

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

In the Matter of the Application of	)	
Southern Missouri Gas Company, L.P.	)	<b>Case No. GR-2010-0347</b>
Request for a Small Company Rate	)	<b>Tariff File No. JG-2011-0253</b>
Increase.	)	

**SOUTHERN MISSOURI GAS COMPANY, L.P. D/B/A SOUTHERN MISSOURI  
NATURAL GAS' RESPONSE IN OPPOSITION TO PUBLIC COUNSEL'S  
MOTION TO COMPEL AND ALTERNATIVE MOTION TO DISMISS**

COMES NOW Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas ("SMNG" or "Company"), pursuant to Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.080, and for its Response in opposition to Public Counsel's Motion To Compel And Alternative Motion To Dismiss ("Motion") respectfully states as follows:

**BACKGROUND**

1. On May 21, 2010, SMNG submitted a letter to the Secretary of the Missouri Public Service Commission ("Commission") in accordance with the provisions of Commission Rule 4 CSR 240-3.050, Small Utility Rate Case Procedure<sup>1</sup> ("Small Company Procedures"), initiating this small company revenue increase request ("Request"). The Company provides service to approximately 8,000 customers.<sup>2</sup>

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<sup>1</sup> As reflected in the Code of State Regulations, the Purpose of the Small Utility Rate Case Procedure is stated as follows: "This rule provides procedures whereby certain small utilities may request increases in their overall operating revenues, without complying with the rules pertaining to general rate cases set forth elsewhere in this chapter."

<sup>2</sup> 4 CSR 240-3.050(1) provides, in part: "Notwithstanding the provisions of any other commission rule to the contrary, a gas utility serving ten thousand (10,000) or fewer customers . . . shall be considered a small utility under this rule."

2. In its May 21, 2010 letter, SMNG requested an increase of \$1,000,000 in its annual gas service operating revenues.<sup>3</sup> In accordance with the Small Company Procedure, the Staff of the Commission ("Staff") initiated an audit of SMNG's books and records and a review of SMNG's existing tariff (referred to as "Staff's Investigation"). As a part of the Staff's audit, SMNG made its books and records available to Staff, and answered numerous data requests. Upon completion of Staff's Investigation, Staff provided its results to both SMNG and the Office of the Public Counsel ("OPC") with Staff's initial recommendations for the resolution of SMNG's Request, and other information regarding Staff's Investigation.

3. On July 9, 2010, OPC also initiated its investigation by filing eight data requests with the Company. Sixteen additional data requests, dated September 24 and October 7, 2010, were issued by OPC. Company responded by providing its answers, pursuant to the Commission's rules of practice and procedure.

4. Staff and Company entered into a "Company/Staff Agreement Regarding Disposition of Small Natural Gas Company Revenue Increase Request" ("Disposition Agreement") on November 17, 2010, setting forth the signatories' proposed resolution to all of the issues pertaining to the Company's revenue increase request. Staff filed the Disposition Agreement, via EFIS, on that date.

5. On December 14, 2010, OPC filed its Response, alleging that:

OPC opposes this agreement because the revenue requirement agreed to by Staff and SMGC may include an acquisition premium above the value of the plant being included in rate base. Including the acquisition premium in rates would be significantly detrimental to ratepayers because it would force ratepayers to overcompensate SMGC for

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<sup>3</sup> Pursuant to 4 CSR 240-3.050(7), SMNG mailed written notice of the request to each of its customers within the prescribed thirty-day time frame.

plant that has been written-down as impaired assets. Rate base should include the value of the assets after the write down to reflect the true value of the assets without forcing ratepayers to pay an acquisition premium.

OPC stated that this is the only issue that OPC seeks to resolve through an evidentiary hearing.

6. On December 28, 2010, SMNG filed its Reply to the Public Counsel's Response And Response To Order Directing Filing in which SMNG generally denied Public Counsel's allegations relating to an acquisition premium. SMNG specifically denied Public Counsel's allegation that there is a possibility of an acquisition premium since SMNG has never purchased any other public utility or any public utility's assets. For this reason, SMNG argued that OPC has no basis for its assertion that the "revenue requirement agreed to by Staff and SMNG may include an acquisition premium above the value of the plant being included in rates" and SMNG denied this allegation. As SMNG pointed out in its December 28 Response, SMNG has never purchased another public utility or another public utility's assets in its brief history, and therefore it is simply impossible for SMNG to have an "acquisition premium" reflected on its books, or in its revenue requirement in this case. Second, SMNG stated that there have been no write-downs to the assets of SMNG, and SMNG denied this allegation in its December 28 Response. Staff's December 22, 2010 Response also confirmed this fact: "Staff denies that SMNG has written-down the assets on its regulated books." (Staff Response, p. 3)

## **OPC'S MOTION TO COMPEL AND ALTERNATIVE MOTION TO DISMISS**

7. On December 23, 2010, OPC filed its Motion seeking a "Commission order compelling Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas (SMGC) to provide OPC with data necessary to determine the true value of SMGC's plant, which will allow OPC and the Commission to ascertain the appropriate rate base for establishing rates." (Motion, p. 1) In addition, OPC stated: "... OPC is attempting to determine the book value of SMGC's assets as if the asset impairment write-downs had been recognized on SMGC's books." (Motion, p. 5)

8. More specifically, OPC is seeking in its Motion an order compelling SMNG to answer data requests which SMNG has already answered. (*i.e.*, DR Nos. 12-19, 21, and 24). Apparently, OPC just does not like the responses it has received. In each case, it states: "This data request is specifically relevant to the production of information associated with the due diligence that would have been performed by \*\* \_\_\_\_\_ \*\* and could be used by OPC and Staff to determine the actual original cost book value of the utility."

