

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

In the matter of the Application of Southern)
Missouri Gas Company, L. P. d/b/a Southern)
Missouri Natural Gas for a certificate)
of public convenience and necessity)
authorizing it to construct, install, own, operate,)
control, manage and maintain a natural gas)
distribution system to provide gas service in)
Branson, Branson West, Reed's Spring)
and Hollister, Missouri.)

Case No. GA-2007-0168

**BRIEF
OF
SOUTHERN MISSOURI GAS COMPANY, L.P.
D/B/A SOUTHERN MISSOURI NATURAL GAS**

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NON-PROPRIETARY

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d/b/a SOUTHERN MISSOURI NATURAL GAS**

Southern Missouri Gas Company d/b/a Southern Missouri Natural Gas ("SMNG" or "Company") respectfully submits its Brief that will address the list of issues filed by the parties on November 26, 2007.

I. Executive Summary

In this proceeding, SMNG has requested a certificate of public convenience and necessity to provide natural gas and transportation services in Branson, Hollister, Branson West, and surrounding unincorporated areas. SMNG has a municipal franchise to provide these services in Branson and Hollister, Missouri, and is seeking a municipal franchise to serve the small community of Branson West.

SMNG has been providing natural gas and transportation services in southern Missouri since 1994. In August, 2007, the Commission granted SMNG an additional certificate of public convenience and necessity to serve Lebanon, Houston, and Licking, Missouri. *See Report & Order,*

Re Application of Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas for a certificate of public convenience, and necessity authorizing it to construct, install, own, operate, control, manage and maintain a natural gas distribution system to provide gas service in Lebanon, Missouri, Case No. GA-2007-0212 (consolidated)(August 16, 2007). SMNG requests that the Commission grant it a conditional certificate in this proceeding with the same conditions as required in Case No. GA-2007-0212, including the condition that the Company submit an acceptable financing proposal for Commission approval.

The Commission Staff is also recommending that the Commission grant SMNG a conditional certificate to serve Branson, Hollister, Branson West, and the unincorporated surrounding areas. *See Staff's Position On The Issues* (filed November 27, 2007). Staff is recommending that the conditions include the same conditions that were accepted by Ozark Energy Partners in a Non-Unanimous Stipulation And Agreement filed in Case No. GA-2007-0568. (Tr. 244)

While most of the conditions accepted by OEP in Case No. GA-2007-0568 are already being followed by SMNG, SMNG strongly objects to the following condition that is being proposed by Staff as a condition in this proceeding:

“SMNG agrees that if, at any time, it sells or otherwise disposes of its assets before SMNG has cost based rates in a sale, merger, consolidation or liquidation transaction at a fair value less than its net original cost for those assets, the purchaser/new owner shall be expected to reflect those assets on its books at its purchase price or the fair value of the assets, rather than at the net original cost of the assets. This provision is intended to define SMNG's responsibility relative to the exercise of this certificate relative to SMNG's risk, not SMNG's customers, to absorb the costs in the event serving of this area is found to be uneconomic under original cost of service regulation. SMNG also acknowledges that it is the intention of the Parties that the provisions of this paragraph shall apply to any successors or assigns

of SMNG. Nothing in this paragraph is intended to increase or diminish the existing rights or obligations of the parties with respect to ratemaking treatment of SMNG's existing assets outside the properties related to this certificate."

The Company is opposed to Staff' proposed condition because it would have the effect of having SMNG attempt to bind some future purchaser of the assets of the Company to an agreement to use a specific accounting adjustment. The accounting adjustment would cause an immediate write-down on the purchaser's rate base if the future buyer purchased the property at less than book value. It would be more appropriate for the Commission to review the proper accounting of the purchase price at the time that the identity of the purchaser, the purchase price, existing rate base, and other relevant circumstances would be known. Such information would be available in any proceeding involving approval of the sale of assets.

As explained in Section IV, Issue 2a below, this condition is unnecessary since the Company has already indicated that its owners will take the economic risk associated with the expansion of the service area. (Tr. 87-88) It is also a totally unprecedented condition which has never been previously proposed by Staff (except in the OEP case) or accepted by the Commission in any previous case, including the previous certificate cases of SMNG. Instead, it flies in the face of a long standing practice of the Commission that both positive and negative acquisition adjustments will not be reflected in rates.

For these reasons, the Commission should not impose this unprecedented condition upon SMNG and any future purchaser of the Company's assets at this time.

Finally, Ozark Energy Partners, LLC, a company that also seeks to serve the Branson and Hollister areas, has also presented testimony of a consultant who criticizes the Company's Feasibility

Study. For the reasons discussed below, OEP's criticisms should be viewed as nothing more than a biased attempt to thwart SMNG's attempts to build a local distribution system in Branson and Hollister, and should therefore be rejected.

For the reasons stated below, SMNG respectfully requests that the Commission grant it a conditional certificate of public convenience and necessity to provide natural gas and transportation services in Branson, Hollister, Branson West, and surrounding unincorporated areas, as requested in SMNG's application in this proceeding.

II. Procedural History

On October 26, 2006, Alliance Gas Energy Corporation ("AGE") filed an Application for a certificate of convenience and necessity to provide natural gas service in Branson, Hollister, Branson, and Reeds Springs¹, Missouri in Case No. GA-2007-0168. The following parties were granted the right to intervene in this matter: Southern Star Central Pipeline ("SCCP"), Ozark Energy Partners, LLC ("OEP"), and Missouri Gas Energy, a division of Southern Union ("MGE"). The Commission Staff ("Staff") and the Office of the Public Counsel ("Public Counsel") also participated in this matter.

