BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

STAFF'S BRIEF

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), and for its Brief states that Staff's recommendation in this case is: SMNG be given a conditional Certificate of Convenience and Necessity (CCN), pending submission of completed financing arrangements and SMNG be held to its commitment to accept full responsibility for the financial viability of the system through an accounting methodology which Staff recommends as providing meaningful protection for consumers against the risk of financial failure of the proposed system. The same conditions should be applied to both companies. (Tr. 244, ls. 23-25.)

I. Procedural History

On October 26, 2006, Alliance Gas Energy filed its Application for a CCN to serve the Branson area and environs. On November 2, 2006, the Commission issued its Order Directing Notice and Setting Date for Submission of Intervention Requests. On November 30, 2006, Ozark Energy Partners filed its Application to Intervene which was granted on December 11, 2006. Various Status Reports were filed, then on June 29, 2007, SMNG filed its Motion for Substitution of Party to substitute itself for Alliance. The Commission granted SMNG's Motion on July 11, 2007. On August 10, SMNG filed its First Amended Application and by separate Motion moved for a prehearing conference. On November 5, 2007, SMNG filed its Second

Amended Application. The hearing in this case was held on November 27 and 28.

II. Discussion

Staff's discussion follows the list of issues submitted prior to hearing:

1. Should SMNG be granted a conditional certificate of convenience and necessity to serve Branson, Hollister, and Branson West, Missouri, and surrounding environs, as requested by SMNG in this proceeding?

Yes. Staff supports the Commission granting both Applicants for this general territory, Southern Missouri Natural Gas (SMNG) and Ozark Energy Partners (OEP), conditional certificates of convenience and necessity (CCN) to serve the requested areas, conditioned on the Company(s) ability to obtain reasonable financing on reasonable terms. (Tr. 244, ls. 2-11; Tr. 256, ls. 12-23.) Staff recommends that both Companies be required to meet certain conditions before a final CCN is granted to either. (Tr. 244, ls 23-25).

The ability of a company to obtain financing is the basis for Staff's recommendation to grant dual conditional CCNs. To increase the chances that at least one of the Applicants will succeed, Staff is recommending that, rather than grant one company a CCN at this time, the Commission grant both companies conditional CCNs. (Tr. 244, ls. 2-11.) Staff recommends that whichever company can make a showing that it has secured financing for the proposed service territories, which includes providing to Staff the final executed financing document(s), is able to begin construction and has fulfilled all appropriate and necessary authorizations for the purpose of providing natural gas service in its requested Commission-authorized service territory be granted the final CCN. (Tr. 245, ln. 9 – Tr. 247, ln. 10)

a. Is there a public need for the proposed service?

Staff views this as the same question as whether natural gas service is necessary or convenient for the public. In terms of public need or the necessity of natural gas service in

Branson, in construing the term "necessary or convenient," the Court has stated that "the term 'necessity' does not mean 'essential' or 'absolutely indispensable,' but that [the] service would be an improvement justifying its cost." In the *Intercon Gas* case, the Court of Appeals further construed this statutory section and noted several criteria for evaluation of the necessity and convenience of the proposed project:

> Public convenience and necessity is not proven merely by the desire for other facilities. It must be clearly shown there is failure, breakdown, incompleteness or inadequacy in the existing regulated facilities in order to prove the public convenience and necessity requiring the issuance of another certificate. The fact that one does not desire to use present available service does not warrant placing in the field a competing utility.

State ex rel. Intercon Gas, Inc. v. Public Serv. Comm'n. 848 S.W.2d 593, 597 (Mo. App. 1993) (*citing State ex rel . Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216,219 (Mo. App. 1973). After defining and interpreting the meaning of the phrase "necessary or convenient," the Court of Appeals indicated that it is up to the Commission to decide "when the evidence indicates the public interest would be served." *Id*.

