

**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)
Lebanon, Missouri.)

Case No. GA-2007-0212

MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY PROCEEDINGS

An essential requirement to the granting of a Certificate of Convenience and Necessity by the Public Service Commission is that the Applicant shows “that it has received the required consent of the proper municipal authorities.” §393.170.2, RSMo 2000; *accord* 4 CSR 240-3.205(1)(D)(1); *Re Laclede Gas Co.*, PSC Case No. GA-2005-0118 (Order Approving Application, Granting Certificate and Closing Case). As will be demonstrated in this Motion, Southern Missouri Gas Company d/b/a Southern Missouri Natural Gas (SMNG) does not have the requisite franchises or other consents in order to be granted a certificate of convenience and necessity in this Matter and its application in this Matter should be dismissed for good cause shown, pursuant to 4 CSR 240-2.116, or ordered stayed until SMNG provides proof of required consent by the local governments to be served.

1. SMNG filed its Application in this matter on or about December 6, 2006, seeking to provide natural gas services in the City of Lebanon.¹
2. In its Application, SMNG stated that it was in the process of obtaining a franchise from the City of Lebanon and would late-file a copy of the ordinance. ¶¶ 4, 8.

¹ The Caption of the Matter is only as to the City of Lebanon; however, ¶4 of the Application states that SMNG was also seeking to serve “various unincorporated environs” and also seeking franchises “from other municipalities in the area that may, in the future, seek to be served by SMNG.”

3. On or about February 8, 2007, SMNG filed Appendix F to its Application, Ordinance No. 4457, purporting to be an ordinance of the City of Lebanon granting SMNG a natural gas franchise. A copy of Appendix F is attached as Exhibit 1.

4. On or about April 12, 2007, counsel for Intervenor Missouri Propane Gas Association (MPGA) sent correspondence to counsel for the City of Lebanon and counsel for SMNG in this Matter challenging the legality of the purported grant of a natural gas franchise by Ordinance No. 4457. See Exhibit 2 for copies of the letters with the attachment.

5. Intervenor MPGA cited to a statute requiring a vote before a natural gas franchise could be lawfully granted by the City of Lebanon and included with the April 12, 2007, a draft petition challenging the ordinance. Exhibit 2.

6. Counsel for MPGA never received a response from either recipient of the letters.

7. Representatives of SMNG were aware that there may be an issue as to whether an election was required for the franchise to be valid. *See* e-mail exchange between Scott Shumate, Public Works Director for the City of Lebanon, and Randy Maffett, of Sendero Capital Partners, Inc., dated October 19, 2006, a copy of which is attached to the draft Petition that is Exhibit 2 (and attached separately as Exhibit 3 for convenient reference).

8. On or about May 14, 2007, the City of Lebanon passed Ordinance No. 4483, a signed and attested copy of which is attached as Exhibit 4.

9. Ordinance No. 4483 submits Ordinance No. 4457 to a vote of the people of the City of Lebanon on August 7, 2007. Exhibit 4.

10. Sections 4 and 5 of Ordinance No. 4483 condition the effectiveness or validity of Ordinance No. 4457 on the approval of the majority of qualified voters voting at the election on August 7, 2007. Exhibit 4.

11. Based on the foregoing, SMNG does not have the requisite franchise from the City of Lebanon it purported to have in submitting Appendix F to its Application in this Matter.

12. It will be another three months before SMNG could possibly have such requisite franchise.

13. The filings of the PSC staff in this matter have demonstrated that SMNG repeatedly and continually failed to provide complete answers to the Data Requests from PSC staff. *See Staff Status Reports, April 13, 2007 and February 27, 2007.*

14. The PSC Staff Report filed May 15, 2007, and stated that a draft of its proposed recommendation on this Matter will be provided to SMNG with a final recommendation or agreement or other filing approximately one month later.

15. MPGA believes that PSC staff was not aware of the issue with the Ordinance when it filed its report May 15, 2007.

For the foregoing reasons, Intervenor MPGA respectfully requests the Commission enter an order dismissing the Application in this Matter, staying any determination in the Matter pending the outcome of the City of Lebanon franchise election, or for such other relief as the Commission deems just and appropriate.

Respectfully Submitted,

/s/ Khristine A. Heisinger

Charles W. Hatfield, Mo. Bar No. 40363
Khristine A. Heisinger, Mo. Bar No. 42584
STINSON MORRISON HECKER LLP
230 W. McCarty St.
Jefferson City, MO 65101
Tel. (573) 636-6263
Fax (573) 636-6231
chatfield@stinson.com
kheisinger@stinson.com

ATTORNEYS FOR MISSOURI PROPANE GAS
ASSOCIATION

CERTIFICATE OF SERVICE

On this 16th day of May 2007, a copy of the foregoing was served via e-mail to:

General Counsel Office
Missouri Public Service
Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Lewis Mills
Office Of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Lera Shemwell
Missouri Public Service
Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Lera.Shemwell@psc.mo.gov

James M. Fischer
101 Madison Street, Suite 400
Jefferson City, MO 65101
jfisherpc@aol.com

Aimee Davenport
Lathrop & Gage
314 East High Street
Jefferson City, MO 65101
adavenport@lathropgage.com

Paul S. DeFord
Lathrop & Gage
2345 Grand Blvd
Kansas City, MO 64106-2684
pdeford@lathropgage.com

*Attorney for Southern Missouri
Natural Gas*

*Attorney for Southern Star
Central Gas Pipeline*

*Attorney for Southern Star
Central Gas Pipeline*

/s/ Khristine A. Heisinger

ATTORNEYS FOR MISSOURI PROPANE GAS
ASSOCIATION

Exhibit 1

APPENDIX F

APPROVED FRANCHISE OF THE CITY OF LEBANON, MISSOURI



BILL NO. 2289

ORDINANCE NO 4457

AN ORDINANCE GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO SOUTHERN MISSOURI GAS COMPANY, L.P. (D/B/A SOUTHERN MISSOURI NATURAL GAS) A MISSOURI LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR PLACE, MAINTAIN, OPERATE AND USE ITS MAINS, SERVICE PIPES, CONDUITS, CONDUCTORS, TANKS, VAPORIZERS, UNDERGROUND VAULTS, REGULATORS, AND OTHER EQUIPMENT, WITH ALL NECESSARY OR APPROPRIATE APPLIANCES AND APPURTENANCES IN CONNECTION THEREWITH, IN, ALONG, ACROSS, OVER AND UNDER THE STREET, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES AND OTHER PUBLIC PLACES IN THE CITY OF LEBANON, MISSOURI AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR THE PURPOSE OF TRANSMITTING, FURNISHING, TRANSPORTING, AND/OR DISTRIBUTING GAS FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH.

BE IT ORDAINED by the Council of the City of Lebanon, Missouri as follows:

Section 1: The right, permission and authority (hereinafter sometimes called the "Franchise") is hereby granted to, and vested in Southern Missouri Gas Company, L.P., a Missouri limited partnership, d/b/a Southern Missouri Natural Gas, (hereinafter sometimes called "SMNG"), its successors and assigns, to construct, reconstruct, excavate for, place, maintain, operate and use all necessary appropriate mains, service pipes, conduits, conductors, tanks, vaporizers, underground vaults, regulators and other equipment with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges and other public places within the corporate limits of the City of Lebanon, Missouri as now fixed and as hereafter extended, and areas dedicated to the City for the public utility use, for the purpose of furnishing transporting and distributing gas for light, heat, power and other purposes within the city limits of the Lebanon, Missouri and in territory adjacent to said City and for the purpose of transporting and transmitting gas through said City; all such equipment, appliances and apparatus to be installed and maintained with due regard to the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys sidewalks, squares, bridges and other public utility use; and exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the City in the exercise of its police powers.

