

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS

7 Evidentiary Hearing

8 March 27, 2008
9 Jefferson City, Missouri
Volume 2

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11

12 In the Matter of the Application)
of Southern Missouri Gas Company,)
13 L.P. d/b/a Southern Missouri)
Natural Gas, For Authority to) Case No. GF-2007-0215
14 Issue Approximately \$10 Million in)
Equity Capital and Approximately)
15 \$50 Million in Notes and Other)
Forms of Indebtedness)

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KENNARD L. JONES, Presiding,
18 REGULATORY LAW JUDGE.

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CONNIE MURRAY,
20 ROBERT M. CLAYTON III,
COMMISSIONERS.

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22

23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR
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1 P R O C E E D I N G S

2 JUDGE JONES: Okay. We're on the record
3 with Case No. GF-2007-0215, in the matter of the
4 application of Southern Missouri Gas Company, doing
5 business as Southern Missouri Natural Gas for authority to
6 issue approximately 10 million in equity capital and
7 approximately 50 million in notes and other forms of
8 indebtedness.

9 This matter was set for an evidentiary
10 hearing today. However, a Stipulation & Agreement was
11 filed this morning by Ozark Energy Partners and Southern
12 Missouri Gas. The Staff of the Commission and the Office
13 of the Public Counsel, although aware of the Stipulation &
14 Agreement, have not signed.

15 At this time we will take statements from
16 the parties about the Stipulation & Agreement and, if
17 necessary, questions from the Commissioners. We'll start
18 with Southern Missouri Gas.

19 MR. FISCHER: Thank you, Judge.

20 MS. SHEMWELL: Do you want to take entries,
21 Judge?

22 JUDGE JONES: I'm sorry. Yes, let's take
23 entries of appearances, beginning with Southern Missouri
24 Natural Gas.

25 MR. FISCHER: Let the record reflect the

1 appearance of James M. Fischer and Larry W. Dority, law
2 firm of Fischer & Dority, P.C. Our mailing address is
3 101 Madison Street, Suite 400, Jefferson City, Missouri
4 65101.

5 JUDGE JONES: And from Ozark Energy
6 Partners?

7 MS. YOUNG: Thank you, Judge. Please
8 reflect the appearance of Mary Ann Young and William D.
9 Steinmeier of William D. Steinmeier, P.C., on behalf of
10 Ozark Energy Partners, LLC. The court reporter has our
11 written entry.

12 JUDGE JONES: Thank you. From the Office
13 of the Public Counsel?

14 MR. POSTON: Thank you. Marc Poston
15 appearing for the Office of Public Counsel, P.O. Box 2230,
16 Jefferson City, Missouri 65102.

17 JUDGE JONES: And from the Staff of the
18 Commission?

19 MS. SHEMWELL: Good morning and thank you.
20 Lera Shemwell representing the Staff of the Missouri
21 Public Service Commission, Post Office Box 360, Jefferson
22 City, Missouri 65102.

23 JUDGE JONES: Thank you. Let's go ahead
24 and go with statements on the Stipulation & Agreement.

25 MR. FISCHER: Good morning. Thank you very

1 much. If my voice cracks, I do have a horrible cold, and
2 I apologize ahead of time. But I appreciate the
3 opportunity to be here. My name is Jim Fischer, and I'm
4 appearing today on behalf of Southern Missouri Gas
5 Company, LP, doing business as Southern Missouri Natural
6 Gas.

7 This is a case that involves the financing
8 application of the company filed by Southern Missouri
9 Natural Gas to raise up to 45 million in debt and up to
10 15 million of equity to refinance its existing debt and
11 finance its proposed expansion into the service
12 territories of Lebanon, Houston and Licking, which was
13 conditionally approved by the Commission in Case No.
14 GA-2007-0212 on August 16th of 2007, and also into the
15 Branson/Hollister areas that was conditionally approved in
16 Case No. GA-2007-0168, which was approved on February the
17 5th of this year.

18 On February 11, 2008, the Staff filed its
19 Staff Memorandum and Recommendation to Approve with
20 Conditions the Company's Second Amended Financing
21 Application in this case. The Staff recommendations
22 suggests that the Commission approve the company's request
23 and adopt nine conditions which are acceptable to Southern
24 Missouri Natural Gas.

25 Southern Missouri Natural Gas believes that

1 its proposed financing is reasonable and in the public
2 interest since it will allow the company to bring natural
3 gas service to unserved areas of Missouri, and it will
4 also strengthen its existing balance sheet by providing
5 additional equity to the company and improve the equity
6 ratio.

7 Southern Missouri's lender and equity
8 investor is a large fund that has experience with
9 investments in other -- in other small gas companies in
10 Missouri and other states.

11 In addition, it has experience with
12 investments in electric assets in the United Kingdom and
13 regulated water and sewer companies in England and Wales.
14 A more complete description of the relevant experience of
15 the energy fund and summary of the specific proposed terms
16 and conditions of the financing is contained in
17 Appendix B, which is highly confidential, which is
18 attached to the Second Amended Financing Application. So
19 if you have specific questions about that, you can take a
20 look there.

