

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

In the Matter of Roeslein Alternative Energy Services,)	
LLC's Request for a Commission Order Declining)	
Jurisdiction, or, in the Alternative, Roeslein Alternative)	
Energy Services, LLC's Application for Permission and)	<u>File No. GA-2016-0271</u>
Approval and a Certificate of Convenience and Necessity)	
to Construct, Install, Own, Operate, Maintain, and)	
Otherwise Control and Manage a Gas Gathering System)	

STAFF RECOMMENDATION

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission, ("Commission") by and through counsel, and for its *Staff Recommendation*, states as follows:

1. On April 12, 2016, Roeslein Alternative Energy Services, LLC (RAES), a Missouri corporation and subsidiary of Roeslein Alternative Energy of Missouri, LLC (RAE), filed its *Request for Order Regarding Lack of Jurisdiction, or, in the Alternative, Application for a CNN* with the Commission. In its *Application*, RAES requests that the Commission determine that it does not have jurisdiction over RAES's activities, or in the alternative, grant RAES a certificate of public convenience and necessity (CCN) authorizing it to construct, install, own, operate, control, manage and maintain a natural gas pipeline system to provide gas to an interstate pipeline.

2. On April 13, 2016, the Commission directed Staff to submit a recommendation on the application by May 12, 2016.

3. On May 6, 2016, the Staff filed its *Motion for Extension of Time* requesting the deadline to file Staff's recommendation be scheduled not later than June 28, 2016, to provide an opportunity for Staff to conduct a thorough investigation.

4. On May 10, 2016, the Commission granted Staff's motion for extension.

5. Staff's investigation included two rounds of data requests and a site visit to the now operational Ruckman Farm facility, wherein Staff observed bio-methane production facility operated by RAE, as well as the compression machinery operated by RAES that compresses the biomethane to pressures capable for distribution in the ANR interstate pipeline.

6. In the attached *Memorandum* (Appendix A), Staff recommends that the Commission approve RAES's request for an order finding the Commission lacks jurisdiction over RAES's commercial activities pursuant to the following representations made to Staff in its investigation:

- a. RAES stated that 100% of all biomethane produced and transported on the Central Corridor Pipeline will be injected into the ANR interstate pipeline¹ ** _____
_____ ** Staff has therefore assumed that there will be no taps off of any of RAES pipelines to landowners, other customers, municipalities, or any pipelines other than an interstate pipelines.
- b. RAES stated that design work has not been completed for the East and West Corridor Pipelines, thus ** _____
_____ ** and legal descriptions of the area to be certificated⁶ are not yet available. Staff has therefore assumed that at such time this information becomes available, RAES will submit additional application(s) to the Commission for these proposed pipeline projects.
- c. RAES stated in its application that all gas it transports will be monitored by means of gas chromatographs to ensure that it is pipeline quality.⁷ Staff has therefore assumed that RAES will provide, operate

¹ GA-2016-0271 DR 0003

² GA-2016-0271 DR 0029 PR

³ GA-2016-0271 DR 0004 HC

⁴ GA-2016-0271 DR 0005 HC

⁵ GA-2016-0271 DR 0006 PR

⁶ GA-2016-0271 DR 0008

⁷ GA-2016-0271 DR 0013

and maintain sufficient monitoring equipment and qualified operating personnel to ensure that the ANR gas quality standards are met.

- d. RAES has stated that RAE will provide CO₂ monitoring equipment at the outlet of its process that will shut down the flow of gas to the RAES pipeline if the CO₂ concentration exceeds 2%⁸. Staff has therefore assumed that RAES will ensure that these monitors and automatic shut-down devices are installed and operate correctly.
- e. RAES stated that it will provide alarms and automatic shut-off valves that will isolate the flow of gas from its pipeline into the ANR pipeline in the event the specification limits are exceeded.⁹ Staff has therefore assumed that RAES will provide alarms and automatic shut-off valves to isolate and prevent off-specification gas from entering the ANR pipeline system.
- f. RAES stated that it will provide and install pressure relief equipment and a high pressure alarm to ensure that its pipeline is not over-pressured by gas delivered to its pipeline by RAE.¹⁰ Staff assumes that such equipment will be installed.
- g. RAES stated that its pipelines will be constructed to the appropriate standard in 49 CFR 192 (federal pipeline safety standards) and operated using personnel qualified under applicable federal pipeline safety regulations.¹¹ Staff notes that the pipelines will be jurisdictional to Missouri and that Missouri pipeline safety regulations are more stringent than federal pipeline safety regulations. Staff assumes that RAES is subject to the applicable requirements of the Missouri Public Service Commission Pipeline Safety Regulations in 4 CSR 240-40.020, 40.030 and 40.080.
- h. ** _____

- i. RAES has stated that it will inject odorant into the gas at the measurement point from RAE to RAES. Staff has therefore assumes that the gas will be odorized.¹³

⁸ GA-2016-0271 DR 0013.1

⁹ GA-2016-0271 DR 0013.1

¹⁰ GA-2016-0271 DR 0013.2

¹¹ GA-2016-0271 DR 0011

¹² GA-2016-0271 DR 0002 HC

¹³ GA-2016-0271 DR 0012

Should plans, conditions, terms, descriptions, or above representations and assumptions change for the Proposed Central Corridor Pipeline project or future projects, Staff's recommendation may change as to the Commission's jurisdiction and a CCN may be required.