The electric service in this area is provided by a regulated Local Distribution Company, the Empire District Electric Company. Consumers may also choose to have propane service. There is no regulated natural gas utility in this area. There was testimony that the public interest would be served because natural gas service would provide customers with additional choice. The mayor of Branson testified as to her belief that having natural gas service in this area "is quite beneficial." (Tr. 144, ls 22-25.)

b. Is SMNG qualified to provide the proposed service?

Yes. SMNG is an existing utility company. Staff does not question that SMNG is qualified to provide the service. Whether SMNG can provide natural gas service at competitive cost-based rates sufficient to become a financially viable operation is Staff's primary concern.

c. Does SMNG have the financial ability to provide the service?

At this point, until SMNG actually obtains financing for the project, Staff cannot state that SMNG has the financial ability to provide the service. There are several factors that have contributed to the financial difficulties of bringing natural gas service to the Branson area, including: (a) the geography and the cost to excavate in rock, (Tr. p. 112, ls 5-15; Tr. 139, ls. 23-25 and p. 140, ln 21 - p. 141, ln 3.); (b) the competition from propane and, electric providers; and (c) the lack of infrastructure to deliver natural gas from an interstate pipeline, and the cost of constructing a supply line 35 miles long at an estimated cost of $500,000 to $600,000 per mile. (Tr. 105, ls. 14 – 25.)

d. Is SMNG's proposed service economically feasible?

Staff believes that this proposed project is riskier than SMNG's proposal to provide service to Lebanon Missouri. (Tr. 296, ls. 11-17.) The costs of construction are approximately double the cost of construction to Lebanon. (Tr. 112, ls. 5-15.) If SMNG can obtain financing, this indicates that a sophisticated lender has found the project meets some objective criteria for economic feasibility. That is the reason Staff is recommending the Commission issue both companies conditional CCNs and that neither company should be permitted to exercise its CCN until and unless it provides proof to Staff and to the Commission that it has obtained reasonable financing. (Tr. 246, ls. 2-16.)

e. Is SMNG's proposed service in the public interest?

It is not in the public interest for SMNG's existing customers to pay for service to Branson when it will cost significantly more for SMNG to serve Branson customers than it costs SMNG to serve its existing customers. Construction costs are so much higher for this area that SMNG is proposing a construction surcharge on Branson customers of approximately $120.00

per year. (Tr. 120, ln. 12.) It would be detrimental to SMNG's existing customers if, at any point, these costs were shifted away from Branson customers to them.

While Staff is recommending that SMNG and OEP both be granted conditional CCNs so both may pursue financing, (Tr. 244, ls. 2-11; Tr. 245, ls. 4-8) Staff does not recommend that it is in the public interest for two companies to be given CCNs to serve this same area. It is Staff's position that if the Commission grants both SMNG and Ozark Energy Partners conditional CCN's, whichever company is able to obtain financing should be granted the final and only CCN for this area. (Tr. 244, ls. 2-11) Both will need to have obtained the statutorily required local franchise prior to beginning construction in any municipality it seeks to serve. If one or both Applicants were to be granted conditional CCNs, both should be required to meet the conditions set out in the Stipulation and Agreement filed in Case No. GA-2006-0561.

2. What conditions, if any, should the Commission impose upon the grant of certificate of convenience and necessity to serve Branson, Branson West, and Hollister, Missouri, and surrounding environs?

Section 393.170 RSMo. (2000) permits the Commission to issue a Certificate of Convenience and necessity to an Applicant and to impose any necessary conditions on the grant of authority:

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

In accord with this sub-section, the Commission may grant Applicant's request if, after hearing, it determines that the certificate is necessary or convenient for the public interest. The conditions Staff recommends the Commission impose are the conditions in the Stipulation and

Agreement OEP signed in Case No. GA-2006-0561, which is incorporated herein by reference, and which is attached hereto.

a. Should the Commission specifically condition the certificate upon the following agreement:

