

**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

In the Matter of the Application of)
Alliance Gas Energy Corporation for a)
Certificate of Convenience and Necessity)
Authorizing it to Construct, Install, Own,)
Operate, Control, Manage and Maintain a)
Natural Gas Distribution System and to)
Provide Gas Service in Branson, Branson)
West, Reed's Spring and Hollister,)
Missouri)

Case No. GA-2007-0168

STATUS REPORT

COMES NOW the Staff of the Missouri Public Service Commission and provides its Status Report as directed by the Commission in Case No. GA-2007-0168 in its *Order Granting Applications to Intervene, Directing Staff to Investigate, and Directing Staff to File Monthly Status Reports*, and further requests that the Commission consider consolidation the two cases captioned above. Staff further states:

1. On June 30, 2006, Ozark Energy Partners, LLC filed an application for a certificate of convenience and necessity to construct, own 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),¹ Ozark Energy Partners, LLC did not file a legal

¹ "If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought."

description of the area to be certificated. However, according to filings by the company in Case No. GA-2006-0561, it is seeking or has received franchises in the cities of Hollister, Reed's Spring, Branson, Branson West, Highlandville, Spokane and Kimberling City.

2. On October 26, 2006, Alliance Gas Energy Corporation filed an application for a certificate of convenience and necessity to construct, own and operate a natural gas distribution utility to serve portions of Taney and Stone counties. As was the case with Ozark Energy Partners, LLC, and as permitted by the Commission's rule at 4 CSR 240-3.205(2), Alliance Gas Energy Corporation did not file a legal description of the area to be certificated. However, according to filings by the company in Case No. GA-2007-0168, it is seeking or has received franchises in the cities of Hollister, Reed's Spring, Branson, and Branson West.

3. A summary of the status of the franchise requests by city as of the date of this filing, to the best of Staff's knowledge, is:

City	Ozark Energy Partners, LLC	Alliance Gas Energy Corp.
Branson	Investigating potential franchise	Franchise granted
Branson West	Municipality has not yet made decision on franchise	Municipality has not yet made decision on franchise
Reed's Spring	On April 3, 2007 ballot for voter approval	No action pending
Hollister	On April 3, 2007 ballot for voter approval	On April 3, 2007 ballot for voter approval
Highlandville	Franchise granted	Not being sought
Spokane	Investigating potential franchise	Not being sought
Kimberling City	Franchise granted	Not being sought

4. Certificates of convenience and necessity issued by this Commission are not exclusive, and the Commission can issue a certificate of convenience and necessity to a public utility even though that certificate will overlap with another public utility's area of service. *Osage Water Co. v. Miller County Water Auth., Inc.* 950 S.W.2d 569, 575 (Mo.App. S.D. 1997). However, Staff anticipates that the Commission will want a uniform result from the proceedings in these cases, as the service areas in question have a substantial overlap.

5. Although the parties to both cases are not identical, all parties in Case No. GR-2007-0168 (Ozark Energy Partners, LLC; Alliance Gas Energy Corporation; Missouri Gas Energy; the Staff of the Commission and the Office of the Public Counsel) are parties to Case No. GR-2006-0561. Although the converse is not true, the only difference between the parties of the two cases is that Southern Star Gas Pipeline, Inc., has chosen not to intervene in the latter case. Staff does not believe that this difference in parties will create any difficulties.

6. Both cases are still in their initial stages. Accordingly, no parties will be prejudiced by consolidation. Staff does not expect that consolidation will slow its review and consideration of the applications, nor will it slow the Commission's consideration of the applications.

7. Staff has initiated its inquiries in each matter, and believes it will be examining the many of the same questions and looking at much of the same information in both cases – questions of the nature of Branson and its environs and the appropriateness of that area for natural gas service. In light of the underlying similarity of that analysis, Staff believes that the Commission should consider these cases in conjunction with one another. Moreover, the Commission must consider the question of the public interest when considering whether or not to grant one or more than one certificate within one area, and that is a question posed by these two

cases when considered together. “The public interest and convenience is the Commission's chief concern when determining whether to grant more than one certificate within one certificated area.” *Id.* at 575, citing *State ex rel. Missouri Pacific Freight Transp. Co. v. Public Serv. Comm’n*, 295 S.W.2d 128, 132 (Mo. 1956); *State ex rel. Orscheln Bros. Truck Lines, Inc. v. Public Serv. Comm’n*, 433 S.W.2d 596, 605 (Mo.App.1968).²

8. Commission rule 4 CSR 240-2.110(3) permits the Commission to consolidate cases that “involve related questions of law or fact...” in order “...to avoid unnecessary costs or delay.” In Staff’s opinion, these cases involve the related questions of whether Branson and its environs are suitable for natural gas service; if the answer to that question is yes, then if the area can support more than one provider of natural gas service; and if the area can support only one provider of natural gas service, then which applicant is the appropriate provider to receive a certificate.

WHEREFORE, Staff requests that the Commission consider consolidation these two matters in light of the overlap in the requested areas of service.

² The Commission has approved consolidation of cases involving applications for similar service territory upon company request in the past; see *In the Matter of the Application of Union Electric Company d/b/a AmerenUE for a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage, and Maintain Natural Gas Pipeline Facilities and a Gas Distribution System for the Public in a Portion of St Charles County, Missouri, as an Expansion of Its Presently Certificated Area, Case No. GA-99-107* and *In the Matter of the Application of Laclede Gas Company for a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage, and Maintain a Gas Distribution System for the Public in a Portion of the City of Wentzville, Missouri, as an Expansion of Its Presently Certificated Area, Case No. GA-99-236, Order to Consolidate Proceedings and Directing Notice (Dec. 3, 1998)*:

Along with its Application, Laclede, on November 24, filed a Motion to Consolidate Proceedings which states that Laclede's application and UE's application address the same service territory and that common questions of law and fact are likely to be presented in both proceedings. For those reasons, Laclede requests that the Commission issue an order consolidating these proceedings. Upon review of these matters, the Commission concludes that common questions of law and fact will likely be presented in these proceedings. The Commission further concludes that consolidation of these proceedings will result in the most efficient use of the Commission's resources and that no party will be prejudiced by consolidation of these proceedings.

Respectfully submitted,

/s/ David A. Meyer

David A. Meyer

Senior Counsel

Missouri Bar No. 46620

Attorney for the Staff of the
Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-8706 (Telephone)

(573) 751-9285 (Fax)

david.meyer@psc.mo.gov

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 9th day of February 2007.

/s/ David A. Meyer