

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

In the Matter of the Application of Missouri Gas     )  
Utility, Inc. for a certificate of public convenience     )  
and necessity authorizing it to construct, install,     )  
own, operate, control manage and maintain a     )     Case No. \_\_\_\_\_  
natural gas distribution system to provide natural     )  
gas service in parts of Harrison, Daviess and     )  
Caldwell Counties, to acquire the Gallatin and     )  
Hamilton, Missouri natural gas systems and to     )  
encumber the acquired assets.     )

**APPLICATION**

Comes now Missouri Gas Utility, Inc. (“MGU” or “Company”), pursuant to Section 393.170, RSMo; Section 393.190, RSMo; 4 CSR 240-2.060; 4 CSR 240-3.205; and 4 CSR 240-3.210, and for its application for a certificate of convenience and necessity; approval of the acquisition of the Gallatin and Hamilton, Missouri natural gas system assets; and, authority to encumber those assets in connection with the acquisition, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

**SUMMARY**

MGU seeks to acquire and obtain the natural gas systems currently operated by the cities of Gallatin and Hamilton, Missouri. These cities formerly operated the systems under lease-purchase agreements. However, the cities have chosen to default on those agreements and, as a result, there are currently no gas supply contracts in place for the winter season. MGU is attempting to purchase the systems from their trustees and to complete the transactions in sufficient time to prevent the disruption of gas service to the Gallatin and Hamilton customers. Accordingly, MGU would propose to close this transaction, if possible, on or near December 1,

2004.

### **ABSENCE OF SOME REFERENCED DOCUMENTS**

Because of the urgency of this matter, this Application is being filed prior to the completion of some of the appendices referenced herein. Additionally, certain documents are deemed to be highly confidential and will be provided after a protective order has been entered. In accordance with Commission Rule 4 CSR 240-2.060(2), MGU will supplement its Application and furnish these documents as soon as they are available. MGU has identified those appendices which will be late filed on the list of appendices attached hereto.

### **APPLICANT**

1. Applicant is Missouri Gas Utility, Inc. MGU's principal office will be located at 702 E. Corine, Gallatin, Missouri 64640.

2. MGU is a corporation duly incorporated under the laws of the State of Colorado. A copy of a certificate from the Missouri Secretary of State that MGU is authorized to do business in Missouri as a foreign corporation was is marked **Appendix A**, and attached hereto. MGU has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court within the past three (3) years that involve customer service or rates. MGU has no annual report or assessment fees that are overdue.

3. MGU is a subsidiary of CNG Holdings, Inc. CNG Holdings' principal office is located at 7810 Shaffer Parkway, Suite 120 (P.O. Box 70868), Littleton, Colorado 80127. CNG Holdings also owns Colorado Natural Gas, Inc. Colorado Natural Gas, Inc. was founded in May of 1996 and provides natural gas service to approximately 6,300 customers in parts of Park, Jefferson, Gilpin, Teller, Clear Creek and Pueblo counties in the state of Colorado. CNG

provides this service subject to the jurisdiction of the Colorado Public Utilities Commission.

4. All correspondence, communications, notices, orders and decisions of the Commission with respect to this matter should be sent to the undersigned counsel and:

Michael P. Earnest  
President/CEO  
Missouri Gas Utility, Inc.  
P.O. Box 270868  
Littleton, Colorado 80127  
Telephone: 303.979.7680, ext. 107  
Facsimile: 303.979.7892  
Email: mpearne@coloradonaturalgas.com

### **BACKGROUND AND URGENCY**

#### **Gallatin Natural Gas Distribution System**

5. The City of Gallatin Natural Gas Distribution System (“NGS”) serves the City and the surrounding communities of Coffey, Jameson and Brooklyn, Missouri. The gas pipeline was installed in late 1995 and became fully operational in 1996. The goal of the project was to convert as many of the approximate 900 potential customers from propane gas to natural gas. Natural gas has many benefits over propane gas, both for the customer and the community. The system currently has approximately 460 customers.

6. Construction of the Gallatin system was financed through the use of a lease-purchase agreement. Under this agreement, Gallatin leased and operated the system. Investment in the system was provided by holders of certain certificates of participation. In December 2003, the City of Gallatin assigned the legal title to certain rights of way and easements and personal property related to the Business to Agent (which holds such real and personal property as agent for the holders of the Certificates of Participation) because the City did not appropriate funds to

pay under the Lease Agreement for the 2004 fiscal year and therefore defaulted on the Lease.

