

**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         | ) | Case No. |
| and maintain a natural gas distribution        | ) |          |
| system to provide gas service in               | ) |          |
| Houston, Licking, and Mountain View, Missouri. | ) |          |

**APPLICATION**

**COMES NOW** Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas, ("SMNG" or "Applicant"), by and through its counsel, and for its Application pursuant to Section 393.170, RSMo 2000,<sup>1</sup> and 4 CSR 240-2.060(1) and 4 CSR 240-3.205 requests that the Commission issue an order granting SMNG a certificate of convenience and necessity for a pipeline and natural gas distribution system to provide natural gas and transportation services in Houston, Licking, and Mountain View, Missouri. In support of this Application, SMNG respectfully states as follows:

1. Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas, a Missouri limited partnership, ("SMNG") owns and operates a natural gas transmission and distribution system located in southern Missouri which serves approximately 7,500 residential, commercial and industrial customers. SMGC is a "gas corporation" and "public utility" under the jurisdiction of the Missouri Public Service Commission, pursuant to Chapters 386 and 393,

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<sup>1</sup>All statutory references are to Revised Statutes of Missouri 2000, unless otherwise indicated.

RSMo. 2000. The Company's street and mailing address is: 301 E. 17<sup>th</sup> Street, Mountain Grove, Missouri 65711. The Company's telephone number is: (417) 926-7533.

2. All correspondence, pleadings, orders, and documents in this proceeding should be addressed to:

James M. Fischer  
Fischer & Dority, P.C.  
101 Madison Street--Suite 400  
Jefferson City, Missouri 65101  
Telephone: (573) 636-6758  
Email: [jfischerpc@aol.com](mailto:jfischerpc@aol.com)

Mike Lumby, General Manager  
Southern Missouri Gas Company, L.P.  
301 E. 17<sup>th</sup> Street  
Mountain Grove, Missouri 65711  
Telephone: (417) 926-7533  
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Randal T. Maffett, President & CEO  
Sendero Asset Management, LLC  
1001 Fannin--Suite 550  
Houston, Texas 77022  
Telephone: (713) 655-0523  
Email: [rmaffett@sendero.biz](mailto:rmaffett@sendero.biz)

3. A copy of SMNG's Certificate Of Good Standing In Missouri from the Missouri Secretary of State is attached as Appendix A and is incorporated herein by reference.

4. In 1995, the Commission issued orders in Case No. GA-94-127 granting a certificate of convenience and necessity to SMNG to construct and operate natural gas systems in

several municipalities, including Houston, Licking and Mountain View, Missouri.<sup>2</sup> SMNG exercised such authority and constructed its trunkline and distribution facilities as authorized by the orders in Case No. GA-94-127. However, SMNG did not complete the trunkline and distribution systems in Houston, Licking, and Mountain View.<sup>3</sup>

5. SMNG desires to complete the construction of its distribution system to Houston, Licking, and Mountain View. In order to commence construction in these areas, SMNG requests that the Commission issue a certificate of convenience and necessity to construct and operate natural gas systems in the Houston, Licking, and Mountain View, Missouri areas.

6. The maps, metes and bounds legal description of the Houston, Licking, and Mountain View, Missouri service area were filed with in the record in Case No. GA-94-127 and are incorporated herein by reference. An updated Feasibility Study is also being provided in Appendix C. A list of ten persons residing in the Company's service area was previously provided in the record in Case No. GA-94-127 and are incorporated herein by reference.

7. Applicant has been new franchises for Houston and Licking, and is in the process obtaining a new franchise for Mountain View, Missouri. The franchises are included in Appendix D. (The Mountain View franchise will be late-filed upon receipt). No other franchises or permits will be required from the counties, or other authorities in connection with

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<sup>2</sup> On April 15, 1995, the Commission issued its Order Approving Tariffs And Authorizing The Commencement Of Construction Of Gas Facilities which authorized the predecessor of SMNG, Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, L.C., to commence construction of its trunkline facilities and municipal distribution facilities in several municipalities, including Houston and Licking, Missouri. Following a ratification vote in Mountain View, Missouri, the Commission issued a similar Order Granting Certificate Of Convenience And Necessity For Mountain View, Missouri, And Authorizing Construction Of Distribution Facilities In Mountain View, Missouri, And In Texas And Wright Counties. (Appendix B).

<sup>3</sup> Section 393.170(3) states in part: "Unless exercised within two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void."

the proposed construction other than the usual and customary state highway, railroad and county road permits which will be obtained prior to construction.

8. Applicant proposes to use its current rates and regulations, as approved by the Commission, for natural gas service contained in its existing tariff.

9. There is no same or similar utility service, regulated or unregulated, available in the area requested.

10. The granting of this Application is required by the public convenience and necessity since natural gas service is not presently available in the proposed certificated area, and the availability of natural gas to Houston, Licking, and Mountain View, Missouri will promote the public interest since natural gas is an economical, safe, and reliable source of energy for residential, commercial, industrial, municipal and other customers.

11. The Applicant has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates which has occurred within three (3) years of the date of the Application.

12. The Applicant has no annual report or assessment fees that are overdue.

13. The financing requirements for the expansion into Houston, Licking, and Mountain View along with the request for a certificate of convenience and necessity for Lebanon (Case No. GA-2007-0212) are being considered in Case No. GF-2007-0215. In order to obtain the financing requested in Case No. GF-2007-0215, it will be necessary for the Company to have regulatory authority to proceed with the construction of the facilities, as requested herein. By separate motion, the Company will seek to consolidate the proceedings in Case No. GF-2007-0215, Case No. GA-2007-0212, and this proceeding.

**WHEREFORE**, Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas respectfully requests an order from the Commission grant SNMG a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a system for the provision of natural gas service to the public pursuant to its proposed rates, rules, and regulations contained in its tariff in Houston, Licking, and Mountain View, Missouri, as more fully described herein.

Respectfully submitted,

/s/ James M. Fischer

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James M. Fischer      Mo. Bar No. 27543  
Fischer & Dority, P.C.  
101 Madison Street, Suite 400  
Jefferson City, Missouri 65101  
Telephone: (573) 636-6758  
Fax: (573) 636-0383  
Email: jfischerpc@aol.com

ATTORNEYS FOR  
APPLICANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, by U.S. Mail, First Class, this 15th day of February, 2007, to:

Office of the Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

/s/ James M. Fischer

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James M. Fischer

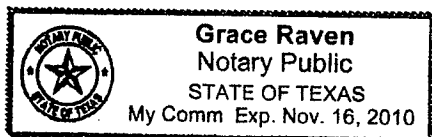
# VERIFICATION


STATE OF TEXAS            )  
                                  )  
COUNTY OF HARRIS        )        ss.