Section 2: Extension of, and additions to, the distribution system maintained by SMNG, its successors or assigns, in the City of Lebanon, Missouri shall be made in accordance with the rules and regulations governing such extensions and additions by

SMNG now on file with the Public Service Commission of Missouri, or in accordance with such amended rules and regulations governing such extensions and additions by SMNG, its successors or assigns, as may hereafter become effective in the manner provided by law.

Section 3a: The rights, privileges and authority hereby granted shall inure to and be vested in SMNG, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon SMNG shall devolve and be binding upon its successors and assigns successively, in the same manner, provided however that the assignment, but not the succession, to the rights, privileges and authority herein granted shall be subject to the approval of the City. SMNG shall, however, provide prior notice of any succession and indicate the individual the City should contact regarding this Agreement and who is responsible for maintenance and coordination of the right of way. Assignment requiring consent by the City shall not be unreasonably withheld.

Section 3b: Grant Not Exclusive: The Franchise and the right it grants to use and occupy the Public Rights-of-Way are not exclusive and do not explicitly or implicitly preclude the issuance of other franchises to operate Natural Gas Distribution Systems or other like systems within the City, affect the City's right to authorize use of Public Rights-of-Way by other Persons to operate Natural Gas Systems or other like systems or for other purposes as it determines appropriate, or affect the City's right to itself construct, operate or maintain a Natural Gas Distribution System or other like system, with or without a Franchise.

Notice should be provided to:

Joe Knapp, City Administrator
Scott Shumate, Public Works Director
PO Box 111
Lebanon MO 65536
417-532-2156
417-588-6090
417-532-8388 fax

Section 4: Insurance and Indemnification

(a) Insurance Required: Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the City and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Missouri law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Natural Gas Distribution System, and the conduct of the Franchisee's business in the city, in the minimum amounts of:

- (1) \$1,000,000 for property damage resulting from any one accident;

- (2) \$5,000,000 for personal bodily injury or death resulting from any one accident; and
- (3) \$2,000,000 for all other types of liability.

Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of Franchisee for damages under the Franchise.

(b) **Qualifications of Sureties:** All insurance policies shall be with sureties qualified to do business in the State of Missouri, with a B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the City.

- (1) **Policies Available for Review:** All insurance policies shall be available for review by the City, and Franchisee shall keep on file with the City certificates of insurance.
- (2) **Additional Insured's; Prior Notice of Policy Cancellation:** All general liability insurance policies shall name commissioners, agents, and employees as additional insured's and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City Clerk. Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the City Council which complies with this Franchise Agreement.
- (3) **Failure Constitutes Material Violation:** Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(c) **Indemnification:**

- (1) Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Natural Gas Distribution System; the conduct of the Franchisee's business in the City; or in any way arising out of the granting of the Franchise or Franchisee's enjoyment or exercise of this Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the this Franchise Agreement.
- (2) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim,

suit, or proceeding prior to Franchisee assuming such defense. The City shall notify Franchisee of claims and suits as soon as practicable, but failure to give such notice shall not relieve Franchisee of its obligations hereunder. Once Franchisee assumes such defense, the City may at its option continue to participate in the defense at its own expense.

(3) Notwithstanding anything to the contrary contained in this Agreement the City shall not be so indemnified or reimbursed in relation to any amounts attributable to the City's own negligence, willful misconduct, intentional or criminal acts, including in the performance of its obligations under this Franchise Agreement.

Section 5: This ordinance shall be and continue in force and effect for a period of twenty (20) years from the date of execution herein (sometimes hereinafter referred to as the "Primary Term"). This ordinance shall be reviewed by the City Council prior to two (2) years of the expiration of this franchise. Based on the review and determination of the City Council, the City shall submit in writing to SMNG no less than two (2) years prior of the expiration of this Ordinance, the City's intent to renew this ordinance for a period not to exceed twenty (20) years; to modify this ordinance for a period not less than 5 years nor more than 20 years. The City shall include any and all information related to its decision to extend or modify the ordinance or to exercise its option to purchase the system. The City reserves the right to terminate this franchise prior to its expiration date in the event:

- (a) SMNG fails to comply with any provision hereof; provided, however, that if such failure of compliance shall be due to a cause beyond the control of SMNG the franchise shall not be so terminated. In the event SMNG shall default in the performance of any of the terms, covenants, or conditions herein and such default is curable, City shall give written notice to SMNG to commence within ten days the work necessary to cure such default, and if SMNG fails to comply with such notice, City may terminate this franchise.
- (b) Any provision hereof becomes invalid or unenforceable and City expressly finds that such provision constituted a consideration material to the granting of this franchise.

The city shall give SMNG 15 days' notice of any termination proceedings.

Section 6: Neither acceptance of, nor compliance with, the provisions of this ordinance shall in anywise impair or affect, or constitute be construed as a relinquishment or waiver of, any right, permission or authority with SMNG, its successors or assigns, may have independently of this ordinance; nor shall any use by SMNG, its successors or assigns, of public property or places in the City of Lebanon,

Missouri as authorized by this ordinance or service rendered by SMNG, its successors, or assigns, in said City, be treated as use solely of the rights, permission and authority provided for by this ordinance, or as service referable solely to this ordinance, or to any obligation of service consequent upon acceptance thereof or as in anywise indicating nonuse of, non-compliance with, any obligation incident to, any right permission or authority vested in SMNG, its successors or assigns independently of this ordinance; and the acceptance provided for in section 5 of this ordinance; and each and every compliance with the provisions of this ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 6, with the same force and effect as though each of the provisions of this section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance.

Section 7: This ordinance shall not relieve SMNG of the obligation to comply with any ordinance now existing in the City or enacted in the future requiring SMNG to obtain written permits or other approval from the City prior to commencement of construction of facilities within the streets thereof. The location of any franchise property installed hereunder shall be first approved by the City.

All franchise property installed and maintained hereunder shall be constructed in a good workmanlike manner and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by the City, the PSC, and the U.S. Department of Transportation, Office of Pipeline Safety. All pipelines installed shall conform to the applicable U.S. A. Standard Code for Pressure Pipeline, in its latest revision.

All excavations shall be made and refilled in strict compliance with City ordinances that may be in effect at the time of the performance of the work and shall be so made as not to interfere unreasonably with the free use of the streets by the public.

Upon completion of the work for which street excavations are made, all portions of the streets which have been excavated or otherwise damaged by such excavation work shall be restored to as good condition as they were in before the commencement of such work, to the satisfaction of the City Engineer.

SMNG shall promptly repair any leaks or breaks in its facilities, consistent with good utility practice. Such emergency repair of franchise property may be commenced without prior permit, provided however, that SMNG shall, by not later than the next normal working day, provide notice to the City and apply to the City Department of Public Works for a permit authorizing such emergency work. Such permit will not be unreasonably withheld; however, SMNG remains obligated to perform the work in the least disruptive manner possible, subject to protecting at all times the public safety.