On July 2, 2007, Southern Missouri Gas Company d/b/a Southern Missouri Natural Gas ("SMNG") filed a Motion for Substitution of Party since SMNG acquired the assets of AGE, including the assignment of the Branson and Hollister, Missouri Franchises, needed to provide

¹ SMNG subsequently withdrew the request to serve Reeds Springs since OEP was awarded the municipal franchise to serve this community. See First Amended Application, p. 3, fn. 2 (filed on August 10, 2007).

natural gas service in the Branson and Hollister, Missouri area. This motion was granted by the Commission on September 15, 2007, and a prehearing conference was scheduled.

On October 24, 2007, SMNG filed a proposed Procedural Schedule which recommended a hearing date of November 27-28, 2007.

On October 25, 2007, the Commission issued its Order Adopting Proposed Procedural Schedule and scheduled a hearing for November 27-28, 2007, and directed the parties to file a List of Issues, if a settlement had not been reached prior to the hearings.

A List of Issues, Order of Witnesses and Order of Cross-Examination was filed by the parties on November 26, 2007. An evidentiary hearing was held on November 27-28, 2007, as ordered by the Commission.

III. Criteria For Granting A Certificate of Public Convenience and Necessity

In *Re: Intercon Gas, Inc.*, Case No. GA-90-280, 30 Mo.P.S.C. 554 (June 28, 1991), the Commission discussed the criteria for granting a certificate of convenience and necessity. The Commission stated as follows:

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 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 certificate was like any other in that MPC had to meet what the Commission then characterized as the following "statutory" criteria: (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.

Id. at 561.

In Case No. GA-90-280, the Commission also discussed criteria used in two sewer company proceedings in which it determined that it was appropriate to consider evidence regarding the need for the proposed service, Applicant's qualifications to provide the service, Applicant's financial ability to provide the service, and the feasibility of the Applicant's proposal. As discussed below, SMNG in this proceeding has clearly met the criteria for granting a certificate of convenience and necessity utilized in past Commission certificate cases.

IV. LIST OF ISSUES

- 1. Should SMNG be granted a conditional certificate of convenience and necessity to serve Branson, Hollister, and Branson West, Missouri, and surrounding environs, as requested by SMNG in this proceeding?**

SMNG Position: Yes. For the reasons discussed below, the Commission should grant SMNG a Certificate of Public Convenience and Necessity to serve Branson, Hollister, and Branson West, Missouri, and surrounding environs, as requested by SMNG in this proceeding. The certificate to serve Branson, Hollister, and Branson West should be conditioned upon SMNG securing financing to be approved by the Commission. In addition, the certificate to serve Branson West, Missouri should also be conditioned upon the Company obtaining a municipal franchise to serve that community.

- a. Is there a public need for the proposed service?**

SMNG Position: Yes. There is a definite need for natural gas and transportation services in Branson, Hollister, and Branson West, and the surrounding environs. SMNG has been granted a municipal franchise to serve Branson and Hollister, Missouri, and strong indications of support from the Branson West municipal leaders that a municipal franchise will be granted to SMNG if a

conditional certificate of public convenience and necessity is approved by the Commission in this proceeding. As a result, SMNG is in a position to fulfill the need for natural gas and transportation services in Branson, Hollister, Branson West, and the surrounding areas, as requested herein.

In *Re Tartan Energy Company d/b/a Southern Missouri Gas Company*, Case No. GA-94-127, 3 Mo.P.S.C. 3d at 181-82, the Commission discussed the public need standard in certificate cases as follows:

The Missouri Court of Appeals has held that “[t]he term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost.” State ex re. Intercon Gas v. P.S.C., 848 S.W.2d 593, 597 (Mo. App. W.D.1993). Testimony was adduced evidence indicating that natural gas is one of the preferred forms of energy in the central United States where it is readily available. The availability of natural gas provides a new energy alternative which may lower energy costs and promote economic development. Natural gas may also provide an inviting alternative for industrial and commercial customers. In addition, the project itself will represent a major capital investment in south central Missouri, which will require the employment of workers during the construction phase of the project, and for the operation of the pipeline.

The Commission also notes that as a general policy in recent years, it has looked favorably upon applications designed to spread the availability of natural gas throughout the State of Missouri wherever feasible. . . . The Commission finds that the facts related above provide sufficient indicia of the need for natural gas service in the proposed service area.

On August 16, 2007, the Commission issued its *Report and Order* in Case No. GA-2007-0212, finding that SMNG met the criteria needed for the issuance of a certificate of public convenience and necessity to serve Lebanon, Houston, and Licking, Missouri. The Commission specifically found that there was a public need for the service, and that the addition of natural gas will result in the creation of jobs in the community by allowing the municipalities to attract new industries and aiding its existing industrial base. The Commission also found that SMNG’s

proposed service was economically feasible, will meet a definite need in those communities, and will confer tangible benefits upon those communities. Finally, the Commission found that the grant of a certificate of public convenience and necessity to SMNG would promote the public interest. *See Report & Order, Re Application of Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas for a certificate of public convenience, and necessity authorizing it to construct, install, own, operate, control, manage and maintain a natural gas distribution system to provide gas service in Lebanon, Missouri, Case No. GA-2007-0212 (consolidated)(August 16, 2007).*

In this proceeding, similar evidence indicates that natural gas is not available in any of the cities of Branson, Hollister, Branson West, and surrounding unincorporated areas. According to the 2000 U.S. Census, Branson has a population of 6,050 with 3,366 households, Hollister has a population of 3,867 with 1,931 households, and Branson West has a population of 408 with 161 households. (Tr. 69-70). Citizens of these communities have not had available to them the clean, cost-effective fuel that many Missourians have used to heat their homes for many years. Existing and future industry and commerce in these areas will benefit as well.