21 I'm also pleased to inform the Commission
22 today that just a few minutes before we came over to the
23 hearing, Southern Missouri Natural Gas and Ozark Energy
24 Partners, LLC have filed a Stipulation & Agreement which
25 resolves all the remaining issues between Southern

1 Missouri Natural Gas and OEP in this proceeding.

2 In the Stipulation & Agreement that we
3 filed today, Southern Missouri Natural Gas and OEP request
4 that the Commission approve Southern Missouri's Second
5 Amended Financing Application with the conditions
6 recommended by the Commission Staff in its Staff
7 Recommendation filed on February 11.

8 This filing is part of a more global
9 settlement between Southern Missouri Natural Gas and OEP
10 in which OEP will be assigning its existing municipal
11 franchises to Southern Missouri Natural Gas, and OEP is
12 withdrawing its opposition to Southern Missouri Natural
13 Gas as to providing natural gas in the Branson area.

14 Hopefully with this settlement between
15 Southern Missouri and OEP, this hearing should be less
16 controversial and shorter for everyone since Southern
17 Missouri Natural Gas, Staff and OEP are all now taking the
18 same position before the Commission that the Commission
19 should approve the company's application with the
20 conditions that are being recommended by the Commission
21 Staff.

22 I also have with me today Randy Maffett,
23 the president of Sendero Capital Partners, the managing
24 partner of Southern Missouri Natural Gas. Mr. Maffett can
25 answer any questions from the Commission, and if you have

1 any questions about the overall situation, be glad to
2 answer them.

3 The company has accepted the Staff's
4 recommended conditions contained in the Staff
5 recommendation. We believe the Commission should approve
6 the company's application with those Staff conditions, and
7 we request that you do so just as quickly as practicable
8 because we want to begin the construction of the new
9 facilities in the Lebanon and the Branson areas just as
10 quickly as we can get all of the orders that we need.

11 Judge, for purposes of the record today, I
12 would ask that the Commission take administrative notice
13 of the following pleadings that would be appropriate.

14 JUDGE JONES: Go right ahead.

15 MR. FISCHER: The first pleading is the
16 company's Second Amended Financing Application which was
17 filed on December 17 of 2007. The second would be the
18 Staff's Memorandum and Recommendation to Approve the
19 Company's Application which was filed on February 11 of
20 2008. The third would be Southern Missouri's Response to
21 the Staff Recommendation which was filed on February 13,
22 which accepts the Staff's recommendation with its
23 conditions.

24 And then finally I'd ask that you take
25 administrative notice of the Stipulation & Agreement

1 race, Judge, but it has resolved issues between Southern
2 Missouri and OEP.

3 COMMISSIONER MURRAY: And that includes the
4 issues related to the certificate?

5 MR. FISCHER: Yes. They have agreed that
6 they will withdraw their intervention and will not seek
7 judicial review of the orders in that case. There is also
8 one complaint case that was also brought by OEP, and
9 they've dismissed that with prejudice.

10 COMMISSIONER MURRAY: All right. And then
11 in terms of where this leaves Southern Missouri for its
12 authority to go ahead and construct, what has to be done
13 now? Do you have to submit something, another pleading in
14 2007-0168?

15 MR. FISCHER: The first step I think is to
16 obtain an Order approving the financing. The financing
17 was in both Lebanon Order and the Branson Order. That was
18 a condition to getting a full CCN in those cases. In the
19 Branson case, I believe we'll need to also submit a
20 pleading asking for a full CCN based upon -- assuming we
21 get the financing order in this case, but yes, we will
22 request a full CCN after the order comes out in this
23 proceeding.

24 COMMISSIONER MURRAY: Based upon having met
25 the conditions for the full CCN; is that correct?

1 MR. FISCHER: Yeah. We may ask you to make
2 a finding about economic feasibility, since I believe you
3 deferred that in the Branson case. But as far as Lebanon
4 goes, I believe all you need to find is that we've met the
5 condition.

6 COMMISSIONER MURRAY: Thank you.

7 JUDGE JONES: Now we'll hear from Ozark
8 Energy Partners. Did you want to make a statement?

9 MS. YOUNG: Judge, no. Just to comment
10 that the Stipulation speaks for itself, and we have agreed
11 to the terms.

12 JUDGE JONES: Okay. And from the Office of
13 Public Counsel?

14 MR. POSTON: We have no comments. We don't
15 intend to oppose the stipulation or the Staff's
16 conditions. I did have a question about it whenever
17 that's appropriate.

18 JUDGE JONES: Okay. From the Staff of the
19 Commission?

20 MS. SHEMWELL: Good morning. May it please
21 the Commission? I'm Lera Shemwell representing the Staff.
22 I too apologize for my voice. Mr. Fischer and I and
23 Kellene all seem to have the same thing that's going
24 around. But Staff just saw the Stipulation & Agreement
25 this morning and has a couple of observations.

1 Southern Missouri Natural Gas has struggled
2 to become a viable entity. Staff -- in Staff's opinion,
3 approval of the proposed financing would eliminate many of
4 Staff's concerns with the company's financial risk. I
5 understand that the identity of the lender is still highly
6 confidential, so I will refer to it as the proposed fund.
7 It is a private equity fund. However, Staff believes that
8 it will b e active in achieving a level of financial
9 viability for Southern Missouri Natural Gas.

