

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

Ozark Energy Partners, LLC)	
)	
Complainant,)	
)	
v.)	Case No. GC-2008-0154
)	
Southern Missouri Gas Company, L.P.)	
d/b/a Southern Missouri Natural Gas,)	
)	
Respondent)	

COMPLAINT

COMES NOW Ozark Energy Partners, LLC (“OEP” or “Complainant”), by its undersigned counsel, and pursuant to Sections 386.390, 386.400, 386.570, 386.590, 386.600, 393.140 and 393.170, RSMo, and 4 CSR 240-2.070, states as follows for its Complaint against Respondent, Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas (“SMNG”):

NATURE OF THE COMPLAINT

This Complaint arises out of the public dissemination by SMNG of blatantly false and misleading information, claiming that SMNG “was awarded the exclusive franchise” to bring natural gas to the Ozark region of Missouri. In point of fact, OEP and SMNG both have currently-pending applications before the Commission to provide natural gas service in largely the same (overlapping) service area. **SMNG’s untruthful characterization of its legal and operating status in the proposed service area has caused substantial public confusion, and is competitively damaging to OEP.**

OEP asks the Missouri Public Service Commission to expeditiously issue an order which: (1) **directs SMNG to immediately cease and desist from the propagation and dissemination of its “Customer Survey 2007,”** or of any other inaccurate, misleading, and competitively-damaging materials which misrepresent the authority of SMNG to provide natural gas service to customers in Branson, Hollister and other parts of the Ozarks region; (2) **directs SMNG to send a mailing to all of the recipients of its October “Customer Survey 2007,”** and provide additional public information as well, **correcting the false and misleading information that was included in its “Customer Survey;”** (3) **directs SMNG to send a letter to the Mayor, each Alderman or City Council member and the City Administrator in the cities of Branson, Branson West, Hollister, Reeds Spring,** and of any other incorporated municipality into which the survey was mailed, **and to all County officials in Taney, Stone and Christian Counties, correcting the false and misleading information that was included in its “Customer Survey 2007;”** and (4) finds and concludes that SMNG has violated Section 393.170, RSMo, and/or other provisions of the PSC Act and PSC rules, regulations and orders, and that SMNG should be required to pay statutory fines and penalties to the State of Missouri as a result of such violations.

OEP also requests that the Commission order an expedited date for filing of an Answer to this Complaint, and an expedited hearing hereon. The Commission has the discretion to shorten the answer period and to order an

expedited hearing. The “public necessity” requires expedited treatment of this matter. 4 CSR 240-2.070 (7) and (11).

JURISDICTION

1. The Public Service Commission of Missouri has jurisdiction over the Respondent and the matters at issue. The Commission has general jurisdiction over Respondent as a public utility and a gas corporation pursuant to, *inter alia*, Section 386.250, RSMo., including all powers necessary or proper to enable it to carry out fully and effectually all its regulatory purposes as provided in Section 386.040 and its general powers under Section 393.140. The Commission has general supervision of Respondent pursuant to Section 393.140, RSMo. As part of that general supervision under Section 393.140, the Commission may:

(5) Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion ... that the ... acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe ... the just and reasonable acts and regulations to be done and observed; ...

2. The Commission has jurisdiction to pursue and hear complaints regarding unlawful conduct by gas corporations, such as this one against Respondent, pursuant to Sections 386.390 and 386.400, RSMo.

3. The Commission has specific jurisdiction to hear this matter pursuant to Section 386.390, RSMo.

THE PARTIES

4. Complainant Ozark Energy Partners, LLC is a limited liability corporation organized under the laws of the State of Missouri. By a currently-pending Application filed on June 30, 2006 in **Case No. GA-2006-0561**, OEP is seeking a certificate of public convenience and necessity from this Commission to provide natural gas service to Hollister, Highlandville, Kimberling City, Reeds Spring, Branson, Branson West, and other portions of the Ozarks region of Missouri. OEP's street and mailing address is: 136 Kessler Drive, Walnut Shade, Missouri (MO) 65771. OEP's telephone number is: 417-294-2201. Its facsimile number is: 417-561-0415. OEP's email address is: oepllc@tri-lakes.net.

5. Respondent, Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas ("SMNG"), is a Missouri limited partnership which owns and operates a natural gas transmission and distribution system located in southern Missouri. SMNG is a "gas corporation" and "public utility" under the jurisdiction of the Missouri Public Service Commission pursuant to Chapters 386 and 393, RSMo. SMNG's street and mailing address is: 301 E. 17th Street, Mountain Grove, Missouri 65711. SMNG's telephone number is: (417) 926-7533.

