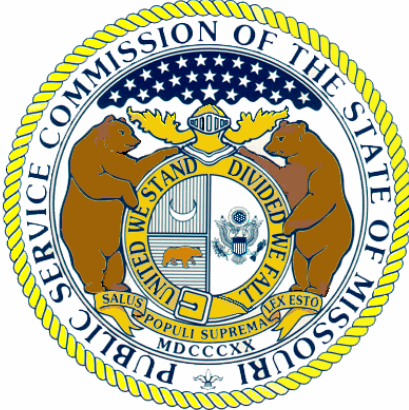


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Alliance Gas Energy)
Corporation for a Certificate of Public Convenience and)
Necessity Authorizing It to Construct, Install, Own,)
Operate, Control, Manage and Maintain a Natural Gas) **Case No. GA-2007-0168**
Distribution System to Provide Gas Service in Branson,)
Branson West, Reeds Spring, and Hollister, Missouri)

REPORT AND ORDER

Issue Date: February 5, 2008

Effective Date: February 15, 2008

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OF THE STATE OF MISSOURI

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Corporation for a Certificate of Public Convenience and)
Necessity Authorizing It to Construct, Install, Own,)
Operate, Control, Manage and Maintain a Natural Gas) **Case No. GA-2007-0168**
Distribution System to Provide Gas Service in Branson,)
Branson West, Reeds Spring, and Hollister, Missouri)

APPEARANCES

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REGULATORY LAW JUDGE: **Benjamin H. Lane, Judge**

REPORT AND ORDER

Syllabus: In this Report and Order, the Missouri Public Service Commission grants a conditional certificate of convenience and necessity to Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas.

Procedural History

On October 26, 2006, Alliance Gas Energy Corporation (“AGE”) filed an application with the Missouri Public Service Commission requesting that the Commission grant AGE authority to provide natural gas service to customers in four southwest Missouri communities (Branson, Branson West, Reeds Spring, and Hollister), all of which are located in either Stone or Taney County.

On November 2, 2006, the Commission issued notice of AGE’s application to members of the public at large and other potentially interested parties and established an intervention deadline of December 4, 2006. On November 8 and November 30, 2006, respectively, Missouri Gas Energy (“MGE”) and Ozark Energy Partners, LLC (“OEP”) filed applications to intervene pursuant to Commission Rule 4 CSR 240-2.075, which governs intervention. The Commission granted those applications by order dated December 11, 2006. That order also directed Staff to promptly commence an investigation into the merits of AGE’s application and to file monthly status reports informing the Commission of Staff’s progress. Staff subsequently filed a series of monthly status reports, most of which emphasized that Staff had nothing new to report because Staff had requested, but not received, important additional information from AGE as required by Commission Rules 4 CSR 240-3.205(1)(A) and (1)(B), which was needed before Staff could complete its analysis and review of AGE’s application.

On February 21, 2007, Southern Star Central Gas Pipeline, Inc. (“Southern Star”) submitted a late-filed application to intervene in this case, which was granted by order dated March 6, 2007. On April 3, 2007, the Missouri Propane Gas Association also submitted a late-filed application to intervene, which was denied by order dated April 19, 2007.

On June 29, 2007, AGE and Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas (“SMNG”) jointly moved to substitute SMNG as a party to this cause pursuant to an Asset Purchase Agreement dated June 29, 2007, under which AGE’s interest in this case was effectively transferred to SMNG.¹ On July 11, 2007, the Commission entered an order granting the joint motion subject to certain conditions specified by Staff on July 9, 2007.

On July 20, 2007, SMNG advised the Commission that all previous filings made in this proceeding by AGE remained pertinent to the pending application given that SMNG would be effectively stepping into the shoes of AGE as the applicant in this proceeding. SMNG further advised the Commission that it would file a status report on or before August 11, 2007, indicating when it planned to file all remaining supplemental and updated information required to complete the application. On August 10, 2007, SMNG filed a First Amended Application and the required status report.² In its status report, SMNG advised the Commission that it believed the First Amended Application contained the supplemental

¹ In their joint motion, AGE and SMNG tacitly acknowledged that the additional required information requested by Staff some six months earlier had not yet been supplied. SMNG did, however, indicate that it “intends to provide the Commission in the near future with the information needed to complete the Application filed by AGE.”

