired
25 consultants that have extensive utility and regulatory

1 experience.

2 So based on the information we have today,
3 Staff believes that both companies have the ability, the
4 knowledge, the manpower resources to operate a utility
5 company, but Staff is uncertain of their financial ability
6 to get gas in that area.

7 Q. And are we statutorily prevented from
8 granting full CCNs to more than one provider for the same
9 area or is that a policy consideration based upon safety
10 and other considerations?

11 A. I could address the logistical reasons, but
12 not the statutory, the legal reasons. Yes, duplicate
13 utilities operating in the same service area is extremely
14 expensive because of all of the facilities that need to
15 be -- you would need two distribution lines, two
16 transmission lines, running down the streets, or in the
17 case of an electric company, you would have to have the
18 dist -- the electrical distribution system built
19 throughout the community as well for both companies. So
20 instead of looking out and seeing the poles that we see
21 today, we would see double those poles in the case of
22 electricity.

23 So I -- having in this case, in this area
24 granting both of these companies a full CCN Staff believes
25 would be not a good idea because it would place an extreme

1 financial burden on both, and Staff believes it could
2 possibly lead to the -- a more likely probability that
3 neither would make it. Whereas, if there's only one in
4 the area, it would stand, hopefully, a better chance of
5 making the system operate financially.

6 Q. Okay. And that -- that same rationale
7 might also, I think you've agreed, make it more difficult
8 for either company to receive financing based upon the
9 fact that all the potential lenders would be aware that
10 there were two companies trying to both get financing?

11 A. Absolutely. And they may -- they may find
12 that -- both companies may find that having a conditional
13 certificate is no more benefit than having no certificate.
14 Staff doesn't know that, but we don't -- we want to give
15 them the opportunity to learn that. And if they come back
16 and say, well, you know, we can't get financing because
17 there's another conditional certificate out there, then
18 we'll know the next time that this would not work.

19 But another reason that the feasibility
20 studies -- and I touched on this. I know there has been
21 and there probably will be a lot of discussion over
22 feasibility studies, and as I indicated, you know, if you
23 just really look at it, if something isn't known, it's a
24 guess, albeit an intelligent guess, or a better guess, but
25 it's still just a guess. And we would hate to base the

1 decision of eliminating one company on guesses or on facts
2 that are not known, and that's why the feasibility studies
3 in Staff's view both have assumptions, a great deal of
4 assumptions, and both companies have a great deal of risk
5 associated with going into a new area like this.

6 Q. Did Staff make any attempt to evaluate
7 which assumptions were more reasonable?

8 A. We would replace their assumptions with our
9 assumptions. We looked at both of them. And we did not
10 try to determine if one made a better assumption than the
11 other on the feasibility study.

12 Q. So when you're normally looking at a
13 feasibility study and so you only have one applicant for
14 an area, do you attempt to evaluate whether the
15 assumptions are reasonable?

16 A. Yes. And prior to the granting of
17 conditional certificates, the primary obstacle was the
18 feasibility study. So there was a great deal of emphasis
19 put on the feasibility studies because that was more or
20 less the determining factor in the probability of how well
21 or whether the company would make it and would it be
22 economically feasible to do so.

23 And if you have your financing, if you have
24 all of your other requirements, then, yes, if you had two
25 companies that applied for a certificate and they had

1 everything, then yes, the feasibility study would be much
2 more important because it would be evaluated closer than
3 in this case. Staff would have hated to eliminate one of
4 these companies based on their feasibility study simply
5 because of the feasibility study, but yet they still may
6 have had an option to get financing or the ability to get
7 financing from that feasibility study.

8 Feasibility studies are, you know, when
9 they're primarily designed, they're designed to, one, give
10 the person developing it an idea is his idea, something
11 that he can do, something that will work. The next major
12 objective of the feasibility study is to attract the guy
13 that has the money, and if you take your feasibility study
14 to the individual that's going to be putting out the
15 millions of dollars to make this work, they have a high
16 degree of sophistication and will probably do their own
17 analysis to determine whether they have -- what degree of
18 comfort they have in the feasibility study of the
19 applicant.

20 And that's what we're hopeful for in this
21 case, that the feasibilities will be good enough to
22 achieve financing. But if one is not, then Staff didn't
23 want to make that determination before -- prematurely.
24 Now, had we not -- if we did not grant conditional
25 certificates, then yes, there would have been a great deal

1 more scrutiny given to both feasibility studies.

2 Q. All right. Let's assume we grant
3 conditional certificates to both and they both obtain
4 financing at the same time and they both come back to us
5 and say, I'm ready to begin. What do we do then?

6 A. Well, then we probably have another
7 proceeding just like this, to where we would evaluate the
8 conditions of the financing. And at that time we can --
9 we would then evaluate other conditions as well as
10 financing. And at some point if both of them come back,
11 Staff and the Commission will have to make a -- Staff will
12 have to make a recommendation to the Commission and the
13 Commission will have to choose one company.

14 COMMISSIONER MURRAY: Thank you,
15 Mr. Straub.

16 JUDGE JONES: Commissioner Jarrett, did you
17 have any questions?

18 COMMISSIONER JARRETT: Yes, thank you,
19 Judge.

20 QUESTIONS BY COMMISSIONER JARRETT:

21 Q. I just want to clarify, I think, maybe a
22 clarification on Commissioner Murray's last question. I
23 guess my question is, what exactly will the conditional
24 CCN say? Because reading Staff's recommendation here, it
25 says that it's subject to -- granting a certificate would

1 be subject to obtaining appropriate financing. Sounds
2 then to me like that's pretty automatic. Once they come
3 in and present, you know, we've got the financing, then
4 are we obligated then to grant the certificate of need, or
5 is there other conditional language in there saying we
6 still reserve the final right; even if you bring in the
7 best financing in the world, we can still turn you down?

8 A. The stipulation should be worded in a way
9 that it has to be reasonable financing, agreeable to by
10 the Staff, and approved by the Commission. So yes, we do
11 have scrutiny over the financing, and even at that time, I
12 would envision that we would still have scrutiny over the
13 rest of the company as well, over the rest of the
14 obstacles.

15 So it just wouldn't be -- Staff did not
16 envision this as being an automatic process, that if they
17 sent us a photocopy of a loan application, that that would
18 be sufficient. So that is not, and it has to be executed
19 documents, and if the company's assets need to be
20 encumbered, then the company is required to file a gas
21 financing case, and then there would be all of the
22 requirements associated with that.

23 So yes, there will be a lot of scrutiny
24 still left for both the Staff and the Commission, and the
25 Staff is always open to suggestions on how to deal with

1 unique and new issues that develop, and this is truly one
2 of them. With the financing being the hurdle in this
3 area, we just didn't -- couldn't come up with any better
4 way of doing it in Staff's view.

5 And it wasn't that we think this particular
6 method is ideal, because it certainly is not. It's simply
7 the best method that we could come up with, working with
8 the conditions that we have to work with, knowing what
9 facts we know now and what guesses we know now.

10 And as I indicated, we hate to make a
11 judgment on guesses when that feas -- a feasibility study
12 indirectly will get gas into new areas, but it's really
13 the financing wherewithal that will actually get that gas
14 there. So up until we get to that point, Staff believed
15 that it would be difficult for us to eliminate a potential
16 company or a potential option available.

17 And I know we've discussed this as a race
18 or whatever, but we weren't intending for that to be the
19 case. We were intending to keep the destiny of each
20 company within the hands of the companies and not have
21 them have to come to Staff and require a sales job or come
22 to the Commission and require a sales job in order to be a
23 provider. We wanted them to be the provider based on
24 their own ability to be the company, to get the financing,
25 to make this work, rather than convincing us that they

1 should be the one chosen to do that. Had we only had one
2 applicant, as I indicated, this would have been a much
3 easier process.

4 Q. So is it your view that if they both come
5 in with meeting all the conditions, that as a Commission
6 we could pick one over the other or reject both of them?