6. Respondent SMNG is actively competing against OEP for a certificate of convenience and necessity to serve much of the same area included in OEP's Application. On October 26 2006, Alliance Gas Energy Corporation filed an Application, in Case No. **GA-2007-0168**, seeking a certificate of public convenience and necessity to provide natural gas service in Branson, Branson West, Hollister and Reeds Spring, and surrounding areas, **a proposed**

territory that significantly overlaps that already sought by OEP in GA-2006-0561. On June 29, 2007, Alliance and SMNG filed a Motion for Substitution of Party, proposing to substitute SMNG for Alliance as the Applicant in GA-2007-0168. That motion was granted on July 11, 2007.

CONTACTS

7. All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this case should be addressed to:

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with a copy to:

Daniel L. Epps, Managing Director
Ozark Energy Partners, LLC
136 Kessler Drive
Walnut Shade, Missouri (MO) 65771
Tel: 417-294-2201
Fax: 471-561-0415
Email: oepllc@tri-lakes.net

STATEMENT OF COMPLAINT

8. During the month of October 2007, Respondent, SMNG, caused to be placed into the U.S. Mail, and/or distributed by other means, a document entitled, **“Customer Survey 2007,”** addressed to persons and businesses

throughout the proposed service territories of both Ozark Energy Partners and SMNG. **A copy of SMNG's "Customer Survey 2007" is attached to this Complaint, as Exhibit A.**

9. At the top of the "Customer Survey", just below the SMNG logo and the name of the company, the following language appears:

In September 2007 Southern Missouri Natural Gas (SMNG) was awarded the exclusive franchise to bring **Natural Gas** into your area. To help facilitate this process, below is a very brief questionnaire that we would appreciate if you would complete and return in the enclosed envelope. If you have any questions please call 1-800-909-7642 or visit our website at www.smng.biz. We look forward to being part of your great community.

10. **SMNG has been awarded no "exclusive franchise" to provide natural gas in the area. This statement in the SMNG "Customer Survey 2007" is simply untrue.**

11. The City of Hollister enacted an ordinance earlier this year granting a municipal franchise to either OEP or Alliance Gas Energy to provide natural gas service in that city. (See Exhibit I to OEP's Application in Case No. GA-2006-0561, filed on March 1, 2007.) SMNG has since replaced Alliance Gas Energy in that ordinance (*i.e.*, either OEP or SMNG). This is clearly and obviously not an "exclusive franchise" that has been awarded to SMNG, as it claims.

12. Although SMNG holds the only currently-existing municipal franchise from the City of Branson for a natural gas utility, Missouri law clearly provides that municipal franchises *may not be "exclusive."* Section 67.1842 (5), RSMo. Therefore, SMNG's statement in its "Customer Survey 2007" is not true as to the City of Branson, either.

13. To date, only OEP has been granted a municipal franchise to provide natural gas service in Kimberling City, Highlandville and Reeds Spring. To the extent that SMNG's "Customer Survey 2007" was mailed or distributed to citizens in those cities, or to citizens living outside any municipality, the public confusion caused by the presumptuous mischaracterization by SMNG of its legal and operating status is clearly exacerbated.

14. Since the issuance of a certificate of convenience and necessity from the Public Service Commission is a prerequisite to the exercise of any municipal franchise to provide natural gas service (Section 393.170, RSMo), SMNG's public statement that it has been awarded "the exclusive franchise to bring Natural Gas to [the] area" is inaccurate and misleading, as a matter of both law and fact.

15. Section 393.170.1, RSMo, states that: "No gas corporation ... shall begin construction of a gas plant ... without first having obtained the permission and approval of the commission."

16. Section 393.170.2, RSMo, states that: "No such corporation **shall exercise any right or privilege under any franchise** hereafter granted ... without first having obtained the permission and approval of the commission." (Emphasis added.)

17. SMNG's "Customer Survey 2007" not only misstates the actual status of its wish to become a natural gas utility in the Ozarks region, but it *presumes* legal authority from this Commission that SMNG *does not have*. **Unless and until SMNG were to obtain a certificate of convenience and**

necessity from the Commission, it has no “customers” to poll or survey in this proposed service territory.

18. SMNG’s public statement that it has been “awarded the exclusive franchise to bring Natural Gas into your area” is also anti-competitive, and a direct attack on Ozark Energy Partners, LLC, which is also actively seeking a certificate of public convenience and necessity from this Commission to provide natural gas service in its proposed service area.