² AGE had originally requested authority to provide natural gas service to customers in the municipalities of Branson, Branson West, Reeds Spring, Hollister, and the surrounding unincorporated areas. In the First Amended Application, however, SMNG withdrew its request for a certificate of convenience and necessity to serve Reeds Spring, since OEP was awarded the municipal franchise to serve this community. See First Amended Application at 3 n.2.

and updated information necessary to complete its application. SMNG further advised the Commission that it intended to supplement the attachments to the First Amended Application as soon as it received additional local governmental approvals.³

In conjunction with its August 10, 2007 status report, SMNG asked the Commission to schedule a prehearing conference, so the parties might propose a procedural schedule for resolving any issues in this case. On August 23, 2007, the Commission issued an order scheduling a prehearing conference for September 10, 2007 and directing the parties to jointly prepare and file a proposed procedural schedule by no later than September 17, 2007. The prehearing conference was held as scheduled and on September 18, 2007, Staff and SMNG filed their joint Request for Extension of Time to File Proposed Procedural Schedule, which was granted by order dated September 19, 2007.

On October 24, 2007, SMNG filed a proposed procedural schedule on behalf of all the parties to this case, which included a proposed hearing date and time of November 27-28, 2007 beginning at 8:30 a.m. each day. The following day, the Commission adopted the proposed procedural schedule.

On November 5, 2007, SMNG filed its Second Amended Application. On November 13, 2007, OEP filed a motion to postpone the hearing. After a flurry of related filings, the Commission ultimately denied OEP's motion by order dated November 20, 2007. Staff filed its Position on the Issues on the morning of the first day of the evidentiary hearing, which commenced as previously scheduled on November 27, 2007 and concluded the following day. All parties but MGE and Southern Star filed posthearing briefs.⁴

³ SMNG filed a Supplement to Appendix A (HC) of the First Amended Application on August 21, 2007.

⁴ In Case No. GA-2006-0561, which involved almost exactly the same parties as this case, OEP filed an application for a certificate of convenience and necessity to serve portions of the same service area SMNG seeks to serve in this case. Of course, this report and order addresses only SMNG's application, not OEP's.

Finally, SMNG and MGE filed a nonunanimous Stipulation and Agreement (“Agreement”) on December 4, 2007. In paragraph 2 of the Agreement, SMNG voluntarily and expressly waived any right to request a Certificate of Convenience and Necessity (“CCN”) for any territory in which MGE was already certificated. In paragraph 3 of the Agreement, SMNG agreed to the imposition of nine additional conditions “[i]f the Commission determines it is in the public interest for SMNG to be granted a certificate of public convenience and necessity for the construction of an intrastate pipeline and to own and operate a gas utility in Stone and Taney Counties.” No one filed any objections to the Agreement within the seven days allowed by Commission Rule 4 CSR 240-2.115(2)(B).⁵

Conclusions of Law

Section 393.170.3, RSMo 2000, authorizes the Commission to issue a certificate authorizing a gas corporation to construct a gas plant and serve as a public utility if the Commission determines, after due hearing, that such authority is “necessary or convenient for the public service.” In construing the phrase “necessary or convenient,” the Missouri Court of Appeals has stated that “[t]he term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable,’ but that an additional service would be an improvement justifying its cost.”⁶ It is up to the Commission to determine, in the exercise of its discretion, “when the evidence indicates the public interest would be served in the award of the certificate.”⁷

⁵ Staff filed a “Response” to the Stipulation and Agreement on December 19, 2007. In this pleading, Staff expressed no opposition to the vast majority of the Agreement. However, Staff did object to paragraph 3.A., under which SMNG would be permitted “to provide service through farm taps for domestic purposes only when necessary to obtain right-of-way for the construction of the pipeline.”

⁶ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm’n*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993) (citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. W.D. 1973)).

⁷ *Id.* at 597-98 (citing *State ex rel. Ozark Elec. Coop. v. Pub. Serv. Comm’n*, 527 S.W.2d 390, 392 (Mo. App. W.D. 1975)).