7 A. Absolutely. Absolutely.

8 COMMISSIONER JARRETT: No further
9 questions, Judge. Thank you.

10 JUDGE JONES: Any recross from Southern
11 Missouri Gas on questions from the Bench?

12 MR. FISCHER: Yes, your Honor, just
13 briefly.

14 RE CROSS-EXAMINATION BY MR. FISCHER:

15 Q. Mr. Straub, as I listen to your testimony,
16 in reference to questions from Commissioner Murray, it
17 sounded like Staff has viewed Southern Missouri Natural
18 Gas as the more likely candidate to get financing, but in
19 the event that they are unable to do so, that OEP would be
20 there as the default provider. Is that kind of how you
21 viewed things?

22 A. I didn't look at it in those terms. Staff
23 did not. We looked at it in terms of keeping the options
24 within the companies until the last possible moment. So
25 I'm sure, like any other interpretation, Southern Missouri

1 may be in a better position. I don't know that.

2 Q. Did you hear testimony, by the way, in the
3 previous case that Southern Missouri has provided the
4 Commission Staff with definitive term sheets from a
5 financer that is willing to give them approximately
6 \$60 million of equity and debt financing subject to
7 getting a CCN from the Commission to serve Branson?

8 A. I know they've provided some documents in a
9 gas financing case, but I don't know the specifics.

10 Q. And you also mentioned that there had been
11 financing problems in previous companies trying to serve
12 southern -- the Branson area; is that right?

13 A. Yes.

14 Q. I believe you mentioned an Ozark Natural
15 Gas Company, which is a previous company applicant?

16 A. Yes. They were granted a conditional
17 certificate and they did not exercise it. It was my
18 understanding that it was the financing that was the
19 problem.

20 Q. Do you happen to know whether Mr. Harold
21 Epps, the father of Danny Epps, was a principal in that
22 company?

23 A. That's my understanding.

24 Q. Do you know if he was also a principal in
25 the company that has assigned their franchise to my

1 client, Southern Missouri Natural Gas?

2 A. That's my understanding, yes.

3 Q. And then also, in answer to some of the
4 questions from Commissioner Murray, I had the sense that
5 what you were saying was these feasibility studies aren't
6 really much more -- aren't much better than just pure
7 guesses?

8 A. Well, they are as good as the information
9 that goes into them.

10 Q. Okay. And it's your understanding that
11 Southern Missouri has used its past experience as inputs
12 into that process?

13 A. I'm sure they have.

14 Q. Now, the Commissioner also talked to you
15 about the approach the Staff has taken that to have both
16 companies granted conditional CCNs. Is an alternative to
17 that approach to use the traditional approach, for the
18 Commission to choose an applicant that it believes should
19 be granted a CCN, and in the event it doesn't get
20 financing, then it would still be available for an
21 alternative company to come in and apply, wouldn't that be
22 the case?

23 A. That is an option, yes. That is an option
24 of the Commission. If the Commission were to choose one
25 company or another in these two proceedings, then we would

1 simply proceed.

2 MR. FISCHER: I appreciate your candor and
3 patience. Thank you very much.

4 JUDGE JONES: Any recross from the Office
5 of Public Counsel?

6 MR. POSTON: No, thank you.

7 JUDGE JONES: Ozark Energy Partners?

8 MR. STEINMEIER: No questions, thank you.

9 JUDGE JONES: Redirect from Staff?

10 MS. SHEMWELL: Thank you, Judge.

11 REDIRECT EXAMINATION BY MS. SHEMWELL:

12 Q. Mr. Straub, has Staff's goal been to treat
13 the two companies fairly?

14 A. Yes. We've put a great deal of effort into
15 ensuring that Staff hasn't shown any favoritism to either
16 company or made anything more difficult or more easy for
17 either of the companies. Our goal was to give them both
18 an equal opportunity to provide the service that they want
19 to provide.

20 Q. Is the public interest one of Staff's --
21 the basis of Staff's recommendation in this case?

22 A. Absolutely, yes. Staff would like to see
23 natural gas in this area as badly as everyone else would.

24 Q. On page 7 of the Stipulation & Agreement,
25 are there conditions at the top for financing that Staff

1 would expect to see a company have that provide a list of
2 the initial evaluation Staff would perform, some of the
3 initial things Staff would look at for financing?

4 A. Yes.

5 Q. And is Staff recommending that those be
6 required of both companies?

7 A. Correct.

8 Q. Would Staff evaluate the reasonableness of
9 financing if both submitted?

10 A. Yes.

11 Q. Can you predict the future, Mr. Straub?

12 A. No.

13 Q. And is that the reason that you have some
14 concern with feasibility studies?

15 A. Exactly.

16 Q. What is Staff's intent in terms of
17 beginning construction? What limits, time limits, would
18 you see placed on that?

19 A. We have a one-year limit; whichever company
20 gets the final CCN, that they must begin construction
21 within a year.

22 MS. SHEMWELL: That's all I have. Thank
23 you.

24 JUDGE JONES: Okay. Mr. Straub, you may
25 step down.

1 It's coming up on 12:30. It's a good time
2 to take a break. I don't know what you-all's necessities
3 are. I don't want to take a full hour lunch because we
4 have three or maybe four witnesses. I'd like to get
5 through them today. Maybe 45 minutes for lunch, that way
6 at least we'll get started within the next hour. So 1:20
7 or I should say, let's go ahead and call it one o'clock,
8 let's get started.

9 MS. SHEMWELL: Judge, would you want Staff
10 to call safety staff next or wait 'til the end?

11 JUDGE JONES: Oh, you have another witness
12 you want to call?

13 MS. SHEMWELL: Only if there are questions
14 or desires from the Commission to ask questions.

15 JUDGE JONES: No, there aren't any.

16 MR. POSTON: I did have a safety-related
17 question.

18 JUDGE JONES: Oh, you do have?

19 MR. STEINMEIER: Your Honor, if I could
20 weigh in on that. I think at this point we would feel a
21 lot better if we were able to present some direct
22 testimony and explain our feasibility study before and
23 then we'll -- unless there's a necessity for somebody from
24 safety to go out of turn, that's what I would suggest.

25 JUDGE JONES: Staff doesn't have to call

1 its witness. You can call Staff's witness if you want.
2 If you want to put on direct of Staff's witness, then you
3 and your presentation --

4 MR. STEINMEIER: I don't need to do that.
5 I need just to present my direct case, then Mr. Poston has
6 some questions of Staff.

7 MR. POSTON: And there's no need for me to
8 go next. I mean, I'd be happy to wait to ask my questions
9 until Ozark's presented their evidence.

10 JUDGE JONES: Okay. After Ozark's
11 presented their evidence, then I'll give you an
12 opportunity to call whatever witnesses you'd want to call.
13 With that, then, we'll stand in recess.

14 (A BREAK WAS TAKEN.)

15 JUDGE JONES: Let's go back on the record.
16 We are back on the record with Case No. GA-2006-0561. At
17 this time we'll take evidence from Ozark Energy Partners.
18 Mr. Steinmeier, you can call your first witness.

19 MR. STEINMEIER: Thank you, your Honor.
20 Ozark Energy Partners calls Steve Cattron to the stand.

21 JUDGE JONES: Would you please spell your
22 name for the court reporter.

23 THE WITNESS: Yes. It's S-t-e-v-e-n, W.,
24 C-a-t-t-r-o-n.

25 (Witness sworn.)

1 JUDGE JONES: Thank you. You may be
2 seated.

3 MR. STEINMEIER: Your Honor, I'd like to
4 have marked as an exhibit the application of Ozark Energy
5 Partners filed in this case.

6 JUDGE JONES: It will be Exhibit No. 26.
7 (EXHIBIT NO. 26 WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9 MR. STEINMEIER: Your Honor, since we're in
10 the marking mode, I'd like to have two other documents.
11 Let me point out for the record that the exhibit we just
12 marked, No. 26, is the application filed by Ozark in this
13 case except for the feasibility study, and attached to it
14 are a couple of documents that were filed with supplements
15 to application during the course of the -- of the
16 proceeding. So it is the latest and up-to-date version
17 of the application but for the feasibility study. And
18 then we would ask to be marked as Exhibit 27 the
19 feasibility study filed by Ozark Energy Partners as
20 revised April 6, 2007 in both HC and NP versions.

21 (EXHIBIT NOS. 27HC AND 28 WERE MARKED FOR
22 IDENTIFICATION BY THE REPORTER.)