10 It is an unusual arrangement. Is the
11 financing arrangement also highly confidential?

12 MR. FISCHER: The specific details are.

13 MS. SHEMWELL: This company will hold both
14 the debt instrument and the equity, and that's quite a
15 unique situation. But since there won't be a third-party
16 debt holder, it means that this investor will not default
17 on itself, since they will hold both the debt and the
18 equity themselves. So we think that will be a much
19 stronger position for SMNG to be in, and if you have
20 questions about that, Mr. Murray can certainly discuss it
21 with you.

22 As Mr. Fischer mentioned, and Staff is
23 aware that the proposed investor has a track record of
24 owning small LDCs in two different states, and we would
25 expect that they would be active in management of this

1 company.

2 We are pleased that this will permit SMNG
3 to start construction to Lebanon. I regularly receive
4 calls from various people in Lebanon asking when that's
5 going to begin, and this certainly will let SMNG get
6 started on that process.

7 I've just briefly read through the
8 Stipulation & Agreement, but it does accept all of Staff's
9 conditions. We understand that not only does SMNG accept
10 those, but the proposed equity holder or the proposed
11 investor also agrees with these conditions.

12 I want to indicate, though, in terms
13 of Branson that we do not have any final documents. This
14 is not the final debt instruments or equity instruments.
15 We haven't seen any executed documents, and that was one
16 of the things that we had suggested in Branson was that we
17 see the actual completed documents. I don't know yet if
18 -- we don't want to delay Branson, but I think we would
19 still like to see the final documents.

20 So Staff's recommendation is that the
21 Commission approve the financing as proposed by Southern
22 Missouri Natural Gas with Staff's conditions. Mr. Murray
23 had submitted a recommendation. I have copies of that.
24 It is filed in EFIS. If you would like to have that
25 either as his testimony in this case or Staff's

1 recommendation in support of the Stipulation & Agreement,
2 we're happy to offer that.

3 JUDGE JONES: So it is a response to the
4 Stip & Agreement?

5 MS. SHEMWELL: Actually the Stip and
6 Agreement is in response to it, but it does contain
7 Staff's reasoning behind its conditions.

8 MR. FISCHER: That was the second document
9 I asked you to take administrative notice of.

10 JUDGE JONES: Okay. Well, because we're
11 taking administrative notice of it, it's a part of the
12 record.

13 MS. SHEMWELL: Okay. Thank you.

14 JUDGE JONES: Commissioner Murray?

15 COMMISSIONER MURRAY: I have a question.

16 JUDGE JONES: Okay.

17 COMMISSIONER MURRAY: Ms. Shemwell, so
18 Staff's position regarding the CCN for the Branson area is
19 that the conditions will have been met when the executed
20 documents are presented; is that correct?

21 MS. SHEMWELL: Commissioner Murray, I
22 haven't had an opportunity to discuss the issue actually
23 with Staff. If we take any sort of break, I'll be happy
24 to do so. That was Staff's recommendation, was that the
25 finally executed documents would serve as satisfaction to

1 that condition.

2 COMMISSIONER MURRAY: All right. And then
3 Mr. Fischer, do you know when those documents -- executed
4 documents will be available?

5 MR. FISCHER: I think they're in progress
6 right now, and I understand that they've been asked to be
7 expedited. I don't know exactly when they -- what date
8 they might be available, but we can let you know. And
9 we'd certainly like to work with Staff to resolve any
10 outstanding questions that there might be on those.

11 MS. SHEMWELL: I do not think Staff will
12 have questions, but we'd like to see the final documents
13 because the terms aren't final at this point.

14 COMMISSIONER MURRAY: Now, for the Lebanon
15 area, is it correct that there's -- that there is nothing
16 remaining before the -- that has to be approved before the
17 company can go forward?

18 MS. SHEMWELL: That's correct.

19 COMMISSIONER MURRAY: Thank you.

20 MS. SHEMWELL: Thank you.

21 JUDGE JONES: Ms. Shemwell, is it necessary
22 that these executed documents be reviewed by Staff before
23 the Stipulation & Agreement is approved?

24 MS. SHEMWELL: Not in the finance case.

25 JUDGE JONES: Okay. So that's a completely

1 different case that you're talking about?

2 MS. SHEMWELL: Yes. We're talking about
3 the 0168 Branson case.

4 JUDGE JONES: Okay.

5 MS. SHEMWELL: GA-2007-0168. And certainly
6 it is not Staff's intention to be any impediment to them
7 getting started into Branson. We will cooperate with them
8 completely to review the documents and recommend approval
9 as soon as possible.

10 JUDGE JONES: Okay. Is there anyone else?
11 I think that's it, Ms. Shemwell. You may be seated.

12 Is there anyone else who would like to make
13 a general statement? If not, we'll have questions from
14 Commissioner Clayton.

15 COMMISSIONER CLAYTON: I just have a
16 handful of questions, and I think -- it sounds to me like
17 we've kind of got a global settlement of sorts here where
18 we have a number of cases that are being resolved in some
19 way, not just the case that's pending before us. Would
20 you-all agree with that?

21 And I guess I want to start off by asking
22 Staff on the basics of this case relating to financing,
23 you are satisfied -- or Staff is satisfied that all the
24 conditions that you are putting in place will -- will be
25 addressed adequately and they've agreed to adopt all of

1 your conditions; is that correct? Whoever. It doesn't
2 matter. Whoever wants to answer. He has to be sworn in.
3 Why don't you just tell me, Lera. He doesn't want to be
4 under oath. He never did.