The Commission has previously recognized and applied five specific criteria that are to be considered when making that determination: (1) There is a public need for the proposed service; (2) The applicant is qualified to provide the proposed service; (3) The applicant has the financial ability to provide the proposed service; (4) The applicant's proposal is economically feasible; and (5) The proposed service promotes the public interest.⁸ Section 393.170.3 further provides that the Commission "may by its order impose such condition or conditions as it may deem reasonable and necessary." Furthermore, since there were no timely filed objections to the nonunanimous Agreement filed by SMNG and MGE on December 4, 2007, the Commission "may treat [it] as a unanimous stipulation and agreement"⁹ and it may be used "to resolve all or any part" of this contested case.¹⁰

After applying the findings of fact set forth below to the applicable law, the Commission concludes that authorizing SMNG to provide natural gas service to Branson, Branson West, and Hollister is necessary and convenient for the public service. Accordingly, the Commission will issue SMNG a conditional CCN, subject to certain additional conditions specified in this report and order.

Findings of Fact

Is there a public need for the proposed service?

No regulated natural gas utility service is available in the proposed service area,¹¹ which, according to 2000 U.S. Census data, has a population of approximately 10,325 residents living in about 5,458 households.¹² Over 90% of these consumers currently use

⁸ See, e.g., *In re Ozark Natural Gas Company*, 5 Mo.P.S.C. 3d 143, 146 (1996); *In re Tartan Energy Company*, 3 Mo.P.S.C. 3d 173, 177 (1994); *In re Intercon Gas, Inc.*, 30 Mo.P.S.C. (N.S.) 554, 561 (1991).

⁹ Commission Rule 4 CSR 240-2.115(2)(C).

¹⁰ Commission Rule 4 CSR 240-2.115(1)(B).

¹¹ Tr. 70:2-4; Tr. 73-74:25-1.

¹² Tr. 69-70:16-1.

electric, propane, or a combination thereof to meet their energy needs.¹³ SMNG's managing partner, Randal Maffett, testified that there was a clear public need for natural gas service in the area SMNG has proposed to serve, explaining that the company had "many discussions with city, county officials, local business leaders, [and the] general public, and we have heard nothing but, when can you get here, how fast can you get here and we wish you were here yesterday."¹⁴

Likewise, Branson's Mayor, Raeanne Presley, testified that although Branson was formed in the early 1900s, natural gas service had never been available but the community and the City Board of Aldermen remain hopeful that this commodity will eventually be brought to Branson.¹⁵ She further testified that the city's corporate and private citizens alike were "very anxious" to be given a chance to see what growth opportunities there might be with the availability of natural gas, and that it was important to the entire community to have more choices when it comes to energy.¹⁶

Moreover, the fact that SMNG has already been awarded municipal franchises to provide natural gas service to the residents of Branson and Hollister (and is seeking such a franchise to serve the much smaller community of Branson West, which has expressed a strong interest in awarding SMNG a municipal franchise)¹⁷ is additional evidence of public need.

Finally, witnesses presented by both Staff and OEP also agreed with SMNG that there is a

¹³ Exhibit 17 (HC); Tr. 405:11-20. Mr. Maffett testified that a market study originally performed by AGE showed that approximately 40% of the residential mix in the Branson area proper is all-electric, while 50% is a mix of electric and propane, 2% is propane-only, and 8% is other fuels, such as wood, coal, and the like. Tr. 101:7-13.

¹⁴ Tr. 71:7-14. Mr. Maffett later testified that "based on the feedback from the local businesses, from local county and city officials and the general population," the "people of the Branson, Hollister and Branson West areas are very excited about [the prospect of] having natural gas." Tr. 83:12-17.

¹⁵ Tr. 138:17-23.

¹⁶ Tr. 137:1-10; Tr. 136:13-21.

¹⁷ Tr. 69:2-15; Tr. 97-98:24-14.

definite public need for natural gas service in the proposed service area.¹⁸ Indeed, as explained in the *Tartan Energy* case, “The Commission also notes that as a general policy in recent years, it has looked favorably upon applications designed to spread the availability of natural gas throughout the State of Missouri wherever feasible.”¹⁹

The Commission finds that there is a public need for the service proposed by SMNG in Branson, Hollister, Branson West, and the surrounding unincorporated areas.

Is SMNG qualified to provide the proposed service?