Randal T. Maffett, being first duly sworn, on his oath and in his capacity as Executive Vice-President states that he is authorized to execute this Application on behalf of Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas and has knowledge of the matters stated herein, and that said matters are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
Randal T. Maffett

Subscribed and sworn to before me this 13<sup>th</sup> day of February, 2007.



  
\_\_\_\_\_  
Notary Public

My Commission Expires: Nov. 16<sup>th</sup> 2010

**APPENDIX A**

**SOUTHERN MISSOURI GAS COMPANY, L.P. D/B/A SOUTHERN MISSOURI  
NATURAL GAS CERTIFICATE OF GOOD STANDING  
ISSUED BY THE MISSOURI SECRETARY OF STATE**



# STATE OF MISSOURI



Robin Carnahan  
Secretary of State

CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

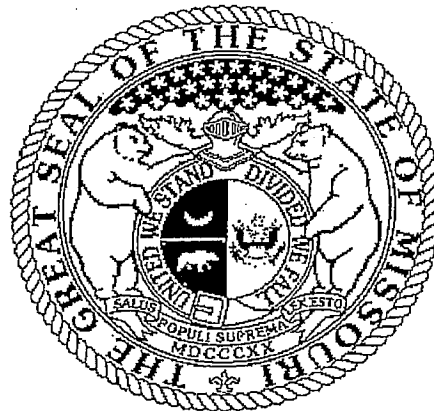
SOUTHERN MISSOURI GAS COMPANY, L.P.  
LP0007788

was created under the laws of this State on the 15th day of October, 1996, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 6th day of December, 2006

*Robin Carnahan*

Secretary of State



Certification Number: 9242703-1    Reference:  
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>

**APPENDIX B**

**ORDER APPROVING TARIFFS AND AUTHORIZING THE COMMENCEMENT OF  
CONSTRUCTION OF GAS FACILITIES, CASE NO. GA-94-127 (APRIL 14, 1995);**

**AND**

**ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY FOR  
MOUNTAIN VIEW, MISSOURI, AND AUTHORIZING CONSTRUCTION OF  
DISTRIBUTION FACILITIES IN MOUNTAIN VIEW, MISSOURI AND IN TEXAS  
AND WRIGHT COUNTIES, CASE NO. GA-94-127 (MAY 19, 1995).**

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 14th  
day of April, 1995.

In the matter of the application of Tartan )  
Energy Company, L.C., d/b/a Southern Missouri )  
Gas Company, for a certificate of convenience )  
of 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

ORDER APPROVING TARIFFS AND AUTHORIZING THE COMMENCEMENT OF CONSTRUCTION  
OF GAS FACILITIES

On September 16, 1994, the Commission issued a Report and Order which granted Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company (Tartan) a Certificate of Convenience and Necessity authorizing it to construct, install, own, operate, control, manage and maintain gas facilities and render gas service in and to the residents of certain areas of Wright, Texas, Howell, Webster, Greene, and Douglas Counties, including the incorporated municipalities of Seymour, Cabool, Houston, Licking, Mountain Grove, West Plains, Ava, Mansfield, Marshfield, and Willow Springs, Missouri, as well as Mountain View, Missouri if the franchise granted by Mountain View was ratified by its voters. The Report and Order contained a number of conditions, and stated that the Certificate of Convenience and Necessity would become effective simultaneously with the effective date of the tariffs Tartan was required to file, while in turn indicating that Tartan's tariff would not be approved until a number of conditions had been met. In addition, the Report and Order also stated that Tartan was required to show compliance with a further set of

conditions prior to the commencement of construction of any gas facilities. Tartan also was required to comply with the terms of the Nonunanimous Stipulation and Agreement. The various conditions are listed in detail on pages 27-28 of the Commission's Report and Order. On October 12, 1994, Tartan filed tariff sheets to comply with the Commission's Report and Order, with a proposed effective date of November 14, 1994. Since that time, the effective date of the tariffs have been extended by Tartan on numerous occasions, with a current effective date of April 15, 1995. On March 29, 1995, Tartan filed a document styled Applicant's Motion for Order Authorizing Commencement of Construction of Natural Gas Distribution System.

On April 7, 1995, the Staff of the Missouri Public Service Commission (Staff) filed a memorandum entitled Staff Recommendation and Report on Items and Tariffs Submitted in Compliance with the Commission's Report and Order. Staff's memorandum serves a threefold purpose: (1) it provides Staff's recommendation with respect to the tariffs filed by Tartan; (2) it provides a brief report to the Commission on Tartan's compliance with the conditions of the Report and Order as required by the Report and Order; and (3) it provides a recommendation with respect to Tartan's motion for authorization to commence construction of its gas system. Staff first explains that the purpose of the extension of the effective date of the tariffs was to allow Tartan additional time to provide Staff with the documents required by the Stipulation and Agreement which the Commission approved in its Report and Order. In addition, Staff adds that since the original filing of the tariffs, Tartan has filed substitute tariff sheets on a number of occasions.

Staff states that the tariff sheets filed by Tartan contain the rates, rules, and regulations under which natural gas service will be provided to its service area in south-central Missouri. The material

contained in the filing, according to Staff, includes a table of contents, a map, metes and bounds descriptions, rate tariff sheets, a Purchased Gas Adjustment Clause, and general Rules and Regulations. Staff indicates that this filing also includes Tartan's Promotional Practice provisions and incorporates material consistent with the most revisions of the Commission's Chapter 13 rules on Service and Billing Practices. In addition, Staff notes that on February 15, 1995, the company submitted to the Commission's Gas Safety Staff an Operations and Maintenance Manual, including requirements for transmission O&M and a Drug Testing Program pursuant to paragraph 5(c) of the Stipulation, and also notes that on March 23, 1995, the company submitted to the Procurement Analysis Staff a copy of a signed firm transportation contract between Tartan and Williams Natural Gas Company pursuant to paragraph 3 of the Stipulation. Additionally, Staff mentions it has received unofficial notification from Tartan that the franchise for Mountain View was ratified by the voters in the April 4, 1995 election.

