

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

6-91

In the matter of the application of Intercon Gas, Inc.,)
a corporation, et al., for an order and certificate of) Case No. GA-90-280
convenience and necessity authorizing it to construct,) (Consolidated with
install, acquire, own, operate, control, manage and) Cases: GA-90-276,
maintain a natural gas pipeline and related facilities) GA-91-81, GA-91-82)
and to transport natural gas in portions of Jefferson,)
Franklin, Crawford, Washington and Phelps Counties,)
Missouri.)

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TABLE OF CONTENTS

	<u>Page</u>
I. PROCEDURAL HISTORY	2
II. PENDING AND POST-HEARING MOTIONS	6
III. CRITERIA FOR GRANTING CERTIFICATES	8
A. Statutory Criteria	8
B. Commission Rules and Precedent	10
IV. APPLICATION OF MISSOURI PIPELINE COMPANY	12
A. Map of Requested Authority and Project Description ...	12
B. Demonstration of Public Need	13
C. Financial Ability to Provide Service and Economic Feasibility of Same	16
D. Rates	17
V. APPLICATION OF LACLEDE GAS COMPANY	18
A. Requested Authorities	18
B. Maps of Requested Authorities and Descriptions of Projects	19
C. Demonstration of Public Need and Required Municipal Consents	20
D. Financial Ability to Provide Services and Economic Feasibility of Same	20
(1) Pipeline Feasibility	20
(2) Distribution System Feasibility	21
E. Rates and Service Area	22
VI. SHOULD EACH COMPETING APPLICANT RECEIVE A CERTIFICATE?	23
VII. APPLICATIONS OF MISSOURI GAS COMPANY AND INTERCON GAS COMPANY	24
A. Requested Authorities	25
B. Comparison of Key Points in Both Proposals	26

C.	Feasibility of Proposed Service and Financial Ability to Provide Same	27
	(1) Applicants' Estimates Regarding Need for Gas	27
	(2) Applicant's Estimates Regarding Construction Costs	31
	(3) Estimates Regarding Proposed Rates and Allegations Re: Rate Discrimination or Preferences	33
	(4) Financial Ability and Qualifications to Provide Service	37
D.	Public Need for Natural Gas in the I-44 Corridor	37
E.	Conclusory Findings Regarding Applicants/Approval of Rates	38
	(1) Conclusory Findings Regarding Applicants	38
	(2) Approval of Rates	39
VIII.	PUBLIC TESTIMONY OPPOSING PIPELINE CONSTRUCTION	40
IX.	CONCLUSIONS OF LAW	42
X.	ORDERED SECTIONS	43

HEARING
EXAMINER: Michael F. Pfaff

REPORT AND ORDER

I. PROCEDURAL HISTORY

On April 22, 1990, Missouri Gas Company (MoGas) applied under Section 393.170¹ for a certificate of public convenience and necessity authorizing MoGas to construct and operate an intrastate natural gas pipeline from Cole County, Missouri, to Fort Leonard Wood, in Pulaski County, Missouri.² By the same Application, MoGas sought authority to, within two years, extend the pipeline north along Interstate Highway 44 (the I-44 corridor) to provide natural gas in and between the Missouri counties of Laclede and Franklin, encompassing the cities of Washington, Union, Lebanon, Rolla, St. James, Cuba, Bourbon, Sullivan, and St. Clair. On April 20, 1990, the Commission ordered that Notice of MoGas' Application (Case No. GA-90-276) be issued.

On April 13, 1990, two days after MoGas applied for authority, Intercon Gas Inc. (Intercon) applied for a certificate of public convenience and necessity to construct and operate an intrastate natural gas pipeline from near Festus in Jefferson County west, to Sullivan, and then southwest on the I-44 corridor to Bourbon, Cuba, St. James and Rolla. The Commission issued Notice of Intercon's Application (Case No. GA-90-280) on April 25, 1990. In its original Application, MoGas sought authority to both transport and to

¹Unless otherwise indicated, all statutory citations are to RSMo, 1986.

²Hereafter, all references to Missouri cities and counties will delete "Missouri".

engage in the sale for resale of natural gas; Intercon originally sought authority only to transport natural gas.

Intercon first amended its Application on May 11, 1990, seeking authority to construct a 25.9 mile lateral line, or spur, from Sullivan into Franklin County, to serve St. Clair, Union and Washington.

On May 22, 1990, Intercon amended its Application for the second time, to formally include Washington County.

On July 16, 1990, MoGas amended its Application, requesting that the Commission initially authorize construction from Ft. Leonard Wood up the I-44 corridor, rather than from Cole County to Ft. Leonard Wood, as originally requested. By so doing MoGas deferred, but did not then abandon, its request for authority from Jefferson City in Cole County, to Ft. Leonard Wood.

Intercon intervened as a party in MoGas' case, as did MoGas in Intercon's. The following were also granted intervention in both docketed cases: Laclede Gas Company (Laclede); Mississippi River Transmission Corporation (MRT); Union Electric Company (UE); Conoco, Inc. (Conoco); the cities of Rolla, St. Clair, Union, Sullivan and Washington (The Municipal Intervenor), the Franklin County Commission and various propane companies.

On August 31, 1990, in a case designated GA-91-81, the Missouri Pipeline Company (MPC), previously certificated in Missouri as an intrastate natural gas pipeline,³ applied for authority to extend its existing pipeline 56 miles in a southwesterly direction, from and through St. Charles County to a point on the I-44 corridor near Sullivan, in Franklin County. MPC then proposed to connect its 56-mile extension to the most recently proposed pipeline by its sister corporation, MoGas.

³In Commission Case No. GA-89-126, MPC received authority to construct and operate an 85-mile intrastate natural gas pipeline from a connection with Panhandle Eastern's Curryville, Missouri, interstate pipeline.

On the same day, Laclede applied for certificates which would authorize Laclede to (a) build a 26-mile natural gas pipeline, with a 5.3 mile spur down to Pacific, from MPC's proposed extension into Ellisville, in St. Louis County, and (b) operate as a Local Distribution Company (LDC) in (inter-alia) Franklin and a part of Crawford Counties, and the cities of Washington, Union, St. Clair, Sullivan, Oak Grove and Pacific. Laclede's Application was docketed GA-91-82.

On September 18, 1990, the Commission consolidated all four applications under Case Number GA-90-280 and established a procedural schedule requiring prefiled direct, rebuttal and surrebuttal testimony. Hearings were scheduled for March 11-15, 1991.

On motion by MoGas, the Commission had previously authorized use of protective orders regarding information sought during discovery which was thought to be privileged or confidential. As a result, a relatively small part of both the evidentiary record and briefs have been published or submitted in both "public" and "proprietary" versions.

On October 15, 1990, MoGas changed its Application for the third time, requesting that it now be permitted to interconnect with the southern end of MPC's proposed pipeline near Sullivan, and thereafter be authorized to build along the I-44 corridor, to provide natural gas to Rolla, St. James, Cuba, Bourbon, and Ft. Leonard Wood.

On December 26, 1990, Intercon amended its Application for the third time. Intercon sought additional authorization to (a) continue down the I-44 corridor to serve Ft. Leonard Wood, and (b) construct another lateral (or spur) from its previously sought lateral into Franklin County in order to serve Pacific.

A prehearing conference was held in this case on February 19, 1991, producing a Hearing Memorandum which, among other things, established a list

of witnesses, order of cross-examination, and a statement of issues as expressed by each party. Commenced on March 11, 1991, the evidentiary hearings ended March 15, 1991, during which 27 witnesses sponsored testimony and underwent cross-examination.

Parties submitted simultaneous initial briefs on April 30, 1991; on May 20, simultaneous reply briefs were submitted.

On April 24, 1991, the Commission, on its own motion, scheduled an additional hearing to consider evidence from the public regarding the routing and safety of MPC's proposed St. Charles County pipeline. The additional hearing was held on May 9, 1991, in Jefferson City where a total of six individuals from or representing St. Charles County made on-the-record or sworn statements regarding MPC's proposed pipeline.

To accommodate all parties of record, the Commission permitted each, at their election, to file simultaneous supplemental briefs regarding the additional hearing of May 9. Only Laclede and MoGas/MPC elected to do so, filing same on May 28, 1991.

With the filing of its initial brief on April 30, 1991, Intercon has again changed its request for authority; and, for the first time, Intercon has changed its position vis-a-vis MPC and Laclede. Intercon now presents, via its brief, a "revised plan" which it characterizes as the "Modified Intercon Proposal." This proposal is discussed at greater length, *infra*, but it significantly changes this case in that (a) Intercon now proposes to transport gas only in the I-44 corridor, in competition with MoGas, and (b) Intercon now supports, with some caveats, the Applications of Laclede and MPC.

In summary, the procedural history of the only competing Applications now remaining in this consolidated case (MoGas and Intercon) is as follows:

<u>Dates</u>	<u>Route Authority Requested</u>
4-11-90: MoGas (Original App.)	Initially Jefferson City to Ft. Leonard Wood (57 miles), then in 2 years, <u>up</u> I-44 corridor to Franklin County.
4-13-90: Intercon (Original App.)	Festus to Sullivan, then down I-44 corridor to Rolla (77.25 miles).
5-11-90: Intercon (1st Amendment)	Same request, but add 25.9 mile lateral from near Sullivan north into Franklin County to serve St. Clair, Union and Washington.
5-22-90: Intercon (2nd Amendment)	To formally include Washington County.
7-16-90: MoGas (1st Amendment)	Initially from Franklin County <u>down</u> I-44 corridor to Ft. Leonard Wood (65 + or - miles), then, from Jefferson City to Ft. Leonard Wood.