The City shall retain the right to determine that it is reasonable and necessary that the franchise property be temporarily disconnected, abandoned, temporarily or permanently removed, temporarily or permanently relocated or substitute facilities

installed, in order that the City, may relocate, change grade, construct, use, maintain, change or modify any street improvement or city-owned facilities. Upon such determination, the City shall provide notice, in writing, to SMNG, whereupon 30 days after the service of such notice upon SMNG, SMNG will at its sole cost and expense begin and diligently prosecute the necessary work to completion, Upon failure to do so, the City cause said work to be completed and SMNG shall immediately pay for the same upon presentation of an itemized account of the cost thereof.

The City, upon such terms and conditions as it may determine, may give SMNG permission to abandon, without removing, franchise property installed. The length of any pipeline or facility abandoned with such permission shall not be considered in calculating payments due under the franchise until the date the City has inspected and approved in writing the abandonment work. Such abandonment may also be subject to approval by other governmental authorities, such as the PSC, in addition to the City. The ownership of all franchise property abandoned pursuant to this section shall thereafter vest in the City.

Section 8: If any provision of this ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 9: As part of the consideration for the rights and privileges conferred by this Ordinance, SMNG shall pay to the City an amount equal to five percent (5%) of its receipts from sales of gas and/or transportation service from each customer; the five percent (5%) hereinafter referred to as the "Franchise Fee." The City agrees to waive its rights with respect to franchise fees for commercial and industrial customer classes LGS, LV and Transport, and hereby establishes a franchise fee schedule for customer classes LGS, LV and Transport in an amount equal to 1% of gross receipts from such customers for a period of one year starting on the date of first deliveries of Natural Gas to such customer class. The franchise fee for commercial customers shall thereafter increase 1% per year up to maximum of 5%. The payment shall be due monthly payable in arrears.

Section 10: The Grantee shall maintain an appropriate business office in Lebanon which shall be open during normal business hours, have a publicly listed business telephone and be so operated to receive subscriber complaints and requests for repairs or adjustments on a twenty-four hour basis. All complaints and documentation thereof shall be handled in accordance with the rules and regulations of the PSC.

Section 10a: Upon reasonable notice, the City shall be entitled to audit SMNG's books and records in order to confirm that the revenues paid to the City are consistent with this Ordinance.

Section 10b: Maps and records identifying the location of SMNG's facilities within and adjacent to the City shall be filed in with the Department of Public Works.

Section 11: This Ordinance shall be paid in full force and effect from and after its passage and approval.

Section 12: This Ordinance shall be interpreted under the laws of the State of Missouri.

Section 13: The City and SMNG each hereby represent and warrant that they have the authority to enter into and perform the obligations under this Ordinance. However, SMNG represents that such warranty on their behalf is contingent upon receiving all necessary approvals from the Missouri Public Service Commission.

Section 14:

(a) Upon a determination by the City that the ownership of the franchise facilities by the City is in the City's best interest, the City shall have the right, within the first five years of this Ordinance, to buy and operate the facilities installed by SMNG. The payment to SMNG will be equal to the book value of the facilities, less depreciation, plus an additional fifteen percent (15%) of BVL. The City will return to SMNG any franchise fees paid by SMNG to the City during those five years.

Option 14a must be exercised by the City of Lebanon prior to SMNG presenting a bona fide bid or offer from a prospective buyer. In the event SMNG presents a bona fide bid or offer from a prospective buyer prior to the City electing to exercise its option to purchase the system then the City shall have the right of first refusal according to the terms as specified in option 14c. The City of Lebanon shall retain its purchase rights and terms under 14a in the event that SMNG does not consummate the sale and transfer of the system to prospective buyer and/or the City of Lebanon has not exercised its option to purchase under 14c. Further, it being hereby understood that City's option to purchase under 14a shall apply only to assets related to the Lebanon system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Lebanon, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

(b) Nothing in this ordinance shall prohibit the parties herein to negotiate in good faith terms of sale and the City's right to purchase and operate the facilities installed by SMNG after the initial five (5) years of this Ordinance.

(c) In the event SMNG elects to sell the facilities contemplated herein related to natural gas distribution for the City, the City shall be granted a right of first refusal to match the terms and conditions of any offer SMNG would otherwise accept.

Upon written notice to the City by SMNG that SMNG intends to sell said facilities the City shall have fifteen (15) business days to notify SMNG in writing of its intent to exercise its right of first refusal. Should the City fail to provide such notification to SMNG within the specified time frame, the City shall have forfeited its right of first refusal and SMNG shall be free to pursue and consummate the sale of said facilities with no further obligations with respect to said right of first refusal. It being hereby understood that right of first refusal shall apply only in the event that SMNG has determined to sell its assets related to the Lebanon system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Lebanon, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

PASSED AND APPROVED THIS 16th DAY OF JANUARY, 2007

CITY OF LEBANON, MISSOURI

BY: 

MAYOR

ATTEST:



CITY CLERK



SOUTHERN MISSOURI NATURAL GAS

FIRST READING HELD JANUARY 16, 2007
SECOND READING HELD JANUARY 16, 2007


Approved as to Form, City Attorney

Exhibit 2



STINSON
MORRISON
HECKER LLP

Charles W. Hatfield
(573) 636-6827
chatfield@stinson.com
www.stinson.com

230 W. McCarty Street
Jefferson City, MO 65101

Tel (573) 636-6263
Fax (573) 556-3632

April 12, 2007

VIA FACSIMILE AND U.S. MAIL

James M. Fischer
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101

Re: City of Lebanon's Grant of a Natural Gas Franchise to
Southern Missouri Natural Gas Company

Dear Mr. Fischer:

As you know, we represent the Missouri Propane Gas Association, an intervener in your client, Missouri Natural Gas Company's ("SMNG") request for a natural gas Certificate of Convenience and Necessity in Case No. 2007-GA-0212 before the Public Service Commission ("PSC").

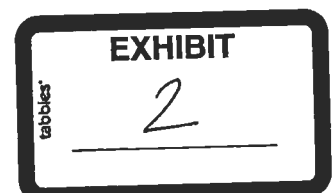
As you know, before the PSC could grant any such certificate, SMNG must show the PSC that it has the required consent of the city in which it proposes to operate. The City of Lebanon adopted Ordinance 4457 in January 2007. This ordinance purports to grant a natural gas franchise to SMNG. The Ordinance was passed by action of the city council.

There is a state statute clearly applicable to third class cities such as Lebanon that requires a natural gas franchise be approved by a majority of voters in the city in order to be granted. § 77.210, RSMo. We understand that there is a general provision applicable to cities, towns and villages that does not require a vote. Statutory construction requires a conclusion that the City is bound by the more specific and later enacted requirements of §77.210. Since the City did not follow that section, SMNG does not have a lawful franchise to provide service to the City of Lebanon..

We request that you immediately inform the Public Service Commission of this matter and take steps to amend or withdraw any submission to the PSC that represents the existence of a valid franchise. If you do not do so, we will so advise the Commission and are prepared to file the enclosed Petition for Declaratory Judgment and Injunctive Relief against the City of Lebanon.