In conclusion, Staff states that it has reviewed the documents which comprise the conditioned items required to be produced prior to the granting of the Certificate and authorization of construction, and believes that they are in satisfactory compliance with the Commission's Report and Order. The Staff also indicates that it has examined the proposed tariff sheets and has determined that they are in compliance with the Commission's Report and Order and should be approved. The Staff therefore recommends that the Commission approve the Certificate and tariff sheets filed by Tartan to become effective with service to be rendered on and after April 15, 1995, and grant Tartan's request for an order authorizing the commencement of construction.

The Commission has reviewed all of the material filed by Tartan subsequent to the issuance of the Report and Order, and has reviewed the

recommendation of Staff, and finds that Tartan is in substantial compliance with the conditions precedent to the approval of its tariffs; that Tartan's tariffs are in substantial compliance with the Commission's Report and Order; and that Tartan is in substantial compliance with the conditions precedent to Commission authorization of the commencement of construction of Tartan's gas facilities.

More specifically, prior to the approval of Tartan's tariffs, Tartan was required to file a certificate of authority to do business in the State of Missouri, an affidavit of its President detailing the relationship between Tartan, Torch Energy Advisors, Inc., and Torch Marketing, Inc., and a signed firm transportation contract with Williams Natural Gas Company. On October 14, 1994, Tartan filed the required certificate, and the affidavit of Tom M. Taylor,<sup>1</sup> which substantially comply with the Commission's directive. On March 23, 1995, Tartan filed a copy of the contract with Williams Natural Gas with the Commission's Procurement Analysis Department, in compliance with the Nonunanimous Stipulation and Agreement and the Commission's Report and Order. Thus all the prerequisites to approval of Tartan's tariffs have been met. The Commission finds that upon review of the tariff sheets filed on October 12, 1994, as substituted on March 16, 1995 and March 20, 1995, and upon review of Staff's recommendation, the tariff sheets as substituted are in compliance with the Commission's Report and Order, and the rates contained in the tariff sheets as substituted are just and reasonable.

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<sup>1</sup> In addition to the required information, Mr. Taylor's affidavit notes that Tartan, which will be doing business in the State of Missouri under the name of Southern Missouri Gas Company, is required under Missouri state law to identify itself as a limited liability company, and therefore should be referred to as Southern Missouri Gas Company, L.C. The Commission will use the designation "Southern Missouri Gas Company, L.C." in the remainder of its order and in the future.

In addition, prior to the commencement of any gas facilities, Tartan was required by the Commission's Report and Order to provide a commitment for the infusion into Tartan of common equity sufficient to achieve a 40-42 percent common equity to total capital ratio, and was required to file certified copies of the required approval of other governmental agencies. The required financial commitment was filed as an exhibit to Tartan's motion, and is in substantial compliance with the Commission's Report and Order. Also attached to Tartan's motion as exhibits are the required approvals of other governmental agencies, including: (1) Missouri Highway and Transportation Commission permits; (2) nationwide permits from the Department of the Army, U.S. Corp of Engineers; and (3) the affidavit of Tom M. Taylor, with attached county franchises authorizing use of county facilities in unincorporated areas of Douglas, Howell, and Webster Counties. These also appear to be in substantial compliance with the Commission's Report and Order.

While county franchises are not a prerequisite to the commencement of construction by Tartan, the Commission's Report and Order does require any necessary county franchises prior to the construction by Tartan of *distribution* facilities to serve residents in the unincorporated portions of the counties within its service territory. Tartan explains in its motion that it does not yet have county franchises for the Counties of Texas and Wright, but states that it has met with the County Commissions in Texas and Wright Counties and expects to receive authorization in the very near future. Tartan adds that it will file the county authorizations when they are available. The Commission is of the opinion that lack of county franchises for Texas and Wright Counties is not an impediment to Tartan's commencement of construction of trunkline facilities. As Tartan correctly states in its motion, since Tartan's trunkline facilities will be constructed along a public highway right-of-way for which approval has

been received from the Missouri Highway and Transportation Department, the trunkline facility and the municipal distribution facilities may be constructed with the governmental permits and franchises which have been obtained to date. In addition, Tartan may construct distribution facilities to serve residents in the unincorporated portions of Douglas, Howell, and Webster Counties.

For purposes of clarity, the Commission determines there are only three areas where Tartan may not yet commence construction: Tartan may not construct distribution facilities to serve residents in the unincorporated portions of Texas and Wright Counties unless it has obtained any necessary county franchises authorizing it to do so, and has filed either a certified copy of the county franchise or an affidavit indicating that the county franchise has been obtained, and Tartan may not construct distribution facilities to serve residents in the city of Mountain View until it files with the Commission a certified copy of the franchise ratified by the voters of Mountain View, or an affidavit indicating that the voters ratified the franchise in the voter ratification election.<sup>2</sup>

The Commission concludes that it is appropriate to approve Tartan's tariffs for service on and after April 15, 1995; to authorize Tartan's Certificate of Convenience and Necessity to become effective simultaneously with the effective date of its tariffs on April 15, 1995; and to authorize commencement of construction of Tartan's trunkline facilities, municipal distribution facilities in the incorporated municipalities contained within its Certificate of Convenience and Necessity, with the exception of Mountain View, and distribution facilities to serve unincorporated areas in Douglas, Howell, and Webster Counties.

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<sup>2</sup> While Staff's recommendation indicates it received unofficial notification that the franchise was ratified by voters on April 4, 1995, Tartan is still required to file with the Commission either the franchise or an affidavit.



IT IS THEREFORE ORDERED:

1. That the following tariff sheets filed by Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, L.C. on October 12, 1994, as substituted by the tariff sheets of March 16, 1995 and March 20, 1995, be and are hereby approved to become effective April 15, 1995:

P.S.C. MO. No. 1

Title Page

Original Sheet Numbers i through x Inclusive

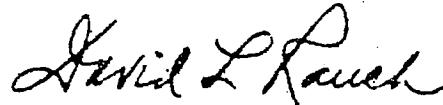
Original Sheet Numbers 1 through 71 Inclusive

2. That the Certificate of Convenience and Necessity granted to Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, L.C. in the Commission's Report and Order of September 16, 1994, shall become effective simultaneously with the effective date of the tariffs approved in Ordered Paragraph No. 1 above, on April 15, 1995.

3. That Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, L.C. be and is hereby authorized to commence construction of its trunkline facilities; municipal distribution facilities in the incorporated municipalities contained within its Certificate of Convenience and Necessity, with the exception of Mountain View; and distribution facilities in the unincorporated portions of Douglas, Howell, and Webster Counties.

