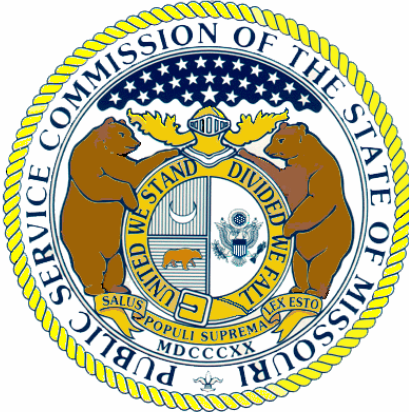


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Ozark Energy)
Partners, LLC for a Certificate of Convenience and)
Necessity to Construct and Operate an Intrastate)
Natural Gas Pipeline and Gas Utility to Serve Portions)
of the Missouri Counties of Christian, Stone and Taney,)
and for Establishment of Utility Rates)

Case No. GA-2006-0561

REPORT AND ORDER

Issue Date: February 5, 2008

Effective Date: February 15, 2008

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and for Establishment of Utility Rates)	

APPEARANCES

William D. Steinmeier and Mary Ann (Garr) Young, William D. Steinmeier, P.C., 2031 Tower Drive, Post Office Box 104595, Jefferson City, Missouri 65110, Attorneys for Ozark Energy Partners, LLC.

James M. Fischer and Larry W. Dority, Fischer & Dority, P.C., 101 Madison Street, Suite 400, Jefferson City, Missouri 65101, Attorneys for Southern Missouri Gas Company, LP. d/b/a Southern Missouri Natural Gas.

Dean L. Cooper, Brydon, Swearingen & England P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, Attorney for Missouri Gas Energy, a Division of Southern Union Company.

Marc D. Poston, Senior Public Counsel, Office of the Public Counsel, Post Office Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230, Attorney for the Office of the Public Counsel and the public.

Lera L. Shemwell, Deputy General Counsel, Missouri Public Service commission, Post Office Box 360, 200 Madison Street, Jefferson City, Missouri 65102, Attorney for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Kennard L. Jones, Judge**

REPORT AND ORDER

Syllabus: In this Report and Order, the Missouri Public Service Commission grants a certificate of convenience and necessity to Ozark Energy Partners, LLC. To ensure that the company is viable and is able to do what the certificate authorizes the company to do, the Commission, however, grants such authority under certain conditions.

Background

Ozark Energy Partners, LLC filed an application for a Certificate of Convenience and Necessity to construct and operate a natural gas pipeline in portions of Christian, Stone and Taney Counties. The company filed its application in June of 2006, and filed supplements in November of 2006, and February and September of 2007. During the course of the proceedings, Southern Missouri Gas Company d/b/a Southern Missouri Natural Gas and Missouri Gas Energy, a Division of Southern Union Company were granted intervention. In November of 2007, Ozark and the Staff of the Commission file a Stipulation and Agreement. Southern Missouri opposed the Stipulation and Agreement and requested a hearing. Later in November, Ozark, Staff and MGE filed a second agreement; independent of the first. An evidentiary hearing was held on November 29, 2007. It is important to note that Southern Missouri has filed an application for approval of a certificate of convenience and necessity to serve portions of the same area that Ozark seeks to serve.¹ This order, however, discusses only the requirements relevant for the grant of such authority to Ozark.

¹ See Commission Case No. GA-2007-0168

Ozark's Application

Having filed its application, Ozark filed supplements that added cities to Ozark's proposed service area. The cities Ozark finally proposes to serve are; Hollister, Reeds Spring, Branson, Branson West, Highlandville, Spokane, Kimberling City and Galena.

Ozark explains in its application that no other gas company is providing service to the areas it seeks to serve. Ozark goes on to state that the proposed service area has a population of roughly 70,000, is host to more than 7,000,000 visitors per year and is one of the fastest growing areas in the state. The closest supply of natural gas to the area is more than 30 miles away.

Stipulation and Agreement between Ozark, MGE and Staff

Ozark, MGE and Staff filed an agreement generally stipulating that Ozark will not seek certification in areas being served by MGE nor will Ozark seek certification in any area in which MGE is seeking such authority. There has been no objection to this Agreement and, finding it reasonable, the Commission will approve the Agreement.