7. RAES's application requests that the Commission find no jurisdiction because RAES is not a "gas company" as defined by Chapter 386, as RAES intends to only serve one private contract, an out of state purchaser, and will not provide service for "public use." Staff agrees that the interstate sale and transportation of RAES's product alone does not meet the public use requirement under 386.020(4), however expansion of service to any localities or citizens, intrastate service contracts, and more may change Staff's recommendation. Staff Counsel prepared a memo on this application for Staff, and is attached as Appendix B.

8. Though not evident in its *Application*, RAES seeks to construct three separate pipelines along three separate routes (corridors) to transport gas from biological production and treatment facilities that are located at individual farm sites in northern Missouri to the ANR interstate pipeline, injecting the gas into the ANR interstate pipeline at three separate interconnect locations. However, at this time, RAES is only able to provide specific information regarding the location of the proposed pipeline corridor and interconnection points with ANR for the Proposed Central Corridor Pipeline; RAES has not provided Staff with information regarding the location of the Proposed Eastern and Western Corridor Pipelines and interconnection point with ANR for the Proposed Eastern Corridor Pipeline. As such, Staff's *Recommendation* is limited to the Proposed Central Corridor Pipeline. Staff requests that the Commission direct

RAES to renew its request for the Commission to consider its jurisdiction relating to the Proposed Eastern Corridor Pipeline and Proposed Western Corridor Pipeline as such sufficient information becomes available and before operation of said pipelines.

WHEREFORE, Staff respectfully requests the Commission issue an order finding that the Commission does not have jurisdiction over the construction or operation of the Proposed Central Corridor Pipeline as proposed by RAES, subject to the aforementioned assumptions, and reserves jurisdictional review for the Proposed Eastern and Western Corridor Pipelines, and requests an instruction that RAES renew its request when such information sufficient for the Commission to make a jurisdictional determination is available.

Respectfully submitted,

/s/ Hampton Williams

Wm. Hampton Williams
Assistant Staff Counsel
Missouri Bar No. 65633
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8517 (Telephone)
Hampton.Williams@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 28th day of June, 2016.

/s/ Hampton Williams

MEMORANDUM

TO: Missouri Public Service Commission Official Case File, Case No. GA-2016-0271

FROM: Kathleen A. McNelis, PE, Utility Regulatory Engineering Manager, Safety Engineering Unit
David M. Sommerer, Utility Regulatory Manager, Procurement Analysis Unit

/s/ Natelle Dietrich 06/28/16
Commission Staff Division / Date

/s/ Wm. Hampton Williams 06/28/16
Staff Counsel's Office / Date

SUBJECT: Staff's Recommendation on Roeslein Alternative Energy Services, LLC's Request for a Commission Order Declining Jurisdiction, or, in the Alternative, Roeslein Alternative Energy Services, LLC's Application for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Gas Gathering System

DATE: June 28, 2016

Staff has reviewed the subject application and recommends that the Commission:

- A. Limit its findings to the proposed central corridor pipeline (design documents have not been submitted for other proposed pipeline systems), and,
- B. Not assert jurisdiction beyond enforcing its pipeline safety regulations in Rules 4 CSR 240-40.020, 40.030 and 40.080. If the plans, conditions, terms, or description change for the Proposed Central Corridor Pipeline project or future projects, Staff's opinion may change, and a CCN may be required.

A detailed description of Staff's evaluation follows.

1. Summary of Application

The applicant in this case, Roeslein Alternative Energy Services, LLC (RAES), is seeking a determination of the applicability of RSMo. 393.170 and Commission Rules 4 CSR 240-2.060 and 4 CSR 240-3.205 for its three proposed pipelines: "Proposed Central Corridor Pipeline", "Proposed East Corridor Pipeline" and "Proposed West Corridor Pipeline". If the Commission determines that its rules are applicable, RAES is seeking a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain and otherwise control and manage the proposed gas pipeline systems.

The gas that RAES proposes to transport in its pipelines will be produced by biological processes from farm waste products and treated to pipeline quality standards by Roeslein Alternative Energy, LLC (RAE), an affiliate of RAES. RAES stated in its application that its affiliate RAE works directly with farmers to implement construction of the bio-gas facilities that will produce the gas from manure and vegetation (e.g. cut prairie grass).