KANSAS CITY
OVERLAND PARK
WICHITA
WASHINGTON, D.C.
PHOENIX
ST. LOUIS
OMAHA
JEFFERSON CITY

DB03/506471 0006/7469182.1

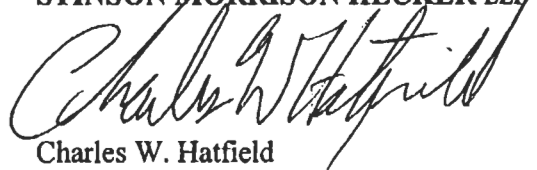


James M. Fischer
April 12, 2007
Page 2

If SMNG will withdraw its application, we see no need to proceed on the matter. Please let me know within two weeks whether you will notify the Commission that no lawful franchise has been granted and/or withdraw SMNG's application or whether we should make our own submission.

Sincerely,

STINSON MORRISON HECKER LLP

A handwritten signature in cursive script, appearing to read "Charles W. Hatfield", written over the firm name.

Charles W. Hatfield

Enclosure



STINSON
MORRISON
HECKER LLP

Charles W. Hatfield
(573) 636-6827
chatfield@stinson.com
www.stinson.com

230 W. McCarty Street
Jefferson City, MO 65101

Tel (573) 636-6263
Fax (573) 556-3632

April 12, 2007

VIA FACSIMILE AND U.S. MAIL

David E. Wilhite, City Counselor
Donnelly, Baldwin and Wilhite, P.C.
112 North Lebanon
Lebanon, MO 65536-2902

Re: City of Lebanon's Grant of a Natural Gas Franchise to
Southern Missouri Natural Gas Company

Dear Mr. Wilhite:

My firm represents the Missouri Propane Gas Association. The PSC granted the Association the right to intervene in Southern Missouri Natural Gas Company's ("SMNG") Application to the Missouri Public Service Commission ("PSC") for a Certificate of Convenience and Necessity to construct and maintain a natural gas system in and provide natural gas service in Lebanon, Missouri.

Before the PSC can grant any such certificate, SMNG must show the PSC that it has the required consent of the city in which it proposes to operate. As part of that showing, SMNG has indicated it has the City's consent. As you know, the City of Lebanon adopted Ordinance 4457 in January 2007. This ordinance purports to grant a natural gas franchise to SMNG. The Ordinance was passed by action of the city council without a vote of the people.

There is a state statute clearly applicable to third class cities such as Lebanon that requires a natural gas franchise be approved by a majority of the voters in the city in order for it to be granted. § 77.210, RSMo. We understand that there is a general provision applicable to cities, towns and villages that does not require a vote. Applying the laws of statutory construction, however, it is clear that the more specific requirement on third class cities would take precedence over the general provision. Moreover §77.210 was the later enacted statute. Therefore, the law requires the City to follow § 77.210 and have a vote of the people before granting a natural gas franchise.

As Ordinance 4457 is an unlawful violation of § 77.210, RSMo, we are prepared to file the enclosed Petition for Declaratory Judgment and Injunctive Relief against the City of Lebanon. Rather than simply file this lawsuit, however, we want to bring this issue to the City for consideration and to see if we can avoid this lawsuit.

KANSAS CITY
OVERLAND PARK
WICHITA
WASHINGTON, D.C.
PHOENIX
ST. LOUIS
OMAHA
JEFFERSON CITY

DB03/506471 0006/7469209.1

David E. Wilhite
April 12, 2007
Page 2

We request that the City council reconsider its ordinance and take the steps necessary to repeal, rescind or otherwise nullify that which did not comply with the law. WE further request assurance that, if the City intends to grant a natural gas franchise, it will hold an election as required by law. We have provided a copy of the proposed lawsuit to SMNG's counsel as well and requested that he inform the PSC that there is an issue as to the legality of the franchise.

We will delay filing the lawsuit for at least two weeks to give you time to consider this issue and respond. I would be happy to discuss it with you further.

I look forward to hearing from you so that we may resolve this matter without the need to file a lawsuit.

Sincerely,

STINSON MORRISON HECKER LLP

A handwritten signature in black ink, appearing to read "Charles W. Hatfield", written over a horizontal line.

Charles W. Hatfield

Enclosure

IN THE CIRCUIT COURT OF LACLEDE COUNTY, MISSOURI

XXXXXX and
XXXXXX,

Plaintiffs,

v.

CITY OF LEBANON, MISSOURI,
a municipal corporation,

Serve: Laina Starnes, City Clerk
City of Lebanon
400 S. Madison
Lebanon, MO 65536

Defendant.

DRAFT

Case No. _____

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

For their cause of action against Defendant, Plaintiffs state:

1. Plaintiff . . .
2. Plaintiff . . .

3. Defendant City of Lebanon, Missouri is a municipal corporation of the state of Missouri, located wholly within Laclede County, Missouri and duly organized and existing under the Revised Statutes of Missouri as a third class city.

4. This Court has jurisdiction to consider this Petition as it requests a declaratory judgment.

5. Venue is proper in this Court.

6. Plaintiffs have no adequate remedy at law.

7. On January 16, 2007, Bill Number 2889 was passed and approved by the City Council of the City of Lebanon and entered as Ordinance 4457. A true and correct copy of the bill/ordinance is attached as Exhibit A.

8. Ordinance 4457 purports to grant a natural gas franchise for the City of Lebanon to Southern Missouri Natural Gas Company, L.P. ("SMNG").

9. There is a real dispute between the City and Plaintiffs regarding whether there must be an election in order for the City of Lebanon to grant a natural gas franchise. The City has proceeded without an election; Plaintiffs' position is that the law requires an election.

10. The City of Lebanon has the mayor and city council form of government as set forth in Chapter 77, RSMo.

11. As a third class city with a Ch. 77 mayor/council form of government, the City of Lebanon can only grant a natural gas franchise pursuant to Section 77.210, RSMo 2000, which states in relevant parts:

All cities of the third class may grant to any person or corporation . . . the privilege and franchise for a period of thirty years, to use the streets, alleys and other public places of such cities, for the purpose of laying pipes, conduits or other heating apparatus thereon and therein, . . . to furnish heat to the inhabitants of the city . . .

* * *

Such franchise or privilege may be extended or renewed by the city council of such city for another period or periods . . . and the extensions or renewals of such franchise or privilege shall be subject to voter approval of the majority of the voters voting on the question, pursuant to the provisions of section 88.251, RSMo. An initial privilege or franchise must be approved by a majority of the voters of the municipality voting on the question.

(Emphasis added.)

12. The natural gas franchise granted by Ordinance 4457 was not done after approval by a majority of the voters.

13. City officials understood that an election was required by law. See Exhibit B, true and accurate copies of e-mails and communications regarding the matter.

14. No election whatsoever took place regarding whether the City should grant a natural gas franchise to SMNG.

15. City officials chose to proceed without conducting an election unless someone else forced them to conduct an election. See Exhibit B.

16. Plaintiffs have suffered harm in being denied the right to vote on the matter of the City granting a natural gas franchise.

17. On or about December 6, 2006, SMNG filed an application for a certificate of public convenience and necessity from the Missouri Public Service Commission ("PSC") to construct, install, own, operate, control, manage and maintain a natural gas distribution system to provide natural gas service in the City of Lebanon, Case No. GA-2007-0212.

