

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

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

Case No. GA-2006-0561

**BRIEF OF THE OFFICE
OF THE PUBLIC COUNSEL**

The issue in this case is whether Ozark Energy Partners, LLC (Ozark) should be granted a certificate of public convenience and necessity (CCN) authorizing it to construct, install, own, operate, control, manage, and maintain a natural gas distribution system to provide gas service in portions of Christian, Stone and Taney Counties. The Office of the Public Counsel supports a Commission Order conditionally granting Ozark's application on the condition that shareholders, rather than ratepayers, are responsible for any detrimental impacts that result from the certificate. The CCN should also be conditioned on the Commission approving Ozark's financing application, which Ozark has not filed.

This case began on June 30, 2006 when Ozark filed the first CCN request for the Branson area since a different company, Ozark Natural Gas Company, Inc., requested and received a CCN for Branson from the Commission in 1996.¹ Ozark Natural Gas Company, Inc. failed to exercise its CCN authority, thus forfeiting its CCN and opening the door for Ozark to file its request to bring natural gas to the Branson area. Southern Missouri Gas Company d/b/a Southern Missouri Natural Gas (SMNG) also filed a request to serve the Branson area, opening subsequent Case No. GA-2007-0168.²

1. Requirements for a CCN

Utility companies wishing to expand their service territory into a new community must first prove the granting of a CCN is “necessary and convenient for the public service” as required by §393.170 RSMo 2000. The Commission outlined the requirements for determining whether to grant a certificate of convenience and necessity in Case No. GA-2007-0212, and reiterated that “necessary” means the expansion “would be an improvement that justifies its costs.”³ The Commission stated that a CCN requires: 1) a need for public natural gas service; 2) a qualified applicant; 3) a financially able applicant; 4) an economically feasible proposal; and 5) that the proposed service is in the

¹ In the Matter of the Application of Ozark Natural Gas Co., Inc. for a Certificate of Public Convenience and Necessity to Construct, Own, and Operate an Intrastate Natural Gas Pipeline and Gas Utility to Serve Portions of Stone, Taney and Christian Counties, and for the Establishment of Utility Rates, Case No. GA-98-227.

² In the Matter of the Application of Southern Missouri Gas Company, L.P., d/b/a Southern Missouri Natural Gas, for a certificate of public convenience and necessity authorizing it to construct, install, own, operate, control, manage and maintain a natural gas distribution system to provide gas service in Branson, Branson West, Reed’s Spring and Hollister, Missouri; Case No. GA-2007-0168.

³ In the Matter of the Application of Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas for a certificate of public convenience and necessity authorizing it to construct, install, own, operate, control, manage and maintain a natural gas distribution system to provide gas service in Lebanon, Missouri, Case No. GA-2007-0212, *Report and Order*, August 16, 2007.

public interest. Ozark has not filed nor had a financing application approved by the Commission, which should be a prerequisite to Ozark receiving CCN authority.

2. The CCN Should be Conditional

The testimony evidence from Case Nos. GA-2007-0168 and the present case made it clear that serving the Branson area is a risky business venture. Public Counsel is aided in its support of the Ozark CCN by Ozark's commitment to adhere to several conditions requested by the Commission's Staff. The following conditions are of particular importance:

- OEP shall be responsible in future rate cases for the economic consequences of any failure of this system to achieve forecasted conversion rates and/or its inability to successfully compete against propane.
- OEP agrees that if, at any time, it sells or otherwise disposes of its assets in a sale, merger, consolidation or liquidation transaction at a fair value less than its net original cost for those assets, the purchaser/new owner shall be expected to reflect those assets on OEP's books at its purchase price or the fair value of the assets, rather than at the net original cost of the assets. OEP also acknowledges that it is the intention of the Parties that the provisions of this paragraph shall apply to any successors or assigns of OEP.

Ozark agreed to these conditions in a Stipulation and Agreement between Ozark and the Staff. Public Counsel urges the Commission to condition Ozark's CCN accordingly. These protections place the economic risk of Ozark's proposal on the investors. Staff witness Mr. Mark Oligschlaeger testified that they "provide meaningful protection of customer interests" and "meaningful assumption of all economic risk by the shareholders." (GA-2007-0168, Tr. 269-270). There is a legitimate concern with new gas systems being overbuilt and reflecting uneconomic levels of plant. (GA-2007-0168, Tr. 270.) In these situations, the net original cost concept of ratemaking is no longer applicable and "should not be used in the rate process." (*Id.*) Instead, "when ownership

passes to a new owner...the presumed rate valuation of the assets should be based on the new purchase price.” (*Id.*) This would simply put the burden on the owner to propose adjustments to that purchase price if the new owner wanted the plant assets valued in a different manner for rate purposes. (GA-2007-0168, Tr. 271).

In the Staff’s November 26, 2007 memorandum in support of the Stipulation and Agreement between Ozark and Staff, the Staff further explained the need for this condition on Ozark’s CCN:

Staff’s goal in recommending the Stipulation is to ensure that the continuing risk of the financial viability of the system not be shifted to customers upon sale of the system. It is the experience of Staff that small systems have struggled financially and, if a system becomes financially viable, it is usually through the sale of the system and the write-down of the value of system assets to a level that may be supported by rates.

Within the last 15-20 years, there has been a distinct pattern to new gas operation start-ups in Missouri. These start-up companies have generally failed to achieve their forecasts for converting existing customers from propane service or for serving new customers in their service territories. As a result, these start-ups have been saddled with “over-built” systems, and accordingly have not been able to charge rates that are fully compensatory of its cost of service.

Public Counsel urges the Commission to condition the CCN for Ozark on the conditions quoted above and agreed to by Ozark. These necessary conditions ensure that consumers will be partly protected from any economic failure of Ozark’s expansion plans.

3. Public Counsel’s Additional Concern with Ozark’s Proposal

Public Counsel is concerned with Ozark’s decision to make certain business strategies and plans confidential. During the hearing, counsel for Southern Missouri Natural Gas raised concerns with the communities to be served not understanding Ozark’s proposed distribution system. (Tr. 30). The testimony evidence indicated that the communities where Ozark has received or is requesting franchise authority are not

fully aware of Ozark's proposal. (Tr. 183). These communities should be aware of Ozark's plan before Ozark begins construction.

4. Conclusion

Public Counsel supports a Commission decision granting the application so long as shareholders absorb all losses, and conditioned upon a positive recommendation from the Commission's Staff on Ozark's financing application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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