7. The Gallatin System runs approximately 46 miles north and south. The northernmost point begins in an area of Missouri known as Brooklyn (“Brooklyn”), and the southernmost point terminates in Gallatin, Missouri. The main pipeline was constructed in 1995 from 6” steel pipe. The wall thickness of the pipe measures 188 inches. Maximum allowable operating pressure is 450 pounds per square inch (“PSI”). The pipeline has a cathodic protection anode (electrical current at 1.4 volts) to prevent rust. The steel pipe has a Gypson coating. Over the 46-mile, 6” line, there are 88 test stations (approximately every ½ mile) for cathodic protection monitoring, and 4 separate 6-inch in-line shut-off valves.

This NGS has an additional 25 miles of 2-inch plexco polypropylene pipe, and 7 miles of 4-inch plexco polypropylene pipe used for short runs from the main 6-inch line to customers’ locations. Currently there are 576 services installed in ground with an average length of 60 feet. The pipeline is supported by four main regulator stations which convert the natural gas from 350 PSI down to 30/60 PSI for consumer use. There is also a smaller regulator station which services 6 separate accounts. The NGS also includes approximately 20 “Farm Taps” which also convert natural gas from 350 PSI to 30 PSI.

At the main connection point at the regulator station in Brooklyn, the pipeline has a fully automated Williams Company odorizer system. This system can also be used manually.

#### **Hamilton Natural Gas Distribution System**

8. The City of Hamilton Natural Gas Distribution System serves the City of Hamilton and surrounding areas. The system was built in 1998 to serve 870 potential customers. Today the system serves 277 customers which were converted from propane to natural gas.

9. Construction of the Hamilton system was financed through the use of a lease-purchase agreement. Under this agreement, Hamilton leased and operated the system. Investment in the system was provided by holders of certain certificates of participation. In December 2003, the City of Hamilton assigned the legal title to certain rights of way and easements and personal property related to the Business to Lessor/Trustee (which holds such real and personal property as Lessor/Trustee for the holders of the Certificates of Participation) because City did not appropriate funds to pay under the Lease Agreement for the 2004 fiscal year and therefore defaulted on the Lease.

10. The Hamilton System consists of a natural gas transmission line and distribution system serving the City and certain appurtenances thereto. The transmission line is a 4-inch steel pipeline between Gallatin, Missouri, and the City of Hamilton, a distance of approximately 13 miles. The distribution system is polyethylene plastic pipe and includes approximately 10,000 feet of 4-inch pipe, 48,000 feet of 2-inch pipe and 34,000 feet of ½ inch pipe. The distribution system currently serves 277 residential and commercial customers.

### **PROPOSED PURCHASE**

11. MGU proposes to purchase from The Bank of New York and UMB Bank the assets, franchise, works or systems necessary and useful in the rendition of natural gas service to the cities of Gallatin and Hamilton, Missouri and the surrounding areas. The specific terms and conditions of the sale are set forth in a Purchase and Sale Agreement by and among City of Gallatin, Missouri and The Bank of New York Trust Company as Agent and Missouri Gas Utility, Inc. (“Gallatin Agreement”) and an Purchase and Sale Agreement by and among City of Hamilton, Missouri and UMB Bank, N.A. as Agent and Missouri Gas Utility, Inc. (“Hamilton

Agreement”) attached hereto and incorporated by reference as **Appendix B** and **Appendix C**, respectively. Descriptions of the facilities to be sold and transferred are contained in the Agreements.

12. Copies of the Resolutions of the Board of Directors of MGU, as certified by the corporate secretary, authorizing the transactions proposed herein are attached to this Application and incorporated herein by reference as **Appendix D** and **Appendix E**, respectively.

13. The proposed sale and transfer of the Gallatin and Hamilton is not detrimental to the public interest because MGU and its employees and affiliates have experience in the provision of natural gas service and is dedicated to the provision of safe and adequate utility service to the public. The management of MGU possesses a considerable amount of experience in the provision of natural gas service. Accordingly, MGU possesses the managerial, engineering and financial expertise to provide good quality natural gas service to the public currently served by the Gallatin and Hamilton systems. Because of its financial stability, MGU may also be able to take advantage of certain strategies in the operation and management of these systems which have heretofore not been available.

14. The proposed transaction should have a positive impact on the tax revenues of the political subdivisions in which the structures, facilities or equipment are now located because MGU is an investor-owned utility and, as such, will be subject to personal and real property taxes, the same as any business owning assets within the taxing authorities.

15. Marked as **Appendix F**, and attached hereto, is a pro forma balance sheet and pro forma income statement of MGU showing the results of the proposed acquisitions.