4. That this order shall become effective on April 15, 1995.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,  
Kincheloe and Crumpton, CC., Concur.

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 19th  
day of May, 1995.

In the matter of the application of Tartan )  
Energy Company, L.C., d/b/a Southern 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

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY FOR MOUNTAIN  
VIEW, MISSOURI, AND AUTHORIZING CONSTRUCTION OF DISTRIBUTION FACILITIES  
IN MOUNTAIN VIEW, MISSOURI, AND IN TEXAS AND WRIGHT COUNTIES

On September 16, 1994, the Commission issued a Report and Order which granted Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company (Tartan) a Certificate of Convenience and Necessity authorizing it to construct, install, own, operate, control, manage, and maintain gas facilities and render gas service in and to the residents of certain areas of Wright, Texas, Howell, Webster, Greene, and Douglas Counties, including the incorporated municipalities of Cabool, Houston, Licking, Mountain Grove, West Plains, Ava, Mansfield, Marshfield, and Willow Springs, Missouri, as well as Mountain View, Missouri, if the franchise granted by Mountain View was ratified by its voters. The Report and Order contained a number of conditions with which Tartan was required to comply prior to approval of its tariffs and authorization for the construction of gas facilities. On April 14, 1995, the Commission issued an Order Approving Tariffs and Authorizing the Commencement of Construction of Gas Facilities.<sup>1</sup> In that order, the

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<sup>1</sup>In that order, the Commission inadvertently referred to Seymour as one of the incorporated municipalities for which Tartan had received a Certificate of Convenience and Necessity. In fact, Tartan dropped its request with respect to Seymour in its First Amended Application, as it had not received a franchise from Seymour. Tartan has subsequently filed an application seeking a Certificate of Convenience and Necessity for Seymour and other incorporated municipalities in Case No. GA-95-349.

have indeed ratified the franchise granted to Tartan have been filed with the Commission. In addition, the remainder of Tartan's Certificate of Convenience and Necessity was made effective simultaneously with the effective date of Tartan's tariffs, which were approved by the Commission in its Order Approving Tariffs and Authorizing the Commencement of Construction of Gas Facilities on April 14, 1995. As Tartan's Certificate of Convenience and Necessity with respect to the incorporated municipality of Mountain View will be effective as of the effective date of this order, Tartan will also *a fortiori* be authorized as of the same date to commence construction of its municipal distribution facilities in the incorporated municipality of Mountain View without further action by Tartan. The Commission also finds that Tartan should be authorized to commence construction of its distribution facilities in the unincorporated portions of Texas and Wright Counties, as Tartan has filed with the Commission appropriate documents indicating receipt of county franchises from the county commissions of Texas and Wright Counties.

**IT IS THEREFORE ORDERED:**

1. That Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, L.C. be and is hereby granted 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 the residents of the incorporated municipality of Mountain View, Missouri.

2. That Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, L.C. be and is hereby authorized to commence construction of municipal distribution facilities in the incorporated municipality of Mountain View, Missouri, and distribution facilities in the unincorporated portions of Texas and Wright Counties.

3. That this order shall become effective on May 30, 1995.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

McClure, Perkins, Kincheloe  
and Crumpton, CC., Concur.  
Mueller, Chm., Absent.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 19th day of May, 1995.



David L. Rauch  
Executive Secretary

**APPENDIX C**

**FEASIBILITY STUDY**

**(HIGHLY CONFIDENTIAL INFORMATION—FILED UNDER SEAL)**

**APPENDIX D**

**APPROVED FRANCHISES OF THE CITY OF HOUSTON, LICKING, MISSOURI  
(THE FRANCHISE FOR MOUNTAIN VIEW TO BE LATE-FILED UPON RECEIPT)**

AN ORDINANCE GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO SOUTHERN MISSOURI GAS COMPANY, L.P. (D/B/A SOUTHERN MISSOURI NATURAL GAS) A MISSOURI LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR PLACE, MAINTAIN, OPERATE AND USE ITS MAINS, SERVICE PIPES, CONDUITS, CONDUCTORS, TANKS, VAPORIZERS, UNDERGROUND VAULTS, REGULATORS, AND OTHER EQUIPMENT, WITH ALL NECESSARY OR APPROPRIATE APPLIANCES AND APPURTENANCES IN CONNECTION THEREWITH, IN, ALONG, ACROSS, OVER AND UNDER THE STREET, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES AND OTHER PUBLIC PLACES IN THE CITY OF HOUSTON, MISSOURI AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR THE PURPOSE OF TRANSMITTING, FURNISHING, TRANSPORTING, AND/OR DISTRIBUTING GAS FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH.

BE IT ORDAINED by the Board of Alderman of the City of Houston, Missouri as follows:

Section 1: The right, permission and authority (hereinafter sometimes called the "Franchise") is hereby granted to, and vested in Southern Missouri Gas Company, L.P., a Missouri limited partnership, d/b/a Southern Missouri Natural Gas, (hereinafter sometimes called "SMNG"), its successors and assigns, to construct, reconstruct, excavate for, place, maintain, operate and use all necessary appropriate mains, service pipes, conduits, conductors, tanks, vaporizers, underground vaults, regulators and other equipment with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges and other public places within the corporate limits of the City of Houston, Missouri as now fixed and as hereafter extended, and areas dedicated to the City for the public utility use, for the purpose of furnishing transporting and distributing gas for light, heat, power and other purposes within the city limits of the Houston, Missouri and in territory adjacent to said City and for the purpose of transporting and transmitting gas through said City; all such equipment, appliances and apparatus to be installed and maintained with due regard to the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys sidewalks, squares, bridges and other public utility use; and exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the City in the exercise of its police powers.

Section 2: Extension of, and additions to, the distribution system maintained by SMNG, its successors or assigns, in the City of Houston, Missouri shall be made in accordance with the rules and regulations governing such extensions and additions by



SMNG now on file with the Public Service Commission of Missouri, or in accordance with such amended rules and regulations governing such extensions and additions by SMNG, its successors or assigns, as may hereafter become effective in the manner provided by law.

Section 3a: The rights, privileges and authority hereby granted shall inure to and be vested in SMNG, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon SMNG shall devolve and be binding upon its successors and assigns successively, in the same manner, provided however that the assignment, but not the succession, to the rights, privileges and authority herein granted shall be subject to the approval of the City. SMNG shall, however, provide prior notice of any succession and indicate the individual the City should contact regarding this Agreement and who is responsible for maintenance and coordination of the right of way. Assignment requiring consent by the City shall not be unreasonably withheld.

