

**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 Public Convenience and)	
Necessity to Construct and Operate an)	<u>Case No. GA-2006-0561</u>
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.)	

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)	<u>Case No. GA-2007-0168</u>
it to Construct, Install, Own, Operate, Control,)	
Manage and Maintain a Natural Gas)	
Distribution System to Provide Gas Service in)	
Branson, Branson West, Reeds Spring, and)	
Hollister, Missouri)	

OZARK ENERGY PARTNERS' RESPONSE TO ORDER DIRECTING FILING

COMES NOW Ozark Energy Partners, LLC (hereinafter, "Ozark" or "OEP"), by and through counsel, and files this Response to the *Order Directing Filing* issued in Case No. GA-2006-0561 on November 16, 2007.

1. Ozark Energy Partners, LLC (OEP) has opposed consolidation of this case with GA-2007-0168 (competing application of Alliance Gas Energy, now Southern Missouri Natural Gas) because OEP did not want its application slowed down by the competing application.

2. OEP would still prefer not to see its application consolidated with that of SMNG, for the same reason. OEP has entered into a Stipulation and Agreement with Staff in this case, which it is prepared to present to the Commission for its consideration and approval.

3. In an effort to slow down OEP's application, SMNG has objected to the Stipulation and Agreement between OEP and Staff, and has requested a hearing thereon, although SMNG has not identified any specific issue or issues upon which it requests a hearing.

4. **The Commission should be aware that, since the November 27-28 hearing dates were set for SMNG's application in GA-2007-0168, several events have occurred, or been discovered,** that should reasonably affect the efficacy of those hearing dates, including: (1) a general mailing by SMNG throughout the contested service areas claiming that SMNG holds "the exclusive franchise to bring natural gas" into the area¹; (2) SMNG's attempt to conceal its financing for its proposed Branson service area in a totally unrelated case (GA-2007-0212, *et al.*) to which the parties to GA-2007-0168 are not parties²; and (3) SMNG's *Second Amended Application* of November 5, 2007, appearing to significantly change SMNG's proposed rates for the Branson area. **Such facts cry out for more time and closer scrutiny, not the mad rush SMNG appears committed to for its own purposes.** Additional activities related to these legitimate issues, each of which goes to SMNG's qualifications and the feasibility of its Branson application, could slow down the process for OEP, as well, if the cases were consolidated.

¹ This is now the subject of a formal complaint before the Commission, in Case No. GC-2008-0154.

² See, *Motion to Consolidate Cases, Grant Late Application to Intervene of Ozark Energy Partners, LLC, or Order New Filing*, filed on November 14, 2007 in Case Nos. GA-2007-0168 and GA-2007-0212, *et al.*

5. **However, if the Commission is only willing to postpone the November 27-28 hearing in GA-2007-0168 if these applications are consolidated, then consolidation would be the preferable alternative to the hearings going forward on November 27-28.** In addition to the other issues previously raised, **consolidated hearings could not be held on those dates because of witness unavailability.**³ OEP has every right to present its witnesses, and have its experts present in the hearing room, and is actively trying to determine the earliest date on which its application and Stipulations and Agreements may be presented to the Commission. Due to the Commission's tight hearing schedule in December, and the holidays, a January hearing schedule is likely to be proposed in the next few days. Allowing the parties to coordinate schedules and collaborate on a workable hearing schedule would be the most logical and reasonable course.

6. Concerning the November 27-28 hearing dates, it would be illogical, in a case with live (rather than pre-filed) testimony, to "accommodate" the scheduling conflict of OEP's rebuttal witness by having him take the stand "out of order." In order to present meaningful rebuttal testimony, OEP's expert witness must first hear the testimony of the other witnesses in the case. However, as previously noted, OEP's rebuttal witness cannot be at the hearing on November 28. Depending on the length of direct testimony, which is highly unpredictable, this "accommodation" could hamstring OEP's right to present meaningful rebuttal testimony, if not eliminating that opportunity altogether.

³ For purposes of presenting its own application and Stipulation and Agreement to the Commission, OEP would have witness unavailability issues in addition to the one discussed in the *Motion to Postpone Hearing* filed on November 13, 2007.

7. OEP takes great exception to SMNG's consistent and deliberate mischaracterization of both OEP's "agreement" to the November 27-28 hearing dates, and of OEP's Motion to Postpone Hearings in GA-2007-0168. OEP did not agree to those hearing dates, did not agree to participate in a "joint proposal" of those hearing dates, and did not authorize or ask SMNG to file a proposed hearing schedule "on behalf of" OEP. OEP's error was in trying to be accommodating and collegial to opposing counsel. Had OEP realized the railroad job that would ensue on SMNG's behalf, OEP would have objected loudly.

8. SMNG also "spins" the OEP Motion to Postpone Hearings by including the word, "indefinitely" in its every reference to that Motion. As esteemed counsel for SMNG well knows, the only reason the word "indefinitely" was used was as an alternative to proposing, in the Motion, other specific dates to which the hearing might be rescheduled, without discussions among counsel and parties to determine workable dates. It would not make sense for the Commission to arbitrarily reschedule the hearing to dates which might present other, legitimate availability problems for the parties, including SMNG, nor was OEP going to unilaterally propose any in its Motion. Thus, the Motion asks for the hearing to be postponed "**indefinitely,**" but carefully **qualified by**, "until such time as the parties can agree on a new schedule of proceedings." This is exactly what SMNG wants the parties to do regarding the OEP Stipulation presentation – but it apparently wants that done long after it completes its own premature hearing.

9. SMNG's application in GA-2007-0168 is not complete, in accordance with 4 CSR 240-3.205. Staff has indicated it has pending Data Requests outstanding concerning SMNG's Branson feasibility study. Outstanding questions also exist as to the 20-cent per Ccf increase in proposed Branson area rates just raised by SMNG in its *Second Amended Application* on November 5, 2007. Thus, OEP is concerned that consolidation of the applications could slow down the Commission's consideration of OEP's complete, and stipulated, application in GA-2006-0561.

10. SMNG itself does not appear prepared to proceed with its prematurely scheduled hearing on November 27-28. Lists of issues, witnesses, and order of cross-examination were to be jointly filed on Monday, November 19, 2007, but counsel for OEP has received no calls, emails or drafts from counsel for SMNG concerning those matters.

11. In the meantime, OEP has a complete and thorough, Ozarks-region-specific Feasibility Study on file in GA-2006-0561, and is prepared to present its application and Stipulation and Agreement to the Commission without any unnecessary delay. OEP is working to identify dates that are available on the Commission's calendar on which its expert witnesses are available to come to Jefferson City for the presentation of its application and Stipulation, before proposing such dates to the other parties to GA-2006-0561.

12. SMNG's opposition to consolidation and to changing its hearing date should be seen for what it is: a bold effort to bully its way ahead of OEP in the "race" to serve the Ozarks by doing everything possible to hide its own

application from sufficient Commission scrutiny, while working diligently to slow down OEP's competing application. The Commission should not willingly participate in this plot.

WHEREFORE, Ozark Energy Partners, LLC, hereby submits this *Response to Order Directing Filing* for consideration by the Commission.

Respectfully submitted,

/s/ William D. Steinmeier

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served electronically on the General Counsel's Office, the Office of the Public Counsel, and counsel for each Intervenor, on this 19th day of November 2007.

/s/ William D. Steinmeier

William D. Steinmeier