23 MS. SHEMWELL: Judge, will the HC version
24 be No. 27?

25 JUDGE JONES: The HC will be 27. The NP

1 will be 28.

2 MR. STEINMEIER: Your Honor, we have
3 adequate copies of these exhibits for each of the
4 Commissioners. Would you want for us to leave them or
5 not?

6 JUDGE JONES: Just hold on to them for now.

7 MR. STEINMEIER: Thank you.

8 JUDGE JONES: If they need to refer to one,
9 they can look at mine.

10 MR. STEINMEIER: Very well.

11 STEVEN W. CATTRON testified as follows:

12 DIRECT EXAMINATION BY MR. STEINMEIER:

13 Q. Would you please state your name and
14 business address for the record.

15 A. Yes. Steven W. Cattron. My business
16 address is 4745 West 136th Street, Leewood, Kansas 66224.

17 Q. And are you the same Steve Cattron who
18 testified yesterday in Case No. GA-2007-0168 in this
19 hearing room?

20 A. Yes, I am.

21 MR. STEINMEIER: Your Honor, unless there
22 is any objection from other parties, since Mr. Cattron's
23 education, qualifications, background were all elicited
24 for the record yesterday in that proceeding, I'll skip to
25 something new.

1 JUDGE JONES: Yes. Whether there's
2 objection or not, I'll have you go ahead and skip to
3 something new. Is your microphone on, Mr. Steinmeier?

4 MR. STEINMEIER: It is. Are you having
5 trouble hearing me?

6 JUDGE JONES: Yes, a little. All right.
7 Go right ahead.

8 MR. STEINMEIER: Thank you, your Honor.

9 BY MR. STEINMEIER:

10 Q. Now, Mr. Cattron, would you tell us please
11 the purpose of your testimony today in this proceeding?

12 A. Yes. The purpose of my testimony today is
13 to support Ozark Energy Partners' application for a
14 certificate of public convenience and necessity, and
15 specifically I will be addressing the applicant's
16 qualifications to provide natural gas service in the Ozark
17 Mountain region and other elements of Ozark Energy
18 Partners' business strategy and feasibility study.

19 Q. And are there other witnesses here today on
20 behalf of Ozark Energy Partners?

21 A. Yes. Mr. Epps is here, managing director
22 of OEP, as well as Greg Pollard from my firm, and then our
23 outside expert witness is here to support as well.

24 Q. And Mr. Cattron, did you prepare or
25 participate in the preparation of the feasibility study

1 previously filed in this case by Ozark Energy Partners?

2 A. Yes, I did. It was prepared under my
3 direct supervision and significant involvement on my part.

4 Q. And could you tell the Commission, please,
5 what is addressed in the OEP feasibility study?

6 A. I think there are two key aspects of this.
7 The first is what I will call a basic business strategy or
8 operating platform that is a significant part, and then
9 really the second part is the economic aspects and
10 financial aspects of the resulting business strategy on
11 the financial pro formas.

12 Q. So does the feasibility study include
13 customer counts, revenues, all that kind of information?

14 A. Yes. Consistent with the -- with the
15 standards that we followed and guidance we received in a
16 number of meetings with the Staff, we have included
17 operating expenses, we have included revenues, we've
18 included customers, everything in that minimum standard
19 we've provided, set forth in schedules by year on a
20 consistent basis.

21 Q. For the first five years of operation?

22 A. For the first five years of operations and
23 only for the purposes of serving this Ozark region.

24 Q. Would you please describe the overall
25 strategic and business model employed by Ozark Energy

1 Partners as reflected in its feasibility study in this
2 case?

3 A. Yes. The overall business strategy is --
4 is probably best addressed -- when we first got involved,
5 when we were first retained by Ozark Energy Partners and
6 started looking at it, everybody's first reaction is to
7 look at the traditional model, build the lateral line,
8 serve the customers. Quite frankly, when we looked at
9 that, it is going to be a challenge for anybody to do
10 that.

11 Whether the number's 18 million, 25
12 million, it really doesn't matter. There's a significant
13 investment that has to be made over probably a 6 to 12 to
14 18 month period that is necessary before you get one
15 dollar of revenue. That puts a significant financial
16 strain on any corporation. So when we looked at that,
17 what we wanted to do is to try to create a business
18 strategy that would allow us to do a much better job in
19 matching investment dollars consistent with when revenue
20 could be experienced.

21 So what we really wanted to do, which is --
22 which is unique in the context that it's not building that
23 long lateral line day one, what we're doing in our
24 business strategy is actually creating a plan with which
25 we can match addition of customers with a much smaller

1 investment, and as the system builds and grows, then we
2 will expand.

3 And ultimately it is in our business plan
4 that that lateral line will exist at some point in the
5 future. Whether OEP owns it or whether we will contract
6 for services from other suppliers that are in that
7 business, those decisions have not been made, but
8 fundamentally, that's really what was at the foundation of
9 our business strategy.

10 Q. And how is Branson represented in -- let me
11 clarify one point for the record. The feasibility study
12 of which we are speaking has been marked as Exhibit 27 in
13 this case in its HC form and as Exhibit 28 in its NP form;
14 is that correct?

15 A. I have Exhibit 27 in front of me.

16 Q. And how is Branson reflected -- the city of
17 Branson reflected in that feasibility study?

18 A. Actually, that -- what -- there's been a
19 little bit of confusing testimony in that respect in that
20 what we basically did is we took Taney and Stone Counties,
21 which is the majority of where customers exist today, as
22 well as where the growth is, what we did is we actually
23 took that information and created a customer penetration
24 program primarily focused on new construction, and then
25 created construction cost estimates that -- actually, we

1 used Southern Missouri Natural Gas cost estimates because
2 they were some of the higher costs in the state.

3 And given the community costs in that
4 community in Branson, you're probably going to be looking
5 at costs that are probably in the range of one and a half
6 to two and a half times higher in the developed areas, and
7 by developed areas I'm talking about where businesses
8 already exist rather than in undeveloped areas where new
9 construction is occurring.

10 So what we ended up doing -- and that cost
11 differential rather than trying to separate it, what we
12 ended up doing is just basically blending and using the
13 Southern Missouri Natural Gas historical cost as an
14 indicator of what we feel is a reasonable estimate.

15 So when we put -- when we put that all
16 together, that really has Branson in our financial
17 analysis, but from a practical standpoint, we do not have
18 a franchise there. We see Branson as a late stage
19 introduction into our business strategy. To start in
20 Branson day one when you're looking at trying to match
21 revenue with lower cost of construction, it creates more
22 challenges. So instead of looking at roughly \$4,000 to
23 add a customer, you're looking at \$6 to \$7,000 to add a
24 customer. Just puts more financial strain on the company.

25 So Branson has never been -- I think it was

1 referred to yesterday as the golden egg. We see Branson
2 as an important community in the future. We do not see
3 Branson -- in fact, we actually see Branson as an
4 hinderance to an early entry strategy that we put forward,
5 and that we think it will result in a much more viable
6 success factor in bringing gas to that community.

7 Q. Mr. Cattron, are feasibility studies
8 generally based on assumptions that are simply wild
9 guesses?

10 A. I certainly hope not. I mean, as business
11 executives, we all make and pay people to make assumptions
12 that are based on prudent, well-founded assumptions. It
13 is absolutely essential that when considering any
14 investment, that prudent assumptions are made and adhered
15 to, and obviously as things change, you modify and you
16 move. But it is absolutely essential and we invested a
17 lot of time and energy to ensure that the assumptions we
18 were making were both representative of what we thought
19 was achievable and doable and conservative in that market.

20 Q. And do you have experience in other aspects
21 of your professional life of working with developing plans
22 based on overlooking assumptions?

23 A. Any future investment you're making, you're
24 making that investment on some foundation of assumptions.
25 I mean, it's -- we don't know until we invest for sure

1 what's going to happen.

2 Q. As president of MGE or as consultant to
3 businesses?

4 A. Absolutely.

5 Q. Will there be substantial capital
6 investments made by OEP if this application is approved by
7 the Commission?

8 A. Yes, there will. I think our capital
9 requirements over the first five years is just a little
10 over \$50 million.