5 MS. SHEMWELL: Commissioner Clayton, we are
6 satisfied. We have spoken with the proposed investor.
7 One of Staff's concerns is that it is a private equity
8 fund, which means that the transparency is not there like
9 it is with others, but we think that it's the best
10 situation for Southern Missouri to get this financing, and
11 we have a commitment that they will comply with all the
12 recommendations from both Mr. Maffett and from the equity
13 investor.

14 COMMISSIONER CLAYTON: Well, private equity
15 has a reputation, and I'm not sure -- I'm not sure the
16 name of -- of this equity firm, nor do I know anything
17 about it, but private equity has a reputation of
18 short-term ownership of certain assets.

19 Do you have specific conditions that
20 address the nature of private equity owning or
21 participating in the financing arrangements here rather
22 than looking at a longer term investor? Are there
23 specific conditions that address that?

24 MS. SHEMWELL: I'm going to defer to
25 Mr. Murray on that.

1 JUDGE JONES: Why don't we just swear

2 Mr. Murray in? You can remain seated, please.

3 (Witness sworn.)

4 JUDGE JONES: Thank you.

5 MS. SHEMWELL: You might state your name.

6 MR. MURRAY: David Murray. As far as the
7 private equity aspect, I just want to inform the
8 Commission that the current ownership of Southern Missouri
9 Gas, even though it may not have been known at the time,
10 that is they're private equity as well. And based on --
11 based on what I have reviewed, this investor does appear
12 to be committed to making investments in, as was pointed
13 out, they're in two states. I believe it's public, that
14 one of those is in Missouri right now through CNG
15 Holdings.

16 CNG Holdings is the -- wholly owns Missouri
17 Gas Utility, and they're approximately 81 percent equity
18 ownership interest. They have 81 percent equity ownership
19 interest in CNG Holdings. Therefore, they have 81 percent
20 ownership interest in Missouri Gas Utility. That
21 transaction occurred without the Commission's review
22 because it was deemed that it was not under the
23 jurisdiction of the Commission because it was a stock
24 transaction.

25 COMMISSIONER CLAYTON: Holding company

1 transaction.

2 MR. MURRAY: Exactly. In this case, as was
3 pointed out, I believe, in the Second Amended Application,
4 they do not feel like they have to have the Commission's
5 approval to actually have the current private equity
6 investor's interest bought out by the new private equity
7 investor.

8 The subject of the finance case has to do
9 with the debt instrument that this private equity investor
10 will hold, and the equity that this new private equity
11 investor will issue is not necessarily the jurisdiction of
12 this Commission either, based on -- based on both Southern
13 Missouri Gas' counsel's position and also Staff's
14 counsel's position.

15 But as far as their commitment, that is one
16 of the things that I have been concerned about, and
17 looking at the financial condition of Southern Missouri
18 Natural Gas right now, I am concerned about the commitment
19 of the current investors. I don't believe that they --
20 they're currently making as of -- they're helping out with
21 working capital needs, and working capital is very
22 important for a gas company, and if -- being that this --
23 this new private equity investor is, you know, like I
24 said, appears to be working quite well with CNG Holdings
25 based on our conversations with Missouri Gas Utility here

1 recently, I have no reason to believe that they would not
2 be committed to this investment, especially considering
3 the fact that they want to hold the debt and the equity.

4 This is quite unique in my opinion, because
5 usually when you invest, you want to diversify, and
6 obviously if you have all your capital tied up in this one
7 company, you're not diversified as far as your -- the type
8 of capital interest you have because if -- if the company
9 should decide that they're not meeting the covenants in
10 their own debt contract, I guess -- I guess they could
11 force a bankruptcy, but what's going to happen? They
12 already own it.

13 So I think that illustrates the commitment,
14 because under the current situation, GMAG is the
15 third-party creditor, and by no means do I consider them
16 an active investor. They provided the debt financing.
17 They're very leveraged right now.

18 COMMISSIONER CLAYTON: Mr. Murray, let me
19 cut you off right there. I think my question was, has
20 Staff put any special conditions on this financing
21 arrangement because of the presence of private equity? I
22 appreciate all the background, but I don't think you got
23 to my question. The answer may be no or that it's not
24 necessary because of those, but can you get to that and
25 tell me if there are any special arrangements addressing

1 the private equity nature?

2 MR. MURRAY: I would say specifically
3 condition No. 5, where it is a requirement for this fund
4 to be the equity investor as long as it is the debt
5 investor to show that they're committed to providing
6 capital for this -- this proposed investment, and also
7 condition 6, I mean, these are unique conditions. You've
8 probably seen some of the more standard finance case
9 conditions that are also in here, but conditions 5 and 6
10 really get at the heart of -- of the situation, unique
11 situation we have here.

12 COMMISSIONER CLAYTON: Okay. So do you
13 have special conditions that will address the nature of
14 the arrangement?

15 MR. MURRAY: The answer would be yes. Yes.

16 COMMISSIONER CLAYTON: That's all you had
17 to say.

18 MS. SHEMWELL: Do you need a copy?

19 COMMISSIONER CLAYTON: No. I've got it up
20 here.

21 Mr. Fischer, let me ask you, I think you
22 probably would be the best person to ask this and kind of
23 walk me through. This financing case, does this address
24 all of the communities that Southern Missouri Gas will be
25 serving of all the cases, all the CCN cases that we have?

