

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE 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, Reeds Spring, and )  
Hollister, Missouri )

**Case No. GA-2007-0168**

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**

In the matter of the Application of )  
Southern Missouri Gas Company, L.P. )  
d/b/a Southern Missouri Natural Gas )  
for Authority to Issue approximately \$10 Million) )  
in Equity Capital and approximately \$50 Million) )  
in Notes and Other Forms of Indebtedness. )

**Case No. GF-2007-0215**

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 )  
Houston, Licking, and Mountain View, )  
Missouri. )

**Case No. GA-2007-0310**

**MOTION TO CONSOLIDATE CASES.**

**GRANT LATE APPLICATION TO INTERVENE OF OZARK ENERGY**

**PARTNERS, LLC, OR ORDER NEW FILING**

COMES NOW Ozark Energy Partners, LLC (hereinafter referred to as "Ozark" or "OEP"), by and through counsel and pursuant to Section 386.420 RSMo, 4 CSR 240-2.110(3) and 4 CSR 240-2.075, and files the instant pleading in these cases. This pleading contains Ozark Energy Partners, LLC's Application to Intervene in Case No. GA-2007-0212, *et al.*, pursuant to 4 CSR 240-2.075, as an alternative remedy. Good cause for applying to intervene after the intervention date is stated herein pursuant to 4 CSR 240-2.075(5).

By this pleading, **Ozark seeks to assure that it is provided with the opportunity to participate meaningfully in any proceeding in which financing arrangements for Southern Missouri Natural Gas' proposed Branson area expansion (in GA-2007-0168) are addressed by the Commission.** SMNG's Branson area application in GA-2007-0168 was filed to directly compete against OEP's pending certificate application to provide natural gas service in the Ozark region in Case No. GA-2006-0561.

However, the financing-refinancing proposal that SMNG has pending before the Commission in the consolidated Lebanon cases<sup>1</sup> involves financing not only for Lebanon, Houston and Licking, *but also for the Branson area* which SMNG seeks a certificate to serve in Case No. GA-2007-0168. **The Commission must not act on SMNG's financing application in Case No. GA-2007-0212, *et al.*, which now affects more than just its Lebanon certificate, without allowing participation of the parties to Case No. GA-2007-0168.**

According to SMNG's pleading<sup>2</sup> of October 5, 2007, its financing filing relating to its Lebanon expansion (conditionally granted in Case No. GA-2007-

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<sup>1</sup> Case Nos. GA-2007-0212, GF-2007-0215 and GA-2007-0310.

<sup>2</sup> "Southern Missouri Natural Gas' Status Report and Response in Opposition to Staff's Motion to Dismiss or in the Alternative to Suspend Application for Financing," filed October 5, 2007 in Case Nos. GA-2007-0212, GF-2007-0215 and GA-2007-0310.

0212) also affects its proposed Branson expansion. (See, *id.*, Paragraphs 4 and 6.) **Therefore, OEP seeks leave to intervene in SMNG's financing case (GF-2007-0215, now part of GA-2007-0212, et al.) or, in the alternative, asks the Commission to consolidate that case with SMNG's Branson certificate application (GA-2007-0168).**

Another possibility would be to order SMNG to file its Second Amended Application not in Case No. GA-2007-0212, *et al.*, but rather in Case No. GA-2007-0168 (Branson area application). Conditional certificates arising out of Case Nos. GA-2007-0212 and GA-2007-0310 have already been granted by the Commission. The only issue still pending in those cases is the financing application. **There is no compelling reason to hold the financing application (GF-2007-0215) hostage to those cases, when the financing clearly affects broader issues, including the Branson area application in GA-2007-0168.**

In support of this Motion and Request, Ozark states as follows:

1. Ozark Energy Partners, LLC is a limited liability corporation organized under the laws of the State of Missouri. By its currently-pending Application filed on June 30, 2006 in **Case No. GA-2006-0561**, OEP is seeking a certificate of public convenience and necessity from this Commission to provide natural gas service to Hollister, Highlandville, Kimberling City, Reeds Spring, Branson, Branson West, and other portions of the Ozarks region of Missouri. OEP's street and mailing address is: 136 Kessler Drive, Walnut Shade, Missouri (MO) 65771. OEP's telephone number is: 417-294-2201. Its facsimile number is: 417-561-0415. OEP's email address is: oepllc@tri-lakes.net.
2. SMNG is actively competing against OEP for a certificate of convenience and necessity to serve much of the same area included in OEP's Application. On October 26 2006, Alliance Gas Energy

Corporation filed an Application, in Case No. **GA-2007-0168**, seeking a certificate of public convenience and necessity to provide natural gas service in Branson, Branson West, Hollister and Reeds Spring, and surrounding areas, **a proposed territory that significantly overlaps that already sought by OEP in GA-2006-0561**. OEP has been granted intervention in Case No. GA-2007-0168.

