

**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**

**I. Procedural History**

On June 30, 2006, Ozark Energy Partners, LLC (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. As permitted by the Commission's rule at 4 CSR 240-3.205 (2),<sup>1</sup> Ozark Energy Partners, LLC later filed the following documents:

(A) A legal description of the area to be certificated (4 CSR 240-3.205(1)(A) 3.);

(B) A plat drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps issued by the Missouri Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch (4 CSR 240-3.205(1)(A) 4.);

(C) A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations (4 CSR 240-3.205(1)(A) 5.);

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<sup>1</sup> "If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought."

(D) The plans and specifications for the complete construction project and estimated cost of the construction project or a statement of the reasons the information is currently unavailable and a date when it will be furnished; (4 CSR 240-3.205(1)(B) 2.); and

(E) Plans for financing (4 CSR 240-3.205(1)(B) 3.).

The parties have engaged in various discovery and discussions and as a consequence, the signatory parties have reached the following agreements, which are set forth in this Stipulation and Agreement (Stipulation) and which dispose of all issues in this case with respect to the signatory parties.

## **II. Approval of the Transaction**

The signatory parties agree that the Commission should issue its order granting OEP a Certificate of Convenience and Necessity to construct and operate a Natural Gas Utility to serve portions of the Missouri counties of Christian, Stone and Taney, and for establishment of utility rates, subject to the conditions contained herein.

## **III. Conditions of Approval**

### **A. Financial Issues**

1. 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.

2. The parties recommend that the Commission make no finding as to the prudence or ratemaking treatment to be given any costs or expenses incurred as a result of the granting of this certificate of convenience and necessity, except as otherwise addressed in this Stipulation and Agreement.

3. 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.

**B. Service Territory**

4. All Parties understand and agree that the Staff has been attempting to negotiate a Stipulation and Agreement with similar terms with Southern Missouri Natural Gas Company (SMNG) for a conditional CCN to serve the same or similar territory as requested by OEP. In the event the Commission grants both OEP and SMNG conditional CCNs, whichever company (OEP or SMNG) completes the following will be the natural gas operating company:

(a) makes a showing that it has secured financing for the proposed service territories, which includes providing to Staff the final executed financing document(s), and

(b) complies with the conditions as set forth in this Stipulation and Agreement and

(c) can immediately begin necessary construction, and

(d) has fulfilled all appropriate and necessary authorizations for the purpose of providing natural gas service in its requested and Commission authorized service territory.

OEP is not relieved of the terms and conditions of this Stipulation and Agreement in the event the Commission grants OEP the only Conditional CCN to serve the requested service area. Nor shall anything in this Stipulation and Agreement be considered as relieving OEP from the responsibility of adhering to Missouri Statutes 393.180 and 393.200 RSMo 2000, and Commission Rule 4 CSR 240-3.220.

**C. Construction**

5. Construction shall not begin in any requested service territory or in any area that may be necessary to serve the requested service territory pertaining to this Stipulation and Agreement until after the Commission issues its Order approving OEP's financing and grants a full CCN to OEP. OEP must commence construction within one year of the Commission's final approval for their full CCN.

6. Construction will be defined as the systematic building of the \*\*\* \_\_\_\_\_ \*\*\* and distribution system(s). These facilities must be under an aggressive construction program as described in the Company's feasibility study in order to serve customers as quickly as possible.

**D. Territorial Issues**

7. The Parties to this case have agreed that OEP should be conditionally certificated to serve its requested service area, which includes the following areas:

City of Highlandville, Missouri and its environs;

City of Hollister, Missouri and its environs;

City of Kimberling City, Missouri and its environs, and;

City of Reeds Spring, Missouri and its environs.

To date, the City of Branson West has not granted a municipal franchise for the provision of natural gas. With regard to the City of Branson West, the parties recommend that the Commission approve a certificate, as requested, that includes Branson West, contingent upon OEP obtaining a municipal franchise from the City of Branson West.

To date, OEP has not been granted a municipal franchise for the provision of gas to the City of Branson. The parties recommend that the Commission approve a certificate, as requested, that includes Branson, contingent upon OEP obtaining a municipal franchise from the City of Branson.