19. **Discovery, and/or investigation by the Commission Staff, will be needed to ascertain the complete mailing or distribution list utilized by SMNG for purposes of this mailing.** However, it is known that said “Customer Survey 2007” was received by individuals and businesses in both Branson and Hollister.

20. In fact, SMNG’s fallacious statement about its “exclusive franchise” has caused public confusion in the proposed service area. **City officials in Hollister, Missouri, for example, have informed OEP that they have received a number of telephone calls from citizens who received the “Customer Survey,” asking who SMNG is, and asking what had happened to OEP.** Other recipients of the survey thought that it must have come from OEP.

21. Thus, SMNG’s flagrant overstatement of its legal and operating status in the proposed service area of OEP has damaged OEP’s reputation and injured its competitive position, by creating public confusion about OEP’s status.

22. **SMNG should be required not only to cease and desist** from making any further unfounded claims that it holds an “exclusive franchise,” **but**

should also be required to immediately correct the public record concerning its actual legal status. This should be accomplished through the mailing of a document, in the form of **Exhibit B** to this Complaint, to the entire mailing or distribution list that received SMNG's "Customer Survey 2007".

23. In addition, SMNG should be ordered by the Commission to issue a press release, with content essentially in the form of **Exhibit B** to this Complaint, to news outlets that serve in the Branson-Hollister area (newspapers and broadcasting stations) correcting the record about the status of the respective applications of OEP and SMNG before the Missouri Public Service Commission.

24. Further, SMNG should be ordered by the Commission to send a letter to the Mayor, each Alderman or City Council member and the City Administrator in the cities of Branson, Branson West, Hollister, Reeds Spring, and of any other incorporated municipality into which the survey was mailed, and to all County officials in Taney, Stone and Christian Counties, correcting the false and misleading information that was included in its "Customer Survey 2007."

25. SMNG should also be held accountable by the Commission for its presumptuous, anti-competitive and deceptive public communication ("Customer Survey 2007"). The Commission should find and conclude that SMNG's "Customer Survey 2007" violated Section 393.170, RSMo, and should direct its General Counsel to seek statutory fines and penalties from SMNG in circuit court under Section 386.600, RSMo.

26. Pursuant to 4 CSR 240-2.070 (5) (E), Complainant states that it has not directly contacted the Respondent about the matter complained of herein.

Unlike the typical complaint before the Commission, such as a billing dispute, Complainant and Respondent are directly competing for certificates of convenience and necessity from this Commission to provide natural gas service to the Ozarks region of Missouri. It is imperative that SMNG *immediately* be ordered to publicly correct the blatantly false statement about its purported “exclusive franchise,” made in its “Customer Survey 2007.” ***There is no time to first informally ask SMNG to take actions that it is highly unlikely to take voluntarily.***

27. OEP cannot yet quantify the damage that has been caused to it by SMNG’s misrepresentation of its current status in the proposed service area. However, no direct damage need be quantified, or even shown, in order for OEP to bring the instant complaint and for the Commission to hear it. Section 386.390.3, RSMo; 4 CSR 240-2.070 (4).

WHEREFORE, Complainant, Ozark Energy Partners, LLC, respectfully and urgently requests that the Commission waive the requirements for notice and hearing and expeditiously issue an Order:

(A) Requiring Southern Missouri Natural Gas (SMNG) to *immediately* cease and desist from publicly distributing its “Customer Survey 2007,” or its contents, in any manner;

(B) Requiring SMNG to *immediately* cease and desist from disseminating any public statements, written or verbal, asserting or suggesting that it holds an “exclusive franchise” to provide natural gas service to any part of the Ozarks region;

(C) Requiring SMNG to provide to the Commission Staff, **within 48 hours of the Commission's Order**, a complete list of the recipients of SMNG's "Customer Survey 2007."

(D) Requiring SMNG to mail, **within five (5) days of the Commission's order**, a written notice, in the form attached to this Complaint as "Appendix B," to each and all of the parties who were the recipients of its "Customer Survey 2007," thereby correcting the erroneous statements made in said "Customer Survey 2007."

(E) Directing the Commission Staff to investigate the original distribution of SMNG's "Customer Survey 2007," and to monitor SMNG's distribution of the corrective notice discussed in the previous paragraph to ensure that SMNG does, indeed, include all of the original recipients of SMNG's "Customer Survey 2007."

(F) Requiring SMNG to issue, **within forty-eight (48) hours of the Commission's order**, a press release to all newspapers and radio and television stations located or serving within the proposed service area of OEP, which press release is substantially in the form of Appendix B to this Complaint, which corrects the erroneous statements made in said "Customer Survey 2007."

(G) Requiring SMNG to send, within 48 hours of the Commission's order, a letter to the Mayor, each Alderman or City Council member and the City Administrator in the cities of Branson, Branson West, Hollister, Reeds Spring, and of any other incorporated municipality into which the survey was mailed, and

to all County officials in Taney, Stone and Christian Counties, correcting the false and misleading information that was included in its “Customer Survey 2007.”

(H) Finding and concluding that Respondent SMNG's actions were in violation of Section 393.170, RSMo, within the meaning of Section 393.140 (5), RSMo.;

(I) Finding and concluding that the practices and actions of Respondent SMNG are unjust and unreasonable, unjustly discriminatory, unduly preferential and anticompetitive, within the meaning of Section 393.140 (5), RSMo.;

(J) Finding and concluding that the lawful, just, reasonable, and proper practice hereafter to be observed and used by Respondent SMNG is for Respondent to accurately represent the status of its authority to provide natural gas service in the Ozarks region;

(K) Finding and concluding that Respondent SMNG should forfeit to the State of Missouri the sum of two thousand dollars for each “Customer Survey 2007” mailed to citizens in the proposed service area, under Section 386.570.1, RSMo, and that each day that its untrue, misleading and anti-competitive statements have gone uncorrected by SMNG is a separate and distinct offense, pursuant to Section 386.570.2; and

(L) Authorizing its General Counsel, under Section 386.600, RSMo, to seek such fines and penalties against SMNG in circuit court; and

(M) Granting such further and additional relief as is equitable and just.

Respectfully submitted,

/s/ William D. Steinmeier

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COUNSEL FOR COMPLAINANT
OZARK ENERGY PARTNERS, LLC

Dated: November 9, 2007

Certificate of Service

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov) and counsel for Southern Missouri Natural Gas, on this 9th day of November 2007.

/s/ William D. Steinmeier

William D. Steinmeier

APPENDIX A –
SMNG “Customer Survey 2007”



In September of 2007 Southern Missouri Natural Gas (SMNG) was awarded the exclusive franchise to bring **Natural Gas** into your area. To help facilitate this process, below is a very brief questionnaire that we would appreciate if you would complete and return in the enclosed envelope. If you have any questions please call 1-800-909-7642 or visit our website at www.smng.biz. We look forward to being part of your great community.

CUSTOMER SURVEY 2007

Customer Name: _____
Address: _____
Business Name & Contact: _____
Phone/Cell Number: _____

1. Are you aware the City Council recently granted a franchise to SMNG to develop a natural gas distribution system for the area? *Yes/No (circle one)*

2. Type of Customer? ☐ Residential ☐ Commercial Business ☐ Industrial

3. What types of energy, or combination thereof, do you use in your home/business?
(circle all that apply)

PROPANE - Yes/No Usage per year _____ gallons Price per gallon _____

Water Heater Yes/No Cook Stove Yes/No Furnace Yes/No

Other Yes/No (please specify) _____

ELECTRIC - Yes/No Usage per year _____ kWh Price per kWh _____

Water Heater Yes/No Cook Stove Yes/No Furnace Yes/No

Other Yes/No (please specify) _____

OTHER (Wood, Fuel Oil, Kerosene, etc...) _____

4. Are you interested in converting any/all of your energy supply to natural gas? Yes/No

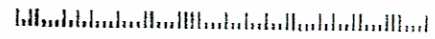
5. Miscellaneous Comments or Questions:

From:



PLA
STA
HE

Southern Missouri Natural Gas
P. O. Box 847
Mountain Grove, MO 65711-0847



 **Southern Missouri
Natural Gas**
P. O. Box 847 • Mountain Grove, MO 65711

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**APPENDIX B –
Proposed Text of SMNG Correction Notice and Press Release –**

Correction Notice:

Southern Missouri Natural Gas recently sent you a “Customer Survey 2007” in which it was stated that SMNG holds an “exclusive franchise” to bring natural gas to your area.

That statement was in error. SMNG does *not* hold an “exclusive franchise” to provide natural gas service in the greater Branson area. SMNG’s application for a certificate of convenience and necessity to provide natural gas service in the Ozark region is currently pending before the Public Service Commission of Missouri.

A competing application by Ozark Energy Partners, LLC for a certificate of convenience and necessity to provide natural gas service in the region is also currently pending before the Public Service Commission.

SMNG apologizes for the confusion caused by its misstatement of its current legal and operating status in the Ozarks region.

Southern Missouri Natural Gas