

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

In the Matter of the Application for)
Authority of Sendero SMGC LP)
Acquisition Company and Sendero)
SMGC GP Acquisition Company to)
Purchase the Partnership Interests of)
DTE Enterprises, Inc. and DTE Ozark,)
Inc. in Southern Missouri Gas)
Company, LP., and for Southern)
Missouri Gas Company, L.P. to)
Execute a Deed of Trust, Security)
Agreement and Financing Statement)
To Secure a Loan to Complete the)
Transaction.)

Case No. GM –2005-0136

NON-UNANIMOUS STIPULATION AND AGREEMENT

I. Procedural History

On November 17, 2004, Sendero SMGC LP Acquisition Company, LLC, Sendero SMGC GP Acquisition Company, LLC (hereafter, collectively “Sendero”), DTE Enterprises, Inc., and DTE Ozark, Inc. (collectively “DTE”) (“Sendero” and “DTE” collectively referred to as “Applicants”) filed an application seeking Commission authority for Sendero to acquire the partnership interests of DTE in Southern Missouri Gas Company, (“SMGC”) and to take other steps to complete that transaction (the “Transaction”). The Applicants also filed a Motion For Expedited Treatment seeking approval of the proposed transaction by December 31, 2004. In addition, Applicants filed a Motion For Protective Order requesting that the Commission issue its standard protective order in the proceeding.

On November 19, 2004, the Commission issued its Order Directing Filing, directing the Commission Staff (“Staff”) to file its Recommendation, or a Status Report, no later than November 29, 2004. The Commission also issued its Order Establishing Protective Order.

Staff complied with the Order Directing Filing by filing its Staff's Status Report on November 29, 2004.

On December 1, 2004, The Empire District Electric Company ("Empire") filed its Application To Intervene in this proceeding.

On December 6, 2004, the Applicants filed their Suggestions In Opposition To Application To Intervene Filed By Empire District Electric Company.

On December 16, 2004, the Commission issued its Order Granting Intervention which authorized Empire to intervene in this proceeding.

On March 30, 2005, Applicants filed their First Amended Application with a revised Sales Agreement and pro-forma calculations.

The parties have engaged in various discovery and discussions and as a consequence, the signatory parties have reached the following agreements, which are set forth in this Non-Uniform Stipulation and Agreement (Stipulation and Agreement) and which dispose of all issues in this case with respect to the signatory parties.

II. Approval of the Transaction

The signatory parties agree that the Commission should issue its order, subject to the conditions contained herein, authorizing Sendero to acquire the partnership interests of DTE, pursuant to the November 15, 2004 Agreement For Purchase Of Partnership Interests between DTE Enterprises, Inc. and DTE Ozark, Inc. as Seller, and Sendero SMGC GP Acquisition Company and Sendero SMGC LP Acquisition Company as Buyer, and the March 24, 2005 First Amendment to Agreement For Purchase of Partnership Interests, which are both contained in Exhibit 2 of the Application ("the Agreement, Exhibit 2"). The parties also urge the

Commission to issue its order approving the Transaction and this Stipulation and Agreement at its earliest opportunity so as to be effective by April 15, 2005, or as soon thereafter as possible.

III. Conditions of Approval

1. FINANCIAL ISSUES/COST OF CAPITAL

Sendero and SMGC will not seek an increase in Cost of Capital for SMGC as a result of this transaction. Any increases in the Cost of Capital SMGC seeks for SMGC will be supported by documented proof that the increases are a result of factors not associated with this transaction; that the increases are not a result of changes in business, market, economic, or other conditions for SMGC caused by this transaction; or that the increases are not a result of changes in the risk profile of SMGC caused by this transaction. Sendero will ensure that the rates for SMGC ratepayers will not increase as a result of this transaction.