RAES is proposing to design and construct 148 miles of pipeline that will transport the gas produced by RAE to the point of injection into either ANR Pipeline Company (ANR Pipeline),¹ or into one of several municipal gas distribution systems in the area. RAES stated that the designs for the Proposed East and West Corridor Pipelines have not been completed; however, it is likely that portions of the Proposed East Corridor Pipeline will lie within areas that have utility service from a municipal natural gas utility. Staff's understanding is that, at this time, the Company does not propose offering utility service on any of its proposed pipelines.²

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2. Scope of Project Proposed By RAES and Scope Considered by Staff

RAES is proposing in its application to construct three pipeline systems in Northwest Missouri, totaling 148 miles of pipeline. These are identified by RAES as the "Proposed East Corridor Pipeline", the "Proposed Central Corridor Pipeline" and the "Proposed West Corridor Pipeline."⁴

2.1. Proposed East and West Corridor Pipelines

RAES has proposed a phased approach to construction. The first phase is construction and operation at a location that is immediately adjacent to the ANR Pipeline right-of-way and requires no jurisdictional pipeline system. This is the Ruckman farm, located at what will be the northern terminus of the future Proposed West Corridor Pipeline. This phase is nearly completed, and RAES provided a site tour of this facility on July 15, 2016 to the PSC Staff. Four PSC Staff members attended the tour and have provided a description of observations below.

RAES stated that the design work has not been completed for the Proposed East and West Corridor Pipelines and capacity information has not been developed.⁵ RAES stated that it has not obtained any easements,⁶ ** _____ **, ⁷ or ** _____ **⁸ for the Proposed East or West Corridor Pipelines. Construction of the pipelines is scheduled to begin in 2017 for the Proposed East Corridor Pipeline and 2018 for the Proposed West Corridor Pipeline.⁹

¹ ANR Pipeline is an interstate transmission pipeline regulated by the Federal Energy Regulatory Commission (FERC).

² GA-2016-0271, DR 0009.

³ GA-2016-0271, DR 0029.

⁴ GA-2016-0271, Application, Appendix B.

⁵ GA-2016-0271, DR 0003.

⁶ GA-2016-0271, DR 0001.

⁷ GA-2016-0271, DR 0004.

⁸ GA-2016-0271, DR 0005.

⁹ GA-2016-0271, DR 0017.

2.2. Proposed Central Corridor Pipeline

RAES provided construction details,¹⁰ ** _____ **¹¹ and ** _____ **¹² for the Proposed Central Corridor Pipeline. RAES stated that it has obtained approximately 40% of the easements for the Proposed Central Corridor Pipeline, and that most of this pipeline is planned to be installed within existing roadways.¹³ RAES stated that it is in negotiations with ANR Pipeline to determine the exact location for the injection point for the Proposed Central Corridor Pipeline.¹⁴

RAES stated that construction of the Proposed Central Corridor Pipeline is expected to occur during the third and fourth quarters of 2016,¹⁵ with an anticipated date for beginning of operation on June 1, 2017.¹⁶

2.3. Scope Considered by Staff

Since the design ** _____ ** have not been completed for the Proposed East and West Corridor Pipelines, Staff has limited its analysis and recommendation to the Proposed Central Corridor Pipeline.

3. Description of Proposed Central Corridor Pipeline Project

The overall waste to gas project can be generalized as follows:

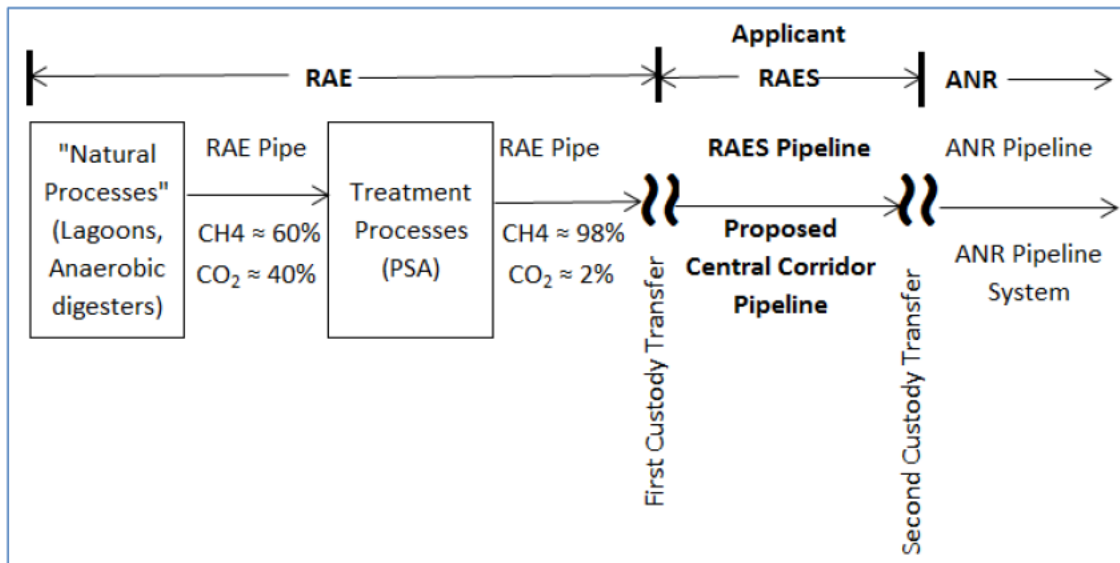


Figure 1: Staff Schematic of Proposed Central Corridor Pipeline System Gas Generation, Treatment and Transportation to ANR Pipeline

¹⁰ GA-2016-0271, Application, Appendix C.