1 Does this financing case address all of those communities?

2 MR. FISCHER: All of the existing ones,
3 yes.

4 COMMISSIONER CLAYTON: All of the existing
5 ones. Okay. And how many communities are they? Can you
6 run through those real quick?

7 MR. FISCHER: There were three involved in
8 the first case, the Lebanon, Houston, Licking, and then we
9 have franchises in Branson and Hollister at the current
10 time, and we are -- Branson West was one that we hoped to
11 get a municipal franchise, but that has not happened as
12 yet. So there are two there, and then it's possible, of
13 course, as --

14 COMMISSIONER CLAYTON: Branson -- wait.
15 Branson and Hollister you already have a CCN, and Branson
16 West is one that's pending, and did you say there's a
17 second one that's pending?

18 MR. FISCHER: No. No. There are -- we
19 have municipal franchises in Branson and Hollister today,
20 and we had -- we were seeking a municipal franchise for
21 Branson West, which is a very, very small community there.
22 As -- as the company develops in that Branson area,
23 though, there may be other communities that they will be
24 able to serve, and they will be receiving some franchises
25 as a result of the settlement with OEP to do that, and

1 that would require additional approval from this
2 Commission.

3 COMMISSIONER CLAYTON: Which communities
4 were -- Southern Missouri Gas was acting as a successor to
5 a prior CCN being granted? Weren't there several
6 communities where there was already a CCN granted and then
7 Southern Missouri stepped in? Maybe I'm mistaken.

8 MR. FISCHER: There were assignments of
9 franchises in the Branson area.

10 COMMISSIONER CLAYTON: Branson. Okay.

11 MR. FISCHER: Hollister, there was also an
12 assignment of a franchise, I believe, there.

13 COMMISSIONER CLAYTON: How many communities
14 right now is Southern Missouri Gas serving, I mean they
15 actually are serving gas?

16 MR. FISCHER: I believe it's 12, but let me
17 ask Mr. Maffett to address that, and I think he also
18 wanted to address your question about private equity as
19 well.

20 COMMISSIONER CLAYTON: Okay. Before
21 you -- don't jump in. I'll give you a chance. Go ahead
22 and swear him in.

23 (Witness sworn.)

24 JUDGE JONES: Would you please state your
25 name for the court reporter.

1 MR. MAFFETT: Randal T. Maffett.

2 JUDGE JONES: Commissioner Clayton.

3 COMMISSIONER CLAYTON: Welcome back,
4 Mr. Maffett. Can you just run through the communities
5 where -- the 12 communities that you just mentioned?

6 MR. MAFFETT: Do you want them listed
7 individual or -- however?

8 COMMISSIONER CLAYTON: Yes.

9 MR. MAFFETT: Okay. Hopefully I can name
10 all 12. There's Rogersville, Marshfield, Mansfield,
11 Seymour, Ava, Cabool, Mountain Grove, Norwood,
12 West Plains --

13 COMMISSIONER CLAYTON: You know them like
14 the back of your hand.

15 MR. MAFFETT: Well, there is 12 of them.

16 MR. FISCHER: Willow Springs is I believe
17 one of them.

18 MR. MAFFETT: Willow Springs. That leaves
19 two more.

20 COMMISSIONER CLAYTON: Okay.

21 MR. MAFFETT: Fordland.

22 COMMISSIONER CLAYTON: And this financing
23 case doesn't have anything to do with your existing
24 properties?

25 MR. MAFFETT: No, sir, it does not.

1 COMMISSIONER CLAYTON: And neither of these
2 conditions?

3 MR. MAFFETT: Other than, you know, we are
4 refinancing the existing debt.

5 COMMISSIONER CLAYTON: Okay. Why don't you
6 go ahead and address that private equity thing? I'll let
7 you go ahead and get that off.

8 MR. MAFFETT: Yes, sir. I think -- there's
9 sometimes maybe a blurred line between private equity, but
10 this is actually not a private equity fund. This is an
11 institutional investment fund. So it's a very, very large
12 fund managed by one of the largest banks in the world. So
13 it is not, you know, what you would typically, what we
14 refer to as private equity.

15 COMMISSIONER CLAYTON: Okay. Well, in that
16 case, is it just basically -- I mean, it's basically a
17 bank?

18 MR. MAFFETT: No, sir. It is a fund, but
19 it is -- it is -- and I'm not enough of an expert to
20 distinguish the fine lines, but it is more of an
21 institutional investment fund as opposed to the typical
22 private equity. Their asset acquisition strategy is a
23 very, very long dated buy, hold and operate.

24 COMMISSIONER CLAYTON: Is it an
25 infrastructure fund?

1 MR. MAFFETT: Yes.

2 COMMISSIONER CLAYTON: It is?

3 MR. MAFFETT: Yes, sir.

4 COMMISSIONER CLAYTON: Okay. So -- I mean,
5 they're looking for infrastructure, they're looking for
6 steady income, consistency. This isn't the type of fund
7 set up for a buy, you know, strip and sell?

8 MR. MAFFETT: No, sir. That's exactly
9 correct. It is very much a long-term buy and hold
10 strategy, and that was a big part, you know, plus they're
11 very familiar with regulated businesses and regulated
12 returns.