11 Q. And how will those capital expenditures
12 benefit the citizens in the service area, please?

13 A. Well, the capital dollars themselves,
14 obviously there are tax implications for those
15 communities, not to mention the business development
16 aspects and the employment, and most probably importantly,
17 bringing gas to that community. It will be a significant
18 added value for that community. We heard from the mayor
19 yesterday of Branson.

20 Q. How does the fast growth in Ozark's
21 proposed service territory affect OEP's business plan?

22 A. It's absolutely essential, as I mentioned
23 earlier in my testimony. Growth is important to our
24 business strategy. You're going to see as we get into the
25 details of our study that much of our study in the early

1 years is really based on a lot of the new growth. It's
2 going to have a high residential concentration. A lot of
3 that is because conversions are going to be a challenge.
4 They've always been a challenge in this industry or in the
5 electric industry.

6 So we wanted to be sure that what we built
7 from a business strategy standpoint could be sustained
8 with a lot of investment in new growth areas, so we very
9 much -- that growth in that area is very important to us,
10 and it's very important that time is understood in aspects
11 of what's happening here. Every day we pass, every time a
12 new customer is added is a customer that's probably not
13 going to convert if they've gone to total electric, which
14 is a large percent in this market, for a minimum of
15 probably 20 to 30 years. So time is extremely important
16 to consider here.

17 Q. Could you tell me, please, what percentage
18 of all-electric customers OEP assumes will convert to
19 natural gas in the first five years?

20 A. I think it's really important, we've
21 assumed nothing in our feasibility study for electric
22 conversions. We have talked to Ozark Energy Partners
23 about the importance of creating a marketing strategy to
24 attract electric conversions, but any electric conversion
25 in my opinion that is put in a feasibility study is highly

1 suspect to whether that is an achievable assumption in any
2 near term estimation.

3 Q. And why is that?

4 A. I'll take a residential customer or
5 commercial customer. We heard the mayor yesterday talk
6 about a large percentage of businesses with electric as
7 well. When you've made a decision to invest in heating
8 equipment, and that's primarily what we're talking about,
9 so we're talking about your furnace, your HVAC equipment,
10 you've invested -- probably at the time you built your
11 home, or if you had to change it, you've probably invested
12 in it 3 to \$4,000, maybe \$5,000. That's an investment
13 that somebody's not just going to change because they
14 might be able to lower their operating costs.

15 I've been in the electric industry trying
16 to compete to convert gas. I've been in the gas industry
17 trying to compete with electric, and I will tell you it's
18 a difficult sell regardless of the economics, to get
19 somebody to change equipment when it's already there, it's
20 operating, it's functioning. We had programs that
21 actually would incent people, we would finance people,
22 that would provide lower operating costs for them, and it
23 was still a difficult challenge to get conversions made.

24 It's going to be exactly the same in this
25 community, quite frankly, if not more challenging. If you

1 look at some of the income in the demographics in this
2 community, \$4,000 is not going to be an easy decision for
3 these folks to make in this community.

4 Q. How many commercial and business customers
5 do you have in the plan?

6 A. I think in -- our plan was actually
7 created, rather than an outcome or a result from
8 assumptions, we created a range. So we created a low and
9 a mid range program, and in our assumption what we
10 basically included is about 100 customers -- hold on just
11 a minute. Let me make sure I've got that number right.
12 Yeah. In our low estimate for -- this is at the end of
13 the fifth year, we actually have 50 customers in the
14 commercial and industrial, and at the end of -- in our
15 midrange program, our feasibility study we have 150
16 customers.

17 Q. Mr. Cattron, do you believe that the cost
18 of natural gas is competitive with propane in the proposed
19 service area?

20 A. Yes, it is, and it was -- I think there's
21 total agreement in the proceeding yesterday as well.

22 Q. As well as being competitive with other
23 forms of fuel, such as electricity and heating oil?

24 A. Yes, and again, we're in agreement.

25 Q. Now, OEP has entered into a stipulation

1 with the Staff in this case which includes a provision
2 that if OEP sells its assets at a loss, the new owner
3 would only be allowed to book those assets at its purchase
4 price rather than the higher net book value or net
5 original cost. Why has OEP agreed to that provision,
6 please?

7 A. You know, it's real simple. When that was
8 actually recommended to the Staff, as advisors we sat down
9 with Mr. Epps, presented this to him. We also met with
10 Mr. Epps and his board of directors and presented it to
11 them, and it was a really simple conclusion for them in
12 that their goal, their objective is to build, operate and
13 run a gas utility. They had no concerns with selling this
14 company. That was not anything on their radar screen. It
15 has absolutely no impact on their business plans, their
16 business goals and their business objectives.

17 Q. They simply don't plan to sell the company?

18 A. No, they do not.

19 Q. Another provision of the stipulation with
20 Staff is that OEP's financing of the project would be
21 submitted after a conditional certificate of convenience
22 and necessity is issued, and we've heard some testimony
23 about that already today. And the construction could only
24 begin once final financing documents have been executed
25 and approved by the Commission; is that your

1 understanding?

2 A. Yes, it is.

3 Q. Why does OEP consider that a reasonable
4 provision, please?

5 A. It's -- the difficulty with a project like
6 this, and it's for any of us, to obtain financing without
7 an indication from this Commission that there's a
8 conditional certificate, it's a chicken and egg issue that
9 we all deal with, and that condition to me is very
10 reasonable. It's very acceptable. To basically say you
11 have a conditional certificate, you have achieved our
12 expectations as a Commission, and now go get the money.

13 We've heard it from Mr. Straub earlier,
14 that's been the issue in the past, and it's reasonable to
15 have us come back not with just a financing plan, but with
16 executed documents that is going to provide the funding
17 necessary to get this system built, gas delivered and
18 operating. My personal opinion is that should probably
19 require at least a three if not a five-year look at what
20 the capital requirements are. It is our expectation, it's
21 been our conversations with the investors we've been
22 discussing this matter with that we would be looking at
23 least the first three years of capital requirements and
24 possibly the first five to be presenting to the Staff with
25 our financing application.

1 Q. So do you think -- do you think a competing
2 company, being in competition with another company for the
3 certificate will limit OEP's ability to obtain financing?

4 A. It hasn't at this time. Quite frankly,
5 what our investors want is a conditional certificate.
6 That's the important element.

7 Q. And would you tell us, please, when are the
8 fees actually paid for the typical financing?

9 A. At least the projects I've personally been
10 involved in in the past, both those that were executed as
11 well as those that didn't, it's very typical in this
12 industry, I heard Mr. Maffet talk about a million and a
13 half dollars of financing cost yesterday and the burden of
14 that. Typically you might pay 25,000, maybe \$50,000 on
15 the front end to get financing in this magnitude
16 completed.

17 The remainder of that is actually going to
18 be more of a contingent fee based program where those
19 funds are actually taken out of the dollars that you
20 actually have invested in. So there really isn't any
21 significant cost on the front end to address financing.
22 Quite frankly, it hasn't even been a concern of ours.

23 MR. STEINMEIER: Your Honor, I would ask
24 the reporter to mark an Exhibit No. 29.

25 (EXHIBIT NO. 29 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 BY MR. STEINMEIER:

3 Q. Mr. Cattron, I refer you to what has been
4 marked belatedly, which is my fault, as Exhibit No. 29,
5 would you tell us what that is, please?

6 A. Yes. That's a one-page bio on myself.

7 Q. And one of the pieces of experience in your
8 professional past reflected on that exhibit is your past
9 service as president of Missouri Gas Energy; is that
10 correct?

11 A. Yes, it is.

12 Q. Which I believe is the second largest
13 natural gas utility in the state of Missouri?

14 A. It was at the time I was there, yes.

15 Q. Before you held that position, how much
16 experience did you have specifically in natural gas
17 operation?

18 A. I did not have any experience in operating
19 a gas utility at the time I took on the president role and
20 responsibility.

21 Q. Did you have experience when you assumed
22 that role in the planning, design, or construction of
23 natural gas transmission or distribution systems?

24 A. No, I did not.

25 Q. So is it essential from your experience to

1 have already been in an industry in order to achieve
2 success in an industry?