¹¹ GA-2016-0271, DR 0004.

¹² GA-2016-0271, DR 0005.

¹³ GA-2016-0271, DR 0001.

¹⁴ GA-2016-0271, DR 0017.

¹⁵ GA-2016-0271, DR 0017.

¹⁶ GA-2016-0271, DR 0038.

Descriptions of these general processes are as follows:

1. The “Natural Processes”¹⁷ will be operated by RAE, an affiliate of RAES, and include manure lagoons that are covered with impermeable sheeting and anaerobic digesters¹⁸ for processing of animal waste and cut vegetation. In these covered lagoons and anaerobic digesters, bio-gas will be produced and contained for removal and treatment in the Treatment Processes. There may be multiple such natural processes on a single farm property.

RAES stated that the bio- gas quality coming off of the natural processes will be about 60% methane (CH₄), and 40% carbon dioxide (CO₂) with up to 3,000 parts per million (ppm) of hydrogen sulfide (H₂S) and will be saturated with water vapor at the pressure and temperature of the respective natural processes.¹⁹ RAES stated that this is not pipeline quality gas.²⁰

2. The Treatment Processes will be operated by RAE, an affiliate of RAES, and will include removal of the water, carbon dioxide, hydrogen sulfide and other selective impurities in a pressure swing adsorption (PSA)²¹ treatment system.

RAES stated that the gas composition exiting the PSA treatment system will be 98% methane, 2% carbon dioxide, will meet pipeline specifications for H₂S and water content and is pipeline quality gas.²² RAES stated that RAE will provide CO₂ monitoring equipment at the outlet of the RAE process that will shut down the flow of gas to the RAES pipeline if the CO₂ concentration exceeds 2%.²³

¹⁷ Term used on p. 2 of “Request for Order Regarding Lack of Jurisdiction, or in the Alternative, Application for a CCN”.

¹⁸ Anaerobic digestion is a biological process in which microorganisms break down biodegradable material in the absence of oxygen.

¹⁹ GA-2016-0271, DR 0012.

²⁰ GA-2016-0271, DR 0012.

²¹ Per GA-2016-0271, DR 0012 response, in the PSA treatment system, the methane and carbon dioxide mixture is compressed to 100 psig and then introduced into a vessel that contains a proprietary solid material that adsorbs the CO₂, H₂S and water vapor. The system consists of three of these vessels operated in parallel in a “batch processing” format. Once the solid in the first vessel is saturated with CO₂ and water, the gas flow moves on to the second vessel and the pressure in the first vessel is reduced, releasing the contaminants and purging them to the atmosphere. As the second vessel nears saturation, the primary flow switches to the third vessel, the purging process begins on the second vessel, and the first vessel is flushed with a small amount of clean gas and then made ready to be re-used. The process continues in this manner.

²² GA-2016-0271, DR 0012.

²³ GA-2016-0271, DR 0013.1.

3. The “First Custody Transfer” of the gas²⁴ occurs at the exit of the PSA treatment system meter and will be from RAE to RAES. The First Custody Transfer point is located at the beginning of the RAES pipeline.
4. The pipeline system proposed by RAES and the subject of this application will transport gas from the first custody transfer (treatment system meter) to a second custody transfer location at the connection of RAES’s pipeline to ANR pipeline. The proposed RAES pipeline system includes laterals to multiple farms.

RAES stated that its pipelines will have a maximum allowable operating pressure (MAOP) of 100 pounds per square inch gauge (psig).²⁵

RAES has stated that it will provide the following for its pipeline system:

- a. Inject odorant into the gas at the measurement point from RAE to RAES.²⁶
 - b. All gas RAES transports will be monitored by means of gas chromatographs to ensure that the gas is pipeline quality standards, and the gas chromatographs will alarm and initiate closure of system valves to ANR Pipeline if the gas does not meet pipeline quality standards.²⁷
 - c. RAES has stated that it will install a pressure relief device to ensure that its pipeline is not over-pressurized by the gas provided by the RAE treatment system.²⁸
5. The “Second Custody Transfer”²⁹ will occur at the point of injection of gas from the RAES pipeline into the ANR Pipeline. The Second Custody Transfer point is located at the end of the RAES pipeline.

For purposes of this application, RAES is only seeking a determination with respect to the pipeline part of the process between the two custody transfers.