8. An Order granting OEP a CCN should include the detailed description of OEP's certificated territory shown in Exhibit D to OEP's Application in this case, as amended on September 4, 2007, including the cities listed above in paragraph 7.

#### **E. Tariffs**

9. OEP will submit, for Commission approval, tariff sheets designed to govern OEP's operations for customers located within the requested service area, modeled after the currently-effective tariffs of Missouri Gas Utility. The purchased Gas Adjustment (PGA) Clause will apply to all sales and transportation services provided under all natural gas rate schedules and contracts. For purposes of the PGA Clause, the term "cost of gas" shall include the cost paid to suppliers for the purchase, transportation and storage of natural gas.

10. The Parties agree that, as a part of this Stipulation, the Commission, in its order approving this Stipulation, should order OEP to file tariff sheets modeled after the currently-effective tariffs of Missouri Gas Utility.

**F. Service Quality Conditions**

11. OEP agrees to the following additional conditions related to quality of service:

- a. The Company will respond to inquiries from the Commission's Consumer Services Department within three (3) business days, except for interruption of service issues, to which it will respond within one (1) business day.
- b. The Company agrees to adhere to all Commission rules and regulations including those relating to service, and will abide by provisions of the Cold Weather Rule. The Cold Weather Rule, among other things, specifies bill payment options and Company responsibility with respect to service disconnections from November 1st through March 31st.

**G. Depreciation**

12. The Company, for purposes of accruing depreciation expense, will use the rates set forth in the attached Depreciation Schedule (Appendix A) until the Company files support for alternative rates and obtains approval of alternative rates from the Commission.

**H. Financing**

13. Prior to beginning construction of any facilities, plant, works or system for the transmission or distribution of natural gas, OEP shall submit a financial plan to the Commission for its approval, which plan shall:

a. Be consistent in all material respects with the terms suitable to the Commission;

b. Include no bank or loan restrictions on the Company's ability to hedge with fixed price physical contracts; and

c. Not include any financing agreement with restrictions on the Company's ability to get fixed price contracts for natural gas.

d. OEP shall submit to the Staff, ten (10) days subsequent to closing of any loan or other financing arrangements, all documents finally executed to obtain financing for construction of the proposed systems.

#### **I. Ownership**

14. OEP agrees that it will own, as opposed to renting or leasing, all assets directly associated with provision of service from \*\*\* \_\_\_\_\_

\_\_\_\_\_. \*\*\* In any subsequent OEP rate proceedings, such assets shall be included in OEP's rate base, pending normal audit and examination in rate cases of such items, including prudence reviews.

#### **J. Adherence to Missouri Rules**

15. OEP shall ensure full compliance with all Missouri Commission rules (including but not limited to the Commission's Cold Weather Rule, Gas Safety rules and Affiliate Transactions rules), reporting requirements and other practices, and OEP's filed and approved tariffs. This paragraph shall not be construed as a waiver of any rights or remedies available to OEP under the law.

**K. Affiliate Transactions**

16. OEP shall maintain full records related to affiliate transactions and corporate allocation of costs between regulated and all nonregulated operations, if any, and shall comply with the Commission's rules concerning affiliate transactions involving natural gas utilities; natural gas marketing activities; and HVAC activities. OEP shall make these records available to the Staff within thirty (30) days of Staff's request for this information. Failure to do so may result in Staff's filing of a complaint with the Commission.

**L. Corporate Allocations**

17. OEP shall provide time reporting and associated expenses billed to the regulated companies and other non-regulated affiliates, if any, and any other documents that support allocation of expenses from these affiliated entities to OEP. Corporate allocations of costs, if any, will be based upon factors that faithfully and accurately represent the level of actual corporate involvement provided and the actual business unit beneficiaries of the incurred costs. OEP shall make these records available to the Staff within thirty (30) days of Staff's request for this information. Failure to do so may result in Staff's filing of a complaint with the Commission.

