**BEFORE THE PUBLIC SERVICE COMMISSION
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

STAFF'S MEMORANDUM IN SUPPORT OF THE

STIPULATION AND AGREEMENT

COMES NOW the Staff of the Commission (Staff) and submits its Memorandum to the Commission in Support of the Stipulation and Agreement (Stipulation) filed in this case on November 8, 2007.

I. Introduction

Staff and Ozark Energy Partners (OEP) have worked diligently to be able to come to an agreement which addresses Staff's concerns. The result of these efforts has been the Stipulation filed in this case. It is Staff's experience that natural gas system's in smaller communities with competition from propane may struggle to generate sufficient revenue to support the cost of constructing the system. ** ______________________________ ______________________________** and OEP is willing to accept responsibility for the financial success of the system.

There are competing applications for provision of natural gas service in the Branson area. Staff has worked with both companies to try to reach Stipulations but has only been able to reach agreement with OEP. OEP management has agreed to accept responsibility for the economic

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Staff Exhibit No. 25
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success or failure and has accepted Staff's other conditions. Staff recommends, therefore, the Commission approve the Stipulation and issue OEP a CCN to serve its requested areas.

A. Legal Standard

Granting a Certificate of Convenience and Necessity (CCN) to OEP to construct gas plant, requires the Commission to determine whether OEP has obtained the necessary franchises, and whether the project is necessary and convenient for the public interest. Section § 393.170 RSMo. (2000). This statutory section also permits the Commission to impose necessary conditions on the grant of authority:

> The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary . . .

In accord with this sub-section, the Commission may grant Applicant's request if, after hearing, it determines that the certificate is necessary or convenient for the public interest. In construing the term "necessary or convenient," the Court has stated that "the term 'necessity' does not mean 'essential' or 'absolutely indispensable,' but that [the] service would be an improvement justifying its cost." In the *Intercon Gas* case, the Court of Appeals further construed this statutory section and noted several criteria for evaluation of the necessity and convenience of the proposed project:

"Public convenience and necessity is not proven merely by the desire for other facilities. It must be clearly shown there is failure, breakdown, incompleteness or inadequacy in the existing regulated facilities in order to prove the public convenience and necessity requiring the issuance of another certificate. The fact that one does not desire to use present available service does not warrant placing in the field a competing utility." *State ex rel. Intercon Gas, Inc. v.*

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Public Serv. Comm'n. 848 S.W.2d 593, 597(Mo.App. 1993)(*citing State ex rel . Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216,219 (Mo. App. 1973). After defining and interpreting the meaning of the phrase "necessary or convenient," the Court of Appeals indicated that it is up to the Commission to decide "when the evidence indicates the public interest would be served." *Id.* The public interest is not served if the utility is unable to deliver service due to its inability to generate sufficient revenue.

"Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service." *State ex rel. Public Water Supply Dist . No. 8 v. Public Serv. Comm'n,* 600 S.W.2d 147, 154 (Mo .App .1980). "The determination of what is necessary and convenient has long been, and continues to be, a matter of debate. From analysis of court decisions on this subject, the general purpose of what is necessary and convenient encompasses regulated monopoly for destructive competition, prevention of undesirable competition and prevention of duplication of service. The **underlying public interest** is and remains the controlling concern, because cut-throat competition is destructive and the public is the ultimate party which pays for such destructive competition." *Id* (emphasis added).

B. Recommendation

Below, Staff discusses the Stipulation and how the conditions address Staff's concerns with economic viability, customer service, reliability, and gas safety, among others. Staff's comments are roughly in the same order as the Stipulation. There are several factors that have contributed to the financial difficulties of bringing natural gas service to the Branson area, including: (a) the cost to excavate in rock, (b) the competition from propane and, in some areas,

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electric cooperatives and (c) the lack of infrastructure to deliver natural gas from an interstate pipeline.