Stipulation and Agreement between Ozark and Staff

The Agreement between Ozark and Staff generally sets out conditions under which Ozark must operate if it is granted a certificate. However, all of the parties did not enter into that Agreement and Southern Missouri filed a timely objection to the Agreement. Under Commission rule, the agreement must therefore "be considered to be merely a position of the signatory parties to the stipulated position[s]" and no party is bound by those stipulations.² Because the Agreement is no longer considered an "Agreement" but merely

² Commission rule 4 CSR 2-115 (D).

a statement of the positions of the signatories, the Commission has no “Agreement” upon which to act. The Commission will, however, adopt those conditions set out in the Agreement as part of this order.

Because Southern Missouri requested a hearing in this matter, the Commission set this matter for hearing, heard evidence and makes the following findings of fact and conclusions of law. Of note, the Commission heard related facts and arguments during the hearing of Case No. GA-2007-0168. Because that case involved the same parties and many of the same witnesses, the Commission takes official notice of the evidence admitted in that case.

Conclusions of Law

The Commission shall have the power to grant the authority sought in Ozark’s application upon a determination that such authority is necessary or convenient for the public service.³ This issue has not been contested. All parties agree that gas service in the requested service area would be convenient and is necessary for the public service. In past cases, and now as a matter of policy, the Commission has set out certain criteria that must be met in order to grant a certificate of convenience and necessity.⁴ Those criteria are set out below.

³ Section 393.170(3) RSMo 2000.

⁴ In re. Ozark Natural Gas Company, 5 Mo. P.S.C. 3rd 143, 146 (1996). See also, In re. Tartan Energy Company, 3 Mo. P.S.C. 3rd 173, 177 (1994); In re. Intercon Gas, Inc., 30 Mo. P.S.C. (N.S.) 554, 561 (1991).

Findings of Fact

There must be a need for the service

All parties agree that there is a need for service. In Case No. GA-2007-0168, the mayor of Branson testified that there is a need for gas service.⁵ Also, in this case, Mr. Epps testified that the area around Branson is growing⁶ and that many workers are unable to afford propane on their wages.⁷ Additionally, there is a population growth in the area and letters setting out the need for gas are included in the feasibility study filed by Ozark.⁸

In light of these facts and that no party argues otherwise, the Commission finds that there is a need for the service proposed by Ozark.

The applicant must be qualified to provide the proposed service.

Randy Hole, a principal in the company and whose resume is attached to Ozark's feasibility study, is a certified financial specialist, deeply knowledgeable of natural gas pipeline construction and finance.⁹ Ralph Handlin, a partner in the company, has 49 years of natural gas engineering experience in four different states.¹⁰ Mr. Handlin also manages a gas company on the west side of Missouri and in Oklahoma.¹¹ Dan Epps, Managing Director, has vast experience in excavating in the relevant region and is intimately familiar

⁵ Case No. GA-2007-0168, Tr. Page. 136, Line 9 – Page 137, Line 7.

⁶ Tr. Page 158, Lines 2-5.

⁷ Tr. Page 177, Lines 2-7.

⁸ Exhibit 28 (NP) and 29 (HC).

⁹ Tr. Page 164, Lines 14 -19.

¹⁰ Tr. Page 164, Lines 22-24.

¹¹ Tr. Page 165, Lines 1-2.

with the area.¹² Upon being granted the requested authority, Ozark intends to higher managers who will perform the day-to-day operations of the company.

With regard to construction of the facilities, Ozark intends to hire experienced personnel once the company is authorized by the Commission to provide service.¹³ Further, Ozark has the benefit of expertise from Steven Cattron and Greg Pollard. Mr. Cattron is a strategic advisor for Ozark¹⁴ and has experience with the Missouri Public Service Commission, Kansas City Power & Light Company and as President and Chief Operating Officer of MGE.¹⁵ Mr. Pollard has a number of years in the natural gas business, including construction, service, maintenance, code compliance and engineering. He has also served as Vice President of MGE.¹⁶

The Commission finds that Ozark satisfies the criteria of being qualified to provide the proposed service.