DTE and Sendero et al. shall be authorized to complete this transaction upon obtaining financing on the following conditions:

- A.) Consistent in all material respects with the terms outlined in Attachment A; and
- B.) There are no bank or loan restrictions on SMGC's ability to hedge with fixed price physical contracts (as have been traditionally used by DTE to hedge); and
- C.) Sendero will not enter into a financing agreement that restricts Sendero's or SMGC's ability to get fixed price contracts for natural gas; and
- D.) Sendero et al. and SMGC shall submit to the Staff, ten (10) days subsequent to closing of the loan, all documents finally executed in this case to obtain financing for the purchase of SMGC by Sendero. Failure to comply will result in the Commission's Order Approving the Stipulation Granting Authority for Sendero SMGC LP Acquisition Company and Sendero SMGC GP Acquisition to Purchase the Partnership interests of DTE Enterprises, Inc and DTE Ozark, Inc. in Southern Missouri Gas Company, LP (SMGC) to Execute a Deed of

Trust, Security Agreement and financing statement to Secure a Loan to Complete the Transaction shall be considered to be null and void and the transfer will not be considered to have been approved by this Commission.

2. ADHERENCE TO MISSOURI RULES

Sendero shall ensure that SMGC continues to comply with all Missouri Commission rules (including but not limited to the Commission's Cold Weather Rule, Gas Safety rules and Affiliate Transactions rules), reporting requirements and other practices, and SMGC's filed and approved tariffs. This paragraph shall not be construed as a waiver of any rights or remedies available to SMGC under the law. If Sendero or SMGC fail to comply with the Missouri Commission rules, the Staff may file a complaint.

3. AFFILIATE TRANSACTIONS

Sendero and SMGC shall maintain data related to affiliate transactions and corporate allocation of costs between regulated and all nonregulated operations, if any, of Sendero, Sendero Asset Management and SMGC. Sendero and SMGC shall comply with the Commission's rules concerning affiliate transactions involving natural gas utilities; natural gas marketing activities; and HVAC activities. Sendero shall make these records available to the Staff within thirty (30) days of Staff's request for this information. Failure to do so may result in Staff's filing of a complaint with the Commission.

4. CORPORATE ALLOCATIONS

Sendero, Sendero Asset Management, and SMGC shall provide time reporting and associated expenses billed to SMGC and other non-regulated affiliates of Sendero, if any, and any other documents that support allocation of expenses from these affiliated entities to SMGC. Corporate allocations of costs, if any, will be based upon factors that faithfully and accurately

represent the level of actual corporate involvement provided and the actual business unit beneficiaries of the incurred costs. Sendero shall make these records available to the Staff within thirty (30) days of Staff's request for this information. Failure to do so may result in Staff's filing of a complaint with the Commission.

5. OPERATION OF SMGC

Sendero shall hire a qualified full-time local general manager who will be directly responsible for the day-to-day operations of the company within three (3) months of the closing of the transaction. Sendero shall hire a full-time local general manager that has at least three (3) years of management experience for a local gas distribution company. If Sendero fails to hire such a general manager within three (3) months Sendero shall report this to Commission Staff and Staff may file a complaint with the Commission. Sendero further agrees that there shall be no significant changes to operational structure or procedures currently in place for SMGC at the time of the closing of the transaction. Sendero shall continue operating SMGC as it currently is operated with no anticipated changes to either key personnel, including the current gas supply manager, or SMGC's operating policies and procedures, including its procedures related to safety rules, and the implementation of adequate gas supply and transportation planning. Sendero reserves the right to make changes in SMGC personnel based on its own performance reviews but Sendero shall not operate without the above mentioned general manager or a gas supply manager with at least the experience of the current gas supply manager without notifying the Staff before such change occurs. Failure to maintain these key positions may result in Staff filing a complaint with the Commission.

6. GAS SUPPLY

Sendero agrees to ensure that SMGC and/or Sendero personnel will prepare detailed supply plans that include how management will monitor the gas supply procurement function. The plans should also include an evaluation of demand requirements (peak day and varying monthly requirements) along with evaluations of hedging, economic cost evaluations, and gas supply/transportation reliability. A detailed plan shall be provided to Staff and the Office of Public Counsel by September 15, 2005, and annually thereafter. If Sendero fails to provide such a detailed plan or if the plan does not contain sufficient detail, as determined by the Staff, after discussion with the Company, Staff may file a complaint with the Commission.