II. DISCUSSION

A. Procedural History

On June 30, 2006, Ozark Energy Partners, LLC (OEP) filed an application for a certificate of convenience and necessity to construct and operate an intrastate natural gas pipeline and gas utility to serve portions of Christian, Stone and Taney counties. As permitted by the Commission's rule at 4 CSR 240-3.205 (2), OEP updated its Application with documents to comply with Commission rules including: (a) the legal description of the area to be certificated (4 CSR 240-3.205(1)(A) 3.); (b) a plat drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps (4 CSR 240-3.205(1)(A) 4.); (c) a feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations (4 CSR 240-3.205(1)(A) 5.); (d) The plans and specifications for the complete construction project and estimated cost of the construction project or a statement of the reasons the information is currently unavailable and a date when it will be furnished; (4 CSR 240-3.205(1)(B) 2.); and (e) plans for financing (4 CSR 240-3.205(1)(B) 3.).

II. Approval of the Transaction

Staff Comments: Staff recommends the Commission approve the Stipulation as in the public interest and grant OEP a CCN to construct and operate a Natural Gas Utility to serve portions of the Missouri counties of Christian, Stone and Taney, including the following Missouri cities and their environs: Highlandville; Hollister, Kimberling City, Reeds Spring, and upon receipt of a

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local franchise, Branson and Branson West. The CCN should be conditioned on OEP's presentation of a financing plan acceptable to the Commission.

With regard to the City of Branson West, the parties recommend that the Commission approve a certificate, as requested, that includes Branson West, contingent upon OEP obtaining a municipal franchise from the City of Branson West. To date, OEP has not been granted a municipal franchise for the provision of gas to the City of Branson. The parties recommend that the Commission approve a certificate, as requested, that includes Branson, contingent upon OEP obtaining a municipal franchise from the City of Branson, and for establishment of utility rates, subject to the conditions contained herein.

III. Conditions of Approval

The Stipulation and Agreement has been entered into by the Staff with conditions that are designed to address the Staff's concerns with this Application. The Stipulation and Agreement represents Staff's best efforts to protect the public interest from potential detrimental impacts that may arise as a result of this construction including financial failure. OEP has accepted the terms and conditions of the Stipulation and Agreement, so that Staff is able to recommend that the Commission approve the Application so long as, in any Order approving a Certificate of Convenience and Necessity (CCN), the Commission place the risk of the economic failure of the system squarely on the owners.

A. Financial Issues

The Stipulation provides:

> 1. OEP shall be responsible in future rate cases for the economic consequences of any failure of this system to achieve forecasted conversion rates and/or its inability to successfully compete against propane.
> 2. The parties recommend that the Commission make no finding as to the prudence or ratemaking treatment to be given any costs or expenses

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incurred as a result of the granting of this certificate of convenience and necessity, except as otherwise addressed in this Stipulation and Agreement.

3. OEP agrees that if, at any time, it sells or otherwise disposes of its assets in a sale, merger, consolidation or liquidation transaction at a fair value less than its net original cost for those assets, the purchaser/new owner shall be expected to reflect those assets on OEP's books at its purchase price or the fair value of the assets, rather than at the net original cost of the assets. OEP also acknowledges that it is the intention of the Parties that the provisions of this paragraph shall apply to any successors or assigns of OEP.

Staff Comments: Staff's goal in recommending the Stipulation is to ensure that the continuing risk of the financial viability of the system not be shifted to customers upon sale of the system. It is the experience of Staff that small systems have struggled financially and, if a system becomes financially viable, it is usually through the sale of the system and the write-down of the value of system assets to a level that may be supported by rates. ** __________ ____. **

This section places the responsibility for the economic success or failure of its certificated gas operations on OEP, and not its customers; generally reserves all ratemaking findings regarding OEP's application to future rate cases; and sets forth an expectation by the parties that any future owners of OEP properties through a purchase or acquisition from OEP will book its acquired net plant in service at the purchase price value of the properties, not the net original cost to OEP.