The applicant must have the financial ability to provide the service

Ozark has set forth partners¹⁷ and stated that it has established a number of contacts in the financing community that will provide access to both equity and debt financing.¹⁸ However, because the Commission in this case will grant Ozark a certificate conditioned upon Ozark's later showing of financial viability, the grant of authority herein contemplated is not premised on Ozark's ability to obtain financing for this endeavor. The Commission therefore need not make any finding in this regard.

¹² Tr. Page 180, Lines 16-19 and Page 180, Line 23 – Page 181, Line 1.

¹³ Exhibit 27 (HC), Pages 21-22.

¹⁴ Tr. Case No. GA-2007-0168, Page 313, Lines 22-24.

¹⁵ Tr. Case No. GA-2007-0168, Page 314, Lines 3-10.

¹⁶ Exhibit 28 (Ozark's Feasibility Study), Page 58.

¹⁷ Exhibit 28, Pages 53-55.

¹⁸ Exhibit 28, Page 24

The Applicant's proposal must be economically feasible

Ozark's Feasibility Study is a useful tool in determining whether the proposal is feasible. However, there remains a high degree of risk associated with providing service to this area.¹⁹ Whether the proposal is economically feasible is a test better used in obtaining financing.²⁰ The Commission finds that its discussion in this regard is better suited for discussion regarding Ozark's ability to obtain financing and reserves its findings for that context. Securing financing would be overwhelming evidence that the proposal is economically feasible.

The service must promote the public interest

The public interest is promoted when there is competition. Natural gas in the proposed service areas will compete with propane, electricity and heating oil.²¹ Additionally, the capital expenditures will benefit the public in the form of tax revenue, business development, employment and the added value of gas service.²² The Commission also adds that if a service is convenient or necessary it intuitively must be in the public interest. The Commission therefore finds that the proposed service is in the public interest.

Discussion

The Commission has concluded that it is necessary and convenient for the public service that natural gas service be offered to the public in the proposed service areas. The Commission, however, is concerned about the ability of Ozark to obtain financing. Further,

¹⁹ Tr. Page 70, Lines 1-18.

²⁰ Tr. Page 70, Lines 1-3.

²¹ Tr. Page 101, Lines 17-23.

²² Tr. Page 98, Lines 5-19.

the Commission is concerned about Ozark's ability to remain well managed. To address these concerns, the Commission will grant Ozark a conditional certificate. The conditions are intended to ensure that the company is able to provide the intended service and that the company continues to so do once it is certified.

Additionally, there are a number of conditions included in the Agreement between Staff and Ozark. Because that agreement now represents the positions of the signatories thereto, the Commission considers the conditions therein to be conditions Staff would have recommended had Staff filed a Recommendation in this matter rather than the Agreement. This being so, the Commission will direct that Ozark comply with these conditions if it is "fully" certified.

Conclusion

Although the Commission will grant Ozark a certificate of convenience and necessity, the grant of such authority will be conditioned on Ozark submitting to the Commission acceptable financing for the proposal. Also, the Commission will condition Ozark's certificate on Ozark maintaining its level of management expertise. To further this end, the Commission will require that Ozark specifically include with its Annual Reports to the Commission information concerning the expertise of its current management.

IT IS ORDERED THAT:

1. Ozark Energy Partners, LLC is granted a conditional certificate of convenience and necessity, the condition of which is that Ozark submit acceptable financing to the Commission.
2. Ozark Energy Partners, LLC shall include with its Annual Reports information pertaining to the expertise of its management.

3. Ozark Energy Partners, LLC shall not begin construction of any facility in Missouri for the purpose of offering natural gas until it has obtained approval of its financing and a "full" certificate of public convenience and necessity from the Missouri Public Service Commission.

4. Ozark Energy Partners, LLC shall comply with the terms and conditions set out in the Stipulation and Agreement entered into between it and the Staff of the Commission.

5. The Stipulation and Agreement entered into between Ozark Energy Partners, LLC, Missouri Gas Energy, a division of Southern Union Company and the Staff of the Commission is approved.

6. The parties shall comply with the terms and conditions set out in the Stipulation and Agreement entered into between Ozark Energy Partners, LLC; Missouri Gas Energy, a division of Southern Union Company; and the Staff of the Commission.

7. This order shall become effective on February 15, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Clayton and Jarrett,
CC., concur;
Murray, C., dissents, with separate
dissenting opinion attached;
Appling, C., dissents;
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 5th day of February, 2008.