3 A. No, it is not. It's important to have --
4 surround yourself with a quality team to ensure success.

5 Q. To the best of your knowledge, did the
6 other Ozark, as referred to earlier today, ten years ago
7 or so, Ozark Natural Gas Company, have a conditional
8 certificate from the Commission?

9 A. Quite honestly, it was my understanding
10 that was not a conditional certificate. That was a full
11 certificate. That certificate was not acted upon, and so
12 that certificate became void. And it's -- quite frankly,
13 it's exactly the same business strategy that Southern
14 Missouri Natural Gas is presenting here. Much of the
15 information -- Alliance is the successor to Ozark Natural
16 Gas. We heard testimony yesterday that some of the same
17 market surveys, some of the same analysis was actually
18 used in Southern Missouri Natural Gas, clearly exactly the
19 same business strategy that had been presented before.

20 MR. STEINMEIER: Your Honor, I would ask to
21 go in-camera, please.

22 (REPORTER'S NOTE: At this point, a
23 in-camera session was held, which is contained in
24 Volume 3, page 107 of the transcript.)

25

1 JUDGE JONES: We are public.

2 MR. STEINMEIER: Thank you.

3 MR. STEINMEIER: With that, your Honor, I
4 offer Exhibits 26 to 29 into evidence and tender the
5 witness for cross-examination.

6 JUDGE JONES: Any objections to those
7 exhibits? Seeing none, Exhibits 26, 27, 28 and 29 are
8 admitted into the record.

9 (EXHIBIT NOS. 26, 27, 28 AND 29 WERE
10 RECEIVED INTO EVIDENCE.)

11 JUDGE JONES: Do you have any
12 cross-examination from Staff?

13 MS. SHEMWELL: None, thank you.

14 JUDGE JONES: Any from the Office of Public
15 Counsel?

16 MR. POSTON: No, thank you.

17 JUDGE JONES: I'll note for the record that
18 Missouri Gas Energy isn't present at this time. Any
19 cross-examination from Southern Missouri Gas?

20 MR. FISCHER: Just briefly.

21 CROSS-EXAMINATION BY MR. FISCHER:

22 Q. Mr. Cattron, did I understand your
23 testimony that the feasibility study you've done, and I
24 think I heard it from counsel, doesn't include Branson
25 specifically?

1 A. What I testified to is if you looked -- the
2 same demographics we talked about yesterday, if you look
3 at the demographics of Taney and Stone Counties, if you
4 look at our feasibility study you'll see exactly the same
5 starting point and the housing -- we started at ground
6 zero with the housing stock. We took the housing stock
7 and looked at what was occupied and what wasn't occupied.
8 We did not try to identify what's in Branson, what's
9 outside of Branson.

10 Our certificated area is much larger than
11 the one of your clients, and so we left it all in. We
12 have -- we do not have a franchise today, so those
13 customers, those customer opportunities are in our study.

14 Q. Is it correct that there are no creative
15 supply facilities that would be located in Branson assumed
16 in your feasibility study?

17 A. We don't have any specific location at this
18 time. What we would establish the first site, that site
19 could be in a number of different places. It will be
20 strategic based on where our growth strategy begins.
21 We're going to put our assets as close as possible to
22 minimize the cost as revenue is built. Ultimately we'll
23 be able to tell you exactly where those are. We're in --
24 we've got very clear ideas where our first one or maybe
25 two sites will go.

1 Q. And neither of those will be in Branson; is
2 that correct?

3 A. I do not believe they're within the city
4 limits of Branson.

5 Q. Are there any other distribution line costs
6 within the city of Branson that are assumed in your
7 feasibility study?

8 A. Again, our feasibility study was created
9 off of customer additions, and so we didn't say, okay,
10 this customer's being added in Hollister, this customer is
11 being added in Kimberling City or this customer is being
12 added in Branson.

13 What we created was based on the growth in
14 the market, our assumptions relating to conversions, here
15 are the customers that's going to be added. A lot of our
16 focus, especially in the early years, is going to be in
17 the area of new growth.

18 MR. FISCHER: Your Honor, could I ask for a
19 yes nor answer on that? I think it was a yes or no
20 question

21 JUDGE JONES: Ask your question again.

22 MR. FISCHER: Were there any specific
23 distribution line costs in the city of Branson included in
24 your feasibility study?

25 JUDGE JONES: That is a yes or no question.

1 THE WITNESS: Could you ask it again?

2 MR. FISCHER: Could I have it read back?

3 THE REPORTER: "Question: Are there any
4 other distribution line costs within the city of Branson
5 that are assumed in your feasibility study?"

6 THE WITNESS: There are no specific
7 distribution costs in any city. I've just tried to
8 communicate -- I'm not sure I can answer yes or no,
9 because we didn't identify where an individual growth in
10 customers was coming. What I've testified to is we don't
11 have a franchise in that community, and so until we have
12 one, we would not have the authority to lay distribution
13 assets in that city. If that's your interest, I'm trying
14 to give -- I think what you want, but I can't answer that
15 yes or no because of the way we created our feasibility
16 study.

17 BY MR. FISHER:

18 Q. Assuming that the Commission granted you a
19 conditional certificate as you've requested and you put
20 forth the investment that is included in your economic
21 feasibility study today, is it correct that you would have
22 to make additional investments in your creative supply
23 facilities and distribution lines in the city of Branson
24 if you chose to go forward in that community?

25 A. We feel for the first five years, based on

1 our estimate is a little over \$4,100 average. If I add
2 one more -- right now, it's not a function of where that
3 customer is setting, other than strategically located in
4 the growth areas where we're trying to go.

5 Q. Would you be able to serve even a single
6 customer in the midtown Branson area if you don't have a
7 creative supply facility sitting within the city of
8 Branson?

9 A. Yes, we would.

10 JUDGE JONES: That was a yes or no answer.

11 MR. FISCHER: That was. That was an
12 amazing answer.

13 THE WITNESS: That was a different
14 question.

15 BY MR. FISCHER:

16 Q. Without a creative supply facility in the
17 city of Branson, how would you serve someone in the middle
18 of Branson?

19 A. Like we would serve any other customer,
20 we'd simply lay a pipeline. Like every other customer
21 we're going to serve, we're going to lay a pipeline. It's
22 called a service line. From the service line there's
23 going to be a main. From the main there's going to be a
24 connection to a source of gas.

25 So it's not a function that that has to set

1 inside the city limits. Not a single one of these storage
2 facilities may set inside the franchise boundaries of any
3 of these communities. We have four franchises today, and
4 it may actually end up that every one of these facilities
5 are in unincorporated areas.

6 Q. Let's assume, Mr. Cattron, that you do
7 serve those four franchise communities under your supply
8 plan that you're talking about. You build the supply --
9 the creative supply facility. How many of those would you
10 need initially?

11 MR. STEINMEIER: Your Honor, I object to
12 this question being asked in public record.

13 MR. FISCHER: I'm sorry. We can go
14 in-camera.

15 MR. STEINMEIER: Okay. Just getting
16 precariously close.

17 (REPORTER'S NOTE: At this point, an
18 in-camera session was held, which is contained in
19 Volume 3, pages 115 through 153 of the transcript.)

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1 JUDGE JONES: Okay. Let's go ahead and
2 call your next witness. Maybe we can get some direct in
3 before we take a break. Mr. Steinmeier?

4 MR. STEINMEIER: Very well. Could I have
5 just a moment? OEP calls Dan Epps, your Honor.

6 JUDGE JONES: Mr. Epps, will you spell your
7 name for court reporter, please.

8 THE WITNESS: Excuse me?

9 JUDGE JONES: Will you spell your name for
10 the court reporter?

11 THE WITNESS: Daniel, D-a-n-i-e-l, Epps,
12 E-p-p-s.

13 JUDGE JONES: Please raise your right hand.

14 (Witness sworn.)

15 JUDGE JONES: Thank you, sir, you may be
16 seated.

17 DANIEL EPPS testified as follows:

18 DIRECT EXAMINATION BY MR. STEINMEIER:

19 Q. Good afternoon, sir.

20 A. Good afternoon.

21 Q. Please state your name and address for the
22 record?

23 A. Daniel Lee Epps, 136 Kessler Drive, Walnut
24 Shade, Missouri.

25 Q. And Mr. Epps, are you the managing director

1 of Ozark Energy Partners, LLC?

