

**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,)	<u>Case No. GA-2007-0212</u>
install, own, operate, control, manage)	et al.
and maintain a natural gas distribution)	
system to provide gas service in)	
Lebanon, Missouri.)	

**INITIAL BRIEF OF SOUTHERN MISSOURI GAS COMPANY, L.P.,
d/b/a SOUTHERN MISSOURI NATURAL GAS**

Procedural History:

On December 6, 2006, SMNG filed an Application for a certificate of convenience and necessity to provide natural gas service in Lebanon, Missouri in Case No. GA-2006-0212. On December 12, 2006, SMNG filed an Application for financing in Case No. GF-2007-0215, seeking authority to issue \$10 million in equity capital and approximately \$50 million in notes and other forms of indebtedness ("debt securities") with maturities of up to 10 years associated with its expansion plans and other corporate purposes. On February 15, 2007, SMNG filed on Application for a certificate of convenience and necessity to provide natural gas service in Houston, Licking and Mountain View¹, Missouri in Case No. GA-2007-0310. At the request of SMNG, these cases were subsequently consolidated on March 8, 2007.

¹ SMNG is no longer seeking a certificate of convenience and necessity to serve the municipality of Mountain View, Missouri.

SMNG filed its applications for a certificate of convenience and necessity with the Missouri Public Service Commission, pursuant to Section 393.170, RSMo 2000, requesting that the Commission grant it authority to provide natural gas service to the public in the Cities of Lebanon, Licking and Houston, Missouri², as an extension of its existing service area and system.

On December 13, 2006, the Commission issued notice of the application and set January 12, 2007 as the date by which interested parties should apply to intervene. Applications to intervene were filed by the Missouri Propane Gas Association ("MPGA") and Southern Star Central Gas Pipeline, Inc., which were subsequently granted. The Commission also directed its Staff to submit its recommendation concerning the application, or a status report, no later than January 22, 2007. Staff filed several status reports as it completed its investigation into the applications.

On May 16, 2006, MPGA filed a Motion to Dismiss or in the Alternative to Stay Proceedings. MPGA requested that the Commission dismiss the proceeding, or hold it in abeyance until a ratification election in Lebanon, Missouri had been completed.

On June 12, 2007, Staff filed its verified Staff Recommendation which recommended, *inter alia*, that the Commission conditionally approve SMNG's Applications to expand service into Lebanon, Houston, and Licking, and to withhold approval of the financing application, pending the receipt of certain specific information. The Staff recommended that the order approving the certificate of convenience and necessity should be conditioned upon a favorable vote of the citizens of Lebanon regarding the ratification of the franchise approved by the City Council of Lebanon, Missouri which is scheduled for August 7, 2007.

² In 1995, the Commission issued orders in Re Tartan Energy Company d/b/a Southern Missouri Gas Company, Case No. GA-94-127 granting a certificate of convenience and necessity to SMNG to construct and operate natural gas systems in

With regard to the Application for financing filed by SMNG in Case No. GF-2007-0215, the Staff Recommendation indicated that SMNG is currently still engaged in definitive negotiations with several potential investors, and that Staff will file its staff recommendation with regard to the financing application at a later time when more specific information regarding the specific identity of the investor(s) is known.

On July 12, 2007, SMNG filed its Response Of Southern Missouri Natural Gas To The Staff Recommendation in which SMNG informed the Commission that the approach suggested by Staff for resolving the final issues related to the applications for a certificate of public convenience and necessity for Lebanon, Houston, and Licking is acceptable to SMNG. In addition, SMNG informed the Commission that the approach suggested by Staff for resolving the final issues related to the application for financing is also acceptable to SMNG.

On June 22, 2007, the Commission issued its Order Setting Procedural Conference And Directing Filing which scheduled a procedural conference on June 29, 2007. The procedural conference was held on June 29, 2007. During the procedural conference, MPGA orally requested a hearing in this matter. Subsequently, MPGA filed its Request For Hearing.