Sendero represents that it has the ability to contract with creditworthy gas supply counter parties on the same basis and on at least as favorable terms as DTE, the exiting owner.

A.) To maintain the integrity of gas supply, the financial entity that owns SMGC shall provide the financial support necessary to ensure SMGC's ability to procure its required supply of natural gas.

B.) Southern Star Central has evaluated SMGC and/or Sendero's creditworthiness and will continue to provide firm service to SMGC on the same basis, in terms of credit requirements, as SMGC has traditionally had.

C.) If any of the service providers require additional financial information, letters of credit, posting of collateral, requests for parental or partnership guarantees, or other similar arrangements, SMGC and/or Sendero shall provide them. The costs and decisions associated with such arrangements shall be subject to review for prudence in a general rate case and not subject to PGA/ACA cost recovery

D.) Sendero will also ensure that the Commission will have full information concerning gas purchasing and gas trading data, copies of all contracts, and gas supply procurement information for both PGA/ACA audits and Sendero shall ensure that safe and reliable service is provided to SMGC customers. Failure to provide safe and reliable service may result in Staff filing a complaint with the Commission.

7. ACTUAL COST ADJUSTMENT ISSUES

Sendero agrees to ensure that SMGC will continue to comply with the commitments that have been made by DTE/SMGC regarding the historical annual ACA recommendations, ACA Case Stipulations and Agreements and SMGC comments to Staff recommendations. This agreement would include carrying forward any ACA over/under recovery balance at the time of sale. This over/under recovery balance will be subject to Staff review and Commission-approved adjustments.

8. ACCOUNTING FOR PLANT IN SERVICE

A.) SMGC agrees not to seek recovery of any acquisition adjustment (acquisition premium) for the acquisition by Sendero from DTE of SMGC when this transaction is completed.

B.) SMGC also agrees not to seek recovery of purported merger savings that would allow either direct or indirect recovery of the acquisition adjustment (acquisition premium) through a savings/sharing mechanism.

C.) SMGC shall keep its books and records in such a manner that its plant in service balances can be segregated between amounts invested by SMGC prior to the date of the closing date of this transaction, and the net original cost values that SMGC asserts may be invested following the date of the closing of the transaction.

D.) Sendero further acknowledges the conditions set forth in SMGC's original certificate in Case No. GA-94-127, and understands that Sendero is purchasing SMGC subject to those conditions until such time as those conditions are either modified or determined by the Commission to be no longer in effect. Please see Attachments B and C.

9. SURVEILLANCE

Upon approval of this transaction, SMGC will provide surveillance reports to the Auditing Department of the Utility Services Division on a quarterly basis. Surveillance reporting will be submitted on the standardized format utilized by the Auditing Department and will be considered highly confidential. The compilation of the surveillance report establishes financial reporting requirements that utility companies under Commission jurisdiction follow to allow the Staff to monitor utility company earnings.

10. MANAGEMENT AGREEMENT

Sendero, Sendero Asset Management, and SMGC agree that the fee for Sendero Asset Management, its successors, or assigns, shall start at \$200,000 per year and shall not increase more than five percent (5%) per year in any subsequent year without Commission approval or until Sendero files a rate case with the Commission.

11. RATE MORATORIUM

A.) The signatory parties to this Agreement agree that they will not request, or encourage or assist in any request for,

- i. a general increase or decrease in SMGC's non-PGA related gas rates, or
- ii. rate credits or rate refunds respecting SMGC's non-PGA related gas rates, that would become effective for service rendered prior to May 1, 2008.

B.) The Signatory Parties agree that SMGC's non-PGA related gas rates shall remain at their current levels through May 1, 2008, unless a significant event that has a major impact on SMGC occurs, including, but not limited to:

- i. terrorist activity or an act of God;
- ii. a significant change in federal or state tax laws;
- iii. a significant change in federal or state utility laws or regulations or a significant change in Generally Accepted Accounting Principles.