**CERTIFICATED AREA**

16. Attached hereto and marked as **Appendix G** is a map of the location of the proposed service area.

17. Attached hereto and marked as **Appendix H** is a metes and bounds legal description of the proposed boundaries of the proposed certificated area in Harrison, Daviess and Caldwell Counties.

18. Because MGU is purchasing existing systems, there is no estimated cost of construction. Attached hereto and marked as **Appendix I** is a feasibility study, which incorporates plans for financing, proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operation.

19. Attached hereto and marked as **Appendix J** is a list of ten persons residing in the area proposed to be certificated.

20. Because MGU does not have a certificate from the Commission for the requested area, it is necessary for MGU to obtain the requisite permission from the Commission.

21. MGU will require franchises from the cities of Gallatin, Hamilton and Coffey. Marked **Appendix K**, **Appendix L** and **Appendix M** are the franchises from these cities. No other franchises or permits from municipalities, counties or other governmental authorities will be required at this time.

22. MGU proposes to use the following base rates for natural gas service:

	<b><u>Customer Charge</u></b>	<b><u>Commodity Charge</u></b>
Residential	\$ 8.00	\$ 3.00
Commercial	\$15.00	\$ 3.00

Transport (Firm)	\$125.00	\$ 2.70
Transport (Interruptible)	\$300.00	Set by Contract

Marked **Appendix N** and **Appendix O**, and attached hereto, are the rates currently utilized by the Gallatin and Hamilton systems. MGU's proposed rates lower the Commodity Charge to \$3.00, from \$3.70, for residential customers. To remain consistent with its affiliate operations, MGU proposes that all rates be set by the therm (100,000 BTU) or dekatherm (Dth). The normal BTU value of the gas delivered into the system from ANR Pipeline is 1000 BTU/CF, so these rates will be the same as equivalent rates in CCF or MCF.

23. Gallatin and Hamilton currently have 14,192 Dth in storage at a cost of \$6.476/Dth, including storage and transportation fees. The estimated usage for the period November 1, 2004, through April 30, 2005, is 59,458 Dth. Using all the storage gas and purchasing additional gas based on the October 27 NYMEX futures corrected for a differential basis of negative \$0.505 for gas delivered into ANR Pipeline, the total cost of gas necessary to meet system requirements for that period is \$520,470, for an initial PGA price of \$8.75/Dth. MGU does not intend to lock in the NYMEX futures prices until Commission approval of the purchase of the system. However, if rates decrease from the current historic highs, MGU may enter into an agreement with the City of Gallatin pursuant to which the City would contract for gas and MGU would agree to take over that contract upon approval.

24. MGU proposes to utilize other rates and regulations similar to those currently utilized by existing Missouri local distribution companies. MGU will work with Staff of the Commission and the Office of the Public Counsel to propose a set of tariff sheets which set forth such regulations.



## **FINANCING**

25. In order to finance the purchases described herein, MGU has arranged for a bank loan (the "Loan"). A copy of the term sheet for which is attached hereto and marked **Appendix P**. In connection with the Loan, MGU will pledge a first security interest in all assets being acquired to include accounts receivable, inventory and the complete physical utility plant, which will constitute a lien on the MGU property to be acquired in the State of Missouri and contains a provision for subjecting after acquired property to the lien.

26. The Loan will be extended for a ten-year term with monthly payments of principal and interest based upon a 20-year amortization. The rate will be fixed for the first five-year period at a rate equivalent to the published rate of the Federal Home Loan Bank of Topeka for 5-year fixed-rate advances plus 225 basis points. As of today's date, the advance rate for this maturity is 3.85%. Were the Loan to close today, the fixed rate on the loan would therefore be 6.10%. All of the \$1.4 million of the Loan will be used for the purchase of the systems.

27. MGU seeks approval of this Commission for the Company to encumber the utility assets to be located in the State of Missouri and/or to create liens on its property to be situated in Missouri in order to secure the Loan.

28. The proposed encumbrance will have no impact on the tax revenues of the political subdivisions in which the structures, facilities or equipment is located as the financing arrangement itself will not result in a change of ownership of these assets.

## **CONCLUSION**

29. Service from a natural gas supplier may not be available in this area if these transactions are not completed. Since MGU has the expertise and the ability to provide service in

this area, MGU believes that the customers should be afforded the opportunity to take continue to take service, if they so desire. These facts support a finding that the granting of the Application, and approval of the transactions described herein, is required by the public convenience and necessity and is not detrimental to the public interest.