> SMNG agrees that if, at any time, it sells or otherwise disposes of its assets before SMNG has cost based rates 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 its books at its purchase price or the fair value of the assets, rather than at the net original cost of the assets. This provision is intended to define SMNG's responsibility relative to the exercise of this certificate relative to SMNG's risk, not SMNG's customers, to absorb the costs in the event serving of this area is found to be uneconomic under original cost of service regulation. SMNG also acknowledges that it is the intention of the Parties that the provisions of this paragraph shall apply to any successors or assigns of SMNG**.** Nothing in this paragraph is intended to increase or diminish the existing rights or obligations of the parties with respect to ratemaking treatment of SMNG's existing assets outside the properties related to this certificate**."**

Yes. This provision is the only significant disagreement between the Staff and SMNG in this application case. That disagreement concerns whether, under certain circumstance, a customer protection measure should be imposed requiring upfront accounting treatment for acquired gas utility assets for any subsequent owner of the CCN for the natural gas service territory sought by SMNG in this case.

Mr. Maffett indicates his willingness to accept the risk of financial failure but, despite his testimony, (Tr. p. 76. ln.8 - p.77, ln.1) SMNG refuses to accept this condition. (Tr. p. 77. ls. 8-9). Staff's recommendation is, however, a fair approach to assure SMNG, Sendero and Mr. Maffett are sincere in accepting responsibility for any failure of the Branson system to achieve forecasted conversion rates and/or its inability to successfully compete against propane. (Tr, 76, ls 8-23.) In an attempt to avoid what Staff believes is a meaningful method to protect customers from the risk of financial failure, SMNG paints this condition as unique or unusual. (Tr. 78, p. 4-9). It is

not. It is one of two alternatives which lead to the same goal of assuring that an Applicant for a CCN accept the risk of financial failure. (Tr. 295, ls. 12-25). One approach is to impute a certain level of revenues and this other approach involves valuation of assets at sale. (Tr. 273, ls. 5-25; Tr. 294, ls. 2-13.) While the valuation approach may be more effective in protecting consumers, it is not more onerous for owners and is a reasonable and fair approach because it uses an objective measurement to value the company's assets. (Tr. 295, ln. 19-25.) The "net original cost concept" has been the policy of this Commission for many years; i.e., the concept that a utility's plant in service should be valued at its net original cost to the initial owner for rate purposes, even if the plant is subsequently purchased at a cost either above or below the net original cost by a subsequent owner. The Staff fully supports this concept. However, in the limited circumstances that a utility is unable to charge cost based rates (due to competitive pressures), the net original cost concept no longer can be or should be applicable to a utility's recovery of its plant investment in rates (Tr. 270, ls. 3-13).

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. (Tr. 270, ls 3-13.)

The general pattern has been that these start-ups have materially overestimated their ability to successfully compete against alternative energy sources (including electric service, but primarily propane), and as a result they have not been able to ultimately charge cost based rates to their customers; i.e., they have not been able to obtain a sufficient number of customers

necessary to achieve revenue levels adequate to fully recover its costs, including its authorized rate of return set by the Commission on its plant investment (Tr. 270 ls. 3-19; Tr. 290, ls. 6-8). As a direct result of this failure, in most cases the initial owners of these properties have chosen to sell the gas utility at a significant discount to its net original cost to new ownership.

It has been a standard condition in certificate cases for new gas utilities that the utilities are explicitly required to fully assume the risk of failing to achieve their estimated conversion rates from existing propane customers (i.e., failure to successfully compete against propane). Trying to remedy inadequate earnings as a result of any such failure by increasing customer rates would constitute an unacceptable shifting of risk from the utility to its customers, and would in all likelihood be counter-productive in any effort by the utility to become more competitive with propane in its pursuit of additional customers. (Tr. 269, ln 20 – Tr. 271, ln. 18.).

It is further 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. (Tr. 269, ln. 20 – 271, ln. 5.) This condition would only apply when and if Sendero sells SMNG. (Tr. 297, ls. 21-24) That is a point at which, despite Mr. Maffet's assurances, Sendero could shift the risk of the financial success of the system from Sendero to its customers.