12. CUSTOMER SERVICE STANDARDS

Sendero will ensure that SMGC continues its commitment to excellent customer service that will be at least the same level as previously provided to its customers by SMGC under DTE's ownership. Sendero will ensure that SMGC will respond to inquiries from the Commission's Consumer Services Department within three (3) business days, except for interruption of service issues, to which it will respond within one (1) business day.

Sendero agrees to provide written notice to all customers in the acquired system regarding the change in Company management and ownership including the Company's address and phone number. The written notice should include information that the system will be subject to regulation by the Missouri Public Service Commission for all matters including rates and service. Customers may reach the Consumer Services Department of the Missouri Public Service Commission at 1-800-393-4211.

13. DEPRECIATION

For purposes of accruing depreciation expense, Sendero agrees to ensure that SMGC continues to use the depreciation rates approved by the Commission, and to continue to maintain the Property Unit Catalog (PUC) and Continuing Property Record (CPR) as detailed in 4 CSR 240-40.040 Uniform System of Accounts Gas Corporations, 4 CSR 240-3.235 Filing

Requirements for Gas Utility General Rate Increase Requests, and 4 CSR 240-3.275 Submission Requirements for Gas Utility Depreciation Studies.

14. NO DETRIMENTAL IMPACT

Sendero represents that it does not intend to take any action that has a material possibility of having a detrimental effect on SMGC's Missouri utility customers, but agrees that, should such detrimental effects nevertheless occur, nothing in the approval or implementation of the proposed acquisition shall impair the Commission's ability to protect such customers from such detrimental effects.

15. COMMISSION AUTHORITY

Sendero agrees that the Commission has, and will continue to have, the authority after the proposed transaction to regulate, through the lawful exercise of its current statutory powers, to ensure the provision of service instrumentalities and facilities shall be safe and adequate and in all respects just and reasonable and not jeopardize the ability of SMGC to meet its Missouri utility obligations. Sendero also agrees that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by SMGC for regulated utility service are not increased as a result of the unregulated and/or nonjurisdictional activities of SMGC or Sendero's affiliates, and Sendero agrees, consistent with such standard, that rates should not be increased due to such activities. Sendero also agrees that no partnership interest of SMGC will be sold or otherwise disposed of without the approval of the Missouri Public Service Commission.

16. ACCESS TO INFORMATION

A.) Sendero shall provide the Staff and Public Counsel with access, upon reasonable written notice during normal working hours and subject to appropriate confidentiality and

discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to Sendero or any affiliate that exercises influence or control over Sendero or has affiliate transactions with Sendero. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, “written” information includes but is not limited to, any written and printed material, audio and videotapes, computer disks and electronically stored information. Nothing in this condition shall be deemed to be a waiver of Sendero’s right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

B.) Sendero agrees to make available to Staff and Public Counsel, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees of Sendero and its affiliates as may be reasonably required to verify compliance with the Cost Allocation Manual and the conditions set forth in this Stipulation and Agreement. Sendero shall also provide Staff and Public Counsel any other such information (including access to employees) relevant to the Commission’s ratemaking, financing, safety, quality of service and other regulatory authority over Sendero; provided that Sendero and any affiliate or subsidiary of Sendero shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries; (a) are not within the possession or control of Sendero; or (b) are either not relevant or are not subject to the Commission’s jurisdiction and statutory authority by virtue of or as a result of the implementation of the proposed acquisition.

C.) Sendero and SMGC will maintain records supporting its affiliated transactions for at least six years.

17. COMMITMENTS AND REPRESENTATIONS ARE MISSOURI JURISDICTIONAL

The commitments and representations made by Sendero and SMGC in this Stipulation and Agreement are intended to apply only in the context of Missouri jurisdictional regulatory activities. Commission approval of this Stipulation and Agreement is not intended, and shall not be construed, to restrict in any way the ability of either the Commission, Sendero or any party hereto to take any position whatsoever regarding matters covered by this Stipulation and Agreement in proceedings before the FERC or any other non-Missouri jurisdictional regulatory authority.