**M. Reliability and Natural Gas Supply Planning**

18. The Company shall provide to Staff and Public Counsel no later than 60 days prior to flowing any natural gas, its plans and analyses demonstrating that adequate production and market area firm pipeline capacity and firm natural gas supplies will be in place for each of the winter months of November through March for customer requirements for normal weather and cold weather, including requirements for



a historic peak cold day, and that the plan demonstrates flexibility for customer requirements for warm weather. The reliability information provided by the Company shall:

- a. Include an explanation of the methodology and logic used in the Company estimates/ forecasts for peak day capacity and monthly supply requirements.
- b. Include the Company's analysis and plans for required market area and production area pipeline capacity and supply resources to be utilized to meet peak day requirements in each Company service area for the upcoming winter and for the next five years, including copies of the contracts and any supporting documents verifying the contract term and constraints such as maximum and minimum daily quantities, and planned revisions/ amendments to these contracts.
- c. At a minimum, address the monthly natural gas supply analysis and plans for normal weather plus or minus 20% variability in heating degree days for the winter season of November through March, with greater variability possible for each winter month. The Company plan shall define the variability that it considers reasonable for each winter month and explain how its gas supply plan addresses those flexibility requirements.
- d. Include any cost/benefit analysis or studies of Company purchasing plans and practices for gas supply.
- e. Include all supporting documentation and calculations and fully functioning electronic spreadsheets that contain

- i. The forecasting model and all formulas and worksheets feeding into this model to establish the peak day requirements and monthly requirements (in Excel, if possible).
  - ii. Heating degree day (HDD) data that the Company used for its peak day and monthly normal, cold, and warm weather supply planning, including a description of the source of this data.
  - iii. Number of customers by class for each month, projected growth for each of the next five years by customer class, contract demand studies and any forecast assumptions affecting Maximum Daily Quantity (“MDQ”).
  - iv. The reserve margin for each Company service area for the upcoming winter and for three years beyond that. Additionally, provide the following: (a) Explain the rationale for the reserve margin for each service area for each of these years; (b) If the reserve margin is different for a peak day in December, versus a peak day in early February, then include the assumptions and calculations for both a December peak day and an early February peak day. (Reserve margin is the capacity in excess of that required for historic peak day requirements divided by the historic peak day requirements.)
- f. Include an updated schematic of the Company delivery system in place and planned for the next five years, including the city gate station(s).

19. Subsequently, no later than September 15 each year for the first five years of operation and at least every three years thereafter, the Company shall provide to Staff and Public Counsel updated reliability information addressing all the items in section one (1) of Reliability and Natural Gas Supply Planning.

20. Every 3 years, OEP shall provide to Staff and Public Counsel an updated study of whether the \*\*\* \_\_\_\_\_ \*\*\*  
than \*\*\* \_\_\_\_\_. \*\*\* The study shall include the Company plans for any changes to its system as a result of the study findings.

**N. Hedging**

21. The Company shall provide to Staff and Public Counsel no later than 60 days prior to flowing any natural gas, its hedging plan to mitigate upward natural gas price volatility for the upcoming winter. Thereafter, the Company shall provide its hedging plan to mitigate upward natural gas price volatility for the upcoming winter on or before May 15 of each year.

**O. PGA/ACA Review**

22. As with all Missouri Local Distribution Companies (LDCs), there will be the standard ACA review of actual gas costs and billed revenues, a reliability review, as well as a prudence review regarding all aspects of decisions impacting the level of actual gas costs. For the purposes of the PGA clause, “cost of gas” includes the cost for the purchase, transportation and storage of gas upstream of the outlet with the interstate pipeline. The Company shall provide to Staff and Public Counsel no later than 60 days

prior to flowing any natural gas, its draft PGA tariff sheets calculating the costs it recommends be included in the purchased gas adjustment factor.

**P. Gas Safety**

23. OEP shall provide only retail natural gas service unless and until necessary filings are made, for Commission approval, that address affiliate transactions and corporate structure questions to the Commission's satisfaction. OEP shall only provide service to a master meter operator after first consulting with the Commission's Gas Safety Staff. OEP shall submit the final construction plans to the Commission's Gas Safety Staff before actual, initial construction begins. OEP shall notify the Commission's Gas Safety Staff in advance of commencement of initial construction. OEP shall complete the necessary construction in a proper manner by qualified personnel in accordance with sound engineering principals and applicable regulations. OEP shall have properly trained and qualified personnel positioned to operate the distribution system. OEP shall have the following required manuals and programs completed and submitted to the Commission's Gas Safety Staff before any natural gas is introduced into any pipeline:

- a. Operations and Maintenance (O&M) manual. This manual must contain all procedures used to comply with sections 9 through 14 of the Commission's pipeline safety regulations. *See 4 CSR 240-40.030(12)(C).*
- b. Operator Qualification Plan. A written qualification program must be completed with the qualification of all individuals performing covered tasks completed prior to operation of the pipeline. Employees can perform

independently only functions for which they have had appropriate training and testing. See 4 CSR 240-40.030(12)(D).