Given the limited circumstances under which this condition would apply – only if Sendero were to sell SMNG, (Tr. p. 270, ls. 20-23; Tr. 271 ls. 12-18; Tr. 272, ls 13-15; Tr. p. 290, ls. 16-20.) it is difficult to understand Mr. Maffett's resistance if he is honest about his willingness to accept the risk of financial viability of this system. The Staff's advocacy of this condition comes from long and consistent experience with natural gas start-up operations in the last 20 years in this state. (Tr. p. 269, ln. 20 – p. 271, ln. 5).

SMNG made several arguments against Commission adoption of the Staff's condition, none of which hold up to scrutiny. The first argument is to depict this condition as being entirely novel and unique to this application; i.e., that SMNG has never seen this condition before (Tr. 77, ln. 24 – Tr. 78, ln. 24.). The Staff believes this characterization is inaccurate. While the specific accounting mechanics required by this condition may be new, the concept and the intent of the condition are not unprecedented at all (Tr. 272-274; Tr. 294). In Case No. GA-94-325, Tartan Energy Corporation agreed to imputation of a minimum level of revenues in its cost of service in any subsequent rate proceeding. The imputed revenue level was consistent with the projected customer load that Tartan's utility plant was intended to serve (Tr. 273, ls. 5-23). Revenue imputation is an alternative means of protecting customers against failure to successfully compete against propane (*Id.*), but the ultimate rate impact will be generally the same under that method as with the approach advocated by the Staff in this proceeding to limit the amount of a utility's rate base that can be incorporated into cost of service when cost-based rates cannot be charged (Tr. 273, ls. 18-23). Importantly, the revenue imputation requirement agreed to in the Tartan case was also explicitly placed upon any subsequent owners of the property, in an identical manner to the Staff's recommendation in this proceeding. SMNG is well aware of the Tartan condition as they are currently an owner of the properties originally operated by Tartan (Tr. 274).

As to SMNG's implicit argument that the Staff is somehow discriminating against SMNG with a condition it has not proposed anywhere else (Tr. 78), Mr. Oligschlaeger testified that the Staff would recommend this as a standard condition in future applications of a similar nature (Tr. 296, ls. 18-22).

Speaking of which, another SMNG argument against the Staff's position is that it would somehow improperly and prematurely tie the hands of a future owner in regard to accounting for its plant investment (Tr. 78). The Staff again disagrees with this contention. Any prospective owner of these properties, having knowledge of this condition, can factor that knowledge into its decision as to what would be an appropriate purchase price, and in fact as to whether to enter into a purchase transaction at all (Tr. 289, ls. 5-10). And, as noted above, the revenue imputation condition in the 1994 Tartan CCN case also served to "bind the hands" of future owners of that property, and properly so in the Staff's opinion.

The Staff believes that the real motivation behind SMNG's opposition to the Staff's proposed condition is not a purported concern about preserving the rights of prospective owners of utility property; it is preserving SMNG's ability to charge new owners the highest possible price for this property. (Counsel for SMNG, Mr. Fischer, admitted as much in his opening statement by noting that acceptance of the Staff's condition would make it harder for SMNG to sell the assets at a future time. Tr. 32) The Staff believes that sales of utility assets by companies which cannot charge cost based rates are highly likely to be valued at a significant discount to net original cost, and that the initial owners acceptance of such losses upon sale of their property is part and parcel of their obligation to accept all economic risk associated with these start-up ventures. SMNG's opposition to this condition means there are very real and important limits on their purported willingness to accept such financial risk. (Tr. 276; Tr. 297, ls. 10-19.)

SMNG criticized the Staff's position on this issue by stating its adoption would force an acquiring company to take a write-down of the plant's value at the time of the sale transaction. (Tr. 77, ls 7-20.) It is not clear how this result will financially damage the new owner in any way. As noted above, SMNG's real concern with asset value write-downs appears to relate more

to the possibility it may have to accept a purchase price for its gas assets that is materially less than the net original cost of the assets.