Within the last 15-20 years, there has been a distinct pattern to new gas operation start-ups in Missouri. These start-up companies have generally failed to achieve their forecasts for converting existing customers from propane service or for serving new customers in their service territories. As a result, these start-ups have been saddled with "over-built" systems, and accordingly have not been able to charge rates that are fully compensatory of its cost of service.

It has been a standard condition in certificate cases for new gas utilities that the utilities are explicitly required to fully assume the risk of failing to achieve their estimated conversion rates from existing propane customers (i.e., failure to successfully compete against propane.) Trying to remedy inadequate earnings as a result of any such failure by increasing customer rates would constitute an unacceptable shifting of risk from the utility to its customers, and would in all likelihood be counter-productive in any effort by the utility to become more competitive with propane in its pursuit of additional customers.

Another consequence of the inability of new start-up gas utilities in Missouri to become fully competitive with propane has been the subsequent sale of many of these companies to new owners, with a purchase price for the utility and/or its assets sharply discounted from the net original cost of the properties. Again, the subsequent sale of these utilities at a large discount reflects the fact that these systems have been over-built. The Staff believes the subsequent purchase price for these types of properties is a much more accurate estimate of their true economic value than the net original cost of the properties to the initial owners. Any effort by the new owners to charge customers the net original cost of the gas properties in this situation would simply be another attempt to shift the risk of the economic viability of these properties from the owners to its gas customers. For this reason, this Stipulation reflects an expectation by the parties, to be clearly communicated to any new or prospective owners of these properties, that any new owners will account for the properties on their books and records at its purchase price of the assets, and not the net original cost to OEP. This treatment would clearly place the burden on the new ownership in any subsequent rate proceedings to justify any attempt to increase rate base by seeking to reflect the net original cost of the properties in customer rates.

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Sections III, A, 1, 2, and 3 of the Stipulation and Agreement are designed to indicate OEP's acceptance of this condition as part of its CCN order.

In granting the CCN the Commission should make no findings as to the prudence of any costs or expenses or the ratemaking treatment given to any costs or expenses as addressed below concerning gas costs and how such costs are defined in the Purchased Gas Adjustment/Actual Cost Accounting process.

To avoid shifting to customers, in a subsequent rate case, the risk of economic viability, Staff will actively oppose any increase in rates, including increases to rate base values that are not fully supported. Staff's concern with sale of the system at less than fair value is addressed in paragraph 3 of this section. Staff will resist any future attempt to shift the risk to customers by claiming that the rate base has a higher value than can be justified.

B. Service Territory

Staff Comments: Staff attempted to negotiate similar Stipulations with both entities which have applied for CCNs for this area. Staff has been able to reach agreement with OEP and therefore, recommends approval of its Application with the conditions set out in this Stipulation. If the Commission were to grant both companies CCNs, Staff recommends that the company which can achieve the following become the operating company:

The Stipulation provides:

(a) makes a showing that it has secured financing for the proposed service territories, which includes providing to Staff the final executed financing document(s), and

Staff comments: The ability of a company to actually obtain financing indicates that a lender has found the project to meet some objective criteria for economic feasibility. Neither company

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should be permitted to exercise its Commission granted CCN until and unless it provides to Staff evidence that it has actually obtained financing for the project.

The Stipulation provides:

(b) complies with the conditions as set forth in this Stipulation and Agreement and

Staff comments: In the past it has been rare that two companies request to serve the same areas. This is especially true in an area where other companies have been granted a CCN and were unable to exercise the CCN and complete the process of building a system and providing service.

Staff recommends the Commission approve the Stipulation between OEP and Staff and grant a conditional CCN to OEP.

The Stipulation provides:

(c) can immediately begin necessary construction, and

Staff comments: Normally, Staff does not recommend that two companies be given conditional certificates to serve the same areas, but, in this case, if the Commission determines that it is in the public interest to grant conditional CCNs, the conditions set fourth in the Stipulation and Agreement give the two companies the necessary flexibility to finalize the requirements necessary to be granted an exclusive CCN. If the Commission grants both companies conditional CCN's, whichever company is able to obtain financing and begin construction immediately to build a natural gas system should be granted the CCN.