On June 26, 2007, the Commission issued its Order Denying Motion To Dismiss, Or In The Alternative To Stay Proceedings which denied MPGA's request to dismiss or stay the proceeding.

On July 9, 2007, SMNG on behalf of itself and the other parties filed a proposed Procedural Schedule which recommended a hearing date of July 27th. On July 10, 2007, the

several municipalities, including Houston, Licking and Mountain View, Missouri. However, SMNG's previous owners did not complete the trunkline and distribution systems in Houston, Licking, and Mountain View.

Commission issued its Order Adopting Procedural Schedule and scheduled a hearing for July 27, 2007. An evidentiary hearing was held on July 27, 2007 as ordered by the Commission.

I. The Commission Should Adopt The Provisions Of The Staff Recommendation And Approve The Company's Applications To Provide Natural Gas and Transportation Service to Lebanon, Houston, and Licking.

The Company respectfully requests that the Commission approve the Applications for a certificate of convenience and necessity to serve Lebanon, Houston, and Licking, as recommended by Staff in the Staff Recommendation. The Staff Recommendation recommended that the Commission conditionally approve the Company's applications for a certificate of convenience and necessity:

Having reviewed the pleadings filed by the MPGA and SMNG's response to same, the Staff believes the Commission may choose to move forward based on the Company's affidavit. Since a question has arisen concerning the franchise agreement, Staff recommends the Commission condition the CCN on a favorable vote of the citizens of Lebanon. However, the Staff recommends the Commission authorize the Company to proceed with construction of the lateral pipeline outside the city limits of Lebanon that will eventually be used to serve the City of Lebanon. The distribution system within the city limits of Lebanon would be constructed only following the ratification election. This approach will enable SMNG to build the lateral pipeline in a timely manner and enable SMNG to serve the City of Lebanon in the upcoming winter heating season, assuming the voters of the municipality approve the franchise. (Ex. 19, Staff Recommendation Memo, p. 4 of 5)

On August 7, 2007, the City of Lebanon conducted a ratification election regarding SMNG's franchise to serve the City. At that election, the citizens of Lebanon ratified the franchise by a vote of 602 (63.50%) in favor to 346 (36.50%) in opposition. (Notice of Election Results filed on August 10, 2007). As a result, the Commission does not need to condition the order on a favorable vote of the citizens of Lebanon since that condition has now been satisfied.

With regard to the Company's application for financing, the Staff Recommendation recommended that the Commission defer ruling on the request for financing until the identity of the investor(s) and terms and conditions of the financing are known. Staff stated that it would issue its final recommendation relative to SMNG's financing application after the additional information requested by Staff was submitted. (Id. at 4-5).

During the hearings, SMNG witness Randy Maffett testified that it would be acceptable to the Company if the Commission conditioned its order granting approval of a certificate of convenience and necessity upon the approval of the necessary financing. (Tr. 108)

II. Criteria For Granting Certificates of 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, 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.

A. SMNG Is Qualified To Provide The Proposed Service

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.

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. 64) If the applications are granted by the Commission, SMNG intends to add approximately twelve additional employees to ensure that it continues to provide safe and adequate service to the new communities. (Id.) Mr. Maffett also testified that the project would be operated in accordance with the current safety rules of the Commission. (Id.)

The City of Lebanon officials also reviewed the qualifications of the Company to provide the proposed service. The Company submitted a response to a Request For Proposal that was issued by the City of Lebanon requesting proposals to provide natural gas service to that community. After the City of Lebanon evaluated the responses to the RFP, the City officials concluded that SMNG was the most qualified to provide natural gas service to their community. (Tr. 187) Subsequently, the City Council granted a franchise to SMNG to provide natural gas service to Lebanon, Missouri. (Ex No. 3) On August 7, 2007, the voters of Lebanon ratified this ordinance by a substantial majority in

favor of having SMNG provide natural gas to the City of Lebanon. (See Notice of Election Results filed on August 10, 2007).