Section 3b: Grant Not Exclusive: The Franchise and the right it grants to use and occupy the Public Rights-of-Way are not exclusive and do not explicitly or implicitly preclude the issuance of other franchises to operate Natural Gas Distribution Systems or other like systems within the City, affect the City's right to authorize use of Public Rights-of-Way by other Persons to operate Natural Gas Systems or other like systems or for other purposes as it determines appropriate, or affect the City's right to itself construct, operate or maintain a Natural Gas Distribution System or other like system, with or without a Franchise.

Notice should be provided to:

City Administrator  
601 S. Grand Ave.  
Houston, MO  
Telephone 417-967-3348  
Fax 417-967-4252

#### Section 4: Insurance and Indemnification

(a) Insurance Required: Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the City and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Missouri law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Natural Gas Distribution System, and the conduct of the Franchisee's business in the city, in the minimum amounts of:

- (1) \$1,000,000 for property damage resulting from any one accident;
- (2) \$5,000,000 for personal bodily injury or death resulting from any one accident; and

- (3) \$2,000,000 for all other types of liability.

Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of Franchisee for damages under the Franchise.

(b) **Qualifications of Sureties:** All insurance policies shall be with sureties qualified to do business in the State of Missouri, with a B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form accepted by the City.

(1) **Policies Available for Review:** All insurance policies shall be available for review by the City, and Franchisee shall keep on file with the City certificates of insurance.

(2) **Additional Insured's; Prior Notice of Policy Cancellation:** All general liability insurance policies shall name commissioners, agents, and employees as additional insured's and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City Clerk. Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the City which complies with this Franchise Agreement.

(3) **Failure Constitutes Material Violation:** Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(c) **Indemnification:**

(1) Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Natural Gas Distribution System; the conduct of the Franchisee's business in the City; or in any way arising out of the granting of the Franchise or Franchisee's enjoyment or exercise of this Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the this Franchise Agreement.

(2) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to Franchisee assuming such defense. The City shall notify Franchisee of claims and suits as soon as practicable, but

failure to give such notice shall not relieve Franchisee of its obligations hereunder. Once Franchisee assumes such defense, the City may at its option continue to participate in the defense at its own expense.

(3) Notwithstanding anything to the contrary contained in this Agreement the City shall not be so indemnified or reimbursed in relation to any amounts attributable to the City's own negligence, willful misconduct, intentional or criminal acts, including in the performance of its obligations under this Franchise Agreement.

Section 5: This ordinance shall be and continue in force and effect for a period of twenty (20) years from the date of execution herein (sometimes hereinafter referred to as the "Primary Term"). This ordinance shall be reviewed by the City Council prior to two (2) years of the expiration of this franchise. Based on the review and determination of the Board of Alderman, the City shall submit in writing to SMNG no less than two (2) years prior of the expiration of this Ordinance, the City's intent to renew this ordinance for a period not to exceed twenty (20) years; to modify this ordinance for a period not less than 5 years nor more than 20 years. The City shall include any and all information related to its decision to extend or modify the ordinance or to exercise its option to purchase the system. The City reserves the right to terminate this franchise prior to its expiration date in the event:

- (a) SMNG fails to comply with any provision hereof; provided, however, that if such failure of compliance shall be due to a cause beyond the control of SMNG the franchise shall not be so terminated. In the event SMNG shall default in the performance of any of the terms, covenants, or conditions herein and such default is curable, City shall give written notice to SMNG to commence within ten days the work necessary to cure such default, and if SMNG fails to comply with such notice, City may terminate this franchise.
- (b) Any provision hereof becomes invalid or unenforceable and City expressly finds that such provision constituted a consideration material to the granting of this franchise.

The city shall give SMNG 15 days' notice of any termination proceedings.

Section 6: Neither acceptance of, nor compliance with, the provisions of this ordinance shall in anywise impair or affect, or constitute be construed as a relinquishment or waiver of, any right, permission or authority with SMNG, its successors or assigns, may have independently of this ordinance; nor shall any use by SMNG, its successors or assigns, of public property or places in the City of Houston, Missouri as authorized by this ordinance or service rendered by SMNG, its successors, or assigns, in said City, be treated as use solely of the rights, permission and authority provided for by this ordinance, or as service referable solely to this ordinance, or to any obligation of service consequent upon acceptance thereof or as in anywise indicating nonuse of, non-compliance with, any obligation incident to, any right permission or authority vested in SMNG, its successors or assigns independently of this ordinance; and

the acceptance provided for in section 5 of this ordinance; and each and every compliance with the provisions of this ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 6, with the same force and effect as though each of the provisions of this section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance.

Section 7: This ordinance shall not relieve SMNG of the obligation to comply with any ordinance now existing in the City or enacted in the future requiring SMNG to obtain written permits or other approval from the City prior to commencement of construction of facilities within the streets thereof. The location of any franchise property installed hereunder shall be first approved by the City.

All franchise property installed and maintained hereunder shall be constructed in a good workmanlike manner and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by the City, the PSC, and the U.S. Department of Transportation, Office of Pipeline Safety. All pipelines installed shall conform to the applicable U.S. A. Standard Code for Pressure Pipeline, in its latest revision.

All excavations shall be made and refilled in strict compliance with City ordinances that may be in effect at the time of the performance of the work and shall be so made as not to interfere unreasonably with the free use of the streets by the public.

Upon completion of the work for which street excavations are made, all portions of the streets which have been excavated or otherwise damaged by such excavation work shall be restored to as good condition as they were in before the commencement of such work, to the satisfaction of the City Administrator.

SMNG shall promptly repair any leaks or breaks in its facilities, consistent with good utility practice. Such emergency repair of franchise property may be commenced without prior permit, provided however, that SMNG shall, by not later than the next normal working day, provide notice to the City and apply to the City for a permit authorizing such emergency work. Such permit will not be unreasonably withheld; however, SMNG remains obligated to perform the work in the least disruptive manner possible, subject to protecting at all times the public safety.

