

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 9th  
day of April, 1996.

In the matter of the application of Southern )  
Missouri Gas Company, L.P., a proposed Missouri )  
limited partnership, for authority to acquire, )  
control, and merge with Tartan Energy Company ) CASE NO. GM-96-175  
of Missouri, L.C., d/b/a Southern Missouri Gas )  
Company, L.C., a Missouri limited liability )  
company. )

ORDER APPROVING MERGER

On November 27, 1995, Tartan Energy Company of Missouri, L.C.,  
d/b/a Southern Missouri Gas Company, L.C. (Tartan) and Southern Missouri  
Gas Company, L.P. (SMG) filed a joint application pursuant to Section  
393.190, RSMo 1994, and 4 CSR 240-2.060(6), seeking authorization of the  
Missouri Public Service Commission (Commission) to merge Tartan into SMG,  
with SMG being the surviving entity. Tartan's predecessor, Tartan Energy  
Company, L.C., d/b/a Southern Missouri Gas Company, L.C. (TEC), with which  
Tartan merged in Case No. GM-96-61, was granted certificates of convenience  
and necessity to serve 15 communities and certain unincorporated areas in  
southern Missouri, pursuant to Case Nos. GA-94-127 and GA-95-349.

Tartan is a limited liability company organized under the laws  
of Missouri with its principal place of business located at 301 East 17th  
Street, Mountain Grove, Missouri 65711, and is a gas corporation and public  
utility as defined in Section 386.020(16) and (32), RSMo 1994, and as such  
is subject to the jurisdiction of the Commission. SMG is a proposed  
Missouri limited partnership proposed to be formed on the effective date  
of the merger, and as the surviving entity will become a gas corporation  
and public utility subject to the jurisdiction of the Commission.

The purpose of the joint application is to change the ownership and structure of the public utility serving the service area approved in Case Nos. GA-94-127 and GA-95-349, through the merger of Tartan into SMG, and to expand the equity owners to include MCN Corporation, Torch Energy Marketing, Inc., and Tartan Management Company of Missouri, L.C. (collectively SMG Partners). Following the merger, Applicants state that SMG will have improved access to capital markets, and SMG will adopt and operate under the rates, terms, and conditions of the tariffs of Tartan and otherwise abide by all the terms and conditions of the certificates of convenience and necessity granted in Case Nos. GA-94-127 and GA-95-349, and GM-96-61.

Applicants explain in the joint application that MCN Corporation (MCN) is a public utility holding company exempt from all the provisions of the Public Utility Holding Company Act (PUHCA) except for Section 9(a)(2) of the Act. MCN owns other gas utility companies, and as of December 31, 1994, had consolidated total assets of approximately \$2.2 billion, including utility assets in excess of \$1 billion. Torch Energy Marketing, Inc. (TEMI) is a wholly-owned subsidiary of Torch Energy Advisors Incorporated (TEAI), which is in turn a wholly-owned subsidiary of United Investors Management, Inc., which is owned by Torchmark Corporation, a public company. TEMI's parent company, TEAI, is a registered investment advisor specializing in the acquisition and management of oil and gas assets, and provides a full range of engineering, geological, geophysical, production, land, legal, product marketing, tax, insurance, environmental, and financial services. In addition, TEAI actively manages three publicly traded entities, two exploration and production companies and a royalty trust. Applicants state that TEMI will bring expertise in gas gathering to SMG, and that the synergies created

between TEMI and SEMG will be beneficial to SMG's customers. Tartan Management Company of Missouri, L.C. (Tartan Management) is a Missouri limited liability company wholly-owned by three individuals, Tom M. Taylor, Michael N. Trusty, and James K. Boyles. Tartan Management has entered into an agreement with Tartan to provide for the construction, management, and long-term operation of the Tartan distribution system.

In addition, Applicants claim that the proposed merger is not detrimental to the public interest because SMG will adopt and operate under the existing approved rates, rules, and regulations of Tartan, and SMG will be fully regulated by the Commission. Applicants add that the merger will not result in any reduced level of service or reliability for Missouri customers. A copy of the proposed plan of corporate merger is attached to the application as Exhibit A. The balance sheets of Tartan and SMG showing the results of the merger pursuant to the agreement are attached to the application as Exhibit D. Applicants state that certified copies of the resolutions of the board of directors for Tartan and SMG will be late-filed as Exhibit C.