No evidence was submitted in this proceeding seriously challenging the qualifications of SMNG to provide the propose service. In fact, MPGA witness Ed Simmons specifically testified that he was not challenging the qualifications of SMNG to operate the proposed system:

[Fischer]: Is it correct that you're not testifying about the competence or the technical abilities of Southern Missouri Gas or its employees?

[Simmons]: That's correct.

(Tr. 230)

Based upon the competent and substantial evidence in the record, the Commission should find that SMNG is qualified to provide the proposed service in Lebanon, Houston and Licking, Missouri.

**B. There Is A Clear Public Need For
The Proposed Natural Gas Service**

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.

In this proceeding, similar evidence indicates that natural gas is not available in any of the cities of Lebanon, Houston, and Licking. The total number of households in these communities is approximately 6,000 in Lebanon, and 1,000 in Houston and Licking. (Tr. 61) These citizens have not had available to them the clean, cost-effective fuel that many Missourians have used to heat their homes for many years.

Mr. Joe Knapp, City Administrator of the City of Lebanon, Missouri, testified that there is a public need for natural gas and transportation service in Lebanon. (Tr. 179) He testified that there would be numerous public benefits if the Commission granted the applications in this case. According to Mr. Knapp, Commission approval of the applications would assist existing industry by providing an economic energy source, and attract potential future industries to Lebanon, thereby providing citizens with good jobs. (Tr. 180-81; 184) Mr. Knapp testified that natural gas availability is often requested by prospective employers considering locating in Lebanon. (Tr. 180-81) In fact, Mr. Knapp was aware of at least three prospective industries that had considered Lebanon as a potential site, but since Lebanon was not in a position to meet their stated criteria of providing natural gas to their proposed site, the industries ultimately did not consider locating there. The combined impact of these three lost, prospective employers would have been 200 additional jobs and \$180 million of capital investment into the Lebanon community. (Tr. 181)

Mr. Knapp also testified that the City Council of Lebanon had expressed an interest in attracting a natural gas provider as early as the 1960s, more than forty (40) years ago. (Tr. 182).

Mr. Knapp summarized the need for natural gas as follows:

We are a heavy manufacturing community. We have some 6,000 jobs that provide good living—a good living and a good quality of life for our people. And for us to remain competitive in that marketplace as a city to attract potential new industrial providers, job providers, we need natural gas.

That is one of the things that just about every time we get a lead, it's on the hit list. Part of what affects our competitive advantage as a city—our competitive ability is without the availability of natural gas—site selection now is done a lot via the Web. And if they hit your website or they hit your location sites and they don't see that you have that available infrastructure, you're bypassed. You never have the opportunity to present your case and what you can do to attract an industry. That is for new customers.

Our existing industry, which is actually where we probably spend more effort on, has approached us multiple times about natural gas. They have to be competitive in the world, and so they have been asking and inquiring and pushing us to provide them with the ability to be competitive in the marketplace, and to provide them at least the opportunity to have an alternative resource that would make it—the marketplace more competitive and, thus, allow them to compete better on the bottom line.

I think if we can work with our existing industry and provide expansion and additional jobs and help them be more competitive, attract new industry with additional jobs and help them be competitive, then the quality of life for our citizens goes up, because they have good jobs, stability, and an income stream to provide those things that are necessary for a quality of life. That's what I have to offer. (Tr. 184)

With this clear need for natural gas in mind, municipal leaders from Lebanon issued a Request For Proposal (RFP) in April, 2006, and approached SMNG regarding the possibility of the development of a natural gas distribution system for their municipality. (Tr. 173-74, 187). SMNG personnel discussed this potential project with various officials and governing bodies of the

communities. These discussions revealed that there was a substantial, unfulfilled demand for natural gas service within the area. (Tr. 56-61)

No evidence was presented that refuted the need for natural gas service in the proposed service area. Even MPGA witness Ed Simmons acknowledged during cross-examination that it finally time for the citizens of Lebanon to have the same energy choices as other consumers in Missouri:

[Fischer]: Q. Let me ask it again: After nearly 130 years, isn't it about time for the citizens of Lebanon to have the same energy choices as other consumers in Missouri?