Ms. Raeanne Presley, Mayor of the City of Branson, Missouri, testified that there is a public need for natural gas and transportation service in Branson. (Tr. 136) Mayor Presley testified that there would be numerous public benefits if the Commission granted the application in this case. According to Mayor Presley, Commission approval of the application would assist existing industry, such as the hospitals, local school district, the city's convention center, and The Chateau on the Lake, by providing an economic energy source, and attract potential future industries to Branson. (Tr. 137)

Ms. Presley testified that the lack of natural gas availability in Branson is viewed as a "negative" factor by prospective employers considering locating in Branson. (Tr. 137)

She testified that Branson was formed in the early 1900s, and that the process of bringing natural gas to her community has been a long process, but that the community remains hopeful that that this commodity will eventually be brought to Branson. (Tr. 138) Mayor Presley summarized the need for natural gas as follows:

Well, I also wanted to mention that we are in the process of developing a 300-acre commerce park. It's what we would call a smart park. It sits across from a very large underground that's quite phenomenal for our region. A lot of big name companies are moving in there. Jack Henry has recently moved a lot of their processing and software development in there, and we believe that has real potential to diversify our economy.

As you know, we are tourism-based. That is all that we do in Branson. But it does have limits in terms of year-round employment and wages. And we're looking for folks to move into our community that would be involved in different types of industries that would have a higher wage.

We are in desperate need of workforce in our community, and we hope that natural gas will be one piece of that puzzle. (Tr. 139)

With this clear need for natural gas in mind, the Branson Board of Aldermen adopted an ordinance which approved the assignment of AGE's municipal franchise to serve Branson with natural gas service to SMNG. (Tr. 138) Hollister has also awarded a municipal franchise to SMNG, and the municipal leaders in Branson West have expressed a strong interest in giving SMNG a municipal franchise to the Company. (Tr. 69; 97-98)

SMNG personnel discussed this potential project with various municipal and county officials, local business leaders, and the general public. These discussions revealed that there was a

substantial, unfulfilled demand for natural gas service within the area. The primary expressed concern was "how fast can you get here and we wish you were here yesterday." (Tr. 71)

During cross-examination by OEP's counsel, Mr. Steinmeier, Ms. Presley expanded upon Branson's desire for natural gas service from SMNG, and indicated that having a public utility based in the Branson area (i.e. Ozark Energy Partners) was not an important factor to the community:

[Steinmeier]:

Q. Mayor Presley, Bill Steinmeier on behalf of Ozark Energy Partners. At the end of the day, the city's ultimate concern is that as soon as possible it be receiving natural gas service from a financially viable, safe and reliable natural gas utility. Would that be an accurate statement?

[Mayor Presley]:

A. If all things were equal, but I'm not certain that all things are equal.

[Steinmeier]:

Q. Okay. And I'm sure it's important to you and folks in the city to – that your local utility have a strong knowledge of the – of the Branson area?

[Mayor Presley]:

A. I guess – I guess I would simply say that Branson is used to working with folks from throughout the nation, so while we welcome people that come in and learn about our community, I would not say that it's important to us that they be based in our community.

(emphasis added)(Tr. 142-43)

According to Staff witness Michael Straub, Staff also agrees that there is a public need for natural gas service in these communities. (Tr. 257) In fact, no evidence was presented that refuted the need for natural gas service in the proposed service area. In fact, SMNG does not believe that any party disputes that there is a clear need for natural gas and transportation services in these communities. (Tr. 373)

Based upon the competent and substantial evidence in the record, the Commission should find that there is a need for natural gas and transportation service in Branson, Hollister, Branson West, Missouri and the surrounding areas, as requested by SMNG.

b. Is SMNG qualified to provide the proposed service?

SMNG Position: Yes. SMNG owns and operates a natural gas distribution system located in southern Missouri which serves approximately 7,500 residential, commercial and industrial customers in twelve communities. SMNG is a "gas corporation" and "public utility" under the jurisdiction of the Missouri Public Service Commission, pursuant to Chapters 386 and 393, RSMo. 2000. It has been certificated as a local distribution system since its inception in 1994. SMNG has been in operation for over 12 years. The Company currently employs 35 employees with collective industry experience of over 300 years. (Tr. 72)

As discussed above, the Commission just four months ago found that SMNG was qualified to provide natural gas and transportation service, and granted the Company's application to serve Lebanon, Houston, and Licking, Missouri. *See Report & Order*, Case No. GA-2007-0212 (August 16, 2007).

According to Staff witness Michael Straub, Staff believed that SMNG was technically capable for providing natural gas service in the Lebanon certificate case, and the management team at SMNG has remained the same since that case. (Tr. 257-58) In addition, the Commission and Staff have been regulating and are quite familiar with SMNG since 1994 when it was first certificated as a local distribution company in Missouri. (Tr. 258)

The Commission has also found that SMNG (previously known as Tartan Energy Company, L.C. d/b/a Southern Missouri Gas Company) is financially and technically qualified to provide natural gas service. *See Report & Order, Re Application of Tartan Energy Company, L.C. d/b/a Souther Missouri Gas Company, for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain Gas Facilities and to Render Gas Service in and to Residents of Certain Areas of Wright, Texas, Howell, Webster, Greene and Douglas Counties, Including the Incorporated Municipalities of Seymour, Cabool, Houston, Licking, Mountain Grove, Mountain View, West Plains, Ava, Mansfield, Marshfield and Willow Springs, Missouri*, Case No. GA-94-127, 3 Mo.P.S.C. 3d 173 (September 16, 1994); *Order Granting Certificate of Convenience And Necessity, Re Application of Tartan Energy Company, L.C. d/b/a Souther Missouri Gas Company, for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain Gas Facilities and to Render Gas Service in and to Residents of Certain Areas of Greene, Wright and Webster Counties, Including the Incorporated Municipalities of Rogersville, Fordland, Diggins, Norwood and Seymour, Missouri*, Case No. GA-95-349, 4 Mo.P.S.C. 3d 61 (September 13, 1995).