By definition, reflecting the full net original cost of a utility's plant in its rates when it cannot charge cost based rates in the first place due to competitive pressures will lead to the utility charging rates that cannot be sustained competitively, leading to further loss of market share to its lower-cost competitors. And, when a utility is clearly not able to charge cost-based rates, at some point the utility's recording of its plant on its books and records should reflect that loss of value. (Tr. 270, ls. 3-13.)

To assure the loss of value is apparent to a new purchaser, Staff recommends this condition be imposed now, as opposed to waiting for a subsequent sale or merger transaction for a number of reasons. First, this condition would obligate all the parties, including SMNG, to make this condition known to potential buyers of the property prior to closing of the transaction. Potential buyers of natural gas properties in this state should be fully informed of the relevant Commission policies in state as they relate to protection of customers against potential harmful impacts of failed competitive efforts against alternative energy sources. (Tr. 289, ls. 5-10.) Also, as noted by the Company in the hearings, not all utility sale transactions are required to come before this Commission for approval. (Tr. 78. ls. 10-13.) Imposition of this condition currently is appropriate because the Commission may not have the opportunity to impose it at the time of a future sale to a third party buyer (Staff Opening Statement, Tr. 42).

In summary, Staff has long supported , and the Commission accepted that any regulatory approval of natural gas start-up or expansion applications must be conditioned upon a commitment by the utility that it alone, and not its customers, must assume all economic risk associated with the utility's ability to compete against alternative energy sources. (Tr. 294, ls. 2-

13). The concern that gas utilities not place the financial burden of failing to successfully compete against alternative forms of energy on its customers does not change in the least when new ownership takes control of gas assets through a purchase or merger transaction. (Tr. 297, ls. 10-18; Tr. 298, ln. 22 to Tr. 299, ln. 16.) If the initial owner of the property was not able to charge cost-based rates to its customers, and the property in turn is sold to another entity at a significant discount to net original cost, a reasonable presumption is that the sale value of the property, as determined through an arm's-length third party transaction, is a much more accurate economic value for the assets as compared to their net original cost. (Tr. 270, ls. 3-25.) The Staff's proposed condition at issue here would require the new owner to book its purchased plant assets at the sales price, not the net original cost, for that very reason. (*Id*.) The presumptive ratemaking value for these assets should be the purchase price in this situation, and the accounting treatment for the assets should reflect the presumptive rate valuation (again, purchase price valuation). It should be emphasized that nothing in the proposed Staff condition would prevent the new owner from seeking rate valuation of its assets at their net original cost, or some other value different from the purchase price, in a subsequent rate proceeding (Tr. 271, ls. 1-5; Tr. 292, ls. 1-24.). But that owner would face a fairly steep burden of demonstrating that rate valuation at an amount greater than purchase price would not result in uneconomic rate levels or subsidization by customers of the utility's competitive efforts against alternative energy sources. (*Id*.)

Staff is not changing its recommendation that an applicant, and not its customers should assume the economic risk of serving a new territory, but is suggesting a different way of assuring the assumption of risk remains with the owner and not the customer. Staff believes this approach is a fair way to determine the actual value of the assets because there is an objective measure of

the value of the assets through an arms-length transaction. (Tr. p. 295, ls. 19-25)

Finally, the Staff notes that the Staff's position in this matter is intended to apply only in very limited circumstances, and will not apply at all to most utilities under most circumstances. For this condition to apply, two things must happen: there must be a direct or indirect sale or liquidation of utility assets, and there must be a finding that the selling utility is not or has not charged cost based rates. If SMNG is economically successful in operating its new system, then the Staff's proposed condition will simply not apply, sale or no sale.

For these reasons, the Staff urges the Commission to condition any approval of the Company's application in this proceeding through adoption of the Staff's position on this issue.

b. Should the Commission adopt similar conditions to those recommended in the Stipulation And Agreement between OEP and Staff filed in Case No. GA-2006-0561 on November 8, 2007?

Staff's position: Yes. If the Commission determines that both Companies should be granted conditional CCN's the Commission should, in every way possible, impose identical conditions on both companies.