The Stipulation provides:

(d) has fulfilled all appropriate and necessary authorizations for the purpose of providing natural gas service in its requested and Commission authorized service territory.

Staff Comments: Either company must have the statutorily required local franchise prior to beginning construction in any municipality it seeks to serve. Hollister is the only city in which

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both companies have franchises. If the Commission were to grant OEP an exclusive certificate, OEP should not be relieved of the terms and conditions of this Stipulation, or the Commission's rules in the event the Commission grants OEP the only conditional CCN to serve the requested service area. If both Applicants were to be granted CCNs, both should be required to meet the conditions set out in this Stipulation.

C. Construction

The Stipulation provides:

5. Construction shall not begin in any requested service territory or in any area that may be necessary to serve the requested service territory pertaining to this Stipulation and Agreement until after the Commission issues its Order approving OEP's financing and grants a full CCN to OEP. OEP must commence construction within one year of the Commission's final approval for their full CCN.

6. Construction will be defined as the systematic building of the ** ________________ ________) ** and distribution system(s).

Staff comments: Neither company should begin any construction for provision of service in its requested service territory or in any area that may be necessary to serve the requested service territory until after the Commission issues its Order approving the Applicant's financing and grants a full CCN. Such order should deny the request of the competing Applicant. The Applicant receiving the exclusive CCN should be required to commence construction within one year of the Commission's final approval for its full CCN.

For purposes of this provision, Staff has defined Construction as the systematic building of the local distribution company. The facilities must be under an aggressive construction program as described in the Company's feasibility study in order to serve customers as quickly as possible. Staff has reviewed OEP's proposal ** ____

____________________ ** and is able to recommend it as a reasonable method to get natural gas service to this area of the state.

D. Territorial Issues

The Stipulation provides:

> 6. The Parties to this case have agreed that OEP should be conditionally certificated to serve its requested service area.
>
> 7. An Order granting OEP a CCN should include the detailed description of OEP's certificated territory shown in Exhibit D to OEP's Application in this case, as amended on September 4, 2007.

Staff comments: <u>A detailed description of the service area in the Order eliminates confusion as to the exact area granted by the Commission.</u>

E. Tariffs

The Stipulation provides:

> 8. OEP will submit, for Commission approval, tariff sheets designed to govern OEP's operations for customers located within the requested service area, modeled after the currently-effective tariffs of Missouri Gas Utility. The purchased Gas Adjustment (PGA) Clause will apply to all sales and transportation services provided under all natural gas rate schedules and contracts. For purposes of the PGA Clause, the term "cost of gas" shall include the cost paid to suppliers for the purchase, transportation and storage of natural gas.
>
> 9. The Parties agree that, as a part of this Stipulation, the Commission, in its order approving this Stipulation, should order OEP to file tariff sheets modeled after the currently-effective tariffs of Missouri Gas Utility.

Staff comments: For purposes of this section, Staff has accepted the use of Missouri Gas Utility's tariff as a basis for OEP to use in the development of its tariff. The tariff will be similar to Missouri Gas Utility's with the exception of rates.

All costs associated with the construction, operation, ** ____________________________ ____ ** facilities shall be subject to recovery in the company's margin (non-gas cost) rates and not in the PGA clause. After reviewing the PGA tariff sheets of the other LDCs, this position is consistent with the language contained in the tariff and also in Section E, Paragraph 9, of this Stipulation and Agreement in Case No. GA-2006-0561. Staff's position would remain unchanged should an existing LDC construct, operate, and maintain a ** ____ ** facility on their current distribution system. The margin rates of OEP are contained in Exhibit 8, pages 64-67 of the feasibility study.

F. Service Quality Conditions

The Stipulation provides:

11. OEP agrees to the following additional conditions related to quality of service:

a. The Company will respond to inquiries from the Commission's Consumer Services Department within three (3) business days, except for interruption of service issues, to which it will respond within one (1) business day.

b. The Company agrees to adhere to all Commission rules and regulations including those relating to service, and will abide by provisions of the Cold Weather Rule. The Cold Weather Rule, among other things, specifies bill payment options and Company responsibility with respect to service disconnections from November 1st through March 31st.