The City shall retain the right to determine that it is reasonable and necessary that the franchise property be temporarily disconnected, abandoned, temporarily or permanently removed, temporarily or permanently relocated or substitute facilities installed, in order that the City, may relocate, change grade, construct, use, maintain, change or modify any street improvement or city-owned facilities. Upon such determination, the City shall provide notice, in writing, to SMNG, whereupon 30 days after the service of such notice upon SMNG, SMNG will at its sole cost and expense begin and diligently prosecute the necessary work to completion, Upon failure to do so,

the City may cause said work to be completed and SMNG shall immediately pay for the same upon presentation of an itemized account of the cost thereof.

The City, upon such terms and conditions as it may determine, may give SMNG permission to abandon, without removing, franchise property installed. The length of any pipeline or facility abandoned with such permission shall not be considered in calculating payments due under the franchise until the date the City has inspected and approved in writing the abandonment work. Such abandonment may also be subject to approval by other governmental authorities, such as the PSC, in addition to the City. The ownership of all franchise property abandoned pursuant to this section shall thereafter vest in the City.

Section 8: Whenever possible, SMNG agrees to limit cutting pavement with preference given to boring under existing streets and driveways, if feasible and cost effective. If pavement cuts are to be made, SMNG agrees to notify the city accordingly before such work begins. Streets, right of ways and private property will be restored to the satisfaction of the City and private property owners.

Section 9: SMNG will be responsible for the total costs of any repairs to City utilities or facilities damaged as a result of work within the City right of ways, as long as the utilities have been properly marked by the City in accordance with Missouri One Call procedures.

Section 10: SMNG will provide the City of Houston with a complete set of "as built" drawings depicting the locations of installed lines and facilities within City of Houston right of ways within thirty (30) days of project completion.

Section 11: If any provision of this ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 12: As part of the consideration for the rights and privileges conferred by this Ordinance, SMNG shall pay to the City an amount equal to five percent (5%) of its receipts from sales of gas and/or transportation service from each customer; the five percent (5%) hereinafter referred to as the "Franchise Fee." The payment shall be due monthly payable in arrears.

Section 13: The Grantee shall maintain an appropriate business office which shall be open during normal business hours, have a publicly listed business telephone and be so operated to receive subscriber complaints and requests for repairs or adjustments on a twenty-four hour basis. All complaints and documentation thereof shall be handled in accordance with the rules and regulations of the PSC.

Section 13a: Upon reasonable notice, the City shall be entitled to audit SMNG's books and records in order to confirm that the revenues paid to the City are consistent with this Ordinance.

Section 13b: Maps and records identifying the location of SMNG's facilities within and adjacent to the City shall be filed in with the City Clerk.

Section 14: This Ordinance shall be in full force and effect from and after its passage and approval.

Section 15: This Ordinance shall be interpreted under the laws of the State of Missouri.

Section 16: The City and SMNG each hereby represent and warrant that they have the authority to enter into and perform the obligations under this Ordinance. However, SMNG represents that such warranty on their behalf is contingent upon receiving all necessary approvals from the Missouri Public Service Commission.

Section 17:

(a) Upon a determination by the City that the ownership of the franchise facilities by the City is in the City's best interest, the City shall have the right, within the first five years of this Ordinance, to buy and operate the facilities installed by SMNG. The payment to SMNG will be equal to the book value of the facilities, less depreciation, plus an additional fifteen percent (15%) of BVLD. The City will return to SMNG any franchise fees paid by SMNG to the City during those five years.

Option 17a must be exercised by the City of Houston prior to SMNG presenting a bona fide bid or offer from a prospective buyer. In the event SMNG presents a bona fide bid or offer from a prospective buyer prior to the City electing to exercise its option to purchase the system then the City shall have the right of first refusal according to the terms as specified in option 17c. The City of Houston shall retain its purchase rights and terms under 17a in the event that SMNG does not consummate the sale and transfer of the system to prospective buyer and/or the City of Houston has not exercised its option to purchase under 17c. Further, it being hereby understood that City's option to purchase under 17a shall apply only to assets related to the Houston system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Houston, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

(b) Nothing in this ordinance shall prohibit the parties herein to negotiate in good faith terms of sale and the City's right to purchase and operate the facilities installed by SMNG after the initial five (5) years of this Ordinance.

(c) In the event SMNG elects to sell the facilities contemplated herein related to natural gas distribution for the City, the City shall be granted a right of first refusal to match the terms and conditions of any offer SMNG would otherwise accept. Upon written notice to the City by SMNG that SMNG intends to sell said facilities the City shall have fifteen (15) business days to notify SMNG in writing of its intent to exercise its right of first refusal. Should the City fail to provide such notification to SMNG within the specified time frame, the City shall have forfeited its right of first refusal and SMNG shall be free to pursue and consummate the sale of said facilities with no further obligations with respect to said right of first refusal. It being hereby understood that right of first refusal shall apply only in the event that SMNG has determined to sell its assets related to the Houston system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Houston, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

PASSED AND APPROVED THIS 12 DAY OF FEBRUARY, 2007

CITY OF HOUSTON, MISSOURI

BY: 

MAYOR

ATTEST:

  
CITY CLERK

ORDINANCE NO. 528

AN ORDINANCE GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO SOUTHERN MISSOURI GAS COMPANY, L.P. (D/B/A SOUTHERN MISSOURI NATURAL GAS) A MISSOURI LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR PLACE, MAINTAIN, OPERATE AND USE ITS MAINS, SERVICE PIPES, CONDUITS, CONDUCTORS, TANKS, VAPORIZERS, UNDERGROUND VAULTS, REGULATORS, AND OTHER EQUIPMENT, WITH ALL NECESSARY OR APPROPRIATE APPLIANCES AND APPURTENANCES IN CONNECTION THEREWITH, IN, ALONG, ACROSS, OVER AND UNDER THE STREET, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES AND OTHER PUBLIC PLACES IN THE CITY OF LICKING, MISSOURI AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR THE PURPOSE OF TRANSMITTING, FURNISHING, TRANSPORTING, AND/OR DISTRIBUTING GAS FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH.

BE IT ORDAINED by the Council of the City of Licking, Missouri as follows:

Section 1: The right, permission and authority (hereinafter sometimes called the "Franchise") is hereby granted to, and vested in Southern Missouri Gas Company, L.P., a Missouri limited partnership, d/b/a Southern Missouri Natural Gas, (hereinafter sometimes called "SMNG"), its successors and assigns, to construct, reconstruct, excavate for, place, maintain, operate and use all necessary appropriate mains, service pipes, conduits, conductors, tanks, vaporizers, underground vaults, regulators and other equipment with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges and other public places within the corporate limits of the City of Licking, Missouri as now fixed and as hereafter extended, and areas dedicated to the City for the public utility use, for the purpose of furnishing transporting and distributing gas for light, heat, power and other purposes within the city limits of Licking, Missouri and in territory adjacent to said City and for the purpose of transporting and transmitting gas through said City; all such equipment, appliances and apparatus to be installed and maintained with due regard to the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys sidewalks, squares, bridges and other public utility use; and exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the City in the exercise of its police powers.