MPC AND LACLEDE FILE ON AUGUST 31, 1990.

10-15-90: MoGas (2nd Amendment)	From south end of MPC's proposed extension, near Sullivan, then <u>down</u> I-44 corridor to Rolla, St. James, Cuba, Bourbon, and Ft. Leonard Wood. (67.5 miles).
12-26-90: Intercon (3rd Amendment)	Same basic request, but add all towns from Rolla south to and including Ft. Leonard Wood (109.7 miles); also, add a 12.7 mile spur to serve Pacific off amended request for 25.9 mile Franklin County lateral. Also, add another 4.4 mile spur off main line to Ft. Leonard Wood to serve St. Robert.
4-30-91: Intercon (Initial Brief) The "Modified Intercon Proposal"	Appears to be similar to Intercon's original application, except add Ft. Leonard Wood and communities between Rolla and Ft. Leonard Wood. Franklin County lateral, and Pacific spur is eliminated. (Exact request unclear).

II. PENDING AND POST HEARING MOTIONS

On the first full day of hearing, March 11, 1991, counsel for Intercon moved to dismiss Conoco as a party, citing Conoco's failure to appear at either the prehearing or the hearing. The Commission then deferred ruling on Intercon's motion, but now grants said motion. The Commission finds that Conoco has failed to comply with Commission Rule 4 CSR 240-2.110-6 by failing,

without excuse, to: (1) appear at either the prehearing or hearing, (2) to file any testimony or (3) to file any briefs. On its own motion, and for the same reasons obtaining in Conoco's case, the Commission also dismisses ARKLA Energy Marketing Company as a party.

On April 30, 1991, Intercon filed its initial brief wherein Intercon first presented its "Modified" proposal, referenced above. In support of its new proposal, Intercon's brief contains several new rate calculations which Intercon now advances as an appropriate gas transportation rate, a rate which Intercon apparently derived from extra (or non) record estimates of, among other things, its "new" construction and operating costs and new load factors.

On May 20, 1991, Staff moved to either strike the extra-record portions of Intercon's brief, or for leave to permit Staff to late-file affidavits regarding same. Staff attached the affidavits to its motion.

Intercon replied to Staff's motion on May 30, 1991, opposing Staff's Motion to Strike, but supporting Staff's idea of late-filing affidavits in lieu of evidence. Intercon attached affidavits and several schedules signed by witnesses S. Orlofsky and James J. Sarikas to its reply. On May 31, 1991, Intercon filed a motion which formally requested that the affidavits of Orlofsky and Sarikas be admitted into the record as "late-filed exhibits."

On June 7, 1991, the Commission issued an Order denying Staff's Motion to Strike or to file affidavits, and denying Intercon's Motion to late-file exhibits. The Commission's Order denying said motions made specific reference to the obvious, viz, that nothing contained in Intercon's brief is evidence and, as a result, Staff's Motion to Strike was improvidently made. The Commission also stated that the evidentiary record in this matter, closed

at the conclusion of the hearings⁴ on March 15, 1991, would not be reopened. The affidavits submitted by Staff and Intercon were rejected and form no part of the evidence available to the Commission in its deliberations of this matter.

On June 10, 1991, Laclede filed a Motion to include as amendments to its previously admitted evidence the certified copies of voted-approved ordinances which grant operating franchises to Laclede to distribute gas in the Washington, Union, St. Clair, Pacific, Oak Grove Village and Parkway, Missouri. The Commission grants said Motion herein.

III. CRITERIA FOR GRANTING CERTIFICATES

A. Statutory Criteria

There is a paucity of statutory criteria for granting, or refusing to grant, a certificate to an applicant for the type of authority herein sought. Sections 386.020(16)⁵ and 386.250,⁶ RSMo 1990 Supp., and 393.140,⁷ while clearly confirming the Commission's jurisdiction, contain no standards or benchmarks to guide it in judging an Applicant for an intrastate pipeline certificate, much less competing applicants.

All Applicants in this case have applied pursuant to Section 393.170, which provides:

393.170. Approval of incorporation and franchises - certificate. - 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water

⁴Record closed excepting receipt of Late-filed Exhibit 51, the contract between Omega and Ft. Leonard Wood.

⁵Wherein "gas plant" is defined.

⁶Confers jurisdiction re: "manufacture, sale or PSC distribution of gas."

⁷Commission has "general supervision" of gas corporations and all "gas plants" owned, leased or operated by same.

system or sewer system without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under and any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

Other than the specifications in 393.170(2) regarding municipal consents, franchises and charters, the only statutory requirement which approaches a standard or benchmark is that the Commission, after "due hearing," shall determine that "such construction" or exercise of the franchise "is necessary or convenient for the public service." (393.170(3)).

The Commission has found no other statutory references which focus on the issues most central to this proceeding, viz, whether in the first instance any of the proposed pipelines are necessary or convenient for the public service and, if so, which pipeline? In both its initial and reply briefs, Intercon strongly suggests that Section 393.130,⁸ provides a discreet statutory criteria by which to judge the competing Applications of Intercon and MoGas. The Commission does not agree. The proposed rates under

⁸Section 393.130, in part, requires "just and reasonable charges" and prohibits rate discrimination and/or preferences.

consideration in this proceeding, discussed at greater length, *infra*, are but one of several factors which the Commission intends to examine. Until one or more of the proposed pipelines commences operations, their various cost and feasibility estimates regarding construction, operations, customer base, acquiring rights of way, cost of capital, and recovering estimated costs through estimated rates will remain exactly that, estimates. The Commission recognizes that some cost and rate estimates may be more reliable than others, as will some estimators, but Intercon's assertion that 393.130 mandates a new statutory criteria in this, a certificate case, is incorrect. Having been forewarned by Intercon, the Commission will do its utmost not to certificate any applicant if their proposed rates are unjust, preferential, or discriminatory.

B. Commission Rules and Precedent

With few statutory criteria available, the Commission finds in its published Rules a number of requirements which Applicants for certificates to build natural gas pipelines are expected to meet. These requirements are contained, although not in the exact sequence here presented, in Commission Rule 4 CSR 240-2.060.

1. Certified copies of the articles of incorporation if a Missouri corporation.
2. A certificate from the Secretary of State that the corporation is authorized to do business in the State of Missouri if it is not a Missouri corporation.
3. A copy of the registration of the fictitious name with the Secretary of State.
4. The metes and bounds description of the area to be certified.⁹
5. A plat drawn to a specified scale on maps comparable to county highway maps.

⁹Applies only to Laclede's Application for area certificate.

6. A feasibility study containing plans and specifications for the installation and estimated cost during first three years of construction.
7. Plans for financing.
8. Proposed rates and charges.
9. An estimate of the number of customers, revenues and expenses during the first three years of operations.
10. Evidence of approval of the affected governmental bodies must be provided.

The Commission has articulated criteria for granting a certificate in a case similar to the instant case. In Missouri Pipeline Company's first application for a certificate, wherein MPC proposed to transport natural gas from Panhandle Eastern's Interstate Pipeline via an 85-mile intrastate pipeline, the Commission found that the Company's application for a certificate was like any other in that MPC had to meet what the Commission then characterized as the following "statutory" criteria:¹⁰ (1) The Applicant must be qualified to provide the proposed service; (2) There must be a need for the service; and (3) The service must promote the public interest.

The Commission has established similar criteria in other, albeit less similar, cases. In a case involving two sewer companies competing for an area certificate, the Commission was of the opinion that the phrase "necessary or convenient for the public service" implied a standard requiring proof of (a) a need for the proposed service; (b) the applicant's qualifications, (c) the applicant's financial ability to provide the service, and (d) the economic feasibility of Applicant's proposal.¹¹

For this case, a matter far more complex than most certificate cases, and one involving competing applications, the Commission has determined

¹⁰Commission Case No. GA-89-126 (1989).

¹¹In Re: M.P.B. Inc., 28 Mo.P.S.C. (N.S.) 55; 73.

that in addition to the statutory criteria, the four criteria employed *In re: M.P.B. Inc.*, 28 Mo.P.S.C. (N.S.) 55, set out above, should also apply.

IV. APPLICATION OF MISSOURI PIPELINE COMPANY

A. Map of Requested Authority and Project Description

See figure 1, at page 14, *infra*, for a map showing the general course of MPC's proposed pipeline.

The Commission finds that Missouri Pipeline Company (MPC) is a duly authorized Missouri corporation maintaining its principal office at 91 Algana Court, Cherokee Industrial Park, St. Peters, Missouri. On August 31, 1990, MPC applied pursuant to Section 393.170 for a certificate of public convenience and necessity authorizing it to, *inter-alia*, construct and own a 56-mile extension of its 85-mile mainline intrastate natural gas pipeline previously certificated in Commission Case No. GA-89-126. The general course of the proposed extension, formally identified as the Franklin County Delivery Spur, and shown following in figure 1, will traverse parts of St. Charles, Warren and Franklin Counties and terminate near Sullivan, in Franklin County. MPC proposes to first interconnect with the pipeline proposed by Laclede, and, at the terminus of MPC's extension, to interconnect with the pipeline proposed by Laclede Gas Company and Missouri Gas Company, discussed *infra*.