13 COMMISSIONER CLAYTON: Are they U.S.
14 based?

15 MR. MAFFETT: Yes, sir.

16 COMMISSIONER CLAYTON: They're not
17 McQueary?

18 MR. MAFFETT: No, sir. It's a Wall Street
19 firm.

20 COMMISSIONER CLAYTON: Okay. I wanted to
21 ask OEP some questions, too. Mr. Steinmeier? I don't see
22 him. Ms. Young is back there.

23 MS. YOUNG: Yes, sir.

24 COMMISSIONER CLAYTON: Right now Ozark is
25 or was a party in the -- how many cases pending before us,

1 other than this one?

2 MS. YOUNG: Well, Commissioner, one of the
3 reasons Mr. Steinmeier isn't here is he's been working on
4 the filings of some other cases this morning. We were a
5 party to obviously our own application case.

6 COMMISSIONER CLAYTON: For which
7 communities?

8 MS. YOUNG: For Branson, Hollister, Branson
9 West, and Reed Springs I believe is in there also.

10 COMMISSIONER CLAYTON: Did anyone get Reed
11 Springs? What did we do on that?

12 MR. FISCHER: I believe there's also
13 Kimberling City that was included.

14 COMMISSIONER CLAYTON: Did we award CCNs to
15 you guys for those? Did we award CCNs to Reed Springs and
16 Kimberling City?

17 MS. YOUNG: I don't believe so. Those
18 are -- I don't have that file with me. I'm sorry. We
19 also were a party and intervenor in the Alliance/Southern
20 Missouri certificate case. We had a complaint filed
21 against Southern Missouri Natural Gas, and we are parties
22 obviously to this financing matter.

23 COMMISSIONER CLAYTON: Okay. Now, we
24 granted -- we granted certificates to OEP for which
25 communities?

1 MS. YOUNG: Hollister -- I'm totally
2 drawing a blank, I'm sorry.

3 COMMISSIONER CLAYTON: Well, tell
4 Mr. Steinmeier he should have been here today. The word
5 processor can wait. Mr. Fischer, do you know?

6 MR. FISCHER: Well, Judge, they were all
7 conditional on financing.

8 COMMISSIONER CLAYTON: I understand.
9 Conditional certificates, where did we grant those for
10 OEP?

11 MR. FISCHER: I understand it was for
12 Hollister and an area that included the Branson area, but
13 they did not have municipal franchise for Branson.

14 COMMISSIONER CLAYTON: I understand, but we
15 granted -- we issued an Order that granted a conditional
16 certificate. Ms. Shemwell, was it those Branson,
17 Hollister and Branson West?

18 MS. SHEMWELL: That's in Case No.
19 GA-2006-0561.

20 COMMISSIONER CLAYTON: Don't rattle off
21 any numbers here. Just yes.

22 MS. SHEMWELL: Yes.

23 COMMISSIONER CLAYTON: Okay. Now, as part
24 of the settlement, OEP is basically giving up -- it's
25 giving up the complaint case. It's removing or

1 withdrawing its intervention in this case, and is it
2 withdrawing its application for a certificate in the other
3 case?

4 MS. YOUNG: I believe that is a part of the
5 substantive transaction overall, yes.

6 COMMISSIONER CLAYTON: So Ozark is not
7 seeking to serve any customers in Missouri at this time?

8 MS. YOUNG: I believe that is correct.

9 COMMISSIONER CLAYTON: So can we assume
10 from this that we'll never see Ozark applying to serve
11 Missourians in the future?

12 MS. YOUNG: I couldn't say, sir.

13 COMMISSIONER CLAYTON: What can you say?

14 MS. YOUNG: That Ozark Energy Partners and
15 Southern Missouri Natural Gas negotiated an agreement
16 whereby the stipulation in this case was filed and the
17 pleadings are being filed in the other case to withdraw
18 from those.

19 COMMISSIONER CLAYTON: I think it would be
20 pretty tough to come back after withdrawing. Does Staff
21 believe there are any other loose ends that will be
22 addressed here? It appears that Ozark is fleeing the
23 state, and that financing will be approved based on your
24 conditions. Are there any other loose ends associated
25 with Southern Missouri Gas or any of these communities

1 that we need to be aware of?

2 MS. SHEMWELL: No. Actually, I just read
3 the Stipulation & Agreement this morning. I haven't read
4 any of the other documents. It's difficult to imagine
5 what those other documents are going to say, but it sounds
6 like --

7 COMMISSIONER CLAYTON: Related to Branson?
8 Related -- wasn't it -- what was the community where
9 you -- the documents that you were looking for?

10 MS. SHEMWELL: We're looking for the final
11 financing documents to serve the Branson area, and it
12 sounds like those will be forthcoming since Southern
13 Missouri Natural Gas is purchasing the franchises from
14 OEP, then all of the communities for which certificates
15 have been granted should be then included in Southern
16 Missouri Natural Gas' case, so that all those communities
17 where they will have a franchise should be included in
18 their CCN. I don't know if an additional filing will be
19 required or not.

20 COMMISSIONER CLAYTON: Will we be asked to
21 do -- let's assume that -- assume that the Commission
22 approves the Stipulation, enters an Order and all the
23 things that we've talked about. Will we be expected to
24 approve or address any future orders foreseeable at this
25 point?

