

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

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

OEP RESPONSE TO SMNG MOTION TO DISMISS

COMES NOW Ozark Energy Partners, LLC (“OEP” or “Complainant”), by its undersigned counsel, and pursuant to 4 CSR 240-2.080 (15), files this Response to the *Motion to Dismiss, Answer and Affirmative Defenses* filed by Respondent, Southern Missouri Natural Gas (SMNG), on December 19, 2007.

1. SMNG has requested that the Commission dismiss the *Complaint* in this case for failure to state a claim upon which relief may be granted, and for lack of jurisdiction. (*Motion to Dismiss, Answer and Affirmative Defenses*, at page 3.)

2. As discussed further below, no reasonable grounds for dismissal of the *Complaint* before hearing have been presented by SMNG. OEP stands by its *Complaint* in this case, and requests that the Commission set a Prehearing Conference at which a hearing date may be established. As recited in the *Complaint*, the Public Service Commission of Missouri has jurisdiction over the Respondent and the matters at issue. The Commission has general jurisdiction over Respondent as a public utility and a gas corporation pursuant to, *inter alia*,

Section 386.250, RSMo., including all powers necessary or proper to enable it to carry out fully and effectually all its regulatory purposes as provided in Section 386.040 and its general powers under Section 393.140. The Commission has general supervision of Respondent pursuant to Section 393.140, RSMo, including the power to supervise the methods and practices employed by Respondent and to “determine and prescribe ... the just and reasonable acts and regulations to be done and observed” when the Commission determines that Respondent has acted in a way that is unjust, unreasonable, unjustly discriminatory or unduly preferential. Section 393.140 (5), RSMo.

3. In addition, the Commission has jurisdiction to pursue and hear complaints regarding unlawful conduct by gas corporations, such as the instant one against Respondent, pursuant to Sections 386.390 and 386.400, RSMo.

4. The Public Service Commission frequently requires companies under its jurisdiction to disseminate information to the public, as OEP is requesting the Commission to order SMNG to do in the instant *Complaint*. The Commission’s power to “determine and prescribe ... just and reasonable acts” (Section 393.140 (5)) is clearly sufficient to support cease and desist orders and affirmative obligations to disseminate corrections or other information to the public. SMNG’s arguments that the *Complaint* should be dismissed because the relief sought therein is beyond the Commission’s jurisdiction, or fails to state a claim upon which relief can be granted, are specious.

5. SMNG has admitted, of record before the Commission, that it sent out the “Customer Survey 2007” complained of in this case. (*Motion to Dismiss*,

Answer and Affirmative Defenses, at page 2; Case No. GA-2007-0168, T-84, I. 9 – T-85, I. 17, T-155, I. 3.) SMNG has admitted that said “Customer Survey 2007” was sent to customers in at least Branson, Hollister and Branson West. (Case No. GA-2007-0168, T-155, I. 25 – T-156, I. 2.)

6. The mischaracterization by SMNG of its legal and operating status in the proposed service area, as having been awarded an “exclusive franchise” in September 2007, has caused public confusion. (See, *Complaint*, Paragraph 20.) This is true even if the evidence were to prove that SMNG’s choice of words in the “Customer Survey 2007” was “an honest mistake” as asserted by Mr. Maffett of SMNG at hearing in GA-2007-0168.¹ (GA-2007-0168, T-84-85.) OEP knows for a fact that some people returned the “Customer Survey 2007” believing that doing so was helping OEP, having no idea that SMNG was a different company or even who SMNG was. Citizens in the proposed service area may even have interpreted SMNG’s language² as indicating it had received certification from the Public Service Commission.

7. Such public confusion would be further exacerbated if the evidence shows that the “Customer Survey 2007” was disseminated beyond the city limits of Branson, Hollister and Branson West. Discovery, and/or investigation by the Commission Staff, will be needed to ascertain the complete mailing or distribution list utilized by SMNG for purposes of this mailing. However, as admitted by SMNG on the record in GA-2007-0168, it is now known that said “Customer

¹ Mr. Maffett offered no explanation of the reference to “September 2007” in the Customer Survey.