What is now SMNG (which was previously known as Tartan Energy Company, L.C. d/b/a Southern Missouri Gas Company) has been in operation as a regulated gas corporation and public utility under the jurisdiction of the Missouri Public Service Commission since its inception in 1994, when it was first certificated as a local gas distribution company for residential, commercial, and industrial customers in twelve southern Missouri communities.²⁰ Furthermore, less than six months ago, the Commission granted SMNG a conditional CCN to serve Lebanon, Houston, and Licking, Missouri, finding that the company was qualified to provide natural gas service to those communities.²¹

Mr. Maffett testified that SMNG has been in successful operation for over 12 years, currently has approximately 35 employees with a collective industry experience of over 200 to 300 years, and is qualified to develop and operate the proposed natural gas project.²²

¹⁸ Tr. 257:6-10; Tr. 373:6-12.

¹⁹ *Tartan Energy*, 3 Mo.P.S.C. 3d at 182.

²⁰ Report and Order, *Tartan Energy*, 3 Mo.P.S.C. 3d 173 (1994); Tr. 258:5-9; Order Granting Certificate of Convenience And Necessity, *In re Tartan Energy Company*, 4 Mo.P.S.C. 3d 61 (1995). In particular, the Commission stated: “The Commission is confident that Tartan [now known as SMNG] possesses the necessary knowledge of the natural gas utility industry including the industry as it has developed in the State of Missouri, as well as of all the requisite technical requirements regarding engineering, safety, and so forth, and so finds. Thus, Tartan has shown that it is qualified to provide the proposed service.” 3 Mo.P.S.C. 3d at 183.

²¹ See Report and Order, *In re Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas*, Case No. GA-2007-0212 (Aug. 16, 2007).

²² Tr. 72:16-25.

Upon approval of its application, SMNG intends to add approximately 20 full-time employees to ensure that it continues to provide safe and adequate service to the new communities, the majority of whom will be involved with construction, conversion, service technicians, meter readers, sales and marketing, and back office functions.²³

Upon Commission approval, Michael Lewis will be the professional engineer in charge of SMNG's construction efforts throughout the proposed service area. Mr. Lewis, a registered professional engineer who performed the preliminary design route selection and associated calculations necessary to ensure that SMNG would construct the right size line at an appropriate cost,²⁴ has an extensive background in the natural gas pipeline industry dating back to 1976. He has worked for United Gas Pipeline Company for ten years, Gulf States Gas and Gulf States Pipeline for eight years, served as a private consultant, and worked for a multinational engineering procurement and construction contracting company known as the Fluor Corporation, where he headed the pipeline department.²⁵ In these various capacities, Mr. Lewis has been involved in the construction of in excess of 20,000 kilometers of pipelines in seven states and ten countries on a total of six continents,²⁶ including projects involving types of rock that are harder than the sandstone and limestone present in the portions of the proposed project area.²⁷

Meanwhile, no evidence was adduced at the hearing seriously challenging the qualifications of SMNG to provide the proposed service. The Commission finds that SMNG has the necessary engineering expertise and experience to satisfy the criterion of being

²³ Tr. 75:12-19; Tr. 73:7-10.

²⁴ Tr. 222:17-18 (HC); Tr. 223-24:24-7 (HC).

²⁵ Tr. 222:7-25 (HC).

²⁶ Tr. 223:1-25 (HC).

²⁷ Tr. 225:20-25 (HC); Tr. 226:1-25 (HC); Tr. 229-30:23-2; Tr. 230-31:18-3. As to the rock involved with the proposed project, Mr. Lewis opined: "It's difficult but it's doable." Tr. 225:25 (HC).

qualified to provide the proposed service in Branson, Hollister, Branson West, and the surrounding unincorporated areas.

Does SMNG have the financial ability to provide the proposed service?

Mr. Maffett testified that the estimated total cost of the proposed project is approximately \$24 million,²⁸ consisting of approximately \$18 million to build a 35-mile-long supply pipeline from Aurora to the Branson area, and about \$6 to \$6.5 million to develop and build out the associated distribution system.²⁹ He further stated that at this point, all of the project design and preliminary engineering work is complete and that SMNG was “basically waiting on the regulatory process and closing the financing” to proceed with the project.³⁰ In concluding that SMNG has the necessary financial strength to provide the proposed service, Mr. Maffett referred to the company’s pending financing application in Case No. GF-2007-0215,³¹ a consolidated proceeding in which SMNG seeks the Commission’s authorization to recapitalize the company by bringing in a new infusion of equity capital in the range of \$10-13 million and approximately \$40-50 million in debt capital³² in order to provide the necessary funds to complete not only the proposed Branson, Hollister, and Branson West project, but also the company’s expansion into Lebanon, Houston, and Licking.³³

In light of these facts, and because Case No. GF-2007-0215 still remains pending, the Commission declines SMNG’s invitation to make a finding that the company is financially capable of providing the proposed natural gas service in Branson, Hollister,

²⁸ Tr. 74:4-6.