MPC seeks authority only to transport, not to sell, natural gas. Company's requested pipeline has a design delivery capacity of 75 million cubic feet a day (MMcfd) downstream to Washington and its proposed Laclede interconnection; Company then states it can deliver up to 35 MMcfd downstream to the proposed terminus near Sullivan where MPC proposes to interconnect with MoGas. The first 29 miles (+ or -) of the proposed extension will be 16-inch outside diameter (O.D.) steel piping; the remaining 27 miles (+ or -) will be 10.75 inch O.D. steel. All piping will be cathodically protected.

MPC estimates the cost of the Franklin County Delivery Spur as follows:

ESTIMATED COST OF FACILITIES:

Right-of-way and survey	\$ 1,200,000
Construction of new pipeline	\$11,400,000
Road, water, and rail crossings	\$ 2,250,000
Inlet and delivery interconnect and meter facilities	\$ 900,000
Legal, engineering, supervision, office, interest, and miscellaneous expenses	<u>\$ 1,350,000</u>
Total	\$17,100,000

ESTIMATED ADDITIONAL ANNUAL EXPENSES:

Operating expenses	\$ 160,000
Maintenance expenses	\$ 200,000
Property taxes	\$ 340,000
Corporate general and administrative expenses	<u>\$ 100,000</u>
Total	\$ 800,000

B. Demonstration of Public Need

The evidentiary record in this case is replete with demonstrations of public need for natural gas in the areas sought by all applicants. When connected to the most current requests for authority by Laclede, MoGas and Intercon, MPC's request appears thus:

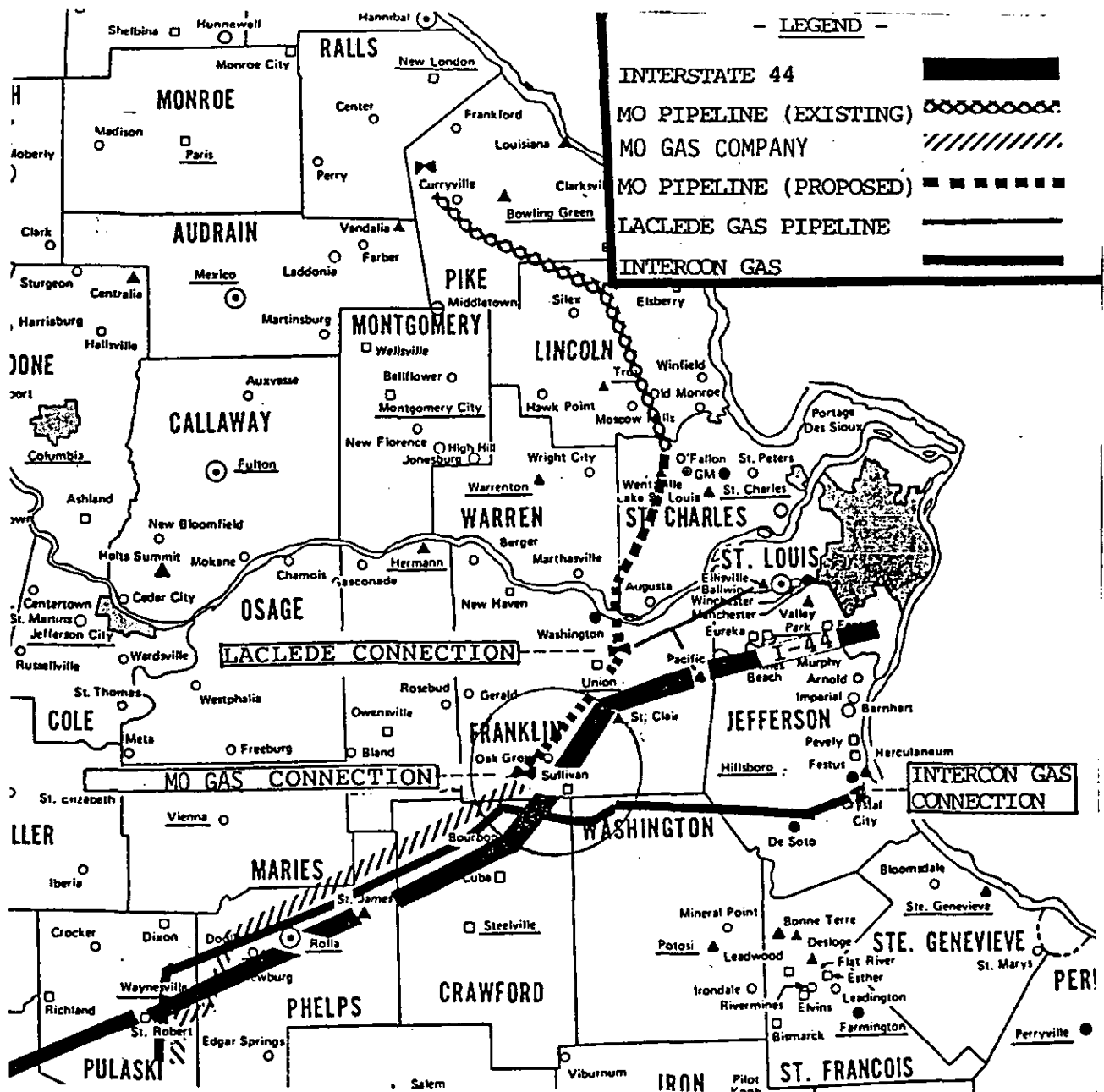


FIGURE 1

The Municipal Intervenors presented testimony and municipal resolutions supporting the need for natural gas service to the cities and residents of Rolla, Sullivan, Union, and St. Clair. They also retained an engineering firm to assay both the public need and the feasibility of establishing natural gas service in those communities. Exhibit 61, p. 8, depicted below, indicates the percentages of city residents who, when asked,

stated they would be interested in converting to natural gas for heating from either propane, electric or heating oil.

<u>CITY</u>	<u>OVERALL % OF RESPONDENTS INTERESTED</u>
Rolla	69%
St. Clair	60%
Sullivan	67%
Union	56%
Washington	50%

The technical witness for the Municipal Intervenors presenting this study, Mr. Leo Ebel, also presented data which demonstrated growth potentials in the areas to be served, the current number of residential, commercial and industrial customers, the relative price of other energy sources, vis-a-vis natural gas, and the long term availability of natural gas. Ebel concluded that providing natural gas service to the City Intervenors is economically feasible. The Commission so finds. Similar studies by Laclede, MoGas and Intercon, (see infra) yield the same result: Residential, commercial and industrial users of energy want natural gas and are willing, over time, to convert existing heating plants to obtain it.

Witnesses for Intercon, MoGas, and Laclede generally agreed that providing natural gas in the areas sought will produce fuel savings for consumers, attract new industry, and lead to increases in employment, goods and services, tax revenues and competition in the energy market.

All Applicants in this case now support MPC's application and each has presented feasibility studies and other evidence which clearly establish a need for natural gas service in all the areas proposed. These areas include the unincorporated areas of Franklin and Crawford Counties, the cities above named, and all other cities and points on the I-44 corridor to and including Ft. Leonard Wood.

The Commission therefore finds that a public need for natural gas service exists in the areas above indicated.

C. Financial Ability to Provide Service and Economic Feasibility of Same.

The evidence establishes that MPC is a wholly-owned subsidiary of Omega Pipeline Company (Omega), the latter being engaged in gathering and transporting natural gas. Omega is a wholly-owned subsidiary of ESCO Energy, Inc. (ESCO) and was acquired by Edisto Resources, Inc., a publicly traded corporation, in August 1990.

Tom M. Taylor, the president of MPC and MoGas and the Senior Vice-President of ESCO, testified that MPC's Franklin Delivery Spur would be funded through "additional equity financing" and, if required, appropriate debt funding. Witness Taylor stated that MPC's existing pipeline, initially authorized by this Commission in August, 1989,¹² and placed in service in early 1990, had been funded solely through equity capital, resulting in a \$15 million (+ or -) investment. Continuing, the witness said:

"We believe the Commission should take that (sic) into consideration in approving this Application as we will again perform in precisely the same manner if it grants the requested authority. Furthermore, as was the case with Missouri Pipeline Company's initial segment, this undertaking is entirely at the risk of our shareholder."

Witness Taylor also testified that both ESCO and Omega had "committed" the funds necessary to finance MPC's extension. Corporate resolutions to that effect are displayed in Exhibit 49.

On re-direct, after admitting on cross-examination that the resolutions could be changed or cancelled, witness Taylor stated, "I know the commitment of individuals on that board. . . They are not going to do that in any stretch of the imagination. They are committed to these projects."

To further advance the economic viability of its project, MPC (as well as MoGas) presented evidence of a contract between its parent, Omega, and

¹²Commission Case No. GA-89-126.