4. Pipeline Safety Jurisdiction

The Commission has pipeline safety authority and jurisdiction for intrastate transportation of gas in Missouri. Accordingly, the Safety Engineering Unit of the Commission Staff will be applying the pipeline safety regulations in Rules 4 CSR 240-40.020, 40.030 and 40.080 to the Proposed Central Corridor Pipeline system regardless of whether a CCN is issued for that gas pipeline system. The pipeline safety regulations will also be applied to the Proposed East and West Corridor Pipeline systems if they are built in the future. RAES has agreed that its pipeline systems will be subject to the Commission regulations regarding pipeline safety.³⁰

²⁴ Custody transfer of the gas in this case occurs when the gas is metered from RAE to RAES.

²⁵ GA-2016-0271, DR 0013.

²⁶ GA-2016-0271, DR 0012.

²⁷ GA-2016-0271, DR 0013 and DR 0013.1.

²⁸ GA-2016-0271, DR 0013.2.

²⁹ Custody transfer of the gas in this case occurs when the gas is metered from RAES to ANR Pipeline.

³⁰ GA-2016-0271, DR 0026.

The Safety Engineering Unit is already applying the pipeline safety regulations to numerous intrastate gas pipelines and pipeline systems in Missouri that do not have a CCN issued by the Commission. Examples are municipal gas systems and gas pipelines to an end-user, such as a power plant or ethanol plant.

5. Staff Site Tour of the Ruckman Farm Project

An aerial photograph of the Ruckman Farm Project was provided by RAES³¹:

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Figure 2: Aerial Photograph of Ruckman Farm Project (Photograph provided by RAES)

The Ruckman Farm project is located on a farm north of Albany, Missouri and includes nine covered lagoons with gas collection systems, below-grade high density polyethylene (HDPE) piping that connects the collected gas to a common treatment system, compressors and an interconnect with ANR Pipeline. Also at the site are two trailers housing the instrumentation, measurement, data recording and other equipment provided by ANR Pipeline to monitor gas quality. The gas at this project is not odorized by RAES because the pipeline does not leave property controlled by either RAE or ANR Pipeline.

³¹ GA-2016-0271, DR 0016 attachment.

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Pipeline Quality

To Staff's knowledge, Missouri has no specific natural gas pipeline quality standard set out in statute or regulation that governs the composition of gas injected into a pipeline. The lack of a specific guideline has not been an issue in the past since natural gas flowing into regulated local distribution systems and municipal systems is received from FERC-regulated interstate pipelines. The Missouri Public Service Commission has also regulated intrastate pipeline systems. Even with respect to a previous intrastate pipeline system, Missouri Pipeline Company, there was an upstream feed of natural gas supply by FERC-regulated interstate pipelines.

In this case, the Company is proposing to inject its processed gas into the ANR Pipeline system. Since ANR Pipeline is an interstate pipeline that is FERC regulated, it has tariffs that govern the terms and conditions of service. The gas quality provisions of ANR Pipeline's tariff are contained in Part 6.13 of its FERC Gas Tariff.

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As long as the Company's practice is to inject gas only into ANR Pipeline's system, the gas quality would be subject to ANR Pipeline's specific tariffs related to gas quality. This is important since ANR Pipeline has the measurement equipment, personnel, safeguards, and standards to help monitor the gas flowing into its system.

The Staff is not aware of any situation in the US where a livestock-based biogas operation is processing gas into "pipeline quality" gas and injecting the product into an interstate pipeline. The fact that natural gas prices have recently been in a relatively low price environment coupled with gas compression requirements and pipeline gas quality standards may have limited the projects where this approach was viable.

Other states have analyzed the issues surrounding conversion of biogas into "pipeline quality" gas. For example, see the California Public Utility Commission's (CPUC) Rulemaking 13-02-008. That case looked at gas quality standards that appear to extend beyond the standard interstate "pipeline quality" standards and included guidelines for "Constituents of Concern". Similar issues regarding an expanded list of trace components were also cited in a biogas case filed before the Washington Utilities and Transportation Commission Docket UG-152164.

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** The Staff is concerned that if processed gas does not meet ANR Pipeline's gas quality standards, it will have negative impacts on the service of municipal customers. A significant protection that enhances the likelihood that the gas supply flowing into towns in Missouri will actually be of "pipeline quality" is the fact that the produced gas is only flowing into the ANR Pipeline system. In other words, at this time, there are no direct interconnects with local systems.

7. CCN ISSUES

Based on Staff's understanding of the Proposed Central Corridor Pipeline, it is Staff's opinion, that the project is not subject to Commission jurisdiction, outside of safety jurisdiction, and therefore, does not require a CCN. Should the scope, description, plans or terms of the project as described in this recommendation change, Staff recommends the Commission direct the Company to file a new request for CCN.

8. Staff Recommendation

This recommendation applies only to the Proposed Central Corridor Pipeline.