18. THE SIGNATORY PARTIES FURTHER STIPULATE AND AGREE THAT :

A.) This Stipulation and Agreement has resulted from extensive negotiations among the parties and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the parties to take other positions in other proceedings.

B.) This Stipulation and Agreement is being entered into for the purpose of disposing of all issues in this case. The parties represent that the terms of this Stipulation and Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as addressed herein, none of the parties to this Stipulation and Agreement shall be deemed to have approved, accepted, agreed, consented or acquiesced to any accounting principle, ratemaking principle or

cost of service determination underlying, or supposed to underlie any of the issues provided for herein.

C.) All parties further understand and agree that the provisions of this Stipulation and Agreement relate only to the specific matters referred to in the Stipulation and Agreement and no party waives any claim or right which it otherwise may have with respect to any matters not expressly provided for in this Stipulation. All parties further reserve the right to withdraw their support for the settlement in the event that the Commission modifies the Stipulation and Agreement in a manner which is adverse to the party withdrawing its support and further, all parties reserve the right to contest any such Commission order modifying the settlement in a manner which is adverse to the party contesting such Commission order.

D.) In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), R.S.Mo. 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, R.S.Mo. 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, R.S.Mo. 2000; their respective rights to seek rehearing pursuant to Section 386.500, R.S.Mo. 2000; and their respective rights to judicial review pursuant to Section 386.510, R.S.Mo. 2000. If this Stipulation and Agreement is not approved by the Commission, the parties request that a revised procedural schedule be established which provides for a hearing, to include the opportunity for cross-examination.

E.) The Staff shall, within five (5) days of the filing of this Stipulation and Agreement, file with the Commission suggestions or a memorandum in support of this Stipulation and

Agreement and the other parties shall have the right to file responsive suggestions within three (3) day of receipt of Staff's memorandum.

F.) The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

G.) To assist the Commission in its review of this Stipulation and Agreement, the parties also request that the Commission advise them of any additional information that the Commission may desire from the parties relating to the matters addressed in this Stipulation and Agreement, including any procedures for furnishing such information to the Commission.

19. The Empire District Electric Company takes no position on this Stipulation and Agreement, and waives its right to request a hearing in this case.

20. The parties to the Stipulation recommend that the Commission authorize Sendero to execute a Deed of Trust, Security Agreements, Financing Statements and other financing documents consistent in all material respects with the terms outlined in the attached Attachment A. Sendero or SMGC shall provide a copy of the final terms and conditions of the financing referenced herein to the Commission.

WHEREFORE, the signatory parties respectfully request that the Commission issue its order approving the Transaction and this Stipulation and Agreement at its earliest opportunity so

as to be effective by April 15, 2005, or as soon thereafter as possible, and order:

A. finding that the Transaction, subject to the terms of the Stipulation and Agreement, is not detrimental to the public interest;

B. authorizing Sendero to directly or indirectly acquire the Partnership Interests of DTE, and to otherwise accomplish the Transaction as permitted by the terms of the Agreement, Exhibit 2 to the Application, including the purchase of the General Partnership Interest by Sendero SMGC GP Acquisition Company, LLC and the purchase of the Limited Partnership Interest by Sendero SMGC LP Acquisition Company, LLC;

C. authorizing Sendero and DTE to enter into, execute and perform in accordance with, or as may be permitted by or result from, the terms of the Agreement, Exhibit 2, to the Application; subject to the terms of this Stipulation and Agreement;

D. authorizing Sendero and DTE to enter into, execute and perform in accordance with, or as may be permitted by or result from, the terms of all other documents and to take any and all other actions which may be reasonably necessary and incidental to the performance of the Transaction; and,

E. granting such other relief as may be necessary and appropriate to accomplish the purposes of the Transaction and the Application and to consummate the Transaction and related undertakings in accordance with the Agreement, Exhibit 2 to the Application, unless as specified to the contrary in this Stipulation and Agreement.

Respectfully submitted,

POLSINELLI SHALTON WELTE SUELTHAUS PC

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ATTORNEY FOR STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 6th day of April 2005.

/s/ Lera L. Shemwell