[Simmons]: A. Okay. Yes.

(Tr. 239)

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 Lebanon, Houston, and Licking, Missouri.

C. The Southern Missouri Natural Gas Project Is Economically Feasible

In this proceeding, SMNG submitted an extensive Economic Feasibility Study which demonstrates that the proposed project is economically feasible. (Ex No. 6HC). The Company has used assumptions, including customer conversion rates, that are consistent with its actual experiences in operating the local distribution system in its existing service area. (Tr. 97) Based upon its existing natural gas rates contained in its approved tariffs, the Company estimates that it will be able to provide natural gas at very competitive rates to existing propane services. (Tr. 63) According to

information available from a propane industry website, the average propane price is approximately \$1.85 per gallon which on a Btu heating content basis equates to \$20 per MMBtu. (Tr. 62-63) SMNG's current delivered cost to a residential home, including distribution charges, PGAs, and taxes, is approximately \$13 per MMBtu. (Tr. 63). SMNG's price is also very competitive with electricity. (Tr. 63)

In addition to the economic factors, natural gas is generally considered a safer and more convenient fuel. The non-economic advantages of natural gas will also be attractive to consumers who desire a greater choice for their heating needs.

In its verified Staff Recommendation (Ex No. 19), Staff states that the Staff issued a number of Data Requests (DRs) addressing both the feasibility study and the financing request, reviewed the various applications, feasibility studies, materials submitted by SMNG, and DR responses. Inputs to the feasibility study include estimated household data based upon federal census data, conversion to natural gas of various types of existing customers, various costs associated with providing service to existing and new areas, proposed capital expenditures, and other assumptions.

Staff analyzed the effects of various changes to the assumptions, substituting more conservative estimates in place of some of the Company's inputs. (Tr. 249-51) Staff made the following adjustments to the Company's model: growth rates were replaced by the Company's actual growth experienced on the existing system from 1995 to 2000, removed all gas sales revenue and expense, added inflation during 2007 for the current SMNG system, tripled the distribution cost per customer from \$500 to \$1,500, added an allowance for interest on working capital, and doubled the estimated pipeline cost from \$9,750,000 to \$19,500,000. The feasibility was evaluated by looking at the internal rate of return (IRR) for the project over the 20 years covered by the model plus

a terminal value. A hurdle rate of 10 percent was considered to be the break point for feasibility. The IRR produced in the model, as adjusted by Staff, is 13 percent. The model, as submitted by SMNG, produces an IRR of 41 percent by this calculation. (Ex No. 19, pp. 2-3)

The Staff Recommendation also pointed out that Company will face embedded, entrenched competition from propane dealers, whose prices and business practices are unregulated. Using information from the Energy Information Administration, the residential price per gallon of propane on March 12 was \$1.68, which equates to an equivalent price per Ccf of natural gas of \$1.83. SMNG's PGA rate for natural gas in March was \$0.95 per Ccf. Since the price of propane is a delivered price, Staff calculated the delivered price of 1,000 Ccf of natural gas to compare with the equivalent of 1,000 Ccf of propane, by adding to the price per Ccf of natural gas, the commodity charge of \$0.357 and the customer charge equivalent by dividing the \$120.00 customer charge for 12 months by 1,000, or \$0.12. The cost of 1,000 Ccf of natural gas, calculated this way, would be \$1,427, whereas the price of the equivalent of 1,000 Ccf of propane would be \$1,834. According to the verified Staff Recommendation, the price of propane would have to drop to approximately \$1.307 per gallon to be competitive to natural gas. However, the wholesale price of propane on March 12 in Missouri was \$1.055. (Id. at 3)

After examining the Company's economic feasibility model and making the above-discussed changes to the inputs, Staff witness Tom Solt testified at the evidentiary hearing as follows: **"My conclusion was that it [SMNG's proposed project] is economically feasible."** (Tr. 251)

Finally, no evidence was submitted by the MPGA which challenged the economic feasibility of the proposed project. In fact, the MPGA witness Simmons had not reviewed the Company's Economic Feasibility Study or the financial information supporting the applications. (Tr. 228-29)

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 competent and substantial evidence in the record demonstrates that the proposed project is clearly economically feasible.