Based on Staff's understanding of the Proposed Central Corridor Pipeline project, it is the Staff's recommendation that the Commission not assert jurisdiction beyond enforcing its pipeline safety regulations in Rules 4 CSR 240-40.020, 40.030 and 40.080, on the representations made by RAES concerning the following:

NP

1. RAES stated that 100% of all biomethane produced and transported on the Central Corridor Pipeline will be injected into the ANR interstate pipeline³⁵ ** _____
_____.³⁶ Staff has therefore assumed that there will be no taps off of any of RAES pipelines to landowners, other customers, municipalities, or any pipelines other than an interstate pipeline.
2. RAES stated that design work has not been completed for the East and West Corridor Pipelines, thus ** _____³⁷, ** _____³⁸, ** _____³⁹, and legal descriptions of the area to be certificated⁴⁰ are not yet available. Staff has therefore assumed that at such time this information becomes available, RAES will submit additional application(s) to the Commission for these proposed pipeline projects.
3. RAES stated in its application that all gas it transports will be monitored by means of gas chromatographs to ensure that it is pipeline quality.⁴¹ Staff has therefore assumed that RAES will provide, operate and maintain sufficient monitoring equipment and qualified operating personnel to ensure that the ANR gas quality standards are met.
4. RAES has stated that RAE will provide CO₂ monitoring equipment at the outlet of its process that will shut down the flow of gas to the RAES pipeline if the CO₂ concentration exceeds 2%.⁴² Staff has therefore assumed that RAES will ensure that these monitors and automatic shut-down devices are installed and operate correctly.
5. RAES stated that it will provide alarms and automatic shut-off valves that will isolate the flow of gas from its pipeline into the ANR pipeline in the event the specification limits are exceeded.⁴³ Staff has therefore assumed that RAES will provide alarms and automatic shut-off valves to isolate and prevent off-specification gas from entering the ANR pipeline system.
6. RAES stated that it will provide and install pressure relief equipment and a high pressure alarm to ensure that its pipeline is not over-pressured by gas delivered to its pipeline by RAE.⁴⁴ Staff assumes that such equipment will be installed.
7. RAES stated that its pipelines will be constructed to the appropriate standard in 49 CFR 192 (federal pipeline safety standards) and operated using personnel qualified under applicable federal pipeline safety regulations.⁴⁵ Staff notes that the pipelines will be jurisdictional to Missouri and that Missouri pipeline safety regulations are more stringent than federal pipeline safety regulations. Staff assumes

³⁵ GA-2016-0271, DR 0003.

³⁶ GA-2016-0271, DR 0029.

³⁷ GA-2016-0271, DR 0004.

³⁸ GA-2016-0271, DR 0005.

³⁹ GA-2016-0271, DR 0006.

⁴⁰ GA-2016-0271, DR 0008.

⁴¹ GA-2016-0271, DR 0013.

⁴² GA-2016-0271, DR 0013.1.

⁴³ GA-2016-0271, DR 0013.1.

⁴⁴ GA-2016-0271, DR 0013.2.

⁴⁵ GA-2016-0271, DR 0011.

that RAES is subject to the applicable requirements of the Missouri Public Service Commission Pipeline Safety Regulations in 4 CSR 240-40.020, 40.030 and 40.080.

8. ** _____

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9. RAES has stated that it will inject odorant into the gas at the measurement point from RAE to RAES. Staff has therefore assumes that the gas will be odorized.⁴⁶

If the plans, conditions, terms, or description, or above representations and assumptions change for the Proposed Central Corridor Pipeline project or future projects, Staff's recommendation may change as to the Commission's jurisdiction, and a CCN may be required.

⁴⁶ GA-2016-0271, DR 0012.

BEFORE THE PUBLIC SERVICE COMMISSION
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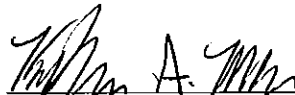
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AFFIDAVIT OF KATHLEEN A. McNELIS, PE

STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

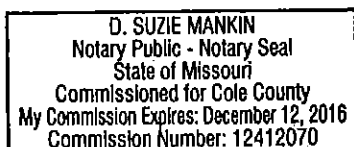
COMES NOW KATHLEEN A. McNELIS, PE and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing Staff Recommendation in Memorandum form; and that the same is true and correct according to her best knowledge and belief.

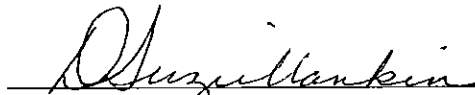
Further the Affiant sayeth not.


KATHLEEN A. McNELIS, PE

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 28th day of June, 2016.




Notary Public

OF THE STATE OF MISSOURI

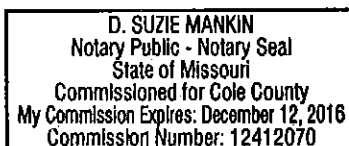
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STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

Further the Affiant sayeth not.

David M. Sommerer
DAVID M. SOMMERER

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 28th day of June, 2016.




Notary Public

TO: Natelle Dietrich
FROM: Hampton Williams
DATE: June 24, 2016
RE: GA-2016-0317 – Jurisdiction of the Commission

QUESTION PRESENTED

On the facts alleged in GA-2016-0271 and Staff’s investigation thereof, does not the Commission have jurisdiction over the activities identified in the application?