18. A prerequisite to being granted a certificate of public convenience and necessity by the PSC is that the applicant has received the required consent of the city in which it proposes to provide service. Section 393.170, RSMo 2000; 4 CSR 240-3.205(1(D)(1).

19. In its case at the PSC, SMNG has represented that it has obtained a franchise from the City of Lebanon to provide natural gas service to customers in the city, and has filed Ordinance 4457 as proof of same.

WHEREFORE, Plaintiffs respectfully request this Court declare that for the City of Lebanon's Ordinance 4457 granting a natural gas franchise to Southern Missouri Natural Gas Company, L.P. is not in compliance with Section 77.210, RSMo and is therefore unlawful and void and enter a preliminary injunction, permanent injunction against the City prohibiting it from taking any action in furtherance of the Ordinance, and such other relief as the Court deems just and proper

Respectfully submitted,

STINSON MORRISON HECKER LLP

DRAFT

By: _____

Charles W. Hatfield, No. 40363
Khristine A. Heisinger, No. 42584
230 West McCarty Street
Jefferson City, MO 65101
Tel.: (573) 636-6263
Fax: (573) 636-6231
chatfield@stinson.com
kheisinger@stinson.com

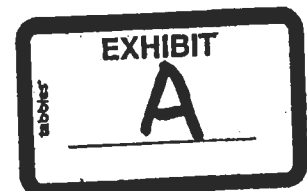
ATTORNEYS FOR PLAINTIFFS

AN ORDINANCE GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO SOUTHERN MISSOURI GAS COMPANY, L.P. (D/B/A SOUTHERN MISSOURI NATURAL GAS) A MISSOURI LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR PLACE, MAINTAIN, OPERATE AND USE ITS MAINS, SERVICE PIPES, CONDUITS, CONDUCTORS, TANKS, VAPORIZERS, UNDERGROUND VAULTS, REGULATORS, AND OTHER EQUIPMENT, WITH ALL NECESSARY OR APPROPRIATE APPLIANCES AND APPURTENANCES IN CONNECTION THEREWITH, IN, ALONG, ACROSS, OVER AND UNDER THE STREET, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES AND OTHER PUBLIC PLACES IN THE CITY OF LEBANON, MISSOURI AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR THE PURPOSE OF TRANSMITTING, FURNISHING, TRANSPORTING, AND/OR DISTRIBUTING GAS FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH.

BE IT ORDAINED by the Council of the City of Lebanon, Missouri as follows:

Section 1: The right, permission and authority (hereinafter sometimes called the "Franchise") is hereby granted to, and vested in Southern Missouri Gas Company, L.P., a Missouri limited partnership, d/b/a Southern Missouri Natural Gas, (hereinafter sometimes called "SMNG"), its successors and assigns, to construct, reconstruct, excavate for, place, maintain, operate and use all necessary appropriate mains, service pipes, conduits, conductors, tanks, vaporizers, underground vaults, regulators and other equipment with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges and other public places within the corporate limits of the City of Lebanon, Missouri as now fixed and as hereafter extended, and areas dedicated to the City for the public utility use, for the purpose of furnishing transporting and distributing gas for light, heat, power and other purposes within the city limits of the Lebanon, Missouri and in territory adjacent to said City and for the purpose of transporting and transmitting gas through said City; all such equipment, appliances and apparatus to be installed and maintained with due regard to the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys sidewalks, squares, bridges and other public utility use; and exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the City in the exercise of its police powers.

Section 2: Extension of, and additions to, the distribution system maintained by SMNG, its successors or assigns, in the City of Lebanon, Missouri shall be made in accordance with the rules and regulations governing such extensions and additions by



SMNG now on file with the Public Service Commission of Missouri, or in accordance with such amended rules and regulations governing such extensions and additions by SMNG, its successors or assigns, as may hereafter become effective in the manner provided by law.

Section 3a: The rights, privileges and authority hereby granted shall inure to and be vested in SMNG, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon SMNG shall devolve and be binding upon its successors and assigns successively, in the same manner, provided however that the assignment, but not the succession, to the rights, privileges and authority herein granted shall be subject to the approval of the City. SMNG shall, however, provide prior notice of any succession and indicate the individual the City should contact regarding this Agreement and who is responsible for maintenance and coordination of the right of way. Assignment requiring consent by the City shall not be unreasonably withheld.

Section 3b: Grant Not Exclusive: The Franchise and the right it grants to use and occupy the Public Rights-of-Way are not exclusive and do not explicitly or implicitly preclude the issuance of other franchises to operate Natural Gas Distribution Systems or other like systems within the City, affect the City's right to authorize use of Public Rights-of-Way by other Persons to operate Natural Gas Systems or other like systems or for other purposes as it determines appropriate, or affect the City's right to itself construct, operate or maintain a Natural Gas Distribution System or other like system, with or without a Franchise.

Notice should be provided to:

Joe Knapp, City Administrator
Scott Shumate, Public Works Director
PO Box 111
Lebanon MO 65536
417-532-2156
417-588-6090
417-532-8388 fax

Section 4: Insurance and Indemnification

(a) Insurance Required: Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the City and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Missouri law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Natural Gas Distribution System, and the conduct of the Franchisee's business in the city, in the minimum amounts of:

- (1) \$1,000,000 for property damage resulting from any one accident;

- (2) \$5,000,000 for personal bodily injury or death resulting from any one accident; and
- (3) \$2,000,000 for all other types of liability.

Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of Franchisee for damages under the Franchise.

(b) **Qualifications of Sureties:** All insurance policies shall be with sureties qualified to do business in the State of Missouri, with a B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the City.

(1) **Policies Available for Review:** All insurance policies shall be available for review by the City, and Franchisee shall keep on file with the City certificates of insurance.

(2) **Additional Insured's; Prior Notice of Policy Cancellation:** All general liability insurance policies shall name commissioners, agents, and employees as additional insured's and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City Clerk. Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the City Council which complies with this Franchise Agreement.

(3) **Failure Constitutes Material Violation:** Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(c) **Indemnification:**

(1) Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Natural Gas Distribution System; the conduct of the Franchisee's business in the City; or in any way arising out of the granting of the Franchise or Franchisee's enjoyment or exercise of this Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the this Franchise Agreement.

(2) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim,

suit, or proceeding prior to Franchisee assuming such defense. The City shall notify Franchisee of claims and suits as soon as practicable, but failure to give such notice shall not relieve Franchisee of its obligations hereunder. Once Franchisee assumes such defense, the City may at its option continue to participate in the defense at its own expense.

(3) Notwithstanding anything to the contrary contained in this Agreement the City shall not be so indemnified or reimbursed in relation to any amounts attributable to the City's own negligence, willful misconduct, intentional or criminal acts, including in the performance of its obligations under this Franchise Agreement.