Ft. Leonard Wood to, inter alia, provide natural gas to Ft. Leonard Wood for a ten year period. The Ft. Leonard Wood contract is discussed at greater length, infra.

In addition, MPC presented evidence of a contract between ESCO and Laclede Gas whereby Laclede has agreed to purchase an additional 30,000 MMcf of gas per day, at firm capacity, for delivery to Laclede via MPC's proposed and existing pipeline. MPC states that without more, these two contracts will assure a reliable income stream to Omega and ESCO, and therefore MPC, for years to come, thereby enhancing the economic viability of its (and MoGas') proposal.

The Commission, having considered both MPC's current proposal and the satisfactory performance and in service date of its existing pipeline, finds that MPC's proposed project is financially feasible with or without a contractual corporate tie to the Ft. Leonard Wood agreement, and that MPC has the financial ability to undertake and complete same.

D. Rates

The Commission has considered MPC's proposal, and evidence supporting same, to charge the same transportation rates in its requested pipeline extension as it presently charges in its existing pipeline. At hearing, this single rate was referred to as a "blanket" rate. The Commission finds that MPC's proposal for one blanket rate is reasonable and supported by the evidence. The Company's increased volumes, through deliveries to Laclede under the ESCO contract, will make it feasible to recoup its new investment without increasing its rates. The Commission also finds that maintaining MPC's present rate will help keep the cost of downstream deliveries of natural gas in the I-44 corridor, discussed infra, at a competitive level.

V. APPLICATION OF LACLEDE GAS COMPANY

The Commission finds that Laclede Gas Company is a duly authorized Missouri Corporation maintaining its principal offices at 720 Olive Street, St. Louis, Missouri. On August 31, 1990, pursuant to Section 393.170, Laclede filed its verified application for the following:

A. Requested Authorities

- (1) For an area certificate entitling Laclede to (inter-alia) construct and operate a natural gas distribution system in:
 - (a) all unincorporated areas in Franklin County;
 - (b) all unincorporated areas in Northeastern Crawford County;
 - (c) the cities and environs of: Washington, Union, St. Clair, Parkway, Sullivan, Oak Grove, and Pacific.
- (2) For a certificate authorizing Laclede to (inter-alia) construct and operate a natural gas pipeline, described and displayed infra, in portions of Franklin and St. Louis Counties.

B. Maps of Requested Authorities and Descriptions of Projects:

Laclede's request for an area certificate includes the following:

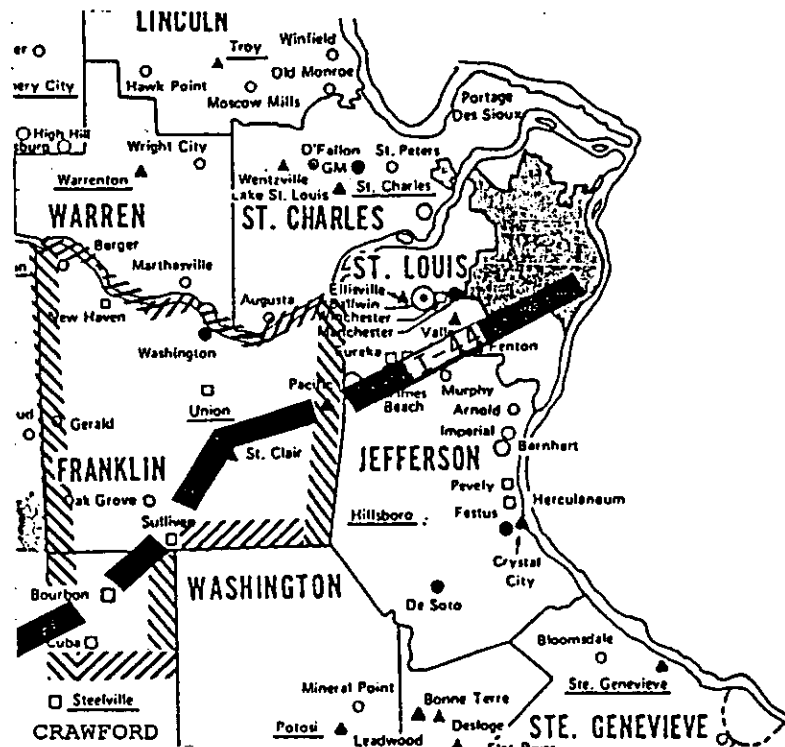


FIGURE 2 - LACLEDE GAS PROPOSED SERVICE AREA

Staff originally recommended that Laclede be certificated only to provide service within one mile of the centerline of Laclede's Franklin County pipelines. Staff's current recommendation is shown infra.

Company's requested authority to construct a pipeline (with a spur to Pacific), as well as its proposed interconnection with MPC's requested extension, is shown in figure 1 at page 14.

Laclede proposes to build a 26-mile (+ or -) 16-inch outside diameter (O.D.) steel pipeline from MPC's requested extension near Washington (see figure 1, at p. 14) to Laclede's existing distribution system at Ellisville. Laclede also requests authority to construct a 6-inch lateral pipeline from the vicinity of Oetters (10.8 miles east of the requested interconnection with MPC) to Pacific. The proposed Pacific lateral would be 5.3 miles in length. Company's Exhibit 72 estimates the total costs of both

the main line and lateral at \$9,521,305.00. Company proposes to finance same by, initially, cash on hand and short-term borrowing.

The natural gas for Laclede's proposed distribution system will arrive via MPC's and Laclede's proposed pipeline above described. Company states the new distribution system will be operated through a newly created district within Company's existing Missouri Natural Gas division.

C. Demonstration of Public Need and Required Municipal Consents.

The Commission's findings regarding public need made in Part III(B) above, also apply regarding Laclede's Application, and are incorporated herein by reference. As remarked, none of the areas sought by Laclede for establishing a new distribution system have access to natural gas. The Commission, therefore, finds that a public need does exist for natural gas in the service areas sought by Laclede.

The Commission also finds that the voters of the following incorporated cities and villages have approved resolutions granting operating franchises to Laclede to operate gas distribution facilities within said cities. These cities and villages are: Union, Washington, St. Clair, Pacific, Parkway, and Oak Grove. The Commission also finds that the county commissions of Crawford and Franklin Counties have granted Laclede franchises to operate in the unincorporated areas of those counties as originally proposed by Laclede. As noted below, the Commission's grant of area authority to Laclede will not include all such areas originally requested; notwithstanding same, the Commission finds that Laclede has secured the approvals required by statute and this Commission's Rules, as described in Section II, *supra*.

D. Financial Ability to Provide Service and Economic Feasibility of Same.

(1) Pipeline Feasibility.

Evidence of the feasibility of Laclede's proposed pipeline is contained in Exhibit 72. The Commission therein finds persuasive evidence that said pipeline will (1) make available to Laclede a new and lower cost natural gas supply, (2) effect a net savings to Laclede and its customers by forestalling other capital programs, (3) reduce Company's dependence on stored natural gas and propane to meet peak load requirements, (4) provide an alternate source of gas to Laclede's entire system, enhancing its reliability and flexibility, and (5) by making additional gas available through Panhandle Eastern Pipeline, enhance Laclede's bargaining position with Mississippi River Transmission, the Company's traditional supplier of natural gas. For the reasons above stated, the Commission finds that Laclede's proposed pipeline is economically feasible.

(2) Distribution System Feasibility.

The Commission's findings regarding the widespread expressions of public need in Sections IV-B and VII-D support to some extent the feasibility of Laclede's current proposal to serve the cities, villages and unincorporated areas of Franklin County. The Commission therefore adopts said sections herein to demonstrate the feasibility of Laclede's proposed distribution systems.

Laclede's feasibility study, Exhibit 72, states that 38% of the homes, businesses and industries in the five community area are heated with propane, 42% by electricity, and 20% with other fuels. Although Laclede's study is slightly flawed by including Sullivan,¹³ the Commission finds that a significant number of existing structures in the proposed area, excluding Sullivan, will eventually convert to lower cost natural gas for heating,

¹³Sullivan's voters did not ratify the ordinance designating Laclede as the franchise.

thereby enhancing the feasibility of Company's proposal. Laclede estimates that in the fifth year, counting new and converted heating customers, that Company will serve 5,900 customers and sell 1,137 MMcf of natural gas annually. The Commission is of the opinion that Company's estimate is reasonable and the Commission finds that Laclede's proposal to establish a new natural gas distribution system in the area above described is economically feasible.

The Commission further finds that Laclede Gas Company, which has long been certificated to provide natural gas service in this state and has a large and stable base of residential, commercial and industrial customers has both the financial and managerial qualifications to provide the service requested.

E. Rates and Service Area

Laclede originally sought a certificate for the areas and communities described in Section V., supra, at page 18. Staff agreed with most of Laclede's proposal, but recommended that Laclede should not be certificated for all the unincorporated areas in Franklin County. Staff instead recommended that Laclede be certificated to provide service only in those unincorporated areas of Franklin County within one mile of the centerline of Laclede's proposed Franklin County pipeline and within one mile of the Franklin County pipeline extension. At hearing, Staff indicated that Staff and Laclede have since agreed that Laclede's certificate would exclude the western portion of Franklin County, leaving Laclede free to serve all those unincorporated areas of Franklin County east of a point two miles west of the proposed Franklin County pipeline extension.