3. On June 29, 2007, Alliance and SMNG filed a Motion for Substitution of Party, proposing to substitute SMNG for Alliance as the Applicant in GA-2007-0168. That motion was granted on July 11, 2007.
4. All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this case should be addressed to:

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with a copy to:

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5. In **Case No. GA-2007-0212**, SMNG sought a certificate of convenience and necessity from the Commission to provide natural

gas service to Lebanon, Missouri. In **Case No. GA-2007-0310**, SMNG sought a similar certificate to serve Houston and Licking, Missouri. In **Case No. GF-2007-0215**, SMNG sought authority from the Commission to issue approximately \$10 million in equity capital and approximately \$50 million in notes and other forms of indebtedness.

6. On March 8, 2007, those three cases were consolidated by the Commission, with GA-2007-0212 being the “lead” case. Under the terms of that *Order Consolidating Cases*, all pleadings filed in the consolidated case were to be file “only in GA-2007-0212.” This was confirmed by the Commission’s *Notice Moving Filing and Reclosing Case No. GF-2007-0215*, issued on September 28, 2007 in Case No. GA-2007-0212, *et al.* However, SMNG has continued to file monthly Status Reports bearing all three case styles and numbers. OEP has followed that example in the instant pleading, partly to highlight the once-separate financing docket (GF-2007-0215) which is the focus of this pleading.
7. On August 16, 2007, the Commission granted a conditional certificate to SMNG to provide service to Lebanon, Houston and Licking, conditioned upon the Company obtaining financing acceptable to the Commission. *See, Report and Order*, Case No. GA-2007-0212, *et al.*, issued August 16, 2007, at “ORDERED: 3.”

8. On October 5, 2007, SMNG filed, in Case No. GF-2007-0212, *et al.*, its “Status Report and Response.” (See footnote 1, above.) In that pleading, SMNG stated, in Paragraph 6:

The Company expects its uses of the funds obtained from the proposed financing to repay the existing senior and revolving debt with Prudential (formerly GMAC Commercial Finance), capital expenditures for its Lebanon, Houston, Licking **and Branson** expansions, general and miscellaneous corporate expenditures as specified in and consistent with the feasibility analyses previously filed and submitted.

(Emphasis added.)

9. **Since it is clear that the financing determination to be made by the Commission in GF-2007-0212, *et al.*, affects SMNG’s pending application in GA-2007-0168 for a Branson-area certificate, OEP has a direct interest in participating in that case.** Therefore, OEP hereby requests leave of the Commission to intervene in Case No. GA-2007-0212, *et al.*, out-of-time, for good cause shown.
10. Pursuant to 4 CSR 240-2.075 (4) (A), Ozark states that it clearly has an interest in this matter which is different from that of the general public and which may be adversely affected by a final order arising from this case. Ozark is a natural gas company that currently has an application pending before the Commission, in Case No. GA-2006-0561, which would overlap, at least in part, the service territory sought by SMNG (previously Alliance) in Case No. GA-2007-0168. SMNG is participating as an Intervenor in Ozark’s certificate application case (GA-2006-0561). Likewise, Ozark is an intervenor in SMNG’s Branson

area certificate case. Since Case No. GF-2007-0212, *et al.*, now clearly affects Case No. GA-2007-0168, OEP seeks to participate as an intervenor in that proceeding, as well.

11. Pursuant to 4 CSR 240-2.075(5), OEP states that because SMNG chose to file its Branson financing application and supporting documentation only in a case other than its Branson certificate case, to which OEP is a party, OEP was compelled to discover the existence of the other certificate and financing cases, decipher the status of the consolidation and determine appropriate action long after the intervention deadline in GA-2007-0212 (January 12, 2007). No intervention deadline was established in GF-2007-0215.<sup>3</sup> OEP is filing this pleading as soon as possible after completing its case research and determination of possible courses of action to insure equitable and complete review of SMNG's financial plans for the Branson service area, which overlaps OEP's proposed service area.