Staff Comments: In section F. 11 above, the Company agrees to respond to inquiries from the Consumer Services Department within three (3) business days, except for the interruption of service issues, to which it will respond within one (1) business day. OEP also agreed to adhere to all Commission rules and regulations including those relating to service and agreed to abide by provisions of the Cold Weather Rule.

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G. Depreciation

The Stipulation provides:

12. The Company, for purposes of accruing depreciation expense, will use the rates set forth in the attached Depreciation Schedule (Appendix A) until the Company files support for alternative rates and obtains approval of alternative rates from the Commission.

Staff comments: the depreciation rates were included in the attachment to the Stipulation so that there is a mutual understanding of the depreciation rates to be used by the Company.

H. Financing

The Stipulation provides:

13. Prior to beginning construction of any facilities, plant, works or system for the transmission or distribution of natural gas, OEP shall submit a financial plan to the Commission for its approval, which plan shall:

a. Be consistent in all material respects with the terms suitable to the Commission;

b. Include no bank or loan restrictions on the Company's ability to hedge with fixed price physical contracts; and

c. Not include any financing agreement with restrictions on the Company's ability to get fixed price contracts for natural gas.

d. OEP shall submit to the Staff, ten (10) days subsequent to closing of any loan or other financing arrangements, all documents finally executed to obtain financing for construction of the proposed systems.

Staff Comments: These conditions define the type of financing arrangement Staff expects the Company to obtain so that it can operate the system efficiently and to hedge and purchase sufficient natural gas to serve its customers. Provision of these documents to Staff will demonstrate the company has obtained financing to begin construction which does not restrict the Company's ability to manage its gas supply efficiently.

I. Ownership

The Stipualtion provides:

14. OEP agrees that it will own, as opposed to renting or leasing, all assets directly associated with provision of service from ** ____________

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> ____
> ____. ** In any subsequent OEP rate proceedings, such assets shall be included in OEP's rate base, pending normal audit and examination in rate cases of such items, including prudency reviews.

Staff Comments: This section requires OEP to own the major assets associated with provision of service from ** ____________, ** as opposed to renting or leasing the assets. This is again related to the fact that new gas systems that prove not to be fully competitive with propane are frequently sold to new owners. However, ** ______________________________________
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________________. ** If such facilities are not owned by OEP, the Staff believes there may not be sufficient hard asset value in the OEP system to make any subsequent sale of these properties feasible. The Staff believes the option to sell these properties, in the event that they cannot be operated economically by OEP, is an important safeguard to gas customer interests, and should be available to OEP. Hence, this requirement that OEP own and include in its rate base all the major assets it intends to use to offer gas service to its customers.

J. Adherence to Missouri Rules

The Stipulation provides:

> 15. OEP shall ensure full compliance with all Missouri Commission rules (including but not limited to the Commission's Cold Weather Rule, Gas Safety rules and Affiliate Transactions rules), reporting requirements and other practices, and OEP's filed and approved tariffs. This paragraph shall not be construed as a waiver of any rights or remedies available to OEP under the law.

K. Affiliate Transactions

The Stipulation provides:

> 16. OEP shall maintain full records related to affiliate transactions and corporate allocation of costs between regulated and all nonregulated

operations, if any, and shall comply with the Commission's rules concerning affiliate transactions involving natural gas utilities; natural gas marketing activities; and HVAC activities. OEP shall make these records available to the Staff within thirty (30) days of Staff's request for this information. Failure to do so may result in Staff's filing of a complaint with the Commission.

Staff comments: This provision is designed to reinforce the provisions of the affiliate transactions rules.