The Staff of the Missouri Public Service Commission (Staff) filed a memorandum containing its recommendations on February 20, 1996. Staff's recommendation states that the effect of the proposed merger is to change the ownership and structure of Tartan and to expand the equity owners to include MCN, TEMI, and Tartan Management. Staff indicates that Applicants claim the merger is beneficial because ownership by the SMG partners will allow SMG improved access to capital markets under better terms and conditions than is available to Tartan without the merger. Additionally, expansion of the equity ownership to include MCN will strengthen the existing management's ability to provide efficient construction and operation as a public utility. In addition, Staff states

that it has reviewed the application for compliance with Commission rules. Staff notes that a certified copy of the resolution of the board of directors for each Applicant must still be provided. Staff also states that it believes it is reasonable to waive the requirement of filing a pre-merger balance sheet and income statement for SMG, as SMG has not yet been formed. SMG Partners propose to form the partnership on the effective date of the merger. In addition, balance sheets and income statements have been provided for Tartan prior to the merger, and for SMG following the merger. Staff also notes that the pro forma merged capital structure of SMG will not change from Tartan's pre-merger capital structure, and no impact is expected on the tax revenues of the state of Missouri.

Staff has no objection to the merger request, as it does not perceive any detriment to customers pursuant to the request. Staff therefore recommends that in the event the Commission approves the merger, the Commission include the following in its order: (1) order SMG to file an adoption notice adopting the existing tariff of Tartan; (2) order that all records pertaining to this merger be made available to the Staff at the next rate proceeding; and (3) order that a certified copy of the resolution of the board of directors of each Applicant be submitted to the official case file as soon as practicable. Staff further recommends that the merger become effective concurrent with the adoption notice tariff sheet.

The Commission has received no requests for intervention in this proceeding, and no party to this case has requested a hearing. Thus, the Commission concludes that no hearing is necessary in this case, and will base its decision upon the verified application and attachments, and the recommendation of Staff. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo App. 1989).

Upon review of the verified application and attachments thereto, and Staff's recommendation, the Commission finds that the proposed merger will allow the surviving entity, SMG, to strengthen its financial position, and thus provide more stable operation as a public utility. The Commission also finds that while the ownership and structure of Tartan will change, no other changes are expected from the proposed merger. However, while the Commission has no objection to the actual merger itself, the method chosen by Applicants to accomplish the merger presents serious logistical difficulties.

Ordinarily the Commission would, as recommended by Staff, approve the merger to become effective concurrent with the effective date of either an adoption notice tariff sheet or new tariff. In addition, the Commission would customarily either cancel the old certificate and grant a new certificate, or transfer the old certificate -- depending upon circumstances -- with the effective date of the cancellation, grant, or transfer to be concurrent with the effective date of the adoption notice or new tariff. Under usual circumstances, a proposed merger will involve either a certificated company or a noncertificated company, but in any event an entity which is already in legal existence.

In this case the Applicants propose to form SMG on the effective date of the merger. Thus, the Commission notes that to the extent SMG purports to be a joint applicant in this proceeding, it does so as a nonexisting entity with no legal standing. The core of the problem is that if SMG is not formed until the effective date of the merger, there will be a gap during which neither entity could legally provide service to customers. This is so because Tartan will no longer exist as an entity after the merger, and SMG will not have an appropriate tariff on file with the Commission, as it would be impossible to have SMG's tariff filed,

reviewed by Staff, and approved by the Commission on the same day. Likewise, it is not possible for SMG to file an adoption notice prior in time to the effective date of the merger, since this is also the date of its creation as an entity, and it is not appropriate for a nonentity to file tariffs with the Commission.

The Commission therefore finds that it cannot approve the proposed merger as it is currently designed to be implemented. Rather, the Commission finds that it can and will approve the merger only upon the following conditions:

1. The proposed Missouri limited partnership known as SMG must be formed and must exist in the State of Missouri prior to the merger.
2. That after the formation of SMG and prior to the merger, SMG shall forthwith submit to the Commission a certified copy of its partnership agreement.
3. That after the formation of SMG and prior to the merger, SMG shall forthwith file an adoption notice adopting the existing tariff of Tartan. The adoption notice shall contain an effective date concurrent with the planned date of the merger, and the adoption notice shall be filed at least fifteen (15) days in advance of the planned date of merger.

The Commission determines that the conditions listed above are necessary and appropriate to protect the public interest. The Commission finds that the proposed merger, as modified by the conditions contained in this order, is not detrimental to the public interest. In the event the merger proceeds under the aforesaid conditions, the Commission further finds that the certificates of convenience and necessity granted to Tartan in Case Nos. GA-94-127, GA-95-349 and GM-96-61 should be transferred to the surviving entity, SMG, subject to all of the terms and conditions applicable to those certificates, including, but not limited to, the terms of the Stipulation and Agreement approved in Case No. GA-94-127.

**IT IS THEREFORE ORDERED:**

1. That Tartan Energy Company of Missouri, L.C., d/b/a Southern Missouri Gas Company, L.C. shall forthwith file a certified copy of the resolution of its board of directors authorizing the proposed merger.

2. That the application for approval of the proposed merