

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 17th day  
of April, 2008.

In the Matter of the Application of Southern     )  
Missouri Gas Company, L.P. d/b/a Southern     )  
Missouri Natural Gas for Authority to Issue     )  
Approximately \$10 Million in Equity Capital     )  
and Approximately \$50 Million In Notes and     )  
Other Forms of Indebtedness                     )

**Case No. GF-2007-0215**

**ORDER APPROVING STIPULATION AND AGREEMENT**

Issue Date April 17, 2008

Effective Date: April 27, 2008

**Syllabus:** This order approves a Stipulation and Agreement filed by Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas and Ozark Energy Partners, LLC.

**Background**

Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas filed an application for financing as described in the above caption. The company later filed a Second Amended Financing Application which provided more information and requested additional authority. Thereafter, the Staff of the Commission filed its Memorandum recommending that the Commission approve the amended application for authority to issue up to \$45 million in debt and up to \$15 million in equity. Staff also recommended that the Commission approve the amended application with conditions.

The conditions suggested by Staff are as follows:

- That nothing in the Commission's order shall be considered a finding by the Commission of the value of this transaction for rate making purposes, which

includes, but is not limited to the capital structure, and that the Commission reserves the right to consider the rate making treatment to be afforded these financing transactions and their effect on cost of capital, in any later proceeding.

- That the company shall file with the Commission all final terms and conditions of the proposed financing, including, but not limited to, the aggregate proceeds received, price information, and estimated expenses.
- That the funds authorized pursuant to the debt instrument shall only be used for capital expenditures related to the proposed expansion of Lebanon, Houston, Licking, Hollister, Branson, Branson West and the existing SMNG natural gas distribution system and the funds shall not be used for the purpose of paying operating expenses.
- That the company shall file with the Commission any information concerning deviations from their stated use of funds from the issuance(s) that would materially change the pro forma financial statements.
- That the debt and equity investor shall be the investor<sup>1</sup> as represented in the Second Amended Financing Application.
- The debt and equity investor agrees and warrants that as long as it is the note holder of the debt instrument proposed in the Second Amended Financing Application, it will also continue to hold the majority equity interest. If the debt instrument proposed in the Second Amended Financing Application should be refinanced at some time in the future, SMNG will request Commission approval to do so.
- That the approval is only for the proposed \$45 million of senior secured debt and not the \$12 million Revolving Credit Facility identified in the terms and conditions of the senior secured debt.
- That SMNG will not seek an increased cost of capital as a result of financing decisions that are considered to be imprudent. SMNG understands that the Commission's authorization of this financing proposal is not an endorsement of the proposal for purposes of setting the rate of return in future rate or complaint cases.

During the course of the proceedings, the Commission granted intervention to Ozark Energy Partners, LLC. Ozark initially opposed SMNG's application but after negotiations the parties filed a Stipulation and Agreement on March 27, 2008. Ozark agrees that the

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<sup>1</sup> The identity of the investor is highly confidential information.

Commission should approve the Second Amended Financing Application with the above-referenced conditions recommended by Staff.

During an on-the-record presentation of the Stipulation and Agreement, both Staff and the Office of the Public Counsel stated that although they had not signed it, they do not oppose the agreement.

### **Conclusion**

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.<sup>2</sup> The Commission notes that every decision and order in a contested case shall be in writing and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, shall include findings of fact and conclusions of law.<sup>3</sup> Consequently, the Commission need not make findings of fact or conclusions of law in this order.

Commission rule 4 CSR 240-2.115(2)(C) states that if no party files an objection within seven days from the date the agreement was filed the Commission may treat it as unanimous. Although seven days have not expired since the filing of the agreement, Staff and OPC, the only other parties to the matter, have indicated that they do not oppose the agreement. It would therefore serve no purpose for the Commission to wait until the seven days have expired before acting on the agreement. Therefore, the Commission will treat it as unanimous. The Commission has reviewed the Stipulation and Agreement and finding it just and reasonable, will approve it and direct the parties to abide by its terms.

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<sup>2</sup> Section 536.060, RSMo 2000.

<sup>3</sup> Section 536.090, RSMo 2000.

**IT IS ORDERED THAT:**

1. The Stipulation and Agreement filed by Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas and Ozark Energy Partners, LLC is approved.
2. The parties shall abide by the terms of the Stipulation and Agreement.
3. That the parties shall abide by the conditions suggested by Staff and set out in the body of this order.
4. Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas' Second Amended Financing Application, as modified by the conditions suggested by the Staff of the Commission as set out in the body of this order, is approved.
5. This order shall become effective on April 27, 2008.
6. This case may be closed on April 28, 2008.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton,  
and Jarrett, CC., concur.

Jones, Senior Regulatory Law Judge