**D. The Southern Missouri Natural Gas
Project 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 and Commission Staff have urged the Commission to conditionally approve SMNG's applications for certificates of convenience and necessity to serve Lebanon, Houston, and Licking, Missouri. 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 applications for a certificate of convenience and necessity to serve Lebanon, Houston, and Licking, Missouri.

**III. The Commission Should Reject The Arguments
Of The Missouri Propane Gas Association Because They
Are Unsupported, Self-Serving Criticisms
Designed To Do Nothing More Than Stifle
Competition In The Marketplace**

Unfortunately, this case is an example of a situation in which marketplace competitors attempt to use the regulatory process to stifle their potential competition. In the past, the Commission has questioned whether there is a legitimate role for intervention of propane dealers in certificate proceedings for natural gas companies. In Re: Ozark Natural Gas company, Inc., Case No. GA-93-157, the Commission issued its Order Denying Intervention and Setting Procedural Schedule (February 23, 1993), at page 2, in which the Commission stated:

Applicant [Ozark Natural Gas Company] does not threaten the legitimate business interests of the Propane Dealers. Applicant is seeking authority to construct the necessary facilities to transport natural gas to those with which it has contracts. The authority sought by Applicant would not interfere with any contracts the Proposed Dealers may have, nor would it interfere with the Propane Dealers' efforts to transact business with any other entity. Thus, without legitimate business interests to protect, the Propane Dealers have no different standing than the public.

Although the Commission has permitted the MPGA to participate in this proceeding, it is unfortunate that the MPGA has utilized this proceeding as an attempt to throw regulatory road blocks in front of a project designed to provide the public with the benefits of natural gas.

Propane dealer witness Ed Simmons was quite candid during cross-examination when he explained that it would never be in the economic interest of propane dealers to permit a natural gas company to come into their service area to provide natural gas in competition with them:

[Fischer]: Q. Do you believe it would ever be in the economic interests of your members [of the Missouri Propane Gas Association] to permit a natural gas company to enter your markets?

[Simmons]: A. No.

[Fischer]: Q. So you can't conceive of any circumstance that the Missouri Propane Gas Association would actively support the approval of a natural gas company to come into one of your areas?

[Simmons]: A. I don't know that we would support it. I don't know that we would necessarily oppose it every time.

(Tr. 231).

Undoubtedly, the strong economic interests of the MPGA against the expansion of natural gas in their market areas explain the strident positions taken by this intervenor in this case. In his first appearance on behalf of propane interests before the Missouri Public Service Commission, MPGA witness Simmons submitted testimony recommending the denial of an Applications to expand the availability of natural gas to unserved areas. (Tr. 652). Notwithstanding the evidence that the public desires to have natural gas as a potential fuel choice, the MPGA has chosen the regulatory forum to compete with natural gas rather than devoting their time and resources to competing in the marketplace.

MPGA witness Simmons, however, candidly admitted that propane dealers are willing to compete with the Company head-to-head in the marketplace:

[Fischer]: **Q. Mr. Simmons, are the propane dealers that you represent in this proceeding willing to compete with Southern Missouri Natural Gas head-to-head in the marketplace?**

[Simmons]: **A. I think yes. We can compete with anybody if the playing field is level.**

[Fischer]: **Q. Is the Missouri Propane Association philosophically opposed to competition with the natural gas industry?**

[Simmons]: **A. No.**

(Tr. 238).

Although the propane dealers are apparently willing to compete with SMNG in the marketplace, it is unfortunate they have chosen the regulatory forum for their first battle. The Commission should summarily reject their criticisms and approve the Staff Recommendation to approve the Company's applications to serve Lebanon, Houston, and Licking, Missouri. The Commission should not deny the public the right to choose natural gas as their fuel of choice, based upon the self-serving criticisms of the Missouri Propane Gas Association in this proceeding.