Section 2: Extension of, and additions to, the distribution system maintained by SMNG, its successors or assigns, in the City of Licking, Missouri shall be made in accordance with the rules and regulations governing such extensions and additions by



SMNG now on file with the Public Service Commission of Missouri, or in accordance with such amended rules and regulations governing such extensions and additions by SMNG, its successors or assigns, as may hereafter become effective in the manner provided by law.

Section 3a: The rights, privileges and authority hereby granted shall inure to and be vested in SMNG, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon SMNG shall devolve and be binding upon its successors and assigns successively, in the same manner, provided however that the assignment, but not the succession, to the rights, privileges and authority herein granted shall be subject to the approval of the City. SMNG shall, however, provide prior notice of any succession and indicate the individual the City should contact regarding this Agreement and who is responsible for maintenance and coordination of the right of way. Assignment requiring consent by the City shall not be unreasonably withheld.

Section 3b: Grant Not Exclusive: The Franchise and the right it grants to use and occupy the Public Rights-of-Way are not exclusive and do not explicitly or implicitly preclude the issuance of other franchises to operate Natural Gas Distribution Systems or other like systems within the City, affect the City's right to authorize use of Public Rights-of-Way by other Persons to operate Natural Gas Systems or other like systems or for other purposes as it determines appropriate, or affect the City's right to itself construct, operate or maintain a Natural Gas Distribution System or other like system, with or without a Franchise.

Notice should be provided to:

Myrna Van Deusen, City Administrator  
225 S. Main Street, P.O. Box 89  
Licking, MO 65542  
Telephone 573-674-2521  
Fax 573-674-2914

#### Section 4: Insurance and Indemnification

(a) Insurance Required: Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the City and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Missouri law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Natural Gas Distribution System, and the conduct of the Franchisee's business in the city, in the minimum amounts of:

- (1) \$1,000,000 for property damage resulting from any one accident;
- (2) \$5,000,000 for personal bodily injury or death resulting from any one accident; and

- (3) \$2,000,000 for all other types of liability.

Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of Franchisee for damages under the Franchise.

(b) Qualifications of Sureties: All insurance policies shall be with sureties qualified to do business in the State of Missouri, with a B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form accepted by the City.

(1) Policies Available for Review: All insurance policies shall be available for review by the City, and Franchisee shall keep on file with the City certificates of insurance and endorsements naming the City as Loss Payee.

(2) Additional Insured's; Prior Notice of Policy Cancellation: All general liability insurance policies shall name commissioners, agents, and employees as additional insured's and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City Clerk. Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the City Council which complies with this Franchise Agreement.

(3) Failure Constitutes Material Violation: Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(c) Indemnification:

(1) Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Natural Gas Distribution System; the conduct of the Franchisee's business in the City; or in any way arising out of the granting of the Franchise or Franchisee's enjoyment or exercise of this Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Franchise Agreement.

(2) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to Franchisee assuming such defense. The City

shall notify Franchisee of claims and suits as soon as practicable, but failure to give such notice shall not relieve Franchisee of its obligations hereunder. Once Franchisee assumes such defense, the City may at its option continue to participate in the defense at its own expense.

(3) Notwithstanding anything to the contrary contained in this Agreement the City shall not be so indemnified or reimbursed in relation to any amounts attributable to the City's own negligence, willful misconduct, intentional or criminal acts, including in the performance of its obligations under this Franchise Agreement.

Section 5: This ordinance shall be and continue in force and effect for a period of twenty (20) years from the date of execution herein (sometimes hereinafter referred to as the "Primary Term"). This ordinance shall be reviewed by the City Council prior to two (2) years of the expiration of this franchise. Based on the review and determination of the City Council, the City shall submit in writing to SMNG no less than two (2) years prior of the expiration of this Ordinance, the City's intent to renew this ordinance for a period not to exceed twenty (20) years; to modify this ordinance for a period not less than 5 years nor more than 20 years. The City shall include any and all information related to its decision to extend or modify the ordinance or to exercise its option to purchase the system. The City reserves the right to terminate this franchise prior to its expiration date in the event:

- (a) SMNG fails to comply with any provision hereof; provided, however, that if such failure of compliance shall be due to a cause beyond the control of SMNG the franchise shall not be so terminated. In the event SMNG shall default in the performance of any of the terms, covenants, or conditions herein and such default is curable, the City shall give written notice to SMNG to commence within ten days the work necessary to cure such default, and if SMNG fails to comply with such notice, the City may terminate this franchise.
- (b) Any provision hereof becomes invalid or unenforceable and the City expressly finds that such provision constituted a consideration material to the granting of this franchise.

The City shall give SMNG 15 days notice of any termination proceedings.

Section 6: Neither acceptance of, nor compliance with, the provisions of this ordinance shall in anywise impair or affect, or constitute be construed as a relinquishment or waiver of, any right, permission or authority with SMNG, its successors or assigns, may have independently of this ordinance; nor shall any use by SMNG, its successors or assigns, of public property or places in the City of Licking, Missouri as authorized by this ordinance or service rendered by SMNG, its successors, or assigns, in said City, be treated as use solely of the rights, permission and authority provided for by this ordinance, or as service referable solely to this ordinance, or to any obligation of service consequent upon acceptance thereof or as in anywise indicating nonuse of, non-compliance with, any obligation incident to, any right permission or

authority vested in SMNG, its successors or assigns independently of this ordinance; and the acceptance provided for in Section 5 of this ordinance; and each and every compliance with the provisions of this ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 6, with the same force and effect as though each of the provisions of this section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance.

Section 7: This ordinance shall not relieve SMNG of the obligation to comply with any ordinance now existing in the City or enacted in the future requiring SMNG to obtain written permits or other approval from the City prior to commencement of construction of facilities within the streets thereof. The location of any franchise property installed hereunder shall be first approved by the City.

All franchise property installed and maintained hereunder shall be constructed in a good workmanlike manner and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by the City, the PSC, and the U.S. Department of Transportation, Office of Pipeline Safety. All pipelines installed shall conform to the applicable U.S. A. Standard Code for Pressure Pipeline, in its latest revision.