As stated above, Laclede has secured franchises from Franklin and Crawford Counties. The Commission finds that it is in the public interest to grant to Laclede an area certificate to serve in the unincorporated areas of

Crawford County, as Laclede originally proposed; the Commission also finds it is in the public interest to grant to Laclede an area certificate to serve in the unincorporated portions of eastern Franklin County as agreed to by Staff and Laclede and as described above. Laclede is herein required to file a metes and bounds description of the areas thus described.

The Commission also finds that it is reasonable and in the public interest that Laclede make its services available to the residents of Franklin and Crawford Counties under the same tariff and terms and conditions as Laclede makes said services available in Laclede's Missouri Natural Division.

VI. SHOULD EACH COMPETING APPLICANT RECEIVE A CERTIFICATE?

The Office of Public Counsel has urged the Commission to grant certificates to all applicants. Public Counsel's Witness Thompson stated that there were two reasons for the recommendation. The first has to do with the differences between a gas distribution system and a pipeline. In the former, economies of scale, or - in Thompson's words - "economies of customer density" work against a duplicatory system. But pipelines, Thompson says, are another matter. Not only is the risk of duplication smaller, but the market for natural gas cannot be "predicted with a great degree of certainty." (Ex. 68, p. 5). The second reason Public Counsel advances is that two competing pipelines will be more likely to give customers a good deal than would one pipeline.

Public Counsel's recommendation is somewhat tempting. It enjoys the distinction of being simple, dispositive, and patriotic, appealing as it does to our collective belief in the virtues of competition. Nevertheless, the Commission finds that it is in the public interest to certify only one pipeline. As shown infra, the evidence in this case does not reveal a present market, or a need, for an amount of gas sufficient to support two pipelines, both of which now propose to make ends meet not by selling gas, but only by

transporting it. Ft. Leonard Wood is the only market that has been identified, and is the subject of a 10-year contract. None of the I-44 communities have distribution systems; none of them have franchised a distributor. The Commission is of the opinion that one pipeline will have a far better chance of succeeding than two. But for the market at Ft. Leonard Wood, which seems indivisible, the Commission would not be overly optimistic about the chances of one pipeline. Although the Commission appreciates Public Counsel's suggestion, the uncertainties of a new and untested market are best explored by one provider, not two.

VII. APPLICATIONS OF MISSOURI GAS COMPANY AND INTERCON GAS COMPANY

The Commission finds that Missouri Gas Company (MoGas) is a duly authorized Missouri Corporation maintaining its principal office at 11 South Meramec, Suite 1010, St. Louis, Missouri. On April 11, 1990, MoGas applied pursuant to Section 393.170 for a certificate of public convenience and necessity authorizing it, to, inter alia, construct and own a natural gas pipeline initially originating in Cole County and terminating at Ft. Leonard Wood in Pulaski County. After amending its Applications (see procedural history) MoGas now proposes to construct and own a 67.5 mile intrastate natural gas pipeline from near Sullivan to Ft. Leonard Wood, as shown in figure 1 on page 14, above.

The Commission finds that Intercon Gas, Inc. (Intercon) is a Delaware Corporation which obtained its certificate of authority to do business in Missouri on March 26, 1990. Intercon maintains its principal office at 1300 Post Oak Blvd., Suite 540, Houston, Texas, and its Missouri registered agent at 906 Olive Street, St. Louis. On April 13, 1990, Intercon applied pursuant to Section 393.170 for a certificate of public convenience and necessity authorizing it to construct and own a natural gas pipeline from Festus to Rolla. After amending its Applications, Intercon now proposes to

construct and own a 109.7 mile intrastate natural gas pipeline from Festus to Ft. Leonard Wood, as described at pages 4, 5 and 6, supra.

A. Requested Authorities

As remarked in the Procedural History, supra, both Intercon and MoGas have freely amended their applications during this proceeding. Of the two, Intercon's amendments have been the most drastic and derivative, culminating in a new authority request made in Intercon's initial brief. Inasmuch as Intercon's latest request for authority has not been accompanied by new evidence or a new or updated feasibility study, the Commission can look only to Intercon's prior filings in order to describe the project which Intercon now proposes. In short, the evidentiary record supporting Intercon's case in chief made during the five full days of hearings ending March 15, 1991, addressed only Intercon's then pending request, as described at page 4, supra; by now scaling down its request, and, in effect, "competing" only with MoGas instead of MPC, Laclede and MoGas, Intercon is almost, but not quite, seeking the same authority it asked for originally. Subject to these caveats, and the extent to which Intercon's filed exhibits and testimony still permit a direct comparison, Intercon and MoGas propose as follows:

B. Comparison of Key Points in Both Proposals

<u>MoGas</u>		<u>Intercon</u>
67.5 miles	Mainline (Laterals)	109.7 miles (excludes Franklin and Washington Counties)
10.75 inch (O.D)	Size of Main	Unclear, Intercon may size down system with its reduction in demand.
\$14,900,000	Cost of system installed	\$23,365,830 ¹⁴ or \$21,640,512 ¹⁵ - 4,400,000 ¹⁶ 4,400,000 ¹⁶ \$18,965,830 ¹⁷ \$17,240,512 ¹⁷
22,000 MCF per day	Maximum Capacity	38,300 MCF per day (does not reflect downsizing)
690,000 MCF to Ft. Leonard Wood 1,018,200 to other I-44 Communities excluding Sullivan, Doolittle & Newburg	Estimated throughput per year (MMcf)	3,982,400 MCF (Excludes Franklin County per brief)
28.7%	Estimated Annual Load Factors	43.3% for all I-44 communities 42.5% ¹⁸
Ft. Leonard Wood will buy 690,000 Mcf per year from Omega	Known customers or shippers which will take or send gas	None identified
PROPOSED RATES		
	<u>Firm</u>	
\$18.10	Demand Charge	\$8.89800
\$.55	Commodity Charge	.24184
	<u>Interruptible</u>	
\$ 1.15	Commodity Charge	.63188

¹⁴In evidence at hearing (Ex. 14, Sch. JJS-2).

¹⁵Also in evidence at Hearing (Ex. 3).

¹⁶Intercon's estimate of the reduction in Intercon's "cost of facilities," per Intercon's Brief.

¹⁷Estimated pipeline cost; per Intercon brief and Exhibits 3 and 14.

¹⁸New estimate of load factor in Intercon's brief.

C. Feasibility of Proposed Service and Financial Ability to Provide Same.

Intercon's initial application, for a 6.625 inch line from Festus to Sullivan to Rolla, estimated the installed cost at \$8,962,724.00. Intercon's first filed feasibility study, Exhibits 2 and 7, Schedule 4, estimated the cost of the pipeline therein proposed at \$12,659,086.00. At hearing, when Intercon was still proposing to construct lateral pipelines into Franklin and Washington Counties, the installed cost was estimated at \$21,640,512 or \$23,365,830. In Intercon's initial brief, wherein the Company abandoned its request to construct the Franklin and Washington County laterals, Intercon states, in a footnote, that deleting same would result "in a reduction in the cost of facilities of \$4,400,000." Although the Commission does not regard this "reduction" as evidence, it does note that, if true, Intercon's latest and now pending request is to construct a pipeline costing either \$17,240,512 or \$18,965,830.

The proposal by MoGas is less complex; since October 15, 1990, MoGas has proposed to build a pipeline from near Sullivan down the I-44 corridor to Ft. Leonard Wood for \$14,900,000.

Without more, the Commission is somewhat dismayed by the changes in Intercon's estimates regarding what it wants to build, where it wants to build it, and how much it will cost. Nevertheless, there are some assumptions in Intercon's presentation which seem less subject to change than others, the first of which involves Intercon's "Natural Gas Requirements Estimate," Exhibit 3, Schedule AJG-3 (Revised).

(1) Estimates Regarding Need for Gas.

As noted on page 26, *supra*, Intercon has estimated an overall load factor for the I-44 communities at either 43.3% or (excluding Franklin and Washington Counties), 42.5%. MoGas estimates a load factor of 28.7%.

Estimations regarding load factors go to the heart of both Intercons' and MoGas' proposals because to estimate a load factor one must first (1) estimate the system's total annual demand for gas, and (2) estimate the amount of "peak" demand that will occur (in this case, on a peak day). The load factor is the ratio (expressed as a percentage) of a system's "average" load to its peak load.

A system's "average load" is easily calculated by dividing one's estimated annual load¹⁹ by 365, the number of days in one year. The resulting figure represents, if only hypothetically, an "average" load. For example, a system which uses exactly 1,000 MMcf of gas each and every day of the year would have an actual annual load (or throughput) of 365,000 MMcf. The load factor of such a system would be 100%. Gas could be sold to or transported on such a system for an extremely competitive rate since seller, transporter and buyer know exactly how much gas the system requires and when it requires it. For a seller or transporter of gas, an on-line customer with a 100% load factor would be tantamount to having a guaranteed market. The transporter's delivery and distribution system, pumps, valves, etc. could be sized in the most economical way to deliver only the amount of gas required. There would be no problem of excess capacity in such a system.