9. With regard to documents in the possession of SMNG's outside auditor, initially SMNG answered DR Nos. 12, 13, 14, 15, 16, and 17 by indicating that it did not have any documents that were responsive to the request. Upon further inquiry from OPC, SMNG initiated inquiries with the outside auditing firm to determine if any of the requested documents were available from them. SMNG has now determined that additional documents that may be responsive to some of the data requests at issue are available and will be provided to OPC forthwith.

10. The issue in this case is not the “due diligence” that would have been performed by \*\*\_\_\_\_\_\*\* or its affiliate. This is totally irrelevant to the determination of “just and reasonable rates” in this case. It frankly does not matter how much or how little, if any, “due diligence” was done by the purchaser of SMNG for purposes of setting rates in this case. The information requested by OPC is not relevant nor reasonably calculated to lead to the discovery of relevant or material information in this proceeding. The party seeking discovery bears the burden of establishing relevance. OPC’s overly broad and unduly burdensome requests will not alter what the Company and the Staff have stated in this matter – SMNG has not written-down the assets on its regulated books. As Staff stated in its December 22, 2010 Response, “Staff’s revenue requirement was calculated using the Company’s net original cost minus accumulated depreciation.” (Staff Response, p. 2). Furthermore, OPC already has access to the books and records of the Company and has the “actual original cost book value of the utility.” SMNG has already provided OPC with this information.

11. With regard to DR No. 12, OPC states: “The excess purchase price tax allocation worksheet response did not include copies of the financial information and other worksheets that would have been required to produce the worksheet provided.” (Motion, p. 6) SMNG has provided the information that was available from its outside auditor and, as discussed in Paragraph 9, *supra*, additional information will be provided to OPC.

12. With regard to DR No. 13, OPC states that “OPC believes that the preparation of all of the aforementioned documents would have required access to

financial information, other supporting worksheets and due diligence information that was not provided in the response.” (Motion, p. 6) SMNG has provided the information that was available from its outside auditor and, as discussed in Paragraph 9, *supra*, additional information will be provided to OPC.

13. With regard to DR No. 14, OPC states that SMNG’s outside auditor provided an email scheduling a conference call to discuss the management structure of SMGC, and that no work product existed for this call. SMNG has provided the information that was available from its outside auditor, and it can not provide information that does not exist or is not in its possession.

14. With regard to DR No. 15, OPC states: “SMGC’s original response, dated October 9, 2010, stated that neither SMGC nor \*\*\_\_\_\_\_\*\* have any of the requested information.” (Motion, p. 9) However, OPC then states: “A subsequent response, dated November 22, 2010, provided a single three-page document that discusses when to test a long-lived asset for recoverability. OPC believes that the review of this type of information indicates that \*\*\_\_\_\_\_\*\* were aware that significant write downs associated with SMGC had occurred; however, financial information, other supporting worksheets and due diligence information that would have been required to perform such an analysis were not provided in the responses.” Notwithstanding OPC’s “expectations”, SMNG has provided the information that was available to it, and it can not provide information that it does not have in its possession.

15. With regard to DR No. 16, OPC states: “Company's original response, dated October 19, 2010, stated that neither SMGC nor \*\*\_\_\_\_\_\*\* have any of the information requested. A subsequent response, dated November 22, 2010, stated no supporting documents have been discovered, nor has \*\*\_\_\_\_\_\*\* been able to discover support for this task.” (Motion, p. 9) SMNG has provided the information that was available from its outside auditor, and it can not provide information that it does not have in its possession.

16. With regard to DR No. 17, OPC states: “SMGC's original response, dated October 19, 2010, stated that neither SMGC nor \*\*\_\_\_\_\_\*\* have any of the information requested. A subsequent response, dated November 22, 2010, stated no supporting documents have been discovered, nor has \*\*\_\_\_\_\_\*\* been able to discover support for this task.” (Motion, p. 10) SMNG has provided the information that was available from its outside auditor, and it can not provide information that it does not have in its possession.