The MPGA has sponsored the testimony of Ed Simmons in this proceeding. This witness has raised several contentions which should be rejected by the Commission. The MPGA contentions fall in three general areas: (1) the Propane Dealers contend that there are generic "pressure problems" in southern Missouri related to the operation of natural gas systems; (2) the Propane Dealers contend that the introduction of natural gas into new communities will raise the cost of providing propane to

existing propane customers; and (3) the Propane Dealers erroneously assert that the Company would be guaranteed a profit if the Commission approved the applications in this case. This section of the Brief will address these various issues.

A. The Commission Should Reject MPGA's Contention That There Are "Pipeline Capacity" or "Pressure Problems" in Southern Missouri.

In its Position Statement, MPGA asserts that there are "pipeline capacity" and/or "pressure problems" in other communities in Southern Missouri. (MPGA Position Statement, p. 1). This contention is wholly without merit and must be rejected by the Commission.

According to the testimony of MPGA witness Ed Simmons, natural gas companies do not have "enough pressure in their mains to push the gas through fast enough, hard enough to the consuming industrial industry." (Tr. 209). He cited in his testimony examples where the City of Springfield and Waynesville added peak shaving plants to their systems. (Tr. 208) However, Mr. Simmons' testimony regarding "pressure problems" did not address Southern Missouri Natural Gas' system at all! (Tr. 233). In fact, Mr. Simmons had not conducted any pressure tests on any part of the SMNG system, and he admitted that his testimony about "pressure problems" was not based upon any personal observations or inspections of SMNG. (Tr. 233-34). His testimony on this point is simply not relevant or applicable to the circumstances that exist for SMNG.

Contrary to the position of MPGA, the record unequivocally demonstrates that SMNG has not experienced "pressure problems" as suggested by MPGA. (Ex No. 9; Tr. 68-69) In fact, Exhibit No. 9 clearly shows that the monthly pressure tests that have been performed by Southern Star Central at SMNG's city gate at Rogersville indicate that the pressures have been nearly constant throughout the months of the year. (Ex. No. 9)(Tr. 68-69)

Based upon this evidence and his experience with SMNG's operations, Mr. Randy Maffett testified: "Southern Missouri has no delivery pressure or operational constraints or issues. And to the best of our knowledge, it never has in its 12 years of operation." (Tr. 69) He also testified that SMNG has never received a consumer complaint regarding pipeline pressure in the time he has operated the Company. (Id.)

SMNG witness Randy Maffett also testified that SMNG has recently substantially increased its firm capacity with Southern Star Central Pipeline Company. Mr. Maffett testified that in December 2006, SMNG contracted with Southern Star Central to add five million cubic feet per day of additional firm capacity which was earmarked primarily for expansions of the Company's service area. (Tr. 63-64)

Based upon the competent and substantial evidence in the record, the Commission should reject MPGA's unsubstantiated assertions that there are "pressure problems" on SMNG's local distribution system.

B. The Commission Should Reject MPGA's Contention That The Introduction Of Natural Gas Will Have An Adverse Impact Upon Propane Customers

MPGA witness Simmons also contended that the introduction of natural gas into these communities would have an adverse impact upon existing propane customers, and would raise the price of propane. (Tr. 210-212) According to Mr. Simmons, SMNG's entrance into the energy market will result in an increase in the price of propane to propane customers. This argument is simply counter-intuitive and is totally contrary to experience in the marketplace.

When natural gas companies enter new markets, they enter these markets with no customers and a zero market share, but with a very attractive product for sale to consumers. Typically, propane dealers have responded to such competition by lowering the price of propane, not raising it as suggested by Mr. Simmons. As Mr. Hatfield, counsel for MPGA, pointed out during cross-examination of SMNG witness Maffett, the propane industry is unregulated, and has more pricing flexibility than the regulated natural gas companies. Mr. Hatfield correctly suggested (and Mr. Maffett strongly agreed) that the unregulated propane industry may respond to competition by lowering the price of propane and offering propane service to industrial customers as a "loss leader":

[Hatfield]: Q. And that the propane industry [which is unregulated], therefore, has more flexibility than you do in terms of setting pricing structure. Would you agree with that?