Conversely, a system which uses 100,000 MMcf of gas each year, but uses 1,000 MMcf on one peak day, has a load factor of 27.4%. For a seller or transporter of gas, a low-load factor customer may not be quite as attractive, depending on total volumes. The gas delivery system must be of a size to meet the peak day, and will cost more.

¹⁹As used herein, "estimated annual load" has the same meaning as "estimated annual throughput."

Intercon's estimates of natural gas requirements (Exhibit 3) although including Washington, Union, Pacific and St. Clair (excluded by Intercon's latest request) is at least amenable to a line by line analysis in order to determine Intercon's predictions regarding how much gas, and under what load factors, the I-44 market might be expected to take.

For the cities below shown, Intercon predicts an annual demand, and a residential market, for natural gas as follows:

RESIDENTIAL				
<u>City</u>	<u>Population (1980)</u>	<u>Annual Demand</u> (MMcfs)	<u>Peak Day Demand</u> (MMcfs)	<u>Load Factor</u>
Bourbon	1,295	76	.82	26%
Cuba	2,120	117	1.21	27%
Dixon	1,710	76	.69	30%
Doolittle	670	30	.27	30%
Ft. Leonard Wood		690	7.00	27%
Newburg	820	36	.33	30%
Rolla	13,303	510	3.35	42%
St. James	3,328	177	1.71	28%
St. Robert	1,735	77	.70	30%
Sullivan	5,461	225	1.50	41%
Waynesville	<u>3,760</u>	<u>166</u>	<u>1.52</u>	30%
Total	34,202	2180	19.10	
				Average Load Factor 31.3% or 31%

To support its projections of residential demand, Intercon's evidence is that 91.6% of those residents who will convert to natural gas will do so in the first year. By year two, Intercon asserts that 93.6% will have converted; by year three, 95.7%. As a result of the high rate of Intercon's predicted conversions, Intercon predicts a total annual residential throughput of 2,180 MMcf in the first year.

Laclede's witness Haury testified that the actual conversion rates will be "much lower" than Intercon has suggested, stating that in Laclede's study and experience, only 14% of the residential load could be expected to convert in the first year. The Commission finds that Intercon has no agreement with any city or gas distributor to transport gas for or to any of

the cities above-named. Since Intercon does not propose to sell or distribute gas, only to transport it, Intercon's predictions of residents converting to natural gas, and thereby creating a high demand, are like the cart pulling the horse. No one can convert to natural gas unless a city or a LDC (local distribution company) constructs a distribution system.

Intercon's predictions regarding their commercial and industrial load, and load factors, are as follows:

<u>City</u>	<u>Commercial</u>		<u>Industrial</u>		<u>Combined Load Factors</u>
	<u>Annual Demand</u> (MMcfs)	<u>Peak Day Demand</u> (MMcfs)	<u>Annual Demand</u> (MMcfs)	<u>Peak Day Demand</u> (MMcfs)	
Bourbon	26	.15	4	.03	45.7%
Cuba	43	.21	77	.39	54.8%
Dixon	28	.11	62	.31	58.7%
Doolittle	11	.04	24	.12	59.9%
Ft. Leonard Wood					
Newburg	13	.05	30	.15	58.9%
Rolla	188	.70	313	1.27	69.7%
St. James	67	.34	17	.14	47.9%
St. Robert	28	.11	63	.32	58.0%
Sullivan	77	.29	804	2.20	96.9%
Waynesville	<u>61</u>	<u>.24</u>	<u>136</u>	<u>.68</u>	58.7%
Total	542	2.24	1530	5.61	
Average Load Factor					72.3%

As it has done with residential, Intercon has achieved its estimate of this load by predicting that 93.4% of the Commercial/Industrial group will convert to natural gas in year 1, and that as a result the total expected demand for gas from these users will equal 2,072 MMcf in the first year, rise to 2,143 MMcf by year two, and reach 2,218 MMcf by year three. By year three, Intercon's load factor, according to Intercon, will have reached an enviable 100%.

The Commission finds that Intercon's predictions regarding its total expected load are virtually without merit. Intercon's estimates of residential, commercial and industrial load, and load factors, have been driven almost exclusively by its unreasonable assumptions regarding the speed

and extent to which potential customers will, or can, convert to natural gas. By indulging in these faulty assumptions, Intercon has made its project look considerably better than it is in fact.

The Commission finds in Intercon's flawed study a clear signal of warning regarding Intercon's entire project. Witness Ginnard, Intercon's sponsoring witness, stated how important the load study is. He said, "The results of our residential load study that we've done was used as a basis for rate calculations. It was used as the basis for designing our pipeline system. It was essentially what we had determined as the need within the area that Intercon was willing to take the project risk from."

MoGas did not perform a residential, commercial or industrial load survey; MoGas did not perform a gas requirements estimate. Instead, MoGas identifies the expected load from the Ft. Leonard Wood contract as its primary, and only, identifiable load. In Exhibit 32, MoGas witness Keith states that the first year transport volumes therein displayed were based on projections supplied by MoGas personnel. At hearing, Keith said Tom Taylor, MoGas' president, gave him the figures. MoGas therein forecasts an annual volume of gas moving down its proposed line toward Ft. Leonard Wood at 1,708,100 Mcf. The Fort has contracted only to take 690,000 Mcf of that total, leaving the rest for any potential users in the I-44 corridor who can either operate their own natural gas system or franchise a local distribution company to do so. MoGas' proposed throughput does not include any estimates of gas going to Sullivan, Doolittle, Newburg or Dixon.

The Commission finds that MoGas' predictions of expected load, and therefore its potential market, are far more reasonable than Intercon's.

(2) Estimates Regarding Construction Costs

Intercon's Witness Ginnard prepared the estimate for the (then) proposed Intercon pipeline by, in his words, "utilizing the results from the

analysis performed by FB&D". FB&D is Ford, Bacon & Davis, Sealants, Inc., an engineering and consulting firm in Monroe, Louisiana.

Intercon's Exhibit 3 displays the estimate, shown below:

Pipeline Materials	\$ 6,373,857
Pipeline Construction	11,895,905
Right-of-Way	792,030
Engineering and Management	1,220,812
Miscellaneous Cost Items	327,406
Contingencies	<u>1,030,502</u>
Estimated Total	\$21,640,512

Witness Ginnard also stated that he estimated monthly cash flows needed as funds used during construction, and that he also capitalized certain estimates of "general," "administrative," and "line pack" costs for use by Witness J. Sarikas, in order that Sarikas could calculate a rate base for Intercon's proposed pipeline. Witness J. Sarikas, in Exhibit 14, Schedule JJS-2, then calculated Intercon's first year rate base as follows:

Current Assets:	
(1) Working Capital	\$0
(2) Materials and Supplies	72,063
(3) Other Current Assets	<u>59,218</u>
(4) Total Current Assets	\$131,281
Property, Plant and Equipment at Cost less Accumulated Depr.	
(5) General Administration	585,000
(6) Land & Land Rights	831,632
(7) Transmission Mains	19,973,604
(8) Metering and Regulating Stations	835,275
(9) Capitalized Interest	1,009,038
(10) Less Accumulated Depr.	<u>0</u>
(11) Total Assets	\$23,365,830

The Commission is uncertain which of these two estimated totals Intercon is (or was) claiming as its investment. Whichever, Intercon has since changed its request for authority and has advised, via the aforementioned footnote in its brief, that its "facilities" will cost \$4,400,000 less than before. Will Intercon's newly proposed "facilities" cost \$17,240,512 or \$18,965,830? Whichever total applies, the Commission is of the opinion that Intercon's estimated costs are understated, notwithstanding that

Intercon claims to have "sized" its pipeline to serve the illusory "market" revealed by Intercon's defective gas requirements study. The Commission finds persuasive evidence on this point adduced by Laclede. Witness Haury, in Exhibit 82, states that Intercon's estimated costs of acquiring rights of way (9.93 per rod) were far below Laclede's observed and historical costs, (35.00 per rod). The same witness also contrasted Intercon's projected installed cost of 37.3 miles of 6-inch pipe (\$10.00 a foot) with Laclede's observed costs of installing 6-inch pipe (\$23.00 a foot). Laclede's witness stated that in these two areas alone, Intercon's erroneous estimates would add \$2,500,000 to its projected costs. On the question of estimating costs for installing a Missouri pipeline or rights of way, the Commission is more inclined to believe Laclede than Intercon inasmuch as Laclede has constructed and operated pipelines in Missouri.

For the reasons above set out, the Commission finds that Intercon's estimated costs for building its proposed pipeline are understated. The Commission has also found that Intercon's assessment of the market for natural gas in the area sought is defective, and suspiciously so. Intercon's projections of demand are neither reasonable nor credible. As a result, Intercon's estimates of pipeline cost and utilization are neither reasonable nor credible.

The Commission finds that MoGas' estimated cost of \$14,900,000 is a reasonable estimate, and reflects management's hands-on experience in constructing the first segment of MPC's intrastate pipeline.