²⁹ Tr. 68:13-22.

³⁰ Tr. 74:7-13.

³¹ Tr. 73:1-6.

³² Tr. 80-81:20-1.

³³ Tr. 81:2-4; Tr. 81:20-25. See also the Second Amended Financing Application filed by SMNG in Case No. GF-2007-0215 on December 17, 2007.

Branson West, and the surrounding unincorporated areas. Instead, the Commission will, as requested by Staff in its brief and recommended by its witness Michael Straub during the hearing,³⁴ issue SMNG a conditional CCN and defer making any finding regarding this criterion until after the Commission decides Case No. GF-2007-0215.

Is SMNG's proposal economically feasible?

The Commission believes that the Feasibility Study prepared by SMNG,³⁵ which was the subject of extensive and vigorous criticism by OEP's witness Steven Catron and equally extensive and vigorous rebuttal testimony from Mr. Maffett, is a useful tool in helping determine whether SMNG's proposal is economically feasible. However, the Commission also agrees with Staff that SMNG's ability to secure acceptable financing is also a useful tool in making that determination, since it would indicate that a sophisticated lender had found that the company's proposal met some objective criteria for economic feasibility. Because Case No. GF-2007-0215 still remains pending, the Commission also declines SMNG's invitation to make a finding that its proposal to provide natural gas service in Branson, Hollister, Branson West, and the surrounding unincorporated areas is economically feasible. Instead, the Commission will, as requested by Staff in its brief and recommended by its witness Michael Straub during the hearing,³⁶ issue SMNG a conditional CCN and defer making any finding regarding this criterion until after the Commission decides Case No. GF-2007-0215.

³⁴ Tr. 243-46 *passim*.

³⁵ Appendix C to Exhibit 2 (HC).

³⁶ Tr. 243-46 *passim*. As Mr. Straub explained: "[A]lthough the feasibility study is an extremely important part of the application, the feasibility study has not been the mechanism that's prevented other applicants from achieving a successful operation in Branson or even getting gas into the Branson area. It's been the financing problem or the lack of the money in order to develop those systems down there. So in Staff's view, the most important issue in these two applications [of SMNG and OEP] is their ability to get the financing that would enable them to build the systems." Tr. 245-46:21-7.

Does the service proposed by SMNG promote the public interest?

Mayor Presley testified that there would be numerous public benefits if the Commission granted SMNG's application. According to Mayor Presley, Commission approval of the application would assist existing large energy users, such as hospitals, local school districts, and the city's convention center by providing them an alternative energy source.³⁷ Ms. Presley also testified that the lack of natural gas availability in Branson is viewed as a "negative" factor by prospective employers considering locating in Branson.³⁸ Mayor Presley summarized the need for natural gas as follows:

Well, I also wanted to mention that we are in the process of developing a 300-acre commerce park. It's what we would call a smart park. It sits across from a very large underground that's quite phenomenal for our region. A lot of big name companies are moving in there. Jack Henry has recently moved a lot of their processing and software development in there, and we believe that has real potential to diversify our economy.

As you know, we are tourism-based. That is all that we do in Branson. But it does have limits in terms of year-round employment and wages. And we're looking for folks to move into our community that would be involved in different types of industries that would have a higher wage. We are in desperate need of workforce in our community, and we hope that natural gas will be one piece of that puzzle.³⁹

Likewise, Mr. Maffett testified that natural gas is one of the preferred forms of energy across the United States, and that SMNG could deliver it to the proposed service area at a cost which would be "quite competitive with the current cost for what customers pay vis-à-vis [the] alternative energy sources" currently in use there,⁴⁰ thereby giving consumers more energy choices at a lower cost,⁴¹ particularly in comparison to propane, where he

³⁷ Tr. 136-37:22-10.

³⁸ Tr. 137:19-25.

³⁹ Tr. 139:3-20.

⁴⁰ Tr. 73-74:23-3.

⁴¹ Tr. 68:1-8; Tr. 73:11-15.

projected cost savings of 25-30%.⁴² Mr. Maffett also indicated that the proposed service would provide additional jobs and stimulate future long-term economic development in the Branson area in particular and southern Missouri in general.⁴³

The Commission finds that the service proposed by SMNG would promote the public interest.