Section 5: This ordinance shall be and continue in force and effect for a period of twenty (20) years from the date of execution herein (sometimes hereinafter referred to as the "Primary Term"). This ordinance shall be reviewed by the City Council prior to two (2) years of the expiration of this franchise. Based on the review and determination of the City Council, the City shall submit in writing to SMNG no less than two (2) years prior of the expiration of this Ordinance, the City's intent to renew this ordinance for a period not to exceed twenty (20) years; to modify this ordinance for a period not less than 5 years nor more than 20 years. The City shall include any and all information related to its decision to extend or modify the ordinance or to exercise its option to purchase the system. The City reserves the right to terminate this franchise prior to its expiration date in the event:

- (a) SMNG fails to comply with any provision hereof, provided, however, that if such failure of compliance shall be due to a cause beyond the control of SMNG the franchise shall not be so terminated. In the event SMNG shall default in the performance of any of the terms, covenants, or conditions herein and such default is curable, City shall give written notice to SMNG to commence within ten days the work necessary to cure such default, and if SMNG fails to comply with such notice, City may terminate this franchise.
- (b) Any provision hereof becomes invalid or unenforceable and City expressly finds that such provision constituted a consideration material to the granting of this franchise.

The city shall give SMNG 15 days' notice of any termination proceedings.

Section 6: Neither acceptance of, nor compliance with, the provisions of this ordinance shall in anywise impair or affect, or constitute be construed as a relinquishment or waiver of, any right, permission or authority with SMNG, its successors or assigns, may have independently of this ordinance; nor shall any use by SMNG, its successors or assigns, of public property or places in the City of Lebanon,

Missouri as authorized by this ordinance or service rendered by SMNG, its successors, or assigns, in said City, be treated as use solely of the rights, permission and authority provided for by this ordinance, or as service referable solely to this ordinance, or to any obligation of service consequent upon acceptance thereof or as in anywise indicating nonuse of, non-compliance with, any obligation incident to, any right permission or authority vested in SMNG, its successors or assigns independently of this ordinance; and the acceptance provided for in section 5 of this ordinance; and each and every compliance with the provisions of this ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 6, with the same force and effect as though each of the provisions of this section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance.

Section 7: This ordinance shall not relieve SMNG of the obligation to comply with any ordinance now existing in the City or enacted in the future requiring SMNG to obtain written permits or other approval from the City prior to commencement of construction of facilities within the streets thereof. The location of any franchise property installed hereunder shall be first approved by the City.

All franchise property installed and maintained hereunder shall be constructed in a good workmanlike manner and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by the City, the PSC, and the U.S. Department of Transportation, Office of Pipeline Safety. All pipelines installed shall conform to the applicable U.S. A. Standard Code for Pressure Pipeline, in its latest revision.

All excavations shall be made and refilled in strict compliance with City ordinances that may be in effect at the time of the performance of the work and shall be so made as not to interfere unreasonably with the free use of the streets by the public.

Upon completion of the work for which street excavations are made, all portions of the streets which have been excavated or otherwise damaged by such excavation work shall be restored to as good condition as they were in before the commencement of such work, to the satisfaction of the City Engineer.

SMNG shall promptly repair any leaks or breaks in its facilities, consistent with good utility practice. Such emergency repair of franchise property may be commenced without prior permit, provided however, that SMNG shall, by not later than the next normal working day, provide notice to the City and apply to the City Department of Public Works for a permit authorizing such emergency work. Such permit will not be unreasonably withheld; however, SMNG remains obligated to perform the work in the least disruptive manner possible, subject to protecting at all times the public safety.

The City shall retain the right to determine that it is reasonable and necessary that the franchise property be temporarily disconnected, abandoned, temporarily or permanently removed, temporarily or permanently relocated or substitute facilities

installed, in order that the City, may relocate, change grade, construct, use, maintain, change or modify any street improvement or city-owned facilities. Upon such determination, the City shall provide notice, in writing, to SMNG, whereupon 30 days after the service of such notice upon SMNG, SMNG will at its sole cost and expense begin and diligently prosecute the necessary work to completion, Upon failure to do so, the City cause said work to be completed and SMNG shall immediately pay for the same upon presentation of an itemized account of the cost thereof.

The City, upon such terms and conditions as it may determine, may give SMNG permission to abandon, without removing, franchise property installed. The length of any pipeline or facility abandoned with such permission shall not be considered in calculating payments due under the franchise until the date the City has inspected and approved in writing the abandonment work. Such abandonment may also be subject to approval by other governmental authorities, such as the PSC, in addition to the City. The ownership of all franchise property abandoned pursuant to this section shall thereafter vest in the City.

Section 8: If any provision of this ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 9: As part of the consideration for the rights and privileges conferred by this Ordinance, SMNG shall pay to the City an amount equal to five percent (5%) of its receipts from sales of gas and/or transportation service from each customer; the five percent (5%) hereinafter referred to as the "Franchise Fee." The City agrees to waive its rights with respect to franchise fees for commercial and industrial customer classes LGS, LV and Transport, and hereby establishes a franchise fee schedule for customer classes LGS, LV and Transport in an amount equal to 1% of gross receipts from such customers for a period of one year starting on the date of first deliveries of Natural Gas to such customer class. The franchise fee for commercial customers shall thereafter increase 1% per year up to maximum of 5%. The payment shall be due monthly payable in arrears.

Section 10: The Grantee shall maintain an appropriate business office in Lebanon which shall be open during normal business hours, have a publicly listed business telephone and be so operated to receive subscriber complaints and requests for repairs or adjustments on a twenty-four hour basis. All complaints and documentation thereof shall be handled in accordance with the rules and regulations of the PSC.

Section 10a: Upon reasonable notice, the City shall be entitled to audit SMNG's books and records in order to confirm that the revenues paid to the City are consistent with this Ordinance.

Section 10b: Maps and records identifying the location of SMNG's facilities within and adjacent to the City shall be filed in with the Department of Public Works.

Section 11: This Ordinance shall be paid in full force and effect from and after its passage and approval.

Section 12: This Ordinance shall be interpreted under the laws of the State of Missouri.

Section 13: The City and SMNG each hereby represent and warrant that they have the authority to enter into and perform the obligations under this Ordinance. However, SMNG represents that such warranty on their behalf is contingent upon receiving all necessary approvals from the Missouri Public Service Commission.

Section 14:

(a) Upon a determination by the City that the ownership of the franchise facilities by the City is in the City's best interest, the City shall have the right, within the first five years of this Ordinance, to buy and operate the facilities installed by SMNG. The payment to SMNG will be equal to the book value of the facilities, less depreciation, plus an additional fifteen percent (15%) of BVLD. The City will return to SMNG any franchise fees paid by SMNG to the City during those five years.

Option 14a must be exercised by the City of Lebanon prior to SMNG presenting a bona fide bid or offer from a prospective buyer. In the event SMNG presents a bona fide bid or offer from a prospective buyer prior to the City electing to exercise its option to purchase the system then the City shall have the right of first refusal according to the terms as specified in option 14c. The City of Lebanon shall retain its purchase rights and terms under 14a in the event that SMNG does not consummate the sale and transfer of the system to prospective buyer and/or the City of Lebanon has not exercised its option to purchase under 14c. Further, it being hereby understood that City's option to purchase under 14a shall apply only to assets related to the Lebanon system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Lebanon, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

(b) Nothing in this ordinance shall prohibit the parties herein to negotiate in good faith terms of sale and the City's right to purchase and operate the facilities installed by SMNG after the initial five (5) years of this Ordinance.

(c) In the event SMNG elects to sell the facilities contemplated herein related to natural gas distribution for the City, the City shall be granted a right of first refusal to match the terms and conditions of any offer SMNG would otherwise accept.