**12. It would be unconscionable for the Commission to approve financing arrangements in GF-2007-0215 (GA-2007-0212, *et al.*), ostensibly concerning only Lebanon, Houston and Licking, and**

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<sup>3</sup> In Case No. GF-2007-0215, an *Order Establishing Protective Order and Directing Staff to File a Pleading Stating When it will File a Recommendation in this Case* was issued on December 12, 2006. It ordered no public notice of the financing application and established no intervention deadline, although "any other party" that wanted to respond to SMNG's Motion for Expedited Consideration was invited to do so. **Of course, there was no reason for OEP to be interested in this case until SMNG's intention of including financing for its proposed Branson service area in GF-2007-0215 (GA-2007-0212, *et al.*) was revealed in its *Status Report, etc.* of October 5, 2007.**

**have such approval act as a *de facto* (or *de jure*) pre-approval of SMNG's financing for its proposed Branson service area, without the participation of the parties to SMNG's Branson certificate application case.**

13. Pursuant to 4 CSR 240-2.075 (4) (B), Ozark states that granting the instant Application to Intervene would also serve the public interest. Ozark was awarded municipal franchises by votes of the people in Kimberling City and Highlandville, Missouri, on November 7, 2006, and in Reeds Spring on April 3, 2007. In Hollister, a franchise ordinance was approved by voters on April 3, 2007 granting a municipal franchise to either Alliance (now SMNG) or OEP. The public interest in the potential for receiving natural gas service in these communities is substantial.
14. Pursuant to 4 CSR 240-2.075 (2), Ozark states that it actively opposes SMNG's application for certificate in GA-2007-0168, but cannot formulate a position on SMNG's proposed financing in GF-2007-0215 until SMNG has filed its Second Amended Application in that case and OEP has had a reasonable opportunity to evaluate that application.
15. OEP also moves the Commission to consolidate Case No. GA-2007-0212, *et al.*, with Case No. GA-2007-0168, so that the financing application which clearly affects the latter case may be heard in that case, with the participation of the parties to that case.

16. These cases involve related questions of law and fact, and the consolidation of these cases would promote judicial economy and avoid unnecessary costs and delay, pursuant to 4 CSR 240-2.110(3).
17. **In the alternative, the Commission should require SMNG's Second Amended Application concerning its financing to be filed in GA-2007-0168, for approval in that case, in addition to, or instead of, being filed in GA-2007-0212, et al.** SMNG has stated that it "is in the process of preparing a Second Amended Financing Application in this matter to conform its application to the final terms and conditions that have been negotiated with its equity and debt investor which it intends to file in the near future." *Status Report*, filed November 5, 2007 in Case No. GA-2007-0212, *et al.*; *see also*, *Southern Missouri Natural Gas' Status Report and Response in Opposition to Staff's Motion to Dismiss or in the Alternative to Suspend Application for Financing*, filed October 5, 2007 in Case No. GA-2007-0212, *et al.*, at paragraph 7.
18. Another alternative would be to require SMNG to file its Second Amended financing Application in a new docket, to which the parties to GA-2007-0212, *et al.*, and GA-2007-0168, are made parties.
19. **In no event should SMNG be allowed to gain financing approval for its proposed Branson area certificate without opportunity for a thorough review of that financing proposal in the context of SMNG's Branson area proposal, and of the relationship of that**

**financing to the feasibility study filed by SMNG in Case No. GA-2007-0168.**

WHEREFORE, Ozark Energy Partners, LLC respectfully requests that the Missouri Public Service Commission: (1) grant its Motion for Late Intervention in Case No. GA-2007-0212, *et al.*, upon good cause shown herein; and/or (2) consolidate Case No. GA-2007-0212 with Case No. GA-2007-0168; and/or (3) require SMNG to file its *Second Amended Application* on financing in Case No. GA-2007-0168 in addition to, or in lieu of, filing same in Case No. GA-2007-0212, *et al.*; or (4) require SMNG to file its *Second Amended Application* on financing in a new docket, and make the parties to Case No. GA-2007-0212, *et al.*, and the parties to Case No. GA-2007-0168, parties to said new docket.

Respectfully submitted,

**/s/ William D. Steinmeier**

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COUNSEL FOR OZARK ENERGY  
PARTNERS, LLC

Dated: November 14, 2007

## **CERTIFICATE OF SERVICE**

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)) and the Office of Public Counsel (at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)), and on counsel for all parties of record, on this 14<sup>th</sup> day of November 2007.

**/s/ William D. Steinmeier**