[Maffett]: A. Yes.

[Hatfield]: Q. And I'm not sure if it [Staff Recommendation] says this, but there's an implication there that they could do, for example different tiers of pricing structure. Do you agree with that?

[Maffett]: A. I think so. Yes, sir.

[Hatfield]: Q. They could offer a loss leader to industrials, for example, because they're unregulated?

[Maffett]: A. You bet.

(Tr. 101)

The Commission should simply reject Mr. Simmon's assertions that the introduction of competition into the propane markets will have an adverse impact upon other propane customers. This testimony is simply not credible. If anything, the introduction of a natural gas alternative is likely to result in propane dealers lowering their prices to all customers in an effort to stay in business.

Even if this unsubstantiated argument was correct (which is not), this argument is not relevant to this proceeding. The Commission's responsibility is not to protect the propane industry from competition, or inhibit competition in the marketplace.

C. The Commission Should Reject MPGA's Contention That SMNG Is Guaranteed A Rate Of Return

Finally, MPGA witness Simmons testified that he believed that SMNG would be guaranteed a rate of return if the Commission granted SMNG a certificate of convenience and necessity in this proceeding. (Tr. 215-16). As a result, he was under the impression that there would not be a "level playing field" with SMNG if a certificate was granted to SMNG. (Id.) Again, this belief is simply not correct. As the Commission knows, public utilities are not guaranteed a rate of return, but the regulatory process only gives the public utility the opportunity to earn a reasonable return on its investment. See Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 64 S.Ct.

281, 88 L.Ed 33 (1943); Bluefield Water Works & Improv. Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed 1176 (1923); Re Kansas City Power & Light Company, Report & Order, Case No. ER-2006-0314, pp. 28-29 (December 21, 2006).

Unlike SMNG which is regulated by the Commission, the propane dealers do not have to obtain the permission of any regulatory agency to change their prices. In addition, the propane industry may discriminate among its customers, especially if it faces competition from a natural gas competitor. However, SMNG must follow the statutory framework contained in Chapter 393 for changing its rates, and the statutory prohibitions against discrimination and the granting of undue or unreasonable preferences or advantages to any customer or locality. *See* Sections 393.130 and 393.140 (11).

As Chairman Davis noted in his questioning of Mr. Simmons, the propane industry does not have a limit upon its profit margins. (Tr. 243). However, public utilities are subject to having their rates reduced by the Commission if their earnings are deemed excessive. *See Order Approving Stipulation And Agreement, Staff of the Missouri Public Service Commission v. Union Electric Company d/b/a AmerenUE*, Case No. EC-2002-1 (July 25, 2002)(Approval of a \$110 Million Rate Reduction)

In summary, if there is an "unequal playing field" between propane dealers and the natural gas industry, SMNG would suggest that the field is certainly not tilted in favor of the regulated public utilities! However, customers deserve the benefits of competition, and SMNG is eager for the opportunity to take the field in Lebanon, Houston and Licking.

CONCLUSION

In conclusion, the Commission should approve the Applications filed by the Company, as recommended by the Commission Staff. Based upon the competent and substantial evidence in the record, it is clear that there is a public need for the proposed service, the company is qualified to provide the service, and the project is economically feasible and otherwise in the public interest. The approval of the Company's applications, as suggested by the Commission Staff, will provide significant benefits for the residents and industry in Lebanon, Houston and Licking. 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 applications for certificates of convenience and necessity to expand its service area as described in the Company's applications 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 lists in the above-referenced cases via electronic filing and electronic mail (e-mail) on this 13th day of August, 2007.

/s/ James M. Fischer

James M. Fischer