Upon written notice to the City by SMNG that SMNG intends to sell said facilities the City shall have fifteen (15) business days to notify SMNG in writing of its intent to exercise its right of first refusal. Should the City fail to provide such notification to SMNG within the specified time frame, the City shall have forfeited its right of first refusal and SMNG shall be free to pursue and consummate the sale of said facilities with no further obligations with respect to said right of first refusal. It being hereby understood that right of first refusal shall apply only in the event that SMNG has determined to sell its assets related to the Lebanon system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Lebanon, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

PASSED AND APPROVED THIS 16th DAY OF JANUARY, 2007

CITY OF LEBANON, MISSOURI

BY: 
MAYOR

ATTEST:


CITY CLERK


SOUTHERN MISSOURI NATURAL GAS

FIRST READING HELD JANUARY 16, 2007
SECOND READING HELD JANUARY 16, 2007


Approved as to Form, City Attorney

Heisinger, Khristine

From: Joe Knapp [leb1@llion.org]
Sent: Wednesday, March 22, 2006 8:27 AM
To: 'Scott Shumate'
Subject: NATural GAs

Scott,
David is still researching the NG issue. What he has found so far indicates that we would have to have an election approved by a majority of the voters to contract for Natural Gas utility. I remember the City passing an ordinance authorizing but we never held an election did we? I'll let you know more as I hear from David.

*Joe Knapp
City Administrator
City of Lebanon, Missouri*

3/7/2007



Heisinger, Khristine

From: John Butz [jbutz@rollacity.org]
Sent: Saturday, April 01, 2006 6:27 PM
To: Carol Daniels
Cc: Joe Knapp
Subject: RE: Natural Gas Franchise Election

Thanks Carol. It appeared to Joe and I an election was required by statute but I was not aware Rolla actually conducted one. Please fax Joe a copy of the ordinance at (417)532-8388.

Thanks,

John

From: Carol Daniels
Sent: Friday, March 31, 2006 1:44 PM
To: John Butz
Subject: Natural Gas Franchise Election

John,

In August 1993, the City conducted an election granting the natural gas franchise to Missouri Public Service. If the City of Lebanon would like a copy, I'd be glad to fax them a copy.

Please let me know if you need additional info.

Thanks!

Carol

3/6/2007

Heisinger, Khristine

From: Joe Knapp [leb1@llion.org]
Sent: Monday, April 03, 2006 8:16 AM
To: 'Scott Shumate'
Subject: FW: Natural Gas Franchise Election

Scott, FYI

*Joe Knapp
City Administrator
City of Lebanon, Missouri*

From: John Butz [mailto:jbutz@rollacity.org]
Sent: Saturday, April 01, 2006 6:27 PM
To: Carol Daniels
Cc: Joe Knapp
Subject: RE: Natural Gas Franchise Election

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Please let me know if you need additional info.

Thanks!

Carol

3/7/2007

P.O. Box 979, 901 North Elm Street, Rolla, MO 65402
TELEPHONE (573) 426-6942
FAX (573) 426-6947

CITY OF ROLLA

Fax

To:	Mr. Joe Knapp, City Administrator	From:	Carol Daniels, City Clerk
Fax:	(417) 532-8388.	Pages:	4 (pages to follow)
Phone:		Date:	04/03/2006
Re:	Natural Gas Election Ordinance	CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments**

Good Morning Mr. Knapp,

City Administrator John Butz asked me to fax you a copy of the City of Rolla ordinance, which authorized the election for a natural gas franchise. Please let me know if I can provide additional information.

Thank you.

Carol L. Daniels

City Clerk

(573) 426-6942

Fax 426-6947

PROPOSED ORDINANCE FOR BALLOT ISSUE

ORDINANCE NO. 2925

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY CLERK TO CALL FOR AN ELECTION PERTAINING TO THE PROPOSITION OF THE RATIFICATION OR REJECTION OF A NONEXCLUSIVE FRANCHISE GRANT TO MISSOURI PUBLIC SERVICE, A DIVISION OF UTILICORP UNITED INC., A DELAWARE CORPORATION, BY THE CITY OF ROLLA, MISSOURI, BY ORDINANCE NO. 2924 ON THE 7TH DAY OF JUNE, 1993, FOR THE USE BY SAID COMPANY OF THE STREETS, ROADS, ALLEYS, SIDEWALKS, BRIDGES, AND OTHER PUBLIC PLACES OF THE CITY FOR A PERIOD OF TWENTY (20) YEARS FOR THE TRANSMISSION, FURNISHING, TRANSPORTATION, AND DISTRIBUTION OF NATURAL GAS WITHIN AND THROUGH SAID CITY; PROVIDING FOR THE FORM OF BALLOT TO BE USED AT SAID ELECTION; THE FORM OF NOTICE OF SAID ELECTION; DIRECTING THE PUBLICATION OF SAID NOTICE AND ESTABLISHING THE EFFECTIVE DATE THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, PHELPS COUNTY, MISSOURI, AS FOLLOWS:

Section 1: Ordinance No. 2924 of the City of Rolla grants a Franchise to Missouri Public Service a division of UtiliCorp United Inc., a Delaware corporation, as hereby described;

"AN ORDINANCE GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO MISSOURI PUBLIC SERVICE, A DIVISION OF UTILICORP UNITED INC., A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION, AND AUTHORITY TO CONSTRUCT, RECONSTRUCT,

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2925

EXCAVATE FOR, PLACE, MAINTAIN, OPERATE AND USE ITS MAINS, SERVICE PIPES, CONDUITS, CONDUCTORS, TANKS, VAPORIZERS, UNDERGROUND VAULTS, REGULATORS, AND OTHER EQUIPMENT, WITH ALL NECESSARY OR APPROPRIATE APPLIANCES AND APPURTENANCES IN CONNECTION THEREWITH, IN, ALONG, ACROSS, OVER, AND UNDER THE STREETS, ROADS, ALLEYS, SIDEWALKS, BRIDGES, AND OTHER PUBLIC PLACES IN THE CITY OF ROLLA, MISSOURI, AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, AND SAID USE OF PUBLIC RIGHTS OF WAY AND PUBLIC PLACES BEING SUBJECT TO THE APPROVAL OF THE PUBLIC WORKS DIRECTOR AND THE MUNICIPAL UTILITIES GENERAL MANAGER, FOR THE PURPOSE OF THE TRANSMISSION, TRANSPORTATION, DISTRIBUTION, AND PROVISION OF GAS FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH, AND PROVIDING THAT THIS ORDINANCE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL SUCH GRANT IS APPROVED BY A MAJORITY OF THE VOTERS OF THE CITY AT SAID ELECTION."

Section 2: The City Clerk is hereby authorized and directed to submit necessary documents to the County Election Authority thereby calling for an election to be submitted to the qualified voters of the City of Rolla, Missouri, on August 3rd, 1993.

Section 3: The question to be placed before the voters shall be as follows:

"The proposition of the ratification or rejection of a Franchise heretofore granted to Missouri Public Service, a division of UtiliCorp United Inc., a Delaware corporation, as provided for by City Ordinance No. 2924 approved June 7, 1993, for the purpose of a natural gas

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distribution system within the City's public easements for a period of twenty (20) years."