JURISDICTION OF THE COMMISSION

The Commission is imbued with “jurisdiction, supervision, powers and duties” extending to the “manufacture, sale or distribution of gas, natural and artificial...within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas...plants, and to persons or corporations owning, leasing, operating or controlling the same.”¹ Furthermore, the Commission’s jurisdiction extends to “all public utility corporations and persons whatsoever subject to the provisions of this chapter...[.]”² Statutes define “Public Utility” “includes every pipeline corporation, gas corporation...as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter.” (Emphasis added)³.

In *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n of Missouri*, the Court reversed the Commission’s order, finding a brewery operating its own electric generator and selling excess generation to its locality is not a public utility.⁴ The Court, in its analysis of the

¹ § 386.205(1), RSMo (2016).

² § 386.205(5), RSMo (2016).

³ § 386.020(43), RSMo (2016).

⁴ *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n of Missouri*, 275 Mo. 483, 205 S.W. 36 (1918). *See also* *Osage Water Co. v. Miller County Water Auth., Inc.*, 950 S.W.2d 569, 574 (Mo. App., S.D. 1997); *Khulusi v. SW Bell Yellow Pages, Inc.*, 916 S.W.2d 227, 232 (Mo. App. W.D., 1995).

Commission's authority to regulate activity, relied heavily on a decision from Supreme Court of Washington in *State ex rel. v. Spokane, etc., Railroad Co.*, quoting:

“The right to regulate under the present law must be measured by the public interest. It will hardly be contended that appellant's contracts with those to whom it sells its surplus is of any interest or concern to any one other than the immediate parties. It is not alleged that it is neglecting its public duty because of them. No one has a right to compel appellant to sell its surplus. The act of sale is purely voluntary. Like the merchant, it can sell at one price to one man and at another price to another.” (Emphasis added).⁵

The Court's analysis established the “public use” standard that was originally omitted from the initial authorizing statute.⁶ Legislators subsequently took action to incorporate “public use” standard into the statute. Presently, Chapter 386 defines “Gas corporation” to include “every corporation...owning, operating, controlling or managing any gas plant⁷ for public use under privilege, license or franchise now or hereafter granted by the state...[.] (Emphasis added).⁸

In *Cirese v. PSC*, a landlord providing electric service to its tenants was determined a public utility, and thus by the Commission to the extent the landlord engaged in producing electricity beyond its own properties and tenants.⁹ The Court found that even though the landlord “sold service only on private contract”, evidence that the landlord was holding “themselves out sell to all comers who desired service in the immediate vicinity of their plant, a district consisting

⁵ *State ex rel. v. Spokane, etc., Railroad Co.*, 89 Wash. 599, 154 Pac. 1110 (1916).

⁶ *Supra* n. 4, p. 39.

⁷ Chapter 386 defines “gas plant” as “all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power.” § 386.020, RSMo. (2016). The Applicant has not contested the point that its proposed operation falls within the definition of “gas plant” as defined by Chapter 386, nor admitted to operating a “gas plant”. The assertion for the Commission's lack of jurisdiction brought by the Applicant is on the grounds that it is not providing service for “public use”.

⁸ § 386.020(18), RSMo (2016).

⁹ *State ex rel. & Use of Cirese v. Pub. Serv. Comm'n of Missouri*, 178 S.W.2d 788, 791 (Mo. App 1944).

of several blocks, and that they did sell to all such customers” triggered the Commission’s jurisdiction with respect to service provided beyond its tenants.¹⁰

In *Hurricane Deck Holding Co. v. Public Service Commission*, a developer was found to be a public utility by mailing bills for a water system turned over to the ownership of the development’s homeowners after its water service provider, Osage Water Company, went bankrupt.¹¹ In *Hurricane Deck*, a prior court decision had determined the Osage Water Company to be a public utility based on its sale of water service to the residents of the two subdivisions, stating that facilities may be determined to be “devoted to “public use” within the meaning of *Danciger* where service was “indiscriminately and reasonably made available to the general public.”¹² When Osage Water Company went bankrupt, the developer turned the operation of the water service over to the homeowners, but maintained administration of the billing. The court in *Hurricane Deck* found that even though the developer never solicited business to serve as a public utility, the customers were captured on their system and through mailing bills to the residents, “offered service indiscriminately to all persons located within that service area.”¹³

Based upon the rationale from *Cirese* and *Hurricane Deck*, the Missouri Appellate Court’s application of “public use” from the Missouri Supreme Court’s *Danciger* decision creates a basis to argue that public use applies where service is being provided indiscriminately to captured consumers regardless of solicitation of service. While the open solicitation and indiscriminate provision of utility service expounded in earlier cases still establish “public use”,

¹⁰ *State ex rel. & to Use of Cirese v. Pub. Serv. Comm’n of Missouri*, 178 S.W.2d 788, 791 (Mo. App 1944).