All excavations shall be made and refilled in strict compliance with City ordinances that may be in effect at the time of the performance of the work and shall be so made as not to interfere unreasonably with the free use of the streets by the public.

Upon completion of the work for which street excavations are made, all portions of the streets which have been excavated or otherwise damaged by such excavation work shall be restored to as good condition as they were in before the commencement of such work, to the satisfaction of the City Administrator.

SMNG shall promptly repair any leaks or breaks in its facilities, consistent with good utility practice. Such emergency repair of franchise property may be commenced without prior permit, provided however, that SMNG shall, by not later than the next normal working day, provide notice to the City and apply to the City for a permit authorizing such emergency work. Such permit will not be unreasonably withheld; however, SMNG remains obligated to perform the work in the least disruptive manner possible, subject to protecting at all times the public safety.

The City shall retain the right to determine that it is reasonable and necessary that the franchise property be temporarily disconnected, abandoned, temporarily or permanently removed, temporarily or permanently relocated or substitute facilities installed, in order that the City, may relocate, change grade, construct, use, maintain, change or modify any street improvement or city-owned facilities. Upon such determination, the City shall provide notice, in writing, to SMNG, whereupon 30 days after the service of such notice upon SMNG, SMNG will at its sole cost and expense begin and diligently prosecute the necessary work to completion, Upon failure to do so,

the City may cause said work to be completed and SMNG shall immediately pay for the same upon presentation of an itemized account of the cost thereof.

The City, upon such terms and conditions as it may determine, may give SMNG permission to abandon, without removing, franchise property installed. The length of any pipeline or facility abandoned with such permission shall not be considered in calculating payments due under the franchise until the date the City has inspected and approved in writing the abandonment work. Such abandonment may also be subject to approval by other governmental authorities, such as the PSC, in addition to the City. The ownership of all franchise property abandoned pursuant to this section shall thereafter vest in the City.

Section 8: Whenever possible, SMNG agrees to limit cutting pavement with preference given to boring under existing streets and driveways, if feasible and cost effective. If pavement cuts are to be made, SMNG agrees to notify the city accordingly before such work begins. Streets, right of ways and private property will be restored to the satisfaction of the City and private property owners.

Section 9: SMNG will be responsible for the total costs of any repairs to City utilities or facilities damaged as a result of work within the City right of ways.

Section 10: SMNG will provide the City of Licking with a complete set of "as built" drawings depicting the locations of installed lines and facilities within City of Licking right of ways within thirty (30) days of project completion.

Section 11: If any provision of this ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 12: As part of the consideration for the rights and privileges conferred by this Ordinance, SMNG shall pay to the City an amount equal to five percent (5%) of its receipts from sales of gas and/or transportation service from each customer; the five percent (5%) hereinafter referred to as the "Franchise Fee." The payment shall be due monthly payable in arrears.

Section 13: The Grantee shall maintain an appropriate business office which shall be open during normal business hours, have a publicly listed business telephone and be so operated to receive subscriber complaints and requests for repairs or adjustments on a twenty-four hour basis. All complaints and documentation thereof shall be handled in accordance with the rules and regulations of the PSC.

Section 13a: Upon reasonable notice, the City shall be entitled to audit SMNG's books and records in order to confirm that the revenues paid to the City are consistent with this Ordinance.

Section 13b: Maps and records identifying the location of SMNG's facilities within and adjacent to the City shall be filed with the City Clerk.

Section 14: This Ordinance shall be in full force and effect from and after its passage and approval.

Section 15: This Ordinance shall be interpreted under the laws of the State of Missouri.

Section 16: The City and SMNG each hereby represent and warrant that they have the authority to enter into and perform the obligations under this Ordinance. However, SMNG represents that such warranty on their behalf is contingent upon receiving all necessary approvals from the Missouri Public Service Commission.

Section 17:

(a) Upon a determination by the City that the ownership of the franchise facilities by the City is in the City's best interest, the City shall have the right, within the first five years of this Ordinance, to buy and operate the facilities installed by SMNG. The payment to SMNG will be equal to the book value of the facilities, less depreciation, plus an additional fifteen percent (15%) of BVLVD. The City will return to SMNG any franchise fees paid by SMNG to the City during those five years.

Option 17a must be exercised by the City of Licking prior to SMNG presenting a bona fide bid or offer from a prospective buyer. In the event SMNG presents a bona fide bid or offer from a prospective buyer prior to the City electing to exercise its option to purchase the system then the City shall have the right of first refusal according to the terms as specified in option 17c. The City of Licking shall retain its purchase rights and terms under 17a in the event that SMNG does not consummate the sale and transfer of the system to prospective buyer and/or the City of Licking has not exercised its option to purchase under 17c. Further, it being hereby understood that City's option to purchase under 17a shall apply only to assets related to the Licking system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Licking, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

(b) Nothing in this ordinance shall prohibit the parties herein to negotiate in good faith terms of sale and the City's right to purchase and operate the facilities installed by SMNG after the initial five (5) years of this Ordinance.

(c) In the event SMNG elects to sell the facilities contemplated herein related to natural gas distribution for the City, the City shall be granted a right of first

refusal to match the terms and conditions of any offer SMNG would otherwise accept. Upon written notice to the City by SMNG that SMNG intends to sell said facilities the City shall have fifteen (15) business days to notify SMNG in writing of its intent to exercise its right of first refusal. Should the City fail to provide such notification to SMNG within the specified time frame, the City shall have forfeited its right of first refusal and SMNG shall be free to pursue and consummate the sale of said facilities with no further obligations with respect to said right of first refusal. It being hereby understood that right of first refusal shall apply only in the event that SMNG has determined to sell its assets related to the Licking system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Licking, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

PASSED AND APPROVED THIS 12<sup>th</sup> DAY OF FEBRUARY, 2007

CITY OF LICKING, MISSOURI

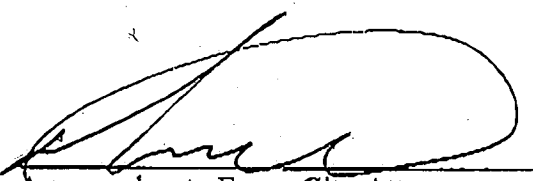
BY: 

MAYOR

ATTEST:



CITY CLERK

  
Approved as to Form, City Attorney