2 A. Yes, sir, I am.

3 Q. How long have you lived in the Branson
4 area, Mr. Epps?

5 A. 57 years.

6 Q. And is your resume in the feasibility study
7 that's already part of the record of this case?

8 A. Yes, sir.

9 Q. Mr. Epps, why did you start Ozark Energy
10 Partners?

11 A. We started Ozark Energy Partners to bring a
12 needed utility to the Ozark Mountain region that has been
13 promised to the people down there for 20 years and has
14 never been accomplished. There's a passion I have for the
15 people down there because I am one of them, and I've got
16 many, many friends that -- and acquaintances that want
17 this utility and I have a passion to bring that down there
18 to them, and that's my goal and dream.

19 Q. We heard testimony this week about the city
20 of Branson itself being the fastest growing city in the
21 Ozarks region. Is the city of Branson the jewel there?

22 A. In my opinion, no. And I was born and
23 raised there. My grandfather was mayor there. My whole
24 family's been there since 1859. But I think that Branson
25 has hit a plateau, and the region around it now has taken

1 over that growth area and Branson is in a -- it's still
2 growing, no doubt, but it is not the Crown Jewel or the
3 golden egg that people portray it to be, because it's just
4 about full. It's busting at the seams right now, so the
5 outside surrounding areas of Branson seem to be the growth
6 pattern and the growth areas that are expanding more,
7 because Branson city limits has trapped itself in my
8 opinion in its geographical area.

9 MR. STEINMEIER: Tender the witness for
10 cross-examination, your Honor.

11 JUDGE JONES: Any cross from Staff?

12 CROSS-EXAMINATION BY MS. SHEMWELL:

13 Q. Mr. Epps, I'm Lera Shemwell. Good
14 afternoon.

15 A. Good afternoon, ma'am.

16 Q. We haven't heard Walnut Shade mentioned in
17 any of the communities. Where is Walnut Shade?

18 A. It is not -- well, I can tell you exactly
19 where my house is from Branson, 9.4 miles north of
20 Branson, off of 65 Highway. It's a small town of one
21 convenience store and 30, 40 people.

22 Q. And where is that from Hollister?

23 A. Hollister is a mile -- actually adjoining
24 Branson only divided by Lake Taneycomo and the bridge, so
25 it's -- from where my location is, it's about 10 miles, 11

1 miles from my house.

2 Q. Is it highly confidential where you're
3 planning to begin construction? Is that where the first
4 pipe would be laid?

5 A. I would think so.

6 MR. STEINMEIER: It's -- at this point, is
7 not clearly determined and would be a better question
8 probably for --

9 MS. SHEMWELL: Has it been determined?

10 MR. STEINMEIER: -- Cattron or Pollard.

11 MS. SHEMWELL: I was just asking Mr. Epps
12 with his expertise about the area, the reason you chose
13 one site over Branson?

14 THE WITNESS: I'm sorry, ma'am. I
15 couldn't understand -- hear what you said.

16 BY MS. SHEMWELL:

17 Q. My question was why you would choose one
18 site over Branson to begin, and so I was asking if where
19 you planned to begin is highly confidential?

20 A. We plan to begin in Hollister, and we chose
21 that over Branson basically because of the -- the
22 challenge that I feel has been in the utility business and
23 around utilities for 40 years of my life almost, the
24 toughness of trying to build a system in the Branson area
25 right now. And we have put miles of water line, sewer

1 lines and telephone systems around Branson. I've done
2 that for years, and it is full. And the southern area,
3 and Hollister, because it is to me is -- to me Hollister
4 is the opportunity because it is growing and leap frogging
5 around Branson, it has more room to expand, and that was
6 really our direct choice. We have claimed Hollister to be
7 our corporate headquarters, and the growth there in my
8 opinion surpasses the growth in Branson at this time.

9 MS. SHEMWELL: That's all I have. Thank
10 you.

11 JUDGE JONES: Questions from the Office of
12 Public Counsel?

13 MR. POSTON: No, thank you.

14 JUDGE JONES: Any questions from Southern
15 Missouri Gas?

16 MR. FISCHER: Yes, your Honor, just briefly
17 here.

18 CROSS-EXAMINATION BY MR. FISCHER:

19 Q. Mr. Epps, you're the managing director of
20 Ozark Energy Partners; is that right?

21 A. Yes, sir.

22 Q. And looking at your resume that's included
23 in the feasibility study, you've been the manager,
24 director since April 2006; is that right?

25 A. Yes, sir.

1 Q. Is that a full-time position?

2 A. Yes, sir.

3 Q. Were you the principal in creating this
4 company?

5 A. No.

6 Q. Did you sign the documents at the Secretary
7 of State's Office?

8 A. I did, but I wasn't exactly the principal.
9 I had partners.

10 Q. Are there -- are there two partners in the
11 company, Mr. Hole and Mr. Handlin?

12 A. Yes.

13 Q. I guess technically they're members rather
14 than partners since it's a limited liability company?

15 A. Yes.

16 Q. What's your principal role as the managing
17 director of Ozark Energy Partners?

18 A. At this point to do the -- run the
19 day-to-day operations and organize the -- the team of
20 people that is necessary to make this project successful.

21 Q. Do you have any other employment at the
22 present time?

23 A. No, sir.

24 Q. Assuming the Commission grants Ozark the
25 certificate of convenience and necessity as you requested

1 in this case, what will be your role at Ozark Energy
2 Partners in the future?

3 A. I intend on remaining as a managing
4 director at this point.

5 Q. Will you effectively be a member of the
6 board of directors and the general manager of the company?

7 A. That's my anticipation.

8 Q. Will you be highly involved in the
9 day-to-day operations of the company?

10 A. To a certain extent.

11 Q. Will you be making the decisions, the
12 day-to-day decisions about construction, decisions about
13 purchasing gas, customer service issues, that kind of
14 thing?

15 A. No, sir.

16 Q. Who will be doing the day-to-day
17 operational decisions?

18 A. That will depend on who we choose as a
19 board -- from the board of directors to manage and operate
20 this company.

21 Q. Okay. So you're not likely to be that
22 person?

23 A. Until we get to the point of where we need
24 to bring in that organization or marketing company or
25 management company. Somebody's got to run it.

1 Q. That's what I'm asking, are -- you're not
2 going to be the general manager after it's certificated?

3 A. I will. I just said that. I will to a
4 certain time.

5 Q. Okay.

6 A. I intend on staying on with this for the
7 rest of my life if that's the question you're asking.

8 Q. Yeah. I'm really asking what your role is
9 likely to be after it's certificated.

10 A. Well, I plan on staying in as a managing
11 director, not necessarily a general manager, but I plan on
12 staying on that and running the day-to-day operations
13 until we hire a management company that will take over the
14 operations for us and help us with and assist us with
15 building this system.

16 Q. Have you identified that management company
17 at this point?

18 A. We have negotiated, but we have not come to
19 terms with any company at this time.

20 Q. Do you know if the cost of that management
21 company is included in the feasibility study?

22 A. Yes.

23 Q. Your resume indicates that you were a
24 supervisor and crew foreman for Hoag Construction Company
25 during the years 2004 and 2005?

1 A. It's Hoag Construction, and yes, I was.

2 Q. I'm sorry. Hoag Construction?

3 A. Yes, sir.

4 Q. Is Hoag Construction Company owned by Bobby

5 Williams?

6 A. Hoag Construction sold to a company out of

7 Louisiana. To my last knowledge, I have never met Bobby

8 Williams. Wouldn't know him if he walked in the door.

9 Q. Do you know if he was previously the owner?

10 A. I do not -- I never met the owners. They

11 were in the Kansas City area. So I have no idea. I

12 worked in our region, so I never saw them or met them.

13 Q. Do you know if Hoag Construction Company

14 has provided services in the past to Cass Telephone

15 Company or New Florence Telephone Company?

16 A. I have no knowledge of that at all. We

17 basically worked with Verizon and CenturyTel.

18 Q. After you left the employment of Hoag

19 Construction Company, were you unemployed during that

20 period between the time until you formed Ozark Energy

21 Partners?

22 A. No. I'm a licensed real estate broker in

23 the state of Missouri. I kept my license active. So I do

24 get involved in real estate transactions.