Should the Commission impose additional conditions on the CCN issued to SMNG?

As discussed in the Commission's conclusions of law *supra*, since there were no timely filed objections to the nonunanimous Stipulation and Agreement filed by SMNG and MGE on December 4, 2007, the Commission may treat it as a unanimous stipulation and agreement and use it to resolve all or any part of this contested case. After reviewing the Agreement, the Commission finds it to be reasonable and necessary and shall adopt, as part of this report and order, the conditions set out in paragraphs 2 and 3 therein. And, since SMNG has yet to obtain a municipal franchise to serve Branson West, the CCN to serve Branson, Hollister, and Branson West cannot become "final" until SMNG is granted the missing franchise.

SMNG has requested that the Commission grant it a conditional CCN in this proceeding with the same conditions imposed in Case No. GA-2007-0212, including the condition that the company obtain financing that is acceptable to and approved by the Commission. In its brief, Staff also argues that the Commission should grant SMNG a conditional CCN. However, Staff suggests that SMNG should also be required to submit to an additional condition that was *not* imposed on SMNG less than six months ago in Case No. GA-2007-0212. This additional condition is:

⁴² Tr. 71-72:15-6.

⁴³ Tr. 68:9-12; Tr. 68-69:23-1; Tr. 73:15-19; Tr. 75:3-6.

SMNG agrees that if, at any time, it sells or otherwise disposes of its assets before SMNG has cost based rates 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 its books at its purchase price or the fair value of the assets, rather than at the net original cost of the assets. This provision is intended to define SMNG's responsibility relative to the exercise of this certificate relative to SMNG's risk, not SMNG's customers, to absorb the costs in the event serving of this area is found to be uneconomic under original cost of service regulation. SMNG also acknowledges that it is the intention of the Parties that the provisions of this paragraph shall apply to any successors or assigns of SMNG. Nothing in this paragraph is intended to increase or diminish the existing rights or obligations of the parties with respect to ratemaking treatment of SMNG's existing assets outside the properties related to this certificate.⁴⁴

SMNG is opposed to this condition because it would have the unreasonable effect of making SMNG attempt to bind any hypothetical future purchaser of the company's assets before cost-based rates are in place to a "front end" agreement to use a specific accounting adjustment. SMNG argues that because Staff's proposed accounting adjustment would cause an immediate write-down on the purchaser's rate base if the future buyer purchased the property at less than book value, it would be more appropriate for the Commission to review such accounting issues on the "back end" – that is, if and when the identity of the hypothetical future purchaser, the purchase price, existing rate base, and other relevant circumstances were actually known.

SMNG also argues that this provision is unnecessary since it has already agreed to abide by all conditions imposed in Case No. GA-2007-0212, including the one which required SMNG's shareholders to assume the financial risk associated with the expansion of SMNG's service area to include Lebanon, Houston, and Licking. SMNG further contends it is also a totally unprecedented condition which flies in the face of a long standing practice of the

⁴⁴ In Case No. GA-2006-0561, OEP agreed to a similar condition via a nonunanimous stipulation and agreement with Staff, which was filed on November 8, 2007. In this case, however, SMNG opposes such a provision as a prerequisite to being granted a CCN.

Commission that both positive and negative acquisition adjustments will not be reflected in rates, and that it has never been previously proposed by Staff (except in Case No. GA-2006-0561, which is OEP's application) or accepted by the Commission in any previous case, including the previous certificate cases of SMNG.

For their part, Staff, OPC, and OEP all strongly insist in their briefs that the condition is necessary to promote the public interest should SMNG's proposed gas service system fail to achieve forecasted conversion rates or otherwise turn out to be unable to successfully compete against propane.

At the outset, the Commission notes that this is a policy issue whose outcome is not dictated by statute or Commission Rule. As such, it falls squarely within Section 393.170.3, which provides that the Commission "may by its order impose such condition or conditions as it may deem reasonable and necessary." For the following reasons, the Commission finds that Staff's proposed condition is neither reasonable nor necessary.