**WHEREFORE**, Missouri Gas Utility, Inc. respectfully requests that the Commission issue its order:

1) authorizing MGU to acquire the franchise, works or systems of the Gallatin and Hamilton, Missouri natural gas systems pursuant to the terms and conditions contained in the Purchase and Sale Agreement by and among City of Gallatin, Missouri and The Bank of New York Trust Company as Agent and Missouri Gas Utility, Inc (“Gallatin Agreement”) and an Purchase and Sale Agreement by and among City of Hamilton, Missouri and UMB Bank, N.A. as Agent and Missouri Gas Utility, Inc. attached hereto as **Appendix B** and **Appendix C**;

2) granting MGU a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a system for the provision of natural gas service to the public in the area described herein;

3) authorizing MGU to file tariffs to establish rates, rules and regulations as described in this Application;

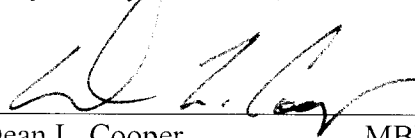
4) finding that the proposed encumbrance of the franchise, works or system of MGU necessary or useful in the performance of its duties to the public in the State of Missouri in order to secure its obligations under the described Loan and authorizing MGU to create and make effective a lien on MGU’s Missouri assets as described herein;

5) authorizing MGU to cause to be done and performed all such other acts and things

as well as to make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the foregoing transactions may be fully effectuated; and,

6) granting such further relief as the Commission may deem just and reasonable under the circumstances.

Respectfully submitted,



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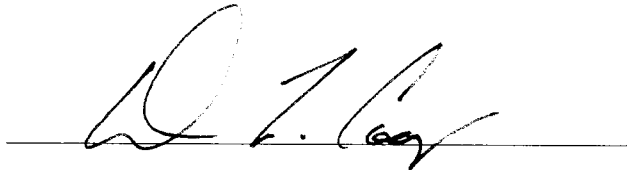
ATTORNEYS FOR MISSOURI GAS UTILITY, INC.

### CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, or sent by electronic mail, on October 29, 2004, to the following:

Tim Schwarz  
Office of the General Counsel  
Governor Office Building, 8<sup>th</sup> Floor  
Jefferson City, Mo 65101

Douglas Micheel  
Office of the Public Counsel  
Governor Office Building, 6<sup>th</sup> Floor  
Jefferson City, MO 65101



## **LIST OF APPENDICES**

**APPENDIX A** – Certificate to Do Business in Missouri [*Application provided. Certificate to be late filed.*]

**APPENDIX B** – Gallatin Purchase Agreement [*Highly Confidential. Draft and ultimately an executed copy to be late filed after issuance of a protective order.*]

**APPENDIX C** – Hamilton Purchase Agreement [*Highly Confidential. Draft and ultimately an executed copy to be late filed after issuance of a protective order.*]

**APPENDIX D** – MGU Board Resolution Approving Gallatin Acquisition

**APPENDIX E** – MGU Board Resolution Approving Hamilton Acquisition

**APPENDIX F** – MGU Pro Forma Balance Sheet and Income Statement

**APPENDIX G** – Map of Proposed Certificated Area

**APPENDIX H** – Legal Description of Area to be Certificated

**APPENDIX I** – Feasibility Study

**APPENDIX J** – List of Ten Persons Residing in the Area to be Certificated (and their addresses)

**APPENDIX K** – Gallatin Franchise

**APPENDIX L** – Hamilton Franchise [*Draft provided. Final to be late filed.*]

**APPENDIX M** – Coffey Franchise [*Draft provided. Final to be late filed.*]

**APPENDIX N** – Current Gallatin Rates

**APPENDIX O** – Current Hamilton Rates

**APPENDIX P** – Loan Documents [*Highly confidential. Term sheet to be provided after issuance of a protective order.*]

**AFFIDAVIT**

STATE OF   COLORADO   )  
                                          )     SS  
COUNTY OF   JEFFERSON   )

I, Michael P. Earnest, having been duly sworn upon my oath, state that I am President / CEO of Missouri Gas Utility, Inc., that I am duly authorized to make this affidavit on behalf of Missouri Gas Utility, Inc., and that the matters and things stated in the foregoing application are true and correct to the best of my information, knowledge and belief.

Michael P. Earnest  
President / CEO

Subscribed and sworn to before me this 26<sup>th</sup> day of October, 2004.

Franklin W. Taylor  
Notary Public  
FRANKLIN W. TAYLOR

My Commission Expires:

  3/23/2006