Section 4: The City Clerk shall deliver a certified copy of this Ordinance to the Phelps County Election Authority calling for said election on August 3, 1993.

Section 5: That the ballots to be used by the qualified voters at said election for the purpose of voting on said proposition shall be in substantially the following form:

"OFFICIAL BALLOT"

CITY OF ROLLA

PHELPS COUNTY, MISSOURI

Shall there be granted to Missouri Public Service, a division of UtiliCorp United Inc., a Delaware corporation, its successors and assigns, the right, permission, authority, and franchise to use the streets, roads, alleys, sidewalks, bridges, and other public places in the City of Rolla, Missouri, for the transmission, transportation, distribution, and provision of gas, in and through said City for a period of twenty (20) years, for which Missouri Public Service, a division of UtiliCorp United Inc., a Delaware corporation, shall pay to said City as a franchise tax, five percent (5%) of the gross receipts from the sale of gas and/or gas transportation service within said City, all as more particularly provided in Ordinance No. 2924 of said City passed and approved June 7, 1993. If said franchise is granted, the tax will be passed through to each customer.

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() Yes

() No

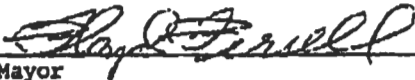
If you are in favor of the question, place an "X" in the box opposite "Yes." If you are opposed to the question, place an "X" in the box opposite "No."

Section 6: The City Clerk shall be directed to provide the election authority for Phelps County, Missouri, with a copy of this Ordinance and to provide such notice of the aforesaid election as may be by law required.

Section 7: This Ordinance shall be in full force and effect from and after its final passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND
APPROVED BY THE MAYOR THIS 7TH DAY OF JUNE, 1993.

APPROVED:


Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Counselor

2925

Heisinger, Kristine

From: Scott Shumate [slshumate@llion.org]

Sent: Thursday, October 19, 2006 1:45 PM

To: 'rmaffett@sendero.biz'

Cc: 'mayor@llion.org'; 'Joe Knapp'

Randy As you could see from my fax there are 2 State of Missouri Statutes dealing with natural gas franchises and public elections. The city will proceed on the 25% petition option with no election unless we are forced to do otherwise (by the propane folks). Several small towns have had elections recently. Does your legal counsel have an opinion on this subject?

3/7/2007

Heisinger, Christine

From: Joe Knapp [leb1@llion.org]
Sent: Friday, October 20, 2006 2:50 PM
To: 'Scott Shumate'
Subject: RE:

Scott,
You wanting me to do any of this?

*Joe Knapp
City Administrator
City of Lebanon, Missouri*

From: Scott Shumate [mailto:slshumate@llion.org]
Sent: Thursday, October 19, 2006 3:01 PM
To: mayor@llion.org; 'Joe Knapp'
Subject: FW:

From: Randal T. Maffett [mailto:rmaffett@sendero.biz]
Sent: Thursday, October 19, 2006 2:04 PM
To: Scott Shumate
Subject: RE:

No, they just knew some cities required voter approval. Lebanon's City Attorney should be the definitive "opinion."

Heads up – we are preparing our application for convenience and public necessity to file with the MPSC. As part of that we will need some help from you including the following:

1. a legal description of the City (metes and bounds)
2. a general map of the City
3. a list of 10 names of property owners in the City, preferably 10 people who would be supporters of the project.

I'm working on finalizing a draft Franchise Agreement for your review which we will need to have executed prior to submitting our application with the MPSC. Should have it to you next week....

Randy Maffett
1001 Fannin, Suite 550
Houston, TX 77002
(713) 655-0523 ofc
(713) 655-7502 fax
rmaffett@sendero.biz
www.sendero.biz



From: Scott Shumate [mailto:slshumate@llion.org]
Sent: Thursday, October 19, 2006 1:45 PM

3/6/2007

To: Randal T. Maffett
Cc: mayor@llion.org; 'Joe Knapp'
Subject:

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3/6/2007

Exhibit 3

Heisinger, Khristine

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City Administrator
City of Lebanon, Missouri

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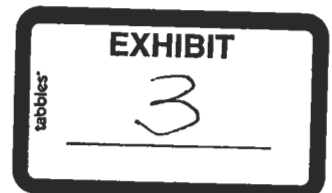
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Randy Maffett
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(713) 655-7502 fax
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Sent: Thursday, October 19, 2006 1:45 PM



3/6/2007

To: Randal T. Maffett
Cc: mayor@llion.org; 'Joe Knapp'
Subject:

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3/6/2007

Exhibit 4

AN ORDINANCE

providing for submission of approval or disapproval by the Voters of the City of Lebanon for the City's grant of a franchise to Southern Missouri Gas Company, L. P., d/b/a Southern Missouri Natural Gas, a Missouri Limited Partnership, to construct and operate a natural gas distribution system in the City for light, heat and other natural gas uses for a period of twenty (20) years:

Whereas, the City of Lebanon is authorized pursuant to the provisions of Section 71.530 RSMo. to grant a franchise to any person or corporation to supply natural gas to the City; and,

Whereas, the City Council did on January 16, 2007 approve the grant of franchise to Southern Missouri Gas Company, L. P., d/b/a Southern Missouri Natural Gas, (hereinafter sometimes called "SMNG") as evidenced by Ordinance No. 4457, a copy of which document is attached hereto; and,

Whereas, the City desires to obtain the approval of this grant by a vote of the qualified Voters of the City of Lebanon, Missouri.

Now, Therefore, be it Ordained by the City Council of Lebanon, Missouri as follows:

Section 1. Pursuant to the provisions of Section 88.251 RSMo. the grant of the franchise to SMNG as set forth in Ordinance No. 4457 shall be submitted to the qualified Voters of the City of Lebanon, Missouri for their approval on August 7, 2007.

Section 2. Ordinance No. 4457 shall remain on file with the City Clerk for public inspection from even date until date of the election.

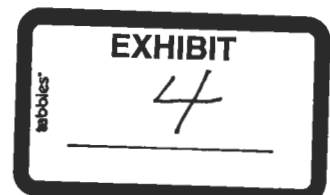
Section 3. The ballot and ballot title will be:

Question:

Shall the City of Lebanon, Missouri grant a franchise to Southern Missouri Natural Gas Company, L.P. for the purpose of providing natural gas for a period of twenty (20) years to customers throughout the City and adjacent territory?

☐ Yes

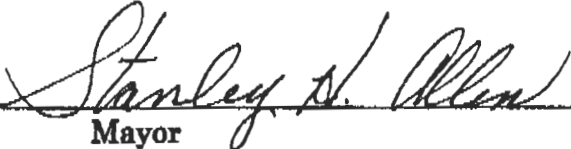
☐ No



Section 4. If a majority of the qualified Voters, voting at said election shall vote in favor of the approval of the grant of this franchise, then the same shall be binding and in full force and effect.

Section 5. This ordinance shall be in full force and effect from and after its approval by the qualified Voters of the City of Lebanon, Missouri, at an election to be held on the 7th day of August, 2007.

Passed and approved by the City Council of Lebanon, Missouri on this 14th day of May, 2007.


Mayor

ATTEST:


City Clerk

First reading held May 14, 2007

Second reading held May 14, 2007