L. Corporate Allocations

The Stipulation provides:

17. OEP shall provide time reporting and associated expenses billed to the regulated companies and other non-regulated affiliates, if any, and any other documents that support allocation of expenses from these affiliated entities to OEP. Corporate allocations of costs, if any, will be based upon factors that faithfully and accurately represent the level of actual corporate involvement provided and the actual business unit beneficiaries of the incurred costs. OEP shall make these records available to the Staff within thirty (30) days of Staff's request for this information. Failure to do so may result in Staff's filing of a complaint with the Commission.

Staff comments: This provision is designed to reinforce the provisions of the affiliate transactions rules.

M. Reliability and Natural Gas Supply Planning

The Stipulation provides:

18. The Company shall provide to Staff and Public Counsel no later than 60 days prior to flowing any natural gas, its plans and analyses demonstrating that adequate production and market area firm pipeline capacity and firm natural gas supplies will be in place for each of the winter months of November through March for customer requirements for normal weather and cold weather, including requirements for a historic peak cold day, and that the plan demonstrates flexibility for customer requirements for warm weather. The reliability information provided by the Company shall:

a. Include an explanation of the methodology and logic used in the Company estimates/ forecasts for peak day capacity and monthly supply requirements.

b. Include the Company's analysis and plans for required market area and production area pipeline capacity and supply resources to be utilized to meet

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peak day requirements in each Company service area for the upcoming winter and for the next five years, including copies of the contracts and any supporting documents verifying the contract term and constraints such as maximum and minimum daily quantities, and planned revisions/ amendments to these contracts.

c. At a minimum, address the monthly natural gas supply analysis and plans for normal weather plus or minus 20% variability in heating degree days for the winter season of November through March, with greater variability possible for each winter month. The Company plan shall define the variability that it considers reasonable for each winter month and explain how its gas supply plan addresses those flexibility requirements.

d. Include any cost/benefit analysis or studies of Company purchasing plans and practices for gas supply.

e. Include all supporting documentation and calculations and fully functioning electronic spreadsheets that contain

- i. The forecasting model and all formulas and worksheets feeding into this model to establish the peak day requirements and monthly requirements (in Excel, if possible).
- ii. Heating degree day (HDD) data that the Company used for its peak day and monthly normal, cold, and warm weather supply planning, including a description of the source of this data.
- iii. Number of customers by class for each month, projected growth for each of the next five years by customer class, contract demand studies and any forecast assumptions affecting Maximum Daily Quantity ("MDQ").
- iv. The reserve margin for each Company service area for the upcoming winter and for three years beyond that. Additionally, provide the following: (a) Explain the rationale for the reserve margin for each service area for each of these years; (b) If the reserve margin is different for a peak day in December, versus a peak day in early February, then include the assumptions and calculations for both a December peak day and an early February peak day. (Reserve margin is the capacity in excess of that required for historic peak day requirements divided by the historic peak day requirements.)

f. Include an updated schematic of the Company delivery system in place and planned for the next five years, including the city gate station(s).

19. Subsequently, no later than September 15 each year for the first five years of operation and at least every three years thereafter, the Company shall provide to Staff and Public Counsel updated reliability information addressing all the items in section one (1) of Reliability and Natural Gas Supply Planning.

20. Every 3 years, OEP shall provide to Staff and Public Counsel an updated study of whether the ** ______________________________
________ ** than ** ______________________________

____. ** The study shall include the Company plans for any changes to its system as a result of the study findings.

Staff Comments: Pipeline capacity and gas supply plans are yet to be fully developed. Thus, the Stipulation and Agreement includes provisions for the Company to provide its plans and analyses demonstrating that adequate production and market area firm pipeline capacity and firm natural gas supplies will be in place and the Company will provide its hedging plan to mitigate upward natural gas price volatility.

N. Hedging

The Stipulation provides:

> 21. The Company shall provide to Staff and Public Counsel no later than 60 days prior to flowing any natural gas, its hedging plan to mitigate upward natural gas price volatility for the upcoming winter. Thereafter, the Company shall provide its hedging plan to mitigate upward natural gas price volatility for the upcoming winter on or before May 15 of each year.