More specifically, the Commission stated: "The Commission is confident that Tartan [now known as SMNG] possesses the necessary knowledge of the natural gas utility industry including the industry as it has developed in the State of Missouri, as well as of all the requisite technical requirements regarding engineering, safety, and so forth, and so finds. Thus, Tartan has shown that it is qualified to provide the proposed service." 3 Mo.P.S.C. 3d at 183.

As SMNG witness Randy Maffett testified in this proceeding, SMNG continues to be qualified financially and technically to operate the expanded local distribution system. In fact, SMNG has been successfully operating its local distribution system for the past twelve years. (Tr. 72-73) If the application is granted by the Commission, SMNG intends to add approximately twenty full-time additional employees to ensure that it continues to provide safe and adequate service to the new communities. (Tr. 75) The majority of these employees will be involved with construction, conversion, service technicians, meter readers, sales and marketing, and back office functions. (Tr. 75) Mr. Maffett also testified that the Company will operate the proposed project in accordance with the current safety rules of the Commission. (Tr. 73.)

Mr. Michael Lewis will be the professional engineer in charge of SMNG's construction efforts throughout the proposed service area. Mr. Lewis has an extensive background in the natural gas pipeline industry dating back to 1976. He has worked for United Gas Pipeline Company for ten years, Gulf States Gas and Gulf States Pipeline for eight years, served as a private consultant, and worked for Fluor Corporation where he headed the pipeline department. (Tr. 222). In these various capacities, Mr. Lewis has constructed in excess of 20,000 kilometers of pipelines in the following states and countries: Arkansas, Oklahoma, Louisiana, Texas, Pennsylvania, Alaska, Washington,

Mexico, Canada, Trinidad, Venezuela, Bolivia, Vietnam, Russia, Kazakstan, Kuwait and Great Britain. (Tr. 222-223). Without a doubt, SMNG has the necessary engineering expertise and experience to supervise the construction of the Branson Lateral Pipeline and related distribution system.

No evidence was submitted in this proceeding seriously challenging the qualifications of SMNG to provide the propose service. Based upon the competent and substantial evidence in the record, the Commission should find that SMNG is qualified to provide the proposed service in Branson, Hollister, Branson West, Missouri, and the surrounding, unincorporated areas, as requested by SMNG.

c. Does SMNG have the financial ability to provide the service?

SMNG Position: Yes. Randy Maffett, the managing partner of SMNG, has testified that SMNG has the financial ability to provide the proposed service. (Tr. 73) The estimated total cost of the project is approximately \$24 million. At this point, all of the project design and preliminary engineering work is complete. The Company is basically waiting on the regulatory approvals and the closing on financing to proceed with the project. (Tr. 74)

With regard to financing, the Company has filed an application with the Commission in Case No. GF-2007-0215 to recapitalize the Company by bringing in a new infusion of equity capital in the range of \$10-13 million, and approximately \$40-50 million in debt capital. The primary terms and conditions of the proposed financing have been negotiated, the identity of the investor and lender have been provided to the Staff, and the Company expects to be in a position to close the financing

in the first quarter of 2008, subject to the necessary regulatory approvals from the Commission. (Tr. 81) The financing would provide the necessary funds to complete the Branson, Hollister, and Branson West expansion project, as well as the Company's expansion into Lebanon, Houston, and Licking. (Tr. 81-82) *See Second Amended Financing Application*, Case No. GF-2007-0215 (filed on December 17, 2007).

According to Staff witness Michael Straub, Staff is not aware of anything that has changed with regard to the financial condition of SMNG since the Commission granted the Company a certificate of public convenience and necessity in the Lebanon certificate case. (Tr. 258) Based upon this competent and substantial evidence, the Commission should find that SMNG is technically and financially capable of providing natural gas service.

d. Does SMNG have the economic ability to provide the service?

SMNG Position: Yes. In this proceeding, SMNG submitted an extensive Feasibility Study which demonstrates that the proposed project is economically feasible. (Ex No. 2, Appendix C--HC). According to Staff witness Michael Straub, Staff also agrees that SMNG's proposal is economically feasible. (Tr. 259)

The Company has used assumptions and inputs into its financial model, including customer conversion rates, that are consistent with its actual experiences in operating the local distribution system in its existing service area in southern Missouri. (Tr. 97; 164) The Company's Feasibility Study demonstrates that the planned expansion will be feasible. (Application, Appendix C--HC)(Tr. 72, 413)

Based upon its existing natural gas rates contained in its approved tariffs plus a 20 cent per Ccf charge for all usage to recover the cost of the Branson Lateral Pipeline, the Company estimates that it will be able to provide natural gas at very competitive rates to existing propane services. (Tr. 71) Average propane prices are approximately \$1.80 to \$2.00 per gallon which on a Btu heating content basis equates to \$19.65 to \$21.80 per MMBtu for natural gas. (Tr. 71) SMNG's current delivered cost to a residential home, including distribution charges, commodity charges, and taxes, is approximately \$15 per MMBtu. (Tr. 63). Based upon an average household's usage of natural gas of approximately 60 Mcfs per year, SMNG's proposed rates would be approximately 25-30% less than the cost of propane. (Tr. 71-72)