25 Q. Did you also approach Alliance Gas Energy

1 about possible employment during that period?

2 A. Absolutely not.

3 Q. Okay. Is it true that your dad, Harold
4 Epps, is on the board of Alliance Gas Energy?

5 A. Not anymore.

6 Q. Previously was he, do you know?

7 A. Yes.

8 Q. And is it correct that that company sold
9 its -- or assigned its interest in the Branson franchise
10 to my client, Southern Missouri Natural Gas?

11 MR. STEINMEIER: Objection, your Honor.
12 This is irrelevant. Alliance is no longer a party to
13 either of the cases being heard this week.

14 JUDGE JONES: It appears to be irrelevant,
15 Mr. Fischer.

16 MR. FISCHER: I'll withdraw it. I'm sorry.

17 JUDGE JONES: Objection sustained.

18 BY MR. FISCHER:

19 Q. Now, Ozark is not an existing local
20 distribution company; is that correct?

21 A. It is not?

22 Q. Yes.

23 A. Not at this time, but it will be.

24 Q. It doesn't have any natural gas facilities
25 or customers anywhere in the country?

1 A. No, sir.

2 Q. Doesn't have an existing tariff that's been
3 approved anywhere, Missouri or elsewhere?

4 A. No, sir.

5 Q. So Ozark will be embarking upon its first
6 venture into natural gas, assuming the Commission grants
7 the certificate?

8 A. Yes, sir.

9 Q. The resumes of Mr. Hole and Mr. Handlin are
10 also attached to the feasibility study, I believe; is that
11 correct?

12 A. Yes, sir.

13 Q. Who are those gentlemen?

14 A. Randy Hole was a principal. He was
15 actually -- him and I were the ones that started Ozark
16 Energy Partners. Randy is a certified financial
17 specialist from Kansas City, Missouri, 44 years old,
18 deeply knowledgeable of natural gas pipeline construction
19 and finance.

20 Q. Are there -- are there -- can you tell me
21 about Mr. Handlin?

22 A. Ralph Handlin, it's Handlin, is a 49 year
23 veteran of natural gas engineering in four states, and he
24 is -- we brought Ralph into this as a full-fledged partner
25 because of his vast knowledge and experience in the

1 natural gas business and industry. He also manages a gas
2 company on the west side of Missouri and in Oklahoma, and
3 is very knowledgeable of this business, Department of
4 Pipeline Safety, Transportation and Safety, and he is
5 really a key factor in the knowledge of what we need to
6 bring natural gas to the Ozark region.

7 Q. How old a gentleman is he?

8 A. 74.

9 Q. Are there any other members of -- or equity
10 owners of Ozark Energy Partners?

11 A. Yes.

12 Q. Besides Mr. Handlin, yourself and Mr. Hole?

13 A. Yes.

14 Q. Who would that be?

15 MR. STEINMEIER: Objection, your Honor.

16 This would be beyond the -- beyond highly confidential.

17 JUDGE JONES: Did you say beyond highly
18 confidential? Does that mean we need to go in-camera or
19 what?

20 MR. STEINMEIER: Ozark Energy Partners
21 should be under no obligation to disclose the inner
22 workings of its financial arrangements at this time. We
23 have a Stipulation & Agreement that provides for separate
24 financing proceeding to take place if and when a
25 conditional certificate is granted to this company.

1 JUDGE JONES: How that's relevant,
2 Mr. Fischer?

3 MR. FISCHER: Your Honor, I think this
4 Commission should have an interest in the investors in
5 this company, and they've identified three. I didn't
6 realize there were any others in their feasibility study.
7 I was asking -- that's interesting news that there are
8 others.

9 MR. STEINMEIER: And the fact that it's
10 interesting news is exactly why it's highly confidential
11 with a competitor in the room when both companies are
12 fighting it out -- or competing for capital in the capital
13 markets.

14 JUDGE JONES: I think maybe at the
15 financing stage maybe it will be relevant. I don't think
16 it is at this time.

17 MR. FISCHER: Well, your Honor, I think the
18 qualifications of the --

19 JUDGE JONES: Qualifications of investors
20 is that they have money.

21 MR. FISCHER: Well, your Honor, I'm not
22 sure that's the case, but I'll withdraw and move it along.

23 BY MR. FISCHER:

24 Q. I was hoping not to have to ask this, but
25 Mr. Epps, have you ever pled guilty to a federal offense?

1 A. Excuse me?

2 MR. FISCHER: Can you read that back?

3 THE REPORTER: "Question: I was hoping not
4 to have to ask this, but Mr. Epps, have you ever pled
5 guilty to a federal offense?"

6 THE WITNESS: Yes, I have.

7 BY MR. FISCHER:

8 Q. With regard to that federal offense, were
9 you defended by a public defender?

10 A. Yes, I was.

11 Q. Were you able to qualify for the income
12 guidelines to be served by a public defender at that time?

13 A. I guess so. I had a public defender.

14 Q. Are you holding yourself out as an expert
15 in the operation of a local distribution company providing
16 natural gas?

17 A. No.

18 Q. Have you ever worked for a natural gas
19 pipeline or a natural gas distribution company?

20 A. No, sir.

21 Q. Prior to your employment with Ozark Energy,
22 have you ever worked for an entity which constructed a
23 natural gas pipeline or local distribution system?

24 A. No.

25 Q. Have you ever been employed by a company

1 that provided natural gas service to customers using
2 propane peaking facility?

3 A. No.

4 Q. Have you ever been employed by a company
5 that provided natural gas service to customers using
6 compressed natural gas or other supply strategies like
7 that?

8 A. No, sir.

9 Q. Prior to your employment with Ozark Energy,
10 did you ever work for any entity where you purchased fixed
11 price contracts for natural gas?

12 A. No.

13 Q. Do you know how many therms are in a CCF of
14 natural gas?

15 A. No. We've never had natural gas in the
16 Ozarks, so how could I have worked for somebody with it?

17 Q. And you don't know how many therms are in a
18 CCF of natural gas?

19 MR. STEINMEIER: Asked and answered.

20 Object, your Honor.

21 JUDGE JONES: Objection sustained.

22 MR. FISCHER: Withdrawn.

23 BY MR. FISCHER:

24 Q. Prior to your employment with Ozark, have
25 you ever worked for a company that contracted for firm

1 capacity from an interstate pipeline?

2 A. No.

3 Q. Is it correct that Ozark does not at the
4 present time have a contract for firm capacity from
5 interstate pipeline?

6 A. That's true.

7 Q. Mr. Epps, would you consider yourself to be
8 an expert in any of these topics; the operation of natural
9 gas pipelines?

10 A. No.

11 Q. The regulation of natural gas pipelines or
12 natural gas distribution companies?

13 A. No.

14 Q. Natural gas pipeline safety regulation?

15 A. That's Ralph Handlin's job, but it's not
16 mine.

17 Q. The operation of natural gas pipelines or
18 local distribution companies?

19 A. No.

20 Q. The level of natural gas that you might
21 need to serve customers in a specific community?

22 MR. STEINMEIER: Your Honor, I object. At
23 this point this line of questioning is bordering on
24 harassment of the witness. I think his resume has already
25 been introduced into the record, and identifying

1 everything on the planet that he may not have done is a
2 waste of the Commission's time.

3 MR. FISCHER: Your Honor, I'll withdraw the
4 question. I think it's quite apparent already, and I
5 don't mean to be discourteous to this witness.

6 JUDGE JONES: Question withdrawn. Move on
7 to a different topic.

8 BY MR. FISCHER:

9 Q. Mr. Epps, let's turn to Ozark's financial
10 ability to provide the service. On page 24 of your
11 feasibility study, it indicates that OEP has established a
12 number of contacts within the financing community that
13 will provide access to both equity and debt financing
14 sources once the Commission's approved -- or provided its
15 approval to OEP's application for a certificate of
16 convenience and necessity; is that correct?

17 A. Yes, sir.

18 Q. Isn't it correct at this point in time that
19 Ozark does not have any definitive contracts for equity or
20 debt financing?