Neither company should begin any construction for provision of service in its requested service territory or in any area that may be necessary to serve the requested service territory until after the Commission issues its Order approving the Applicant's financing and grants a full CCN. Such order should deny the request of the competing Applicant. The Applicant receiving the exclusive CCN should be required to commence construction within one year of the Commission's final approval for its full CCN.

For purposes of this proposed condition, Staff would recommend defining "construction" as "the systematic building of the local distribution company."

Above are the Staff's positions on the issues in this case.

Respectfully submitted,

/s/ Lera L. Shemwell
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 4th day of January, 2008.

/s/ Lera L. Shemwell

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

STIPULATION AND AGREEMENT OF OEP, MGE AND STAFF

COME NOW Ozark Energy Partners, LLC (OEP), Applicant herein, Missouri Gas Energy (MGE), a division of Southern Union Company, Intervenor herein, and the Staff of the Public Service Commission of Missouri ("Staff"), and submit this Stipulation and Agreement to the Commission for its approval in this case.

1. On June 30, 2006, OEP filed an application for a certificate of convenience and necessity to construct and operate an intrastate natural gas pipeline and gas utility to serve portions of Christian, Stone and Taney counties, including the cities of Hollister, Reeds Spring, Kimberling City, Highlandville, Branson and Branson West.

2. A *Stipulation and Agreement* between OEP and the Staff of the Missouri Public Service Commission was filed in this case on November 8, 2007.

3. OEP, MGE and Staff have engaged in discussions and, as a consequence, have reached the following agreements, which are set forth in this Stipulation and Agreement of OEP, MGE and Staff (the "instant Stipulation") and which dispose of all issues in this case with respect to the signatory parties.

4. MGE joins the Stipulation and Agreement filed in this case on November 8, 2007.

5. OEP hereby voluntarily waives any right to seek a certificate of public convenience and necessity to provide natural gas service in any sections for which MGE has already received a certificate of convenience and necessity from the Commission.

6. If MGE files an application for a certificate of convenience and necessity to serve an area not in a section or sections in which MGE has already received a certificate from the Commission, OEP also voluntarily waives any right to file a competing application for the requested area.

Contingent Waiver of Rights

7. This Stipulation and Agreement is being entered into solely for the purpose of settling the identified issues in the case that is listed above. Other than explicitly provided herein, none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding regardless of whether this Stipulation and Agreement is approved.

8. This Stipulation and Agreement has resulted from negotiations among the Signatories and the terms hereof are interdependent. If the Commission does not approve this Stipulation and Agreement unconditionally and without modification, then this Stipulation and Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof, except as explicitly provided herein.

9. If the Commission does not approve this Stipulation and Agreement without condition or modification, and notwithstanding the provision herein that it shall

become void; neither this Stipulation and Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with §536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Stipulation and Agreement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation and Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

10. In the event the Commission accepts the specific terms of this Stipulation and Agreement without condition or modification, the Signatories waive their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to RSMo §536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to §536.500 RSMo 2000; and their respective rights to judicial review pursuant to §386.510 RSMo 2000. This waiver applies only to a Commission order approving this Stipulation and Agreement without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Stipulation and Agreement.

Right to Disclose

11. The Staff, if requested by the Commission to do so, will file suggestions or a memorandum in support of this Stipulation and Agreement. Each of the Parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum, which shall also be served on all Parties. The contents of any suggestions or memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

12. The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests; provided, that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to Commission Rule 4 CSR 240-2.135.

WHEREFORE, the undersigned Parties respectfully request that the Commission issue its Order:

(a) Approving all of the specific terms and conditions of the Stipulation and Agreement filed in this case by OEP and Staff on November 8, 2007; and

(b) Approving all of the specific terms and conditions of this Stipulation and Agreement of OEP, MGE and Staff.

Respectfully submitted,

/s/ William D. Steinmeier

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Date: November 21, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served electronically on the General Counsel's Office, the Office of the Public Counsel and all counsel of record, this 21st day of November 2007.

/s/ William D. Steinmeier

William D. Steinmeier