(3) Estimates Regarding Proposed Rates and Allegations Re:
Rate Discrimination or Preferences

MoGas proposes as its first year rate the same rate as contained in the contract between Omega and Ft. Leonard Wood, shown infra. In support of this rate, which Intercon, the Commission Staff, and the Municipal Intervenors question, MoGas has also submitted proof of its total investment, cost of

service, and capital structure in order to support an "alternative" rate calculated by the modified fixed-variable rate methodology approved by this Commission in MPC's initial pipeline case. Using the same method, Staff has also calculated and advocates an "alternative" rate for MoGas, but has used a hypothetical capital structure of 50 debt/50 equity to calculate a rate. MoGas calculated its rate by using its actual capital structure, which is 100% equity, and this generally accounts for the differences between the rates calculated by MoGas and those calculated by Staff.

The three proposed rates (all shown per Mcf) are as follows:

	<u>Ft. Leonard Wood Contract Rate</u>	<u>MoGas Calculated Rate</u>	<u>Staff Calculated Rate</u>
<u>Firm Gas</u>			
Demand Charge	\$18.10000	\$13.17660	\$10.16000
Commodity Charge	\$ 0.55000	\$ 0.94330	\$ 0.87370
<u>Interruptible Gas</u>			
Commodity Charge	\$ 1.15000	\$ 1.37650	\$ 1.20770

To arrive at the calculated rates shown above, MoGas and Staff both employed a rate base of \$14,900,000, but assumed as follows regarding other rate components:

<u>MoGas</u>		<u>Staff</u>
\$4,188,665	Estimated first year cost of service	\$3,906,520
16.25%	Cost of capital	12.10%
16,300 Mcf	Estimated Contract	18,606 Mcf
1,709,100 Mcf	Estimated throughput	1,874,600 Mcf
28.7%	Estimated load factor	27.6%
\$2.4508	Average estimated rate for first year	\$2.0839

Neither of the two "alternative" rates shown above include MPC's transportation rate. Transporters of gas over MoGas' system (other than

Ft. Leonard Wood) would also have to pay MPC's transportation rate, given that all I-44 gas going to MoGas must flow through MPC's proposed extension.

Adding MPC's current rate to MoGas' calculated rate produces the following, a rate which more truly represents what I-44 customers would pay to transport natural gas over the MoGas pipeline.

	<u>MoGas Calculated Rates</u>	<u>MPC Existing Rates</u>	<u>Combined Rates</u>
Demand Charge (16,300 Contract Demand)	\$13.17660	\$2.4702	\$15.6468
Commodity Charge (1,709,100 Annual Throughput)	\$.94330	\$.1482	\$ 1.0915
Average Rate at 28.7% Load Factor	\$ 2.4513	\$.4309	\$ 2.8822

At hearing, Intercon proposed the following as its first year rates.

Firm Gas

Demand Charge	\$8.89800
Commodity Charge	\$0.24184

Interruptible

Commodity Charge	\$0.63188
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Like MoGas, Intercon also submitted a rate calculation by use of the modified fixed-variable rate methodology. Using a rate base of \$23,365,830, Intercon calculated its (then applicable) first year rate based on:

Estimated Cost of Service	\$5,391,925
Cost of Capital	12.52%
Estimated Contract Demand	35,380 Mcf
Estimated throughput	5,481,400 Mcf
Estimated load factor	42.4%
Average rate for first year	\$0.9837

By scaling down its request for authority, and by now supporting Laclede's and MPC's application, Intercon's proposed first year rate would have to change, although there is no on-the-record evidence to support such a change. However, in the interest of fairness and in order to compare Intercon's most recent "proposal" with MoGas' proposal, the Commission is willing to assume that Intercon's deletion of the Franklin and Washington

County laterals will reduce Intercon's rate base by, as Intercon's footnote suggests, some \$4,400,000. Given the extraordinary amount of assumptions, predictions and estimates already on the record in this case, it will do no great damage to indulge in another, albeit an extra-record, assumption.

The Commission has considered Intercon's off-the-record evidence not to indulge Intercon, but to assure itself that present and future gas customers in the I-44 corridor will be able to obtain gas from a transporter which offers the product at a fair and realistic price. The Commission finds that Intercon's estimated rates are neither fair nor realistic. Intercon's estimates of its construction costs are low. Intercon's estimates of demand and load factors are, as remarked above, unrealistically high, leading Intercon to predict a 100% utilization of its facilities in 36 months.

If Intercon had made a more realistic estimate of its load, load factor and throughput, Intercon's average rate would be higher than MoGas and MPC combined. Assuming the truth of Intercon's once-stated first year cost-of-service (\$5,391,925), but employing the first year load, load factor and throughput estimates of MoGas, Intercon's average rate would be \$3.1548. The combined average rate of MoGas and MPC, as shown above, would be \$2.8817.

Intercon has instead touted its proposed rates as "6 to 12 times" less than MoGas and has engaged in similar hyperbole regarding alleged rate discrimination, preferences, and the "dangers" of affiliated transactions within the EDISTO, ESCO, Omega, MoGas Corporate family.

The Commission is not convinced. The Commission finds that MoGas' proposal, while more conservative than Intercon's, is by far the most realistic and, in a very real sense, the most fair and trustworthy. For reasons already expressed and amplified below, the Commission simply does not believe Intercon's witnesses Ginnard and Bolton regarding load and load factors; nor was the Commission convinced by that portion of Mr. Orlofsky's

testimony in which he assured the Commission of Intercon's commitment to build its pipeline, even if the other competing applicants also received a certificate. Given Intercon's frequent changes of position, and especially its most recent shift, how can the Commission know which pipeline Orlofsky was then considering?

(4) Financial Ability and Qualifications to Provide Service

The Commission finds that both Intercon and MoGas have the financial ability to provide the service requested. However, the Commission also finds that of the two, MoGas is more likely to actually construct and operate the proposed pipeline inasmuch as Intercon has made faulty and extremely self-serving estimates of its predicted load, load factors, construction costs, and, as a result, its suggested rates. For the same reasons, the Commission finds that MoGas is more qualified to construct and operate the pipeline.

D. Public Need for Natural Gas in the I-44 Corridor

The Commission hereby incorporates its findings regarding public need made on pages 11 and 18 above. The Commission also finds that the following additional cities, towns and communities have no access to natural gas: Sullivan, Bourbon, Cuba, St. James, Rolla, Dixon, Doolittle, Newburg, Saint Robert, Waynesville and Ft. Leonard Wood. The Commission finds that natural gas is a desirable commodity for heating, cooking and cooling and that its availability will promote the public interest in the I-44 corridor; the Commission further finds that authorizing the construction of a pipeline to make natural gas available in the I-44 corridor is necessary and convenient for the public service.

E. Conclusory Findings Regarding Applicants/Approval of Rates

(1) Conclusory Findings Regarding Applicants

For the reasons above and herein stated, the Commission finds that MoGas is clearly the best qualified of the two applicants. In support thereof, the Commission adopts and incorporates herein its findings made in Sections C and D, above.

The Commission also finds that Intercon's frequent amendments to its requests for authority, culminating in its radically different request in Intercon's brief, is itself an indication that Intercon's divergent proposals were never fully thought out or supported by the actual market needs in the various areas Intercon applied to serve. Together with the findings set out in VII.C (1) through VII.C (4), above, Intercon's maneuverings have also contributed to the Commission's belief that the testimony of witnesses Ginnard and Bolton is not credible.

The Commission has also considered evidence regarding Intercon's past dealings in Michigan and Arkansas. In Michigan, Intercon filed a competing application to build a pipeline originally proposed by the Saginaw Bay Pipeline Company. Before the matter was heard by the Michigan Public Service Commission, Intercon withdrew its application and, in exchange for a 10% equity position in Saginaw Bay's project, supported its former rival.

In Arkansas, Intercon won approval to construct the NOARK pipeline after proposing, as it has done in this case, to fund the project with 20% equity and 80% debt. Although NOARK has been authorized for over a year, construction has never commenced, the project has never been financed, and Intercon is no longer a participant.

Intercon, although a corporation, is wholly owned by two gentlemen from Texas, Cy Wagner and Jack Brown. Neither Mr. Wagner nor Mr. Brown were willing to divulge anything to this Commission regarding their net worth.

Their banker did fly up from Texas, but the Commission was not reassured. Mr. Wagner and Mr. Brown have been associates of T. Boone Pickens. At hearing, the Commission heard of their hostile takeover attempts of Gulf Oil, Phillips Petroleum, Panhandle Eastern Pipeline and others.

The Commission realizes that there is nothing illegal or immoral about hostile takeovers, "greenmail," or pursuing business opportunities in Michigan and Arkansas. Nevertheless, as innocent as these events seem to be when considered individually, they take on a different look when combined with the Commission's findings regarding the lack of credibility in witnesses Ginnard and Bolton. The Commission is of the opinion that Intercon's application(s) have more of the character of a speculation than a well reasoned business undertaking.

The application of MoGas, by contrast, is supported by credible evidence and, given Ft. Leonard Wood's contract with Omega, a more realistic expectation of a demand for gas.

(2) Approval of Rates

The Commission hereby authorizes MoGas to charge the following rates for its services in transporting natural gas in the I-44 corridor from Sullivan to Ft. Leonard Wood.

For Gas Transported to Ft. Leonard Wood

Firm Gas

Demand Charge	\$18.10000
Commodity Charge	\$ 0.55000

Interruptible Gas

Commodity Charge	\$ 1.15000
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The Commission also authorizes MoGas, but only for a period of 18 months after its pipeline is operational and on-line, to charge up to the following rates for its services in transporting gas to all other points on the I-44 corridor from and including Sullivan to, and including, Waynesville

and St. Robert. MoGas is specifically authorized, on presentation of an enabling tariff, to charge less than the rate shown below.