- c. Emergency Manual. This manual must contain procedures to deal with emergencies as specified in section (12)(J) of the PSC pipeline safety regulations. See 4 CSR 240-40.030(12)(J).
- d. Anti-Drug and Alcohol Misuse Plan. See 4 CSR 240-40.080 [49 CFR Parts 40 and 199].
- e. Damage prevention program and membership in Missouri One Call Systems, Inc. This program will address the notification of the public and potential excavators in the vicinity of the pipeline about how to learn the location of the buried pipeline before excavation. See 4 CSR 240-40.030(12)(I). Membership in Missouri One Call System, Inc. is mandatory for all underground pipeline operators as per RSMo Chapter 319.022 and federal amendment 49 CFR Part 192-82.
- f. Public education program. This program will provide continuing education to the public in the vicinity of the pipeline, as well as, government officials, excavators, and the customer, about how to recognize a gas pipeline emergency for the purpose of reporting it to the operator (compliance with portions of this requirement may be combined in item e). See 4 CSR 240-40.030(12)(K).

**Q. Uniform System of Accounts**

24. The Company will keep its account numbers as stated in the General Instruction No. 3(C) of Part 201 (Uniform System of Accounts) of the Accounting and Reporting Requirements for Natural Gas Companies.

**R. Surveillance**

25. Upon approval of this transaction, OEP shall begin providing to Staff and OPC "surveillance reports", or periodic reports of earnings.

**S. Other Provisions**

26. None of the signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation, depreciation or revenue related method, any service or payment standard, and 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 Commission, judicial review or other proceeding, except as otherwise expressly specified herein. Nothing in this Stipulation and Agreement shall preclude the Staff in future proceedings from providing recommendations as requested by the Commission or limit Staff's access to information in any other proceedings. Nothing in this Stipulation and Agreement shall be deemed a waiver of any Commission statute or regulation.

27. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not approve this Stipulation and Agreement, or approves this Stipulation and Agreement with modifications or conditions to which signatory parties

object, this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

28. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1 (RSMo. 2000) to present testimony, to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.070. (RSMo. 2000); and their respective rights to judicial review of the Commission's Report and Order in this case pursuant to Section 386.510 (RSMo. 2000).

29. The Staff shall also 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 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 Staff. 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 the Commission's rules on confidential information.

30. The Staff shall, within ten (10) days, file a memorandum in support of this Stipulation. Each of the other 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 Signatories.

31. To assist the Commission in its review of this Stipulation, the Parties also request that the Commission advise them of any additional information that the Commission may desire from the Parties relating to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.

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

(a) Approving all of the specific terms and conditions of this Stipulation and Agreement as a resolution of all issues in this case;

(b) Granting OEP a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a system for the provision of natural gas service to the public in the specific areas described in Exhibit D to OEP's Application in this case, as amended on September 4, 2007 including the cities listed in paragraph 7;

(c) Authorizing and requiring OEP to adopt tariffs to establish rates, rules and regulations as substantially modeled after the currently-effective tariffs of Missouri Gas Utility, using the rates in OEP's Feasibility Study;

(d) Ordering OEP to submit a financing plan, prior to beginning construction, that is satisfactory to the Commission;

(e) Ordering that OEP will own, as opposed to renting or leasing, all equipment, plant, works or system used in supplying, transporting and distributing natural gas \*\*\* \_\_\_\_\_.

(f) \*\*\* \_\_\_\_\_

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Respectfully submitted,

**/s/ Lera L. Shemwell**

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**/s/ William D. Steinmeier**

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COUNSEL FOR OZARK ENERGY  
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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 8<sup>th</sup> day of November 2007.

**/s/ Lera L. Shemwell**

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