17. With regard to DR No. 18, OPC states: “SMGC's original response, dated October 14, 2010, stated that it does not have access to the requested documents, but a subsequent response, dated November 22, 2010, provided a copy of only the purchase agreement which clearly indicates in Sections 4.19 and 4.23 that other documents existed.” (Motion, p. 11) SMNG initially did not have the requested information. When Public Counsel indicated that what it was seeking was a “source document” to confirm the purchase price of SMNG, SMNG requested that the purchase agreement be produced by \*\*\_\_\_\_\_\*\* as a source document. The Highly

Confidential purchase agreement, reflecting the specific information requested, was produced and provided to OPC.<sup>4</sup> Clearly, \*\*\_\_\_\_\*\* is not a “gas corporation” under the jurisdiction of the Commission. It is the owner of an equity interest in a “gas corporation.” See Section 386.020((18)). While OPC erroneously asserts that “\*\*\_\_\_\_\*\* is the primary entity that would benefit from a rate increase and should provide the requested information”, this assertion does not give the Commission statutory authority to compel an entity that is not under its jurisdiction to produce any information; let alone the sensitive “due diligence” information in its possession or its financial model for determining the value of public utilities it might invest in. Nor does this case involve any affiliated transactions that would give the Commission jurisdiction or statutory authority to compel the production of books and records of SMNG’s affiliates. The Affiliate Transactions Rule gives the Commission very limited authority to compel a gas corporation to make available the books and records of an affiliate “for the sole purpose of ensuring compliance with this [Affiliated Transactions] rule. . .” 4 CSR 240-40.015(6)(B). This case does not involve any allegations that SMNG is not complying with the Affiliated Transaction Rule.

In summary, it is simply beyond the jurisdiction and statutory authority of the Commission to compel the production of the books and records of an equity investor in SMNG in this rate case.

18. With regard to DR No. 19, OPC states: “SMGC's response, dated October 14, 2010, stated that it does not have access to the requested documents.”

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<sup>4</sup> As discussed in Paragraph 9, *supra*, SMNG has now determined that additional documents that may be responsive to some of the data requests at issue are available and will be provided to OPC forthwith.



(Motion, p. 11) SMNG can not provide information that it does not have in its possession. While OPC again erroneously asserts that “\*\* \_\_\_\_\_ \*\* is the primary entity that would benefit from a rate increase and should provide the requested information”, this assertion does not give the Commission statutory authority to compel an entity that is not under its jurisdiction to produce any information; let alone the sensitive “due diligence” information in its possession or its financial model for determining the value of public utilities in which it might invest. Nor does this case involve any affiliated transactions that would give the Commission jurisdiction or statutory authority to compel the production of books and records of SMNG’s affiliates. The Affiliate Transactions Rule gives the Commission very limited authority to compel a gas corporation to make available the books and records of an affiliate “for the sole purpose of ensuring compliance with this [Affiliated Transactions] rule. . .” 4 CSR 240-40.015(6)(B).

19. With regard to DR No. 21, OPC states: “SMGC's response, dated October 14, 2010, stated that it does not have access to the evaluations and other requested documents used by \*\* \_\_\_\_\_ \*\* to justify the purchase.” (Motion, p. 12) While OPC again erroneously asserts that “\*\* \_\_\_\_\_ \*\* is the primary entity that would benefit from a rate increase and should provide the requested information”, this assertion does not give the Commission statutory authority to compel an entity that is not under its jurisdiction to produce any information; let alone the sensitive “due diligence” information in its possession or its financial model for determining the value of public utilities in which it might invest. Nor does this case involve any

affiliated transactions that would give the Commission jurisdiction or statutory authority to compel the production of books and records of SMNG's affiliates.

20. With regard to DR No. 24, OPC states: "SMGC's response, dated October 14, 2010, stated that it does not have access to the requested records." (Motion, p. 13) While OPC again erroneously asserts that "\*\*\* \_\_\_\_\_ \*\* is the primary entity that would benefit from a rate increase and should provide the requested information", this assertion does not give the Commission statutory authority to compel an entity that is not under its jurisdiction to produce any information.

21. Finally, Public Counsel requests that, in the alternative, the Commission dismiss this small utility rate case "if the utility fails to timely provide the Staff or OPC with the information needed to investigate the utility's request." (Motion, p. 14). As explained herein, SMNG has provided Staff and OPC with information and answers to their Data Requests, and provided additional information necessary to investigate its request for rate relief. Staff has duly investigated this matter and entered into a Disposition Agreement with the Company. OPC is now engaged in investigation using an unprecedented approach to ratemaking. It would be an abuse of discretion for the Commission to dismiss this case simply because the OPC is seeking overly broad and irrelevant information from unregulated entities that are beyond the jurisdiction of the Commission in the hope of furthering an unprecedented approach to ratemaking. In fact, it has been ten years since this

Company has received a general rate increase, and it would be unreasonable to dismiss this proceeding, based upon Public Counsel's unsubstantiated assertions in its Motion.

**WHEREFORE**, SMNG respectfully submits its Response in opposition to the OPC's Motion To Compel And Alternative Motion To Dismiss, and hereby requests that the Commission deny Public Counsel's motion in this matter.

Respectfully submitted,

/s/ James M. Fischer

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#### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the General Counsel of the Staff of the Missouri Public Service Commission and the Office of the Public Counsel on this 3<sup>rd</sup> day of January, 2011 by hand-delivery, fax, electronic or regular mail.

/s/ James M. Fischer  
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