<u>For Other Gas Transported in the I-44 Corridor</u>	
<u>Firm Gas</u>	
Demand Charge	\$13.17660
Commodity Charge	\$ 0.94330
<u>Interruptible Gas</u>	
Commodity Charge	\$ 1.37650

The Commission has approved the temporary use of the rate calculated by MoGas instead of the rate calculated by Staff. Staff's hypothetical 50/50 debt/equity ratio, while appropriate in other regulatory contexts, is not as appropriate for a start-up capital intensive business venture with (other than Ft. Leonard Wood) no customers. There is simply more risk in this undertaking than in the on-going business dealings of regulated monopolies, other pipelines, or interstate pipelines. Until the Commission can determine MoGas' actual rate base and cost of service, it is more fair and prudent to approve the temporary use of the rate set above.

The Commission has therefore only temporarily approved the rate shown above; on or before the expiration of the time stated, MoGas is directed to prepare to file a rate case wherein its actual costs, expenses and revenues will be used to calculate or support an appropriate rate, rates, or range of rates. The Commission also reserves for its future consideration the question of treating MoGas and MPC as one entity for ratemaking purposes.

VIII. PUBLIC TESTIMONY OPPOSING PIPELINE CONSTRUCTION

There has been a substantial amount of testimony on behalf of those Missouri residents who have no natural gas, and very much want it. The Commission has also heard from a large number of residents who object to the pipelines proposed by the Missouri Pipeline Company and Laclede Gas. One such group of landowners opposing Laclede's proposed pipeline, identified as those owning property in the vicinity of Bassett Road and Highway T, Franklin

County, Missouri, presented Exhibit 83 for the Commission's consideration and review. Exhibit 83 contains maps, statements regarding the dangers posed by Laclede's pipeline, a description of an alternative pipeline route that Laclede could follow, a rather concise synopsis of the Commission's statutory power regarding the routing of utility lines, a series of photographs, and letters opposing the pipeline. This group of landowners has requested that the Commission, using its safety jurisdiction, exercise control over the routing of Laclede's proposed pipeline.

Another group of concerned citizens appeared and gave testimony at the additional hearing held in this case on May 9, 1991. This group of citizens opposed the extension of Missouri Pipeline's existing natural gas pipeline into southern St. Charles County. Foremost among their complaints was that none of the adjoining property owners and, indeed, no one in that portion of the county, would receive any gas from Missouri Pipeline Company's proposed project. At hearing, it became apparent that most of those in attendance were of the opinion that MPC's pipeline was designed primarily to carry gas to Ft. Leonard Wood. Understandably, this group saw no need for such a pipeline to traverse any part of St. Charles County. Despite this misunderstanding, the Commission is convinced that most, if not all, of those who opposed the pipeline for the "wrong" reason would have continued to oppose it had they known of Missouri Pipeline Company's proposal to interconnect with Laclede at or near Washington, Missouri. The intended destination of the gas notwithstanding, the citizens and residents who gave testimony at the Commission's hearing on May 9, 1991, did not want MPC's high pressure pipeline to either traverse or abut their properties. The St. Charles County residents offered into evidence Exhibit 101, a document which contained a petition containing over 300 names opposing the pipeline and urging the Commission to devise an alternate course for it. Area residents retained counsel who made a

statement on their behalf and also were represented by Representative Craig Kilby, who presented sworn evidence supporting their position.

Although the residents of Franklin and St. Charles County were opposing different pipelines, and presented their concerns in a slightly different format, the Commission notes a similarity in their requests, in the depth of their feelings, and in their obvious attachment to the land. As one citizen of Franklin County remarked, "I think you should grant the franchise only if Laclede Gas will agree not to place these lines on private property where the owners object." (Ex. 83, p. 20). The Commission is sympathetic to these, and similar, concerns. However, and as remarked in the synopsis outlining the Commission's jurisdiction referred to earlier, it is not the Commission, but the city and county governments of our state, and - ultimately - its courts, which permits utilities to operate within a particular city or a particular county. Most utilities, including MPC and Laclede, will go to great lengths to secure landowner consent, but they are sometimes unable to do so. Failing consent, it is only the courts of this state, not this Commission, which have the power to permit a utility to build on private property and to determine the fair value of that property.

The Commission's safety jurisdiction does not extend to questions of this nature. The legislature has indicated that only county and city governments, and the courts, have the power to deny the utility the right to construct utility facilities over private property.

IX. CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions:

The Commission has jurisdiction over these applications under Sections 393.170 and 393.150, RSMo 1986. Section 393.170 states the Commission has the authority, after due hearing, to grant a certificate of

public convenience and necessity when it has determined such a grant will be in the public interest. Section 393.150 empowers the Commission to set just and reasonable rates.

Having established in the Findings of Fact that there is a public need for the services requested, and that Applicants MPC, Laclede and MoGas are qualified and financially able to provide said services, the Commission concludes that the authorizations and grants herein contained are necessary and convenient for the public service.

As stated in *State ex rel. Public Water vs. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980) the phrase necessary or convenient for the public service extends to preventing undesirable competition and the duplication of services. In *State ex rel. Beaufort Transfer Company vs. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), the reviewing court found that the Commission had a certain amount of discretion regarding evidence of public need and the public interest.

The Commission also concludes that the rates and charges herein approved and authorized are, pursuant to Section 393.150, just and reasonable.

X. ORDERED SECTIONS

IT IS THEREFORE ORDERED:

1. That Missouri Pipeline Company is hereby granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain an intrastate natural gas pipeline originating at the terminus of said Company's presently existing pipeline in St. Charles County, and extending in a southwesterly direction for 56 miles to a point at or near Sullivan, Missouri, in the southern portion of Franklin County.

2. That Missouri Pipeline Company shall file tariffs reflecting the rates and charges specified in this Order and a concise description and map showing the route of the pipeline herein authorized.

3. That Laclede Gas Company is hereby granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain an intrastate natural gas pipeline system consisting of a 26 mile mainline from Washington, Missouri, to Ellisville, Missouri and a 5.3 mile lateral pipeline from near Oetters, Missouri, to Pacific, Missouri.

4. That Laclede Gas Company shall file with the Commission a concise description and map showing the route of the pipeline herein authorized.

5. That Laclede Gas Company is hereby granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain a natural gas distribution system in those unincorporated areas of Franklin and Crawford Counties provided for by the agreement between Staff and Laclede, as stated in the Findings of Fact, above; that in addition Laclede Gas Company is hereby granted a certificate of public convenience and necessity authorizing it to construct and operate a natural gas distribution system in, and pursuant to franchises granted by, the Missouri cities of Washington, Union, St. Clair, Parkway, Oak Grove and Pacific. Laclede Gas Company is also directed to file a metes and bounds description of the newly certificated areas provided for herein and to file tariffs for said areas in accordance with the Findings of Fact in this Order.

6. That the original and amended Applications filed by Intercon Gas, Inc. for a certificate of public convenience and necessity authorizing Intercon Gas, Inc. to construct, own and operate an intrastate natural gas pipeline are hereby denied.

7. That Missouri Gas Company is hereby granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain a 67.5 mile intrastate natural gas pipeline originating

near Sullivan, Missouri, and proceeding in a southwesterly direction along the Interstate-44 corridor to Ft. Leonard Wood, Missouri.

8. That Missouri Gas Company shall file tariffs reflecting the rates and charges specified in this Order and which contain a concise description and map showing the route of the pipeline herein authorized.

9. That Missouri Gas Company is hereby ordered to file a permanent rate case within 18 months of the date said pipeline becomes operational.

10. That nothing in this Report and Order shall be taken or construed to prevent the Commission, at any time in the future, from treating and considering Missouri Pipeline Company and Missouri Gas Company as a single entity in order to determine the reasonableness of their rates and charges.

11. That the Missouri Pipeline Company, the Missouri Gas Company and Laclede Gas Company shall construct, operate and test the intrastate pipelines herein authorized pursuant to all gas safety rules promulgated or adopted by this Commission and subject to the review, inspection, and approval by the Staff of the Missouri Public Service Commission.

12. That Intercon Gas, Inc.'s Motion to dismiss Conoco, Inc., as a party to these proceedings, made on March 15, 1991, is hereby granted for the reasons stated in the Findings of Fact.

13. That the Commission, on its own Motion, hereby dismisses the ARKLA Energy Marketing Company as a party to these proceedings, for the reasons stated in the Findings of Fact.

14. That late-filed Exhibit 51 is hereby received into the record.

15. That Laclede Gas Company's Motion of June 10, 1991, to amend its previously submitted evidence by including evidence of Laclede's operating franchises in the Missouri cities and incorporated villages identified above is hereby granted.

16. That this Report and Order shall become effective July 9, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

Steinmeier, Chm., Mueller,
Rauch, McClure and Perkins, CC.,
Concur and certify compliance
with the provisions of
Section 536.080, RSMo 1986.

Dated at Jefferson City, Missouri,
on this 28th day of June, 1991.