The additional charge of 20 cents per Ccf is designed to recover the costs of the construction of the Branson Lateral Pipeline so that SMNG's existing customers are not in any way burdened by the proposed project. (Tr. 27) For Branson area residential customers, the proposed 20 cent per Ccf charge for all usage will add approximately \$120 per year to their natural gas costs. (Tr. 120) This approach is consistent with other local distribution company tariffs that have differing rates for different districts that have different underlying costs. *See e.g., Atmos Energy Tariffs, Mo.P.S.C. No. 2, Sheet Nos 22-30; Union Electric Company (Gas), Mo.P.S.C. No. 2, Sheet Nos. 22-30.* Such district tariffs reflecting differing underlying costs were recently approved by the Commission in *Re Atmos Energy Corporation, Report and Order*, p. 32-34, Case No. GR-2006-0387 (February 22, 2007).

In addition, the approval of proposed rates in a certificate case is consistent with the practice that was used by the Commission for SMNG's predecessor company, *Re Tartan Energy*, in

Case No. GA-94-127, 3 Mo.P.S.C. 3d 173 (September 16, 1994) and Case No. GA-95-349, 4 Mo.P.S.C.3d 61 (September 13, 1995). In addition, proposed rates were approved in the certificate cases involving other start-up companies in their respective certificate cases. *See Re Fidelity Natural Gas*, Case Nos. GA-91-291 (December 31, 1991) and GA-92-298, 1 Mo.P.S.C.3d 426 (November 10, 1992); *Re Ozark Natural Gas Company*, Case No. GA-98-227, 7 Mo.P.S.C.3d 367, 369 (August 4, 1998). All relevant factors, including the Company's expected rate of return, expenses and rate base, were taken into account in the Feasibility Study. (Application, Appendix C--HC). The approval of the proposed rates to serve Branson, Hollister, Branson West, and surrounding areas in this proceeding would not constitute "single issue ratemaking"³ and would otherwise be consistent with past practices involving expansions of service areas for existing natural gas local distribution companies.

(1) The Commission Should Reject The Criticisms of Ozark Energy Partners

In this proceeding, OEP hired an outside consultant in an apparent attempt to discredit SMNG's economic feasibility analysis. Mr. Steve Cattron, on behalf of OEP, has erroneously challenged **

_____ ** (Tr. 340-62 HC). For the reasons stated herein, the Commission should reject the criticisms of Ozark Energy Partner's outside consultant regarding the economic feasibility of the proposed project.

First, Mr. Cattron was not hired by OEP to provide an objective analysis of SMNG's feasibility study. Instead, he testified that "the primary purpose of today's testimony was to challenge the credibility of the [SMNG] feasibility study." (Tr. 371). As a hired spokesman for

OEP, his role in this proceeding was not to provide the Commission with an objective analysis. Instead, Mr. Cattron candidly conceded that he would not be testifying at all in this proceeding if he had determined that SMNG's project was economically feasible. (Tr. 371) In addition, Mr. Cattron admitted that he was not an engineer (Tr. 387), and therefore Mr. Cattron is not qualified to give an expert opinion regarding construction costs per customer, or the expected total capital requirements for SMNG's proposed engineering project.

Secondly, in contrast to the biased opinions expressed by OEP's consultant, the Staff has determined that SMNG's proposed project is economically and technically feasible. (Tr. 259). In addition, Staff has not expressed any reservations regarding the items raised by Mr. Cattron in his rebuttal testimony.

Finally, SMNG's managing partner, Mr. Randy Maffett, addressed and rebutted each of the criticisms raised by Mr. Cattron related to SMNG's Feasibility Study.² (Tr. 399-416) He explained that Mr. Cattron's calculations "are grossly erroneous" as they related to the expected cost per customer. (Tr. 400). He testified that SMNG's existing service area is substantially more spread out geographically than the compact Branson service area. SMNG's existing main transmission line is approximately 120 miles in length with two laterals that serve approximately 7,700 customers in six different counties. (Tr. 401) Unlike the compact service area of Branson, Missouri, SMNG's existing service area spans approximately 3,300 square miles as compared to only 15-20 square miles in the Branson service area. (Tr. 401-02) As a result, Mr. Maffett testified that it is "useless" to

² Although much of the testimony related to Mr. Cattron's criticisms of the SMNG Feasibility Study was contained in the in camera portion of the record, SMNG does not believe that its response to these criticisms needs to be maintained as confidential, and the Commission may discuss SMNG's response to these criticisms in its decision in this case.

compare SMNG's existing service area to the Branson area regarding the expected cost per customer, or as a marketing opportunity. (Id.)

Unlike SMNG's existing service area which has very limited commercial or industry customers, Mr. Maffett testified that the Branson area has "very, very significant commercial area" with over 200 restaurants in Branson alone. (Tr. 402) Mr. Maffett explained that there are over 40,000 hotel rooms and overnight condominiums in the Branson, Hollister and Branson West area. However, SMNG's existing service area doesn't "even have a single hotel that compares to the lobby at Chateau on the Lake." (Tr. 403)

With regard to SMNG's historic growth rates, Mr. Maffett again pointed out that OEP misunderstood SMNG's actual experience. Contrary to the erroneous data relied upon by OEP's consultant, Mr. Maffett explained that SMNG grew rapidly in the first years of its history, adding 3,545 customers in its first year of commercial operation (1996), 1,783 new customers in the second year (1997), 491 new customers in the third year (1998) and 404 new customers in the fourth year (1999) of operations. (Tr. 404)