1 MS. SHEMWELL: Yes. I believe that since
2 it was just a conditional CCN, you will need to issue a
3 final CCN.

4 COMMISSIONER CLAYTON: So that will not be
5 from this case?

6 MS. SHEMWELL: It will not.

7 COMMISSIONER CLAYTON: So we'll -- we'll
8 enter the financing Order and then we'll come back and
9 have a final order addressing the conditional approval?

10 MS. SHEMWELL: The Commission declined to
11 address the economic feasibility in its Order, and the
12 2007-0215 or 168 case, 2007-0168, so it will come back in
13 that case. The Commission can then address the financial
14 feasibility and the business feasibility of the system and
15 issue a final CCN. And they will be asked to do that.

16 MR. FISCHER: Commissioner, Mr. Maffett
17 also has some more specific information about the
18 preparation of documents, I think, that he can address.

19 COMMISSIONER CLAYTON: If he wants to,
20 that's fine. I'm not looking for more, but if you want to
21 give me more.

22 MR. MAFFETT: I was just going to let you
23 know that the documents are in progress. We've already
24 had a couple of turns between our lawyers and the
25 investor's lawyers, and our intent is to try to have those

1 documents submitted as quickly as possible.

2 COMMISSIONER CLAYTON: The same equity firm
3 that will -- what percentage of ownership? Is that
4 public? What percent -- if it's not public, just tell me
5 it's not public.

6 MR. MAFFETT: It's not public.

7 COMMISSIONER CLAYTON: Somebody used a
8 figure of ownership of the holding company for MGU.
9 That's public?

10 MR. MAFFETT: Yes. Yes.

11 COMMISSIONER CLAYTON: The ownership
12 percentage, well, you-all said -- we haven't been in
13 closed -- the 81 percent ownership interest in MGU?

14 MR. MURRAY: Yes.

15 COMMISSIONER CLAYTON: Okay. So there will
16 be no -- CNG Holdings will have no ownership role in this
17 company, Southern Missouri Gas will continue to be
18 Southern Missouri Gas, and the same equity firm will just
19 have had significant stakes in each?

20 MR. MAFFETT: Yes, sir.

21 COMMISSIONER CLAYTON: I guess would be a
22 way to phrase that. Got a little rate increase, got to up
23 their investment in Missouri; is that what happened?

24 MR. MURRAY: I'd just like to clarify
25 something. I don't mean to be argumentative with Randy

1 Maffett, but these are private equity investors. This is
2 not a publicly traded fund. They require, I believe a net
3 worth of at least 5 million for individuals to invest in
4 this infrastructure invest -- excuse me -- IIF. It's an
5 infrastructure investment fund, but those are private,
6 whether they're institutional or --

7 COMMISSIONER CLAYTON: So you don't see a
8 difference -- do you see a difference between this fund
9 and say someone like a Carlyle, a Blackstone Group? Well,
10 Blackstone I think went public, but Cerberus?

11 MR. MURRAY: Strategies, I mean, there may
12 be some difference in strategies, but private equity is
13 still private equity. It's the mere fact that it's not
14 publicly traded.

15 COMMISSIONER CLAYTON: The strategy would
16 be different, that would be the only difference then.
17 Would you agree with that, Mr. Maffett?

18 MR. MAFFETT: Yes, sir. I mean,
19 infrastructure funds by definition are generally
20 long-lived investments.

21 COMMISSIONER CLAYTON: Mr. Murray, give me
22 the worst case scenario that you can think of with a
23 private equity fund buying into a utility, what is the
24 absolute worst case scenario that we should be concerned
25 about?

1 MR. MURRAY: Well, obviously they have an
2 obligation to serve, safe and reliable service. I think
3 we've seen maybe some reluctance on the current investor
4 to continue to put money into the system. Worst case
5 scenario is we would have, I guess, a dispute with them on
6 whether or not they have an obligation to continue to
7 invest in the -- in the proposed expansion. Even if it
8 isn't a success, there is still responsibility for them to
9 commit the capital.

10 COMMISSIONER CLAYTON: Are you confident
11 that the Commission and the Commission Staff will have the
12 tools and the power necessary to protect the customers
13 that are currently being served by Southern Missouri Gas
14 as well as potential future customers? Do we have the
15 tools to protect those folks?

16 MR. MURRAY: If we can keep them from
17 raising their rates through a rate case process so -- just
18 like with Aquila, if for whatever reason they get into a
19 situation --

20 COMMISSIONER CLAYTON: I understand the
21 whole Aquila thing, but I mean, we've got customers that
22 aren't even being served yet. I mean, all that plant has
23 to be -- and I'm not even sure what stage, nothing's
24 been -- there's no ground dug, no pipes in the ground in
25 any of these, what, six communities here, right? Five

1 communities, six communities, correct?

2 MR. MAFFETT: Correct.

3 COMMISSIONER CLAYTON: I mean, Aquila's at
4 least serving customers right now. These folks, I mean,
5 there are no pipes in the ground right now, so we're
6 building from the ground up. This is a fresh investment.
7 And there are other things than just rates, like mandating
8 that service is going to be safe and adequate, and do we
9 have the tools to protect those customers?