21 A. That is true. That comes when we get our
22 certificates.

23 MR. FISCHER: Okay. And Judge, perhaps we
24 should go in camera. I think this might be confidential.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in
2 Volume 3, pages 172 through 175 of the transcript.)

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1 JUDGE JONES: Commissioner Murray?

2 QUESTIONS BY COMMISSIONER MURRAY:

3 Q. Yes. And I regret having to go into this,
4 but in that federal offenses are generally those that
5 violate the laws contained in the U.S. Criminal Code and
6 they're usually white collar crimes involving frauds, I
7 need to know what federal offense you pled guilty to?

8 A. Picking up arrowheads on a river bank on
9 Bull Shoals Lake. Everybody laughs about that, but that's
10 a fact.

11 Q. And when was that?

12 A. Can I elaborate?

13 Q. What year was that?

14 A. It was in 1998, about six months after my
15 wife had died, and I was down on that river where we were
16 raised and I had five broken rocks in my hand the size of
17 my thumbnail and I was made -- set an example of, you
18 might say.

19 Q. All right. I don't need to go into that
20 any further then. Thank you.

21 What made you want to go into supplying
22 this service for the Ozarks area?

23 A. Ma'am, you have to be raised down there
24 like I was where you don't have a utility. We're in an
25 area that is a booming area, but we're the last on the

1 list to get any kind of utilities for the people down
2 here. And granted, I grew up down there, and I worked in
3 the construction field and had a lot of friends down there
4 that are being paid 8, \$10 an hour, that can't afford
5 propane that runs at about \$1.95 to \$2.50 a gallon and the
6 desire and the need for that utility is one of the reasons
7 that I wanted to do this.

8 And the other reason, or reasons is that we
9 need it. The industry -- I've been in the real estate
10 business down there since 1983, off and on, but mainly
11 with my own real estate company during of the '90s.
12 Industry will not come to the Taney County, Stone County
13 region without natural gas. There's projects down there
14 that I was involved in as a real estate broker that we
15 could not close because the people that would come in
16 think they have natural gas down there and want to build a
17 big box unit or a shopping center and find you've got to
18 run it on propane would not do it. It's cost prohibitive.

19 So there's a desire and a need for it for
20 the people. It's also for the industry and the commercial
21 industry down in our area. We've been there all of our
22 lives, and it's something that is -- it's a much needed
23 and desired industry. We've proven it by countless votes
24 by the times that I've been involved in this and getting
25 the people franchised, it's -- we've got to have it. It's

1 just got to get done.

2 Q. What is the most recent industry --
3 industrial entity that did not come to the area because of
4 a lack of natural gas?

5 A. Well, I was personally involved as a real
6 estate broker with an organization that wanted to build a
7 clinic and a pharmaceutical manufacturing, I guess you
8 would call it plant. They were going to employ at least
9 200 full-time people. And because when they came down and
10 they saw the region we had the work force, we had the
11 transportation force, we had all the entity -- we had the
12 electrical, we had the rural water systems, but without
13 natural gas it wasn't feasible, and those people walked
14 off.

15 That's the same that has been run into, not
16 just with me, but with countless people in this real
17 estate market down here that are trying to bring industry
18 down here that won't. There's places even in Hollister
19 right now that without natural gas cannot build their
20 business or expand their business or make it work on a
21 propane-based system. It's not feasible when you build a
22 200,000 square foot building and you want to try to heat
23 it with propane, the costs are so high that it just did
24 not -- isn't going to work or it would have been done
25 already.

1 Q. And are you involved in selling commercial
2 or residential real estate, or both?

3 A. Both, my wife and I had a real estate
4 company down here, a very successful one for eight years.
5 But I was also involved in other types of real estate
6 before I owned my own business. We had five different
7 subdivisions down there that we sold. Didn't have to have
8 a real estate license to sell your own land in the state
9 of Missouri, but once we sold all that out, then I became
10 a real estate broker and my wife and I enjoyed eight years
11 and she died of cancer, and that was it. I sold my
12 company. I took care of my kids.

13 COMMISSIONER MURRAY: I don't think I have
14 any other questions. Thank you.

15 JUDGE JONES: Commissioner Appling?

16 COMMISSIONER APPLING: No questions.

17 JUDGE JONES: Commissioner Jarrett?

18 QUESTIONS BY COMMISSIONER JARRETT:

19 Q. Good afternoon. I just had one question.
20 Why do you feel like your company is better situated to
21 provide natural gas service than Southern Missouri Gas
22 Company is?

23 A. Because I'm a native of the region. I know
24 the desires of the hearts of the people down there and I
25 have the passion to make this work. I don't have a

1 passion to sell my company. I have a passion to bring
2 something to the people down here that I have promised and
3 promised and promised, and that's my goal and my dream, is
4 to fulfill the needs and the desires of the people in
5 Ozark Mountain country that are friends of mine, that
6 we've all lived together and grown up together down there.

7 And I feel like we have the best qualified
8 group of people that we've hired to help us get to this
9 point and to carry it on through. We have an engineer
10 that works with our company. We have finance people that
11 work with our company, and we all from that general area
12 that feel that we are the most qualified to be able to do
13 this, especially when we bring in our process that were --
14 that Mr. (Name of confidential witness omitted) had
15 described.

16 I've cut that rock down there. I put in
17 35,000 miles of telephone cable in that area, in this
18 area, and rural water systems and I know what it takes to
19 bust that rock. It's a -- God made it to stand on. He
20 didn't make it to dig a hole in. So we want to be the
21 ones to be the natural gas provider for that area because
22 we have made a commitment.

23 I've stood in front of 20 different
24 councils this last year, I've got four towns to vote on
25 us, and I've had thousands of people depend on me to bring

1 this down here, and that's my goal. I have no intentions
2 ever of an intention of selling my company. It's pretty
3 dear to me. It's been around our -- us for a long time
4 and we -- it's time for us to get on with it, you know.
5 We're losing a lot of time right now because of the
6 massive construction going on, and we need -- we need to
7 bring this utility to make our area as popular and to grow
8 and expand like the northern parts of Missouri and the
9 center parts of Missouri are right now, and we're hampered
10 by it, and that's -- that's why I think we can get 'er
11 done.

12 COMMISSIONER JARRETT: Thank you.

13 JUDGE JONES: Mr. Steinmeier, do you have
14 any other witnesses?

15 MR. STEINMEIER: No, sir.

16 JUDGE JONES: You don't? Well, let's take
17 a quick five-minute break for the court reporter to relax.
18 We have plenty of time. We'll come back for redirect and
19 close out the day.

20 MR. STEINMEIER: I have no redirect, your
21 Honor.

22 JUDGE JONES: You have no redirect?

23 MR. STEINMEIER: No, sir.

24 MR. FISCHER: Your Honor, I do have one
25 recross question.

1 JUDGE JONES: Do you have any recross?

2 MS. SHEMWELL: No.

3 JUDGE JONES: Let's go ahead and ask the
4 recross.

5 RE-CROSS-EXAMINATION BY MR. FISCHER:

6 Q. Mr. Epps, when you were talking about
7 appearing in front of the 20 city councils, did you tell
8 any of the city councils that you -- we're not in-camera.
9 Could we go in-camera?

10 (REPORTER'S NOTE: At this point, an
11 in-camera session was held, which is contained in
12 Volume 3, page 183 of the transcript.)

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1 JUDGE JONES: Did you have any redirect
2 based on that question and answer, Mr. Steinmeier?

3 MR. STEINMEIER: No, your Honor.

4 JUDGE JONES: With that, then, you're
5 excused, sir.

6 MS. SHEMWELL: Judge, I believe we may be
7 done.

8 JUDGE JONES: We are done, let's stay on
9 the record, though, I just -- I want to talk to the
10 attorneys about the briefing. First, I'd like the
11 transcript expedited to December 7th; and I'd also like
12 one round of Briefs due January 8th, so a few days after
13 your Briefs are due in the other case. I don't suspect
14 they'll be much different with the proposed findings of
15 fact and conclusions of law.

16 MS. SHEMWELL: That's fine with Staff.

17 JUDGE JONES: Are there any other concerns
18 before we adjourn? Hearing none, then, we are adjourned.

19 WHEREUPON, the hearing of this case was
20 concluded.

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