Mr. Maffett testified that SMNG's financial model and feasibility study has assumed the same growth rates that occurred in SMNG's early years. As explained by Mr. Maffett, "Our actual experience is primarily the basis of our feasibility study with the exception of the census bureau data for Branson because the market is so significantly different than our existing market and the independent outside third-party analysis that we had done by KPMG which is where we got the data that showed what the propane, propane/electric, electric-only mix and the survey questions ...[regarding] customers' willingness to switch." (Tr. 405) However, these growth rates are more

conservative than the growth rates that were originally assumed by SMNG's predecessor Tartan Energy in its original feasibility study in 1996. (Tr. 404)

With regard to OEP's criticisms of the electric customer conversion rates, Mr. Maffett testified that even if all the electric conversions were removed from SMNG's feasibility study, the net impact on the economics of the project would be minimal. (Tr. 407) As a result, Mr. Maffett concluded that the all-electric market is not a significant factor in the economic feasibility study since these conversions affected the internal rate of return by ** _____ **. (Id). In reality, it is the large number of commercial customers, and a few industrial customers in the Branson area, that are the economic drivers of the financial model. (Tr. 408) Mr. Maffett also explained that OEP's criticisms of the "gross margin" estimates were misplaced since SMNG's load profiles will substantially change as SMNG expands into the Lebanon and Branson markets where there are higher load factor customers. (Tr.409-10) In addition, Mr. Maffett testified that the SMNG's current gross margin data are skewed by a single large existing industrial customer that has a long term contract with a low commodity rate. (Id.)

In summary, none of the points that OEP's consultant raised in his rebuttal testimony are valid criticisms of SMNG's feasibility study:

[Fischer]: **Q. Okay. Did anything that Mr. Cattron say today cause you to question the economic feasibility or viability in your proposed expansion into the Branson area?**

[Maffett]: A. Not a thing. We – we have relied on over 300 years of natural gas industry experience with our management team, with our employees, we've relied upon the data and the analysis we have from over 7,000 residential and commercial and industrial customers over 12 years of operating history to – to form the basis of our analysis.

This is the same basis that was used in Lebanon, and it was the same basis used for Houston and Licking.

Again, the demographics change with each area, but the underlying assumptions and the underlying fundamentals have all been predicated on historical operating results and they've all been consistently applied. (Tr. 413)

Based upon the competent and substantial evidence in the whole record, it is clear that the Company's natural gas service will be very competitive with propane and other alternative fuels available in the proposed service area. As a result, the Commission should conclude that the proposed project is clearly economically feasible.

e. Is SMNG's proposed service in the public interest?

SMNG Position: Yes. SMNG's proposed service is in the public interest.

In its Report and Order in *Re: Intercon Gas, Inc.*, Case No. GA-90-280 , 30 Mo. P.S.C. (N.S.) 554, 579 (June 28, 1991), the Commission found unequivocally "that natural gas is a desirable commodity for heating, cooking and cooling and that its availability will promote the public interest" Specifically, the Commission found in that Report and Order that numerous municipalities, including Sullivan, Bourbon, Cuba, St. James, Rolla, Dixon, Doolittle, Newburg, St. Robert, Waynesville and Ft. Leonard Wood, had no access to natural gas; and it was necessary to adopt policies that would make natural gas available to these communities to promote the public interest. Id.

In *Re: Fidelity Natural Gas, Inc.*, Case No. GA-91-99, the Commission elaborated upon its policy of encouraging natural gas availability:

Natural gas service is not available in the area sought to be certificated and the granting of this application is required for public convenience and necessity because it will make available to the residents of Sullivan, Missouri, a new and cost-effective form of energy that will, additionally, enhance the economic development of the area.

Report & Order, Case No. GA-91-299, p. 3.

In more recent years, the Commission has consistently granted certificates of convenience and necessity to local distribution companies that proposed to make natural gas available in new service areas. See e.g., *Re Missouri Gas Utility*, Case No. GA-2007-0421 (June 26, 2007); *Re Laclede Gas Company*, Case No. GA-2005-0118 (January 11, 2005); *Re Missouri Gas Energy*, Case No. GA-2005-0107 (December 30, 2004); *Re Missouri Gas Energy*, Case No. GA-2005-0053 (November 9, 2004); *Re Missouri Gas Energy*, Case No. GA-2005-0002 (August 25, 2004); *Re Missouri Gas Energy*, Case No. GA-2004-0241 (February 11, 2004); *Re Missouri Gas Energy*, Case No. GA-2003-0123 (October 31, 2002); *Re Missouri Gas Energy*, Case No. GA-2002-1090 (July 25, 2002); *Re Missouri Gas Energy*, Case No. GA-2001-0509 (October 16, 2001); *Re Union Electric Company d/b/a AmerenUE*, Case No. GA-2001-657 (October 4, 2001); *Re Missouri Gas Energy*, Case No. GA-2000-412 (February 29, 2000); *Re Union Electric Company d/b/a AmerenUE*, Case No. GA-99-0107 (May 4, 1999); *Re Laclede Gas Company*, Case No. GA-99-236 (May 4, 1999); *Re Union Electric Company d/b/a AmerenUE*, Case No. GA-98-556 (September 1, 1998); *Re Ozark Natural Gas Company*, Case No. GA-98-227 (August 4, 1998); *Re Missouri Public Service*, Case No. GA-97-132 (May 15, 1997); *Re Arkansas Western Gas Company d/b/a Associated Natural Gas*, Case No. GA-97-215 (March 19, 1997); *Re United Cities Gas Company*, Case No. GA-97-76 (January 28, 1997).

