

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

In the Matter of the Application of)
Southern Missouri Gas Company, L.P.,)
d/b/a Southern Missouri Natural Gas,)
for a Certificate of Public Convenience)
and Necessity Authorizing It to Construct,)
Install, Own, Operate, Control, Manage,)
and Maintain a Natural Gas Distribution)
System to Provide Gas Service in)
Lebanon, Missouri.)

**Case No. GA-2007-0212,
*et al.***

**DISSENTING OPINION OF COMMISSIONER
ROBERT M. CLAYTON III**

This Commissioner dissents from the majority Report and Order granting a certificate of convenience and necessity to Southern Missouri Gas Company ("SMG") for the franchise territories of Lebanon, Licking, and Houston. While customers in these communities deserve competitive choices when purchasing their energy, a number of questions have been raised in this case that require additional attention and scrutiny by the Commission. Before the Commission grants such powers to a utility, it must do more to ensure that current and future rate payers are sufficiently protected from the potential risk of this business venture. While the conditions placed on the company are a good first step to relieve some of the risk on customers, the Commission must send the message to the utility that it will be held to the highest of standards in terms of quality of service and reasonableness of rates.

SMG is requesting the right to offer gas service in several new communities. The moving party has the duty to prove the necessity and convenience of the proposal before the Commission grants certification. The term necessary means that the project "would be an

improvement justifying the cost.”¹ Inconvenience is based on whether the lack of service amounts to necessity.² The Commission may consider “the safety and adequacy of facilities[,], the relative experience and reliability of competing suppliers,”³ and the public interest.⁴ In addition, the court has further suggested other factors such as a comparison of the proposed expansion with existing services, the actual costs of current supply, the projected costs of the new company, the comparative reliability of the supply and the financial soundness and effective management of the company. Other factors include whether there are existing facilities in place that may provide adequate service and the costs associated with providing such structure.⁵ Looking at the totality of the evidence, this Commissioner believes that the applicant has not met its burden.

Construction of a gas distribution system from scratch is a capital intensive project and a rare occurrence. Many questions have been raised as to the potential reach of service within the community as well as the required penetration rate for success. Today, there are no gas mains in the ground; there are no meters present anywhere in these communities; and there is no transmission line from the interstate gas pipeline. Natural gas local distribution companies are permitted to operate as monopolies generally because of the high risk associated with achieving a satisfactory return on such a capital intensive investment.

In addition, the size and market position of the company do not suggest it is the most appropriate company for this type of expansion. The company only recently entered certain markets of southwest Missouri including the counties of Wright, Texas, Howell, Webster, and Greene and the communities of Seymour, Cabool, West Plains, Ava, Mansfield, Marshfield, and

¹ *Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597 (Mo. App., W.D. 1993).

² *Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216 (Mo. App. 1973).

³ *Ozark Elec. Coop. v. Public Service Commission*, 527 S.W.2d 390, 394 (Mo.App.1975).

⁴ *Id.* at 392.

⁵ *Public Water Supply Dist. 8 v. Public Service Commission*, 600 S.W.2d 147, 156-157 (Mo. App. 1980).

Willow Springs by purchasing Tartan Energy Company L.L.C.⁶ It is among the smallest utilities in the state. It does not have large economies of scale to offer its customers, and its systems are spread over 130 miles, among twelve communities. This project is not simply an expansion of an existing plant but a venture into new, uncharted territory.

The company has also had a short and questionable record of performance in Missouri. In the eleven years that the company has been in operation in Missouri, it has already seen questions raised by both the Staff and the Commission. In its PGA/ACA filing of 2004/2005,⁷ a hearing was held by the Commission in light of rate increases of up to 43%. The Staff found questionable gas purchasing strategies that left customers inappropriately vulnerable to gas volatility and high prices. The Commission expressed skepticism of the rate hike; however, the company advised that if the Commission did not approve the PGA/ACA, the company would exhaust its working capital, the company's credit standing would be reduced and supply would be jeopardized because sellers would require pre-payment and high interest rates for credit.⁸ Staff suggested that the Commission could address imprudent behavior in a complaint case rather than put the company at risk financially by not approving the PGA. The Commission ultimately approved the PGA/ACA.

In 2006, the Office of Public Counsel filed a complaint in Case Number GC-2006-0180, alleging lack of prudent gas purchasing practices as a result of PGA increases of 37-43%. Unfortunately, the parties entered into a toothless Stipulation and Agreement that failed to penalize SMG for imprudent actions. The Stipulation only encouraged forward-looking hedging

⁶ Transcript, Pages 73 and 248. See *also*, GA-94-127.

⁷ GR-2005-0279

⁸ Transcript of GR-2005-0279, Page 60.

and improved gas purchasing practices. Because the Commission failed to send an appropriate message, this Commissioner dissented from that Order.⁹

Also, since the gas purchasing problems of 2004/2005, it is this Commissioner's understanding that the Staff has raised additional concerns in the company's 2005/2006 PGA/ACA filing. During the hearing in this case, evidence was adduced suggesting that a negative adjustment of over \$200,000 has been proposed by the Staff in the existing PGA case.¹⁰ Further, the company has advised that such an adjustment will be "detrimental to the company" if ordered by the Commission.¹¹ New customers in Lebanon, Licking and Houston may be subjected to such rate hikes due to recurring imprudent gas purchasing without stronger action taken by the Commission.

In conclusion, this Commission is faced with a question of allowing a utility to expand into a new service territory with significant capital requirements and risk. In the short time period the company has been doing business in Missouri, Office of Public Counsel has filed a complaint against the company for improper or imprudent gas purchasing practices, the Commission has demanded improvements to protect its customers from improperly paying higher rates and, now, Staff allegedly has found new problems in the PGA/ACA review for further company-threatening adjustments. The company is requesting a leap of faith from the Commission for a potentially risky investment, and it has simply not carried its burden.

In the future, this Commissioner would not object to revisiting the decision once the company has a proven track record of prudent performance. While the citizens of the new communities deserve the chance for competition to work, current and future customers have a

⁹ Dissenting Opinion of Commissioners Robert M. Clayton III and Steve Gaw, GC-2006-0180 (May 2, 2006).

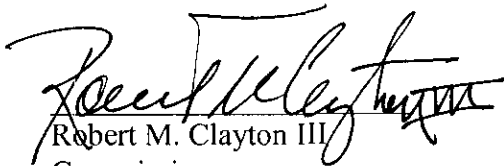
¹⁰ Transcript of GR-2006-0352, Page 87.

¹¹ *Id.*

right to receive safe and reliable service at just and reasonable rates, and this Commissioner does not believe adequate assurances have been made to meet that standard.

For these reasons, this Commissioner respectfully dissents.

Respectfully submitted,


Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 3rd day of October 2007.