10 MR. MURRAY: I believe so, yes.

11 COMMISSIONER CLAYTON: You do believe so.
12 If you would have said no --

13 MR. MURRAY: Only as good as the laws that
14 we have, though.

15 COMMISSIONER CLAYTON: Well, that's what
16 I'm asking. You know, we don't see this every day. We
17 don't have an application from, you know, from Laclede to
18 go in and build a brand-new, you know, community up or --
19 you know, this is not something we see.

20 MR. MURRAY: Let me just add one thing, and
21 this is something that obviously requires some statutory
22 changes. I am bothered by the fact that we are not able
23 to review a significant change in ownership. This company
24 may end up owning 99 percent of this -- of Southern
25 Missouri Natural Gas, and by means of doing stock

1 transactions, they're able to stay from under -- they can
2 get out of our jurisdiction.

3 And I know in other cases we've had
4 significant concerns about certain owners of operations,
5 of whether it's a telephone or a gas or a water utility.
6 They can make significant changes in ownership without
7 jurisdiction of this Commission, and there will be some
8 concerns about possible transparency. They have -- they
9 need to cooperate with us in turning over financial
10 information, especially when we get into rate cases, so
11 that is important.

12 But that's a statute. I mean, apparently
13 that's a statutory issue, but a change in control of a
14 utility could have an impact on our utilities.

15 COMMISSIONER CLAYTON: Are they doing
16 better on their gas purchasing?

17 MR. MURRAY: I would probably defer to Dave
18 Sommerer on that, but I do see this proposal as probably
19 an improvement of the current situation because they have
20 liquidity issues right now, and Mr. Maffett may be able to
21 speak more about that, but it's not going as well as they
22 had hoped.

23 COMMISSIONER CLAYTON: Do you want to
24 respond to that, Mr. Maffett?

25 MR. MAFFETT: Yes, sir. I mean, there's

1 definitely been challenges that's stemmed back to the 2005
2 hurricane season and everything else, but to answer your
3 question, yes, sir, we are complying to the letter with
4 the Stipulation & Agreement with Staff on our hedging
5 program, and, you know, I mean, looking back in hindsight,
6 it's always 20/20. This year would have been a year where
7 hedging less would have been more beneficial to the
8 customers. In lieu of that, we adhered to the Stipulation
9 and Settlement Agreement.

10 COMMISSIONER CLAYTON: I understand that.
11 I don't -- there needs to be a plan and need to stick to
12 the plan. I don't want -- I don't like gas purchasing
13 left to chance and crossing fingers, that sort of thing.

14 MR. MAFFETT: Yes, sir.

15 COMMISSIONER CLAYTON: Well, I don't think
16 I have any other questions. I wish you-all the best of
17 luck and hope not to see you again for a while.

18 COMMISSIONER MURRAY: I don't have any
19 other questions, thank you.

20 JUDGE JONES: Mr. Poston, you had a
21 question. Was that question of a particular party?

22 MR. POSTON: Well, I had a question, and it
23 kind of follows up on a question Commissioner Murray had
24 about the financing agreement and when that gets reviewed.
25 It didn't sound like that would be reviewed in this case,

1 that perhaps it would be reviewed before the CCN was
2 issued.

3 I just want to make sure that that's
4 something that the Staff looks at and files a
5 recommendation to or something like that to approve before
6 this company can go in and start operating. I see someone
7 circling things on an agreement that apparently covers
8 that.

9 JUDGE JONES: Mr. Fischer, is that
10 something you can respond to?

11 MR. FISCHER: Yes. I actually was trying
12 to talk about that issue, that the Commission had
13 indicated in the Branson case that they would be
14 conditioned on financing and it was a conditional
15 certificate and that we would come back for a request for
16 a full certificate. I don't know that it requires any
17 kind of a hearing, but the record is there.

18 We were going to come in and ask that the
19 Commission approve the full certificate and get another
20 order from the Commission to grant the full certificate so
21 we could proceed forward, the nature of the order granting
22 us the right to commence construction.

23 JUDGE JONES: And that would be in the 0168
24 case?

25 MR. FISCHER: Yes.

1 JUDGE JONES: Mr. Poston, does that address
2 your concerns?

3 MR. POSTON: I think so, right. So this
4 would get approval and review before that CCN would issue?

5 MR. FISCHER: Yes. And I also wanted to
6 clarify, the -- certainly the identity of the fund and all
7 that has been provided. It's just under seal. There's --
8 if you want more information about that, it's in Appendix
9 B of the Second Amended Financing, telling you who it is.
10 You'll recognize the name of the fund.

11 Randy, did you have any other comments?

12 MR. MAFFETT: Yes, sir. Commissioner
13 Murray, Commissioner Clayton, one of the things that I
14 wanted to just clarify is, you know, we didn't make the
15 rules in terms of the holding company investment and what
16 has to be approved or doesn't have to be approved, but in
17 spite of or in lieu of those rules, we have provided full
18 disclosure to Staff who that investor was. We've made
19 that investor available to Staff for direct
20 communications, and we've also provided the outline -- the
21 term sheets that we have signed with that investor on the
22 equity side as well as the debt side. So we have provided
23 all the documentation even if the rules didn't require us
24 to.

25 JUDGE JONES: Okay. Is there anything else

1 from anyone else?

2 Seeing nothing, then we will go off the
3 record. Thank you, you-all.

4 WHEREUPON, the hearing of this case was
5 concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
19 My commission expires March 28, 2009.
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