O. PGA/ACA Review

The Stipulation provides:

> 22. As with all Missouri Local Distribution Companies (LDCs), there will be the standard ACA review of actual gas costs and billed revenues, a reliability review, as well as a prudence review regarding all aspects of decisions impacting the level of actual gas costs. For the purposes of the PGA clause, "cost of gas" includes the cost for the purchase, transportation and storage of gas upstream of the outlet with the interstate pipeline. The Company shall provide to Staff and Public Counsel no later than 60 days prior to flowing any natural gas, its draft PGA tariff sheets calculating the costs it recommends be included in the purchased gas adjustment factor.

P. Gas Safety

The Stipulation provides:

> 23. OEP shall provide only retail natural gas service unless and until necessary filings are made, for Commission approval, that address affiliate transactions and corporate structure questions to the Commission's satisfaction. OEP shall only provide service to a master meter operator after first consulting with the Commission's Gas Safety Staff. OEP shall submit the final construction plans to the Commission's Gas Safety Staff before actual, initial construction begins. OEP shall notify the Commission's Gas Safety Staff in advance of commencement of initial

construction. OEP shall complete the necessary construction in a proper manner by qualified personnel in accordance with sound engineering principals and applicable regulations. OEP shall have properly trained and qualified personnel positioned to operate the distribution system. OEP shall have the following required manuals and programs completed and submitted to the Commission's Gas Safety Staff before any natural gas is introduced into any pipeline:

a. Operations and Maintenance (O&M) manual. This manual must contain all procedures used to comply with sections 9 through 14 of the Commission's pipeline safety regulations. *See 4 CSR 240-40.030(12)(C).*

b. Operator Qualification Plan. A written qualification program must be completed with the qualification of all individuals performing covered tasks completed prior to operation of the pipeline. Employees can perform independently only functions for which they have had appropriate training and testing. *See 4 CSR 240-40.030(12)(D).*

c. Emergency Manual. This manual must contain procedures to deal with emergencies as specified in section (12)(J) of the PSC pipeline safety regulations. *See 4 CSR 240-40.030(12)(J).*

d. Anti-Drug and Alcohol Misuse Plan. *See 4 CSR 240-40.080 [49 CFR Parts 40 and 199].*

e. Damage prevention program and membership in Missouri One Call Systems, Inc. This program will address the notification of the public and potential excavators in the vicinity of the pipeline about how to learn the location of the buried pipeline before excavation. *See 4 CSR 240-40.030(12)(I).* Membership in Missouri One Call System, Inc. is mandatory for all underground pipeline operators as per RSMo Chapter 319.022 and federal amendment 49 CFR Part 192-82.

f. Public education program. This program will provide continuing education to the public in the vicinity of the pipeline, as well as, government officials, excavators, and the customer, about how to recognize a gas pipeline emergency for the purpose of reporting it to the operator (compliance with portions of this requirement may be combined in item e). *See 4 CSR 240-40.030(12)(K).*

Staff comments: If all the components of the ** ______________________________

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________________ ** are designed, constructed, and tested in compliance with the standards, codes, and regulations referenced by the Company and all parts of the system are operated by personnel that are trained and qualified in this specific type of delivery

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system, then the Gas Safety/Engineering Staff believes the system can be operated in a safe manner.

Q. Uniform System of Accounts

The Stipulation provides:

> 24. The Company will keep its account numbers as stated in the General Instruction No. 3(C) of Part 201 (Uniform System of Accounts) of the Accounting and Reporting Requirements for Natural Gas Companies

R. Surveillance

The Stipulation provides:

> 25. Upon approval of this transaction, OEP shall begin providing to Staff and OPC "surveillance reports", or periodic reports of earnings.

Staff comments:

WHEREFORE, the Staff recommends the Commission approve the Stipulation and issue OEP a conditional CCN to serve its requested service area.

Respectfully submitted,

/s/ Lera L. Shemwell

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 26th day of November 2007.

/s/ Lera L. Shemwell

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