In this proceeding, SMNG urges the Commission to conditionally approve SMNG's application for a certificate of public convenience and necessity to serve Branson, Hollister, Branson West, Missouri, and surrounding areas, as requested by SMNG herein. In so doing, the Commission will continue its policy of encouraging the development of the State's infrastructure to bring natural gas to our citizens and industries.

In summary, it is clear from the evidence presented by the Company and Commission Staff that: (1) there is a public need for natural gas service; (2) SMNG is qualified to provide the proposed service; (3) the proposed project is clearly economically feasible; and (4) the proposed project is otherwise in the public interest. The Company would therefore respectfully request that the Commission approve its application for a certificate of public convenience and necessity to serve Branson, Hollister, Branson West, Missouri, and surrounding areas.

2. What conditions, if any, should the Commission impose upon the grant of certificate of convenience and necessity to serve Branson, Branson West, and Hollister, Missouri, and surrounding environs?

SMNG Position: SMNG believes it would be appropriate to place the same conditions on the grant of the certificate of public convenience and necessity that the Commission included in its *Report and Order* in Case No. GA-2007-0212. More specifically, SMNG believes it would be appropriate to condition the grant of a certificate upon the Company obtaining financing that is acceptable to the Commission. In addition, since SMNG does not have a municipal franchise for Branson West, Missouri, the Commission should condition the grant of a certificate to serve Branson West upon the Company obtaining a municipal franchise from this community before construction of the local distribution system begins in this municipality.

- a. Should the Commission specifically condition the certificate upon the following agreement by SMNG:

“SMNG agrees that if, at any time, it sells or otherwise disposes of its assets before SMNG has cost based rates in a sale, merger, consolidation or liquidation transaction at a fair value less than its net original cost for those assets, the purchaser/new owner shall be expected to reflect those assets on its books at its purchase price or the fair value of the assets, rather than at the net original cost of the assets. This provision is intended to define SMNG’s responsibility relative to the exercise of this certificate relative to SMNG’s risk, not SMNG’s customers, to absorb the costs in the event serving of this area is found to be uneconomic under original cost of service regulation. SMNG also acknowledges that it is the intention of the Parties that the provisions of this paragraph shall apply to any successors or assigns of SMNG. Nothing in this paragraph is intended to increase or diminish the existing rights or obligations of the parties with respect to ratemaking treatment of SMNG’s existing assets outside the properties related to this certificate.”

SMNG Position: No. Staff’s proposed condition referenced above is totally unprecedented.

This condition has never been previously suggested by Staff in a litigated certificate case. (Tr. 280)

For example, Staff did not propose this onerous condition in the Company’s recent case involving its application for a certificate of public convenience and necessity to serve Lebanon, Houston and Licking in Case No. GA-2007-0212 (Tr. 279), nor did Staff propose it in SMNG’s original certificate case to build its existing local distribution system in 1994. (*Id.*) The Staff did not attempt to impose it upon Missouri Gas Utility’s recent expansion of its certificate. *See Re Missouri Gas Utility*, Case No. GA-2007-0078. (Tr. 280) In fact, Staff witness Mark Oligschlaeger candidly testified that Staff has never even attempted to propose this condition in any other case, with the exception of the pending certificate case involving Ozark Energy Partners. (Tr. 280)

The proposed Staff condition is unnecessary since the Company has already indicated that its owners will take the economic risk associated with the expansion of the service area. (Tr. 87-88) It

is totally unnecessary to protect ratepayers for the Staff to suggest yet another condition that will adversely affect the Company's ability to dispose of its assets in the future.

The Company is adamantly opposed to Staff's proposed condition because it would have the effect of having SMNG attempt to bind some future purchaser of the assets of the Company on an agreement to use a specific accounting adjustment related to the future purchase price. The accounting adjustment would cause an immediate write-down on its rate base on its books if the future buyer purchased the property at less than book value.

As the Commission knows, there are strong precedents against allowing acquisition premiums to be reflected in rates when the assets are purchased at more than book value. Similarly, the Commission has held that it will not require a company to write down its rate base when the assets are sold at less than book value. *See e.g., Re UtiliCorp United Inc. and St. Joseph Light & Power Company for Authority To Merge*, 12 Mo.P.S.C.3d 388, 389-90 (February 26, 2004). In addition, Mr. Oligschlaeger testified that the Uniform System of Accounts requires that the use of "net original cost" for ratemaking, and that it would require a waiver if a public utility requested the accounting treatment being advocated by Staff. (Tr. 275, 284-85)

Staff witness Mark Oligschlaeger also testified that this practice has been the consistent policy for public utilities under cost-based rates. (Tr.281) In fact, the Staff's proposed condition has never previously proposed this condition upon an unwilling company, and the condition has never been previously imposed by the Commission:

- Q. And by that, if a company buys a company for more than the book value, the Staff would not support having the ratemaking be at the – the purchase price; is that correct?

- A. That is correct, and that is also true for negative acquisition adjustments under the conditions of cost-based ratemaking.
- Q. And that's -- that's been consistent too, hasn't it, that this Commission has not gone down the road of writing down the rate base in a situation where a company buys it for less than book value, assuming cost-based rates?
- A. That's correct.
- Q. So Staff is proposing this condition for the first time being imposed on a company that has not agreed to this provision previously as a condition to its certificate; is that correct?
- A. Along Ozark Energy, this is the first time we're proposing this specific condition.