¹¹ *Hurricane Deck Holding Co. v. Pub. Serv. Comm’n of State*, 289 S.W.3d 260, 266 (Mo.App. W.D. 2009).

¹² *Osage Water Co. v. Miller County Water Auth. Inc.*, 950 S.W.2d 569, 574 (Mo. App. S.D. 1997) (quoting *Marano v. Gibbs*, 45 Ohio St.3d 310, 544 N.E.2d 635, 637 (1989)).

¹³ *Hurricane Deck Holding Co. v. Pub. Serv. Comm’n of State*, 289 S.W.3d 260, 266 (Mo.App. W.D. 2009).

courts have identified that consumers confined to utility service from entity serving all residents of a subdivision meets the “public use” threshold.

** _____

_____ ** The bio-methane natural gas will be transmitted via interstate pipeline operated by ANR by injecting the Applicant’s product into an existing lateral line currently serving several northern Missouri municipalities.¹⁵ ** _____

_____ **

During periods of operation, the bio-methane natural gas injected by the Applicant into the ANR lateral lines will very likely be consumed by northern Missouri municipalities.

Like the developing rationale of “public use” articulated in *Cirese* and *Hurricane Deck*, the affected municipalities are confined consumers and the bio-methane natural gas produced and injected by the Applicant’s is being provided indiscriminately to all natural gas consumers in those municipalities. However, unlike *Cirese* and *Hurricane Deck*, the Applicant has no contract, communications, advertisements or solicitations for utility within those northern Missouri municipalities.¹⁶

Furthermore, the municipalities are receiving natural gas service through the interstate pipeline, not the Applicants directly.¹⁷ ANR is not regulated by the Commission, as it is a natural gas interstate pipeline. The Commission does not have jurisdiction over interstate commerce, as Chapter 386 does not apply to “commerce among the several states of this union...[.]”¹⁸

¹⁴ GA-2016-0271, DR 0029 PR.

¹⁵ GA-2016-0271, DR 0015.

¹⁶ GA-2016-0271, DR 0028.

¹⁷ GA-2016-0271, DR 0013.1.

¹⁸ § 386.030, RSMo (2016).

In *City Services Gas Co. v. Missouri Pub. Service Commission*, the Missouri Supreme Court held that a pipeline corporation transporting gas from out of state into Missouri to directly service industrial end users was beyond the Commission's authority as the parties were engaged in interstate commerce and "The Commission does not have jurisdiction of the pipeline on account of these sales...[.]"¹⁹

Staff Counsel believes that the Commission likely does not have jurisdiction over the Applicant's asserted activities because the Applicant is not serving municipalities or individuals in the state of Missouri directly, regardless of compensation, and that affected municipalities are receiving the Applicant's bio-methane natural gas through ANR's distribution system, which is FERC regulated. Should there be deviation from the representations made to Staff regarding those activities, particularly with respect to direct service to Missourians; Staff Counsel's assessment of the Applicant's request may change.

CONCLUSION

Given the nature of the transaction, through an interstate pipeline, and the assertion that no Missouri citizens or companies will be direct consumers of the Applicant's product, Staff Counsel believes that the Applicant's proposal falls outside the scope of "public use" to satisfy

¹⁹ *Missouri ex. Rel. Cities Service Gas Co. v. Missouri Pub. Service Commission*, 85 S.W.2d 890, 897 (1935). The Commission has found in the past that, however "while the Missouri Supreme Court has held § 386.250, the section granting jurisdiction to the Commission over gas corporations, applicable only to intrastate commerce. *Cities Service Gas Co.*, *supra*. However, that case was decided prior to the enactment of the Natural Gas Act and the subsequent case law, which bestowed upon the states the power to regulate that portion of interstate commerce. Therefore, the Commission finds that this type of state regulation, although not allowable at one time, is appropriate now and allows the Commission control over direct sales of natural gas by pipelines to industrial end users." *Re Transportation of Natural Gas Intervenor*s, Case No. GO-85-264, 28 Mo.P.S.C. (N.S.) 619 (1987). See also *Panhandle Eastern Pipeline Co. v. Indiana Pub. Service Commission*, 332 U.S. 507, 71 PUR NS 97, 102, 92 L.Ed. 128, 68 S.Ct. 190, 195 (1947); *Panhandle Eastern Pipe Line Co. v. Michigan Pub. Service Commission*, 341 U.S. 329, 89 PUR NS 1, 4, 95 L.Ed. 993, 71 S.Ct. 777, 780 (1951); *Federal Power Commission v. Louisiana Power & Light Co.*, 406 U.S. 621, 94 PUR3d 209, 220, 32 L.Ed.2d 369, 92 S.Ct. 1827, 1838 (1972).

Chapter 386's definition of a "gas company". However, should Applicant's assertions change, the Commission may have authority to assert jurisdictions so far as the Applicant's activities fall within its jurisdiction.