

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Southern)
Missouri Gas Company, L.P. d/b/a Southern)
Missouri Natural Gas for a Certificate of)
Public Convenience and Necessity Authorizing)
it to Construct, Install, Own, Operate, Control,)
Manage and Maintain a Natural Gas)
Distribution System to Provide Gas Service in)
Branson, Branson West, Reeds Spring, and)
Hollister, Missouri)

Case No. GA-2007-0168

**APPLICATION FOR REHEARING, RECONSIDERATION AND
CLARIFICATION**

COMES NOW Ozark Energy Partners, LLC (hereinafter, "Ozark" or "OEP"), Intervenor herein, by and through counsel and pursuant to Section 386.500 RSMo and 4 CSR 240-2.160, and for its Application for Rehearing, Reconsideration and Clarification respectfully states as follows:

1. On February 5, 2008, the Commission issued its Report and Order in this case. Said Report and Order contained an effective date of February 15, 2008. Pursuant to Section 386.500, this Application for Rehearing, Reconsideration and Clarification is timely filed.

2. As stated in the Report and Order in this case, at page 7, "[t]he Commission has previously recognized and applied¹ five specific criteria that are to be considered when making that determination" as to whether the public interest would be served in the award of the certificate. Those criteria include that

¹ *In re Intercon Gas, Inc.*, 30 Mo.P.S.C. (N.S.) 554, 561 (1991), *Intercon Gas, Inc. v. Public Service Comm'n*, 848 S.W.2d 593, 597 (Mo.App. 1993); *aff'd, State ex rel. Intercon Gas, Inc. v. Public Service Comm'n*, 848 S.W.2d 593 (Mo.App. 1993); *In re Tartan Eneregy Company*, 3 Mo.P.S.C.3d 173, 177 (1994); *In re Ozark Natural Gas Company*, 5 Mo.P.S.C.3d 143, 146 (1996).

“The applicant has the financial ability to provide the proposed service;” and that “The applicant’s proposal is economically feasible.”

3. The Commission erred in its Report and Order in this case by failing to find and conclude that SMNG had failed to meet its burden of proving that its proposal to provide service in the Branson area, as proposed in this case, is economically feasible and in the public interest. The Commission further erred in failing to find and conclude that SMNG had failed to meet its burden of proving that it has the financial ability to provide the proposed service.

4. In its Report and Order, at pages 11-12, **the Commission declined to make a finding SMNG “is financially capable** of providing the proposed natural gas service in Branson, Hollister, Branson West, and the surrounding unincorporated areas. Instead, the Commission will, as requested by Staff in its brief and recommended by witness Michael Straub during the hearing, [footnote omitted] issue SMNG a conditional CCN and **defer making any finding** regarding this criterion until after the Commission decides Case No. GF-2007-0215.” (Emphases added.)

5. Similarly, **the Commission declined to find that SMNG’s proposal in this case “is economically feasible.** Instead, the Commission will, as requested by Staff in its brief and recommended by its witness Michael Straub during the hearing, issue SMNG a conditional CCN and **defer making any finding** regarding this criterion until after the Commission decides Case No. GF-2007-0215.” (Emphases added.)

6. Inexplicably, Staff did not request a hearing in Case No. GF-2007-0215, in its Staff Recommendation filed in that case on February 11, 2008. While responses to the Staff Recommendation in Case No. GF-2007-0215 are not due until February 21, under Commission rule (4 CSR 240-2.080 (15)), that case has nonetheless already appeared on the Commission's Agenda for February 14, 2008 for discussion. Although Staff stated in its Staff Recommendation in GF-2007-0215 that SMNG "is currently in a very weak financial position," (at page 3 of 9), it does not appear to have evaluated the Feasibility Study of SMNG in the instant case nor discussed any of the manifold errors and weaknesses in that Feasibility Study made evident at hearing in this case. Rather, Staff has recommended "conditional approval granted pending receipt of definite terms of transaction." (GF-2007-0215, Staff Recommendation, page 2 of 9.)

7. **At the very least, the Commission should clarify the procedure it intends to follow in order to render the "deferred findings" concerning SMNG's financial ability, and concerning the economic feasibility of SMNG's proposal in the instant case.** This clarification should include describing the manner, time and docket in which the Commission intends to complete its review of SMNG's application herein.

8. Under no circumstance should the Commission consider a preliminary approval of SMNG's pending financing application in GF-2007-0215 to be the final step needed by SMNG to "complete" its application herein or to qualify SMNG for a "permanent" certificate of convenience and necessity for the proposed service area. There is pending a request by OEP for a hearing in Case

No. GF-2007-0215. To grant a final approval of SMNG's application to serve the Branson area by a quick approval of SMNG's financing application in that case, without a full opportunity for OEP to address the issues in that case and without full findings and conclusions on the issues "deferred" by the Commission in its Report and Order in the instant case, would be unjust and unreasonable and a violation of OEP's rights, including its right to due process of law and equal protection under the law.

9. In the instant case, as in GA-2006-0561, Staff recommended as a condition of any conditional CCN the requirement that not only the financing plan of SMNG be approved, but that approval of final, executed financing documents should be required before a determination is made granting a final or permanent CCN. The Commission should clarify that an approval of SMNG's pending financing *plan* in GF-2007-0215 is not the final determination or grant of a permanent certificate of convenience and necessity, to the exclusion of OEP.

10. It is imperative that the Commission clarify that the condition in the certificate in this case is not only the filing of a financing "plan," or even conditional promises of investors and lenders. The object of finally assuring that natural gas service is delivered to the Ozarks (greater Branson) region requires submission and review of final, executed financing documents. Only then can the Commission be certain that investors and lenders have "signed on the dotted line" and committed firm money to build-out the project.

11. SMNG stated at hearing that the only condition proposed by Staff in Case No. GA-2007-0168 to which it objected was Section III.B.3 (GA-2007-0168,

T-78), a condition rejected by the Commission in its Report and Order in this case. SMNG did not object to the condition that final, executed financing documents must be submitted to the Commission for review and approval before a final, or unconditional, certificate of convenience and necessity is granted. Thus, the Commission should include this financing condition in both certificates, requiring Commission review and approval of final, executed financing documents.

WHEREFORE, Ozark Energy Partners, LLC, respectfully requests that the Commission grant rehearing in this case or, in the alternative, reconsider, modify and clarify at least portions of its Report and Order of February 5, 2008 in this case, as detailed above.

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 14th day of February 2008.

/s/ William D. Steinmeier

William D. Steinmeier