² “In September 2007 Southern Missouri Natural Gas (SMNG) was awarded the exclusive franchise to bring **Natural Gas** into your area.” (From Customer Survey 2007.)

Survey 2007” was received by individuals and businesses in at least Branson, Hollister and Branson West. (GA-2007-0168, T-155, I. 25 – T-156, I. 2.)

8. In addition, the *Motion to Dismiss, Answer and Affirmative Defenses* raises a serious question as to the credibility of SMNG’s explanation, at hearing in Case No. GA-2007-0168, of the allegedly “honest mistake” in its “Customer Survey 2007.” Mr. Maffett testified that, after SMNG “completed the acquisition of Alliance Gas Energy’s assets in June of 2007,” (T-84, II. 20-22) SMNG began “formulating business plans and strategies,” (T-84, II. 22-23) and sought to “find out ... what the response and/or the level of interest [the general public] had in having natural gas and their willingness to convert.” (T-84, I. 24 – T-85, I. 2; See also, *Motion to Dismiss, Answer and Affirmative Defenses*, at page 2.) However, why would SMNG only begin to formulate business plans and strategies, and assess customer interest and willingness to convert to natural gas, *after already having* “completed the acquisition of Alliance Gas Energy’s assets in June of 2007,” (T-84, II. 20-22) rather than prior to deciding whether to acquire Alliance’s assets?

9. Further, the “Customer Survey 2007” was sent out during October 2007. (GA-2007-0168, T-155, II. 20-23.) The SMNG feasibility study, including assumptions concerning customer conversions, had already been filed on or about August 10, 2007. Therefore, as admitted by Mr. Maffett at hearing in GA-2007-0168, the results of the “Customer Survey 2007” would not affect any input into SMNG’s feasibility study or its decision to acquire the assets of Alliance Gas Energy. (GA-2007-0168, T-156, II. 3-20.) The relative timing of these activities

casts serious doubt on the credibility of the reasons stated by Mr. Maffett for the dissemination of the “Customer Survey 2007.” Since SMNG had already acquired Alliance’s assets, *and* filed its feasibility study, before the customer survey was sent out, it seems far more likely that the real reason for the survey was to confuse the public (and public officials) about the status of the competing application of OEP and attempt to create an unfair competitive advantage over OEP in terms of name recognition and apparent presence in the proposed service area.

10. SMNG has also refused to publicly correct the misstatement in its “Customer Survey 2007” concerning its alleged “exclusive franchise” in the area. (Case No. GA-2007-0168, T-156, l. 22 – T-157, l. 1.) This is in spite of the fact that it admits that its statement that SMNG holds an “exclusive franchise” was wrong. (*See, Motion to Dismiss, Answer and Affirmative Defenses*, at page 2.)

11. As stated in the instant *Complaint*, SMNG should be required not only to cease and desist from making any further unfounded claims that it was awarded an “exclusive franchise” in September 2007 (or at any other time), but should also be required to immediately correct the public record concerning its actual legal and operating status. Further, SMNG should be held accountable by the Commission for its misleading public communication, and by acting beyond its legal authority by purporting to have “customers” in an area in which it is not certificated by the Commission, by being assessed statutory fines and penalties, as prayed in the *Complaint*.

WHEREFORE, Complainant, Ozark Energy Partners, LLC, respectfully requests that the Commission issue an Order:

(A) Taking official notice of the transcript of Case No. GA-2007-0168, or at least the portions cited hereinabove;

(B) Denying SMNG's Motion to Dismiss the instant *Complaint*; and

(C) Setting a Prehearing Conference in this case for the purpose of establishing a date for hearing.

Respectfully submitted,

/s/ William D. Steinmeier

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COUNSEL FOR COMPLAINANT
OZARK ENERGY PARTNERS, LLC

Dated: December 28, 2007

Certificate of Service

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov) and counsel for Southern Missouri Natural Gas, on this 28th day of December 2007.

/s/ William D. Steinmeier

William D. Steinmeier