Staff may argue that somehow SMNG's rates are not "cost-based." (Tr. 275) However, this argument would be incorrect. According to Mr. Oligschlaeger's testimony, if a company requests a rate increase, and the Commission establishes new rates, then the Company's rates would be "cost-based." (Tr. 290). Even Mr. Oligschlaeger conceded that SMNG has had a rate case in 2000 in which the Commission established its existing rates. (Tr. 290-91). As a result, following Staff's own definition, SMNG would indeed have "cost-based" rates.

Perhaps more importantly, the Commission should not impose this unprecedented condition upon SMNG and any future purchaser of the Company's assets at this time. It would be more appropriate for the Commission to review the proper accounting of the purchase price at the time that the identity of the purchaser, the purchase price, existing rate base, and other relevant circumstances would be known. Such information would be available in any proceeding involving approval of the sale of the assets.

For these reasons, SMNG respectfully urges the Commission to decline to impose the Staff's

proposed condition upon SMNG's expansion into the Branson area.

b. Should the Commission adopt similar conditions to those recommended in the Stipulation And Agreement between OEP and Staff filed in Case No. GA-2007-0561 on November 8, 2007?

SMNG Position: SMNG believes that, as an operating local distribution company, SMNG is already complying with the conditions contained in the Stipulation And Agreement between OEP and Staff filed in Case No. GA-2007-0561 (Tr. 78), with the exception of the unprecedented condition contained in Paragraph 3 of the OEP Stipulation related to the accounting of the purchase price for a future sale of assets. SMNG does not have any objections to the other conditions contained in the OEP Stipulation (Tr. 78), but believes they are unnecessary since SMNG is currently following them. (Tr. 78-80)

For example, SMNG already has Commission-approved tariffs (OEP Paragraph E), adheres to service quality conditions, including the Cold Weather Rule (OEP Paragraph F), has approved depreciation rates (OEP Paragraph G), has agreed to submit a financing plan for approval by the Commission (OEP Paragraph H), adheres to other Commission rules (OEP Paragraph J), maintains full records related to the affiliate transactions and corporate allocation of costs (OEP Paragraph K), uses time reporting related to Corporate Allocations (OEP Paragraph L), provides Staff and Public Counsel with reliability and natural gas supply planning information (OEP Paragraph M), provides Staff and Public Counsel with hedging plans (OEP Paragraph N), participates in PGA/ACA reviews (OEP Paragraph O), follows the Gas Safety rules (OEP Paragraph P), adopts the Uniform System of Accounts (OEP Paragraph Q), and provides Surveillance Reports to Staff (OEP Paragraph R).

Since SMNG is already complying with these routine conditions as a part of its obligations as an existing public utility, it is unnecessary for the Commission to impose these conditions upon SMNG's certificate of public convenience and necessity in this proceeding.

V. The Commission Should Approve the Stipulation And Agreement Between SMNG and Missouri Gas Energy

On December 4, 2007, SMNG and MGE filed a Stipulation And Agreement addressing their agreement related to certain matters related to areas where the proposed SMNG service area is continuous to MGE's existing service area. For example, in paragraph 2, SMNG voluntarily waives any right to seek a certificate of public convenience and necessity to provide natural gas service in any sections for which MGE has already received a certificate of convenience and necessity from the Commission. Other provisions of the Stipulation And Agreement describe agreements between SMNG and MGE regarding the construction process to ensure that there is no adverse consequences from the construction on existing MGE facilities in the area. (*See Paragraph 3 A-I.*)

On December 19, 2007, Staff filed its Staff Response To Stipulation And Agreement Between Missouri Gas Energy And Southern Missouri Natural Gas Company in which it indicated that "Staff does not object to the Stipulation, because it does not restrict or limit service in any uncertificated areas." (Staff Response, p. 2) However, Staff noted it does object to the provision in the Stipulation related to Farm Taps. (*Id.*) Staff stated its concern as follows:

SMNG has requested a "service line" which Staff interprets as a distribution line only, with no rights to serve any retail customers along the line. Staff is not recommending that SMNG be prohibited from serving retail along this line, however, SMNG must make application to and receive authorization from this

Commission before it may provide "Farm Tap" type service. (*Id.*)(*emphasis added*)

SMNG wishes to clarify that it is seeking in this case the authority to provide farm tap service to landowners along the proposed Branson Lateral Pipeline. In fact, it is often necessary to provide landowners with farm tap service in order to secure their agreement to allow the public utility to cross their land or otherwise grant an easement to do so. It would cause an impediment to the construction of the Branson Lateral Pipeline if farm tap service was not permitted. Therefore, SMNG respectfully requests that it be permitted to provide farm tap service off this service line, consistent with the agreements contained in the Stipulation And Agreement Between Missouri Gas Energy and SMNG filed on December 4, 2007.

VI. CONCLUSION

In conclusion, the Commission should approve the Application filed by the Company for a certificate of public convenience and necessity to provide natural gas and transportation services to Branson, Hollister, Branson West and surrounding unincorporated areas, as requested by the Company herein. Based upon the competent and substantial evidence in the record, it is clear that there is a public need for the proposed service, SMNG is qualified financially and technically to provide the service, and the project is economically feasible and otherwise in the public interest. The approval of the Company's application will provide significant benefits for the residents and industry in Branson, Hollister, Branson West, and surrounding areas. The SMNG project will have a positive impact upon employment in the area, provide an additional energy source, and promote economic development throughout the proposed service territory. (Tr. 184).

WHEREFORE, SMNG respectfully requests that the Commission act promptly to approve the application for certificates of public convenience and necessity to expand its service area as described in the Company's application in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Initial Brief was served to all counsel on the official service list in the above-referenced case via electronic filing and electronic mail (e-mail) on this 4th day of January, 2008.

/s/ James M. Fischer

James M. Fischer