Notwithstanding the various protestations to the contrary, the proposed condition is indeed unprecedented, as it has never been previously suggested by Staff in a litigated certificate case other than Case No. GA-2006-0561.⁴⁵ For example, Staff did not propose it in SMNG's recent (and successful) application for a certificate of public convenience and necessity to serve Lebanon, Houston and Licking in Case No. GA-2007-0212.⁴⁶ Nor did Staff propose it in SMNG's original certificate case to build its existing local distribution system in 1994.⁴⁷ Similarly, Staff did not attempt to impose it in Case No. GA-2007-0078, in which Missouri Gas Utility recently sought an expansion of its certificate.⁴⁸ In fact, Staff witness Mark

⁴⁵ Tr. 280:4-24.

⁴⁶ Tr. 279:12-15.

⁴⁷ Tr. 280:9-20.

⁴⁸ Tr. 280:21-25.

Oligschlaeger candidly testified that Staff has never even attempted to propose this condition in any other case, with the exception of the pending certificate case involving OEP.⁴⁹

The proposed Staff condition is also unnecessary since SMNG has already indicated that its shareholders will take the economic risk associated with the expansion of its service area to Branson, Hollister, and Branson West, just as they did in the Lebanon case.⁵⁰ The Commission does not see why it is necessary to protect ratepayers to impose a “front end” condition that has a significant potential to adversely and unfairly affect SMNG’s ability to dispose of its assets in the future, when an acceptable “back end” remedy is already available should there be any abuses.

The Commission also observes that there are strong precedents against allowing acquisition premiums to be reflected in rates when the assets are purchased at more than book value. For example, the Commission has stated that it will not require a company to write down its rate base when the assets are sold at less than book value.⁵¹ In addition, Mr. Oligschlaeger testified that the Uniform System of Accounts requires that the use of “net original cost” for ratemaking, and that it would require a waiver if a public utility requested the accounting treatment now being advocated by Staff.⁵² And although Mr. Oligschlaeger also testified that this practice has been the consistent policy for public utilities under cost-based rates,⁵³ he admitted that neither Staff nor the Commission has ever previously attempted to impose this condition upon an unwilling company as a prerequisite of obtaining a CCN.⁵⁴ For all of these these reasons, the Commission declines to impose the condition discussed here and

⁴⁹ Tr. 279-80:16-8.

⁵⁰ Tr. 87-88 *passim*.

⁵¹ See, e.g., *In re UtiliCorp United Inc. and St. Joseph Light & Power Co.*, 12 Mo.P.S.C.3d 388, 389-90 (2004).

⁵² Tr. 275:1-25; Tr. 284-85 *passim*.

⁵³ Tr. 280-81:25-4.

⁵⁴ Tr. 281-82 *passim*.

proposed by Staff in this case.

The final issue is whether the Commission should impose a number of other conditions similar to those recommended in the Stipulation and Agreement between OEP and Staff in Case No. GA-2006-0561, which was filed on November 8, 2007. Mr. Maffett testified that with the exception of the condition discussed immediately above, SMNG has “no objections to any of the other terms and conditions in the stipulation,” because the company was already in voluntary compliance with most of them anyway throughout the course of the company’s day to day operations over the past 12 years.⁵⁵ In short, Mr. Maffett explained that in his view, the conditions in question are unnecessary since SMNG is currently following them. The Commission finds that even though SMNG may already be complying with these routine conditions as a part of its obligations as an existing public utility, it will do no harm to require the company to do what it is already doing.

IT IS ORDERED THAT:

1. Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas is granted a conditional certificate of convenience and necessity to provide natural gas service to Branson, Branson West, Hollister, and the surrounding unincorporated areas, conditioned upon the company’s submission of financing arrangements the Commission finds acceptable and its acceptance of non-disposition accounting-related conditions similar to those recommended in the Stipulation and Agreement between Ozark Energy Partners, LLC and Staff in Case No. GA-2006-0561.

2. Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas shall not begin construction of any facility in Missouri for the purpose of offering natural gas service to Branson, Branson West, Hollister, or the surrounding unincorporated areas until

⁵⁵ Tr. 78:13-24.

it has obtained approval of its financing and a “full” certificate of public convenience and necessity from the Missouri Public Service Commission.

3. Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas shall comply with the terms and conditions set out in paragraphs 2 and 3 of the Stipulation and Agreement entered into between it and Missouri Gas Energy.

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

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Appling and
Jarret CC., concur;
Clayton, C., dissents;
and certify compliance with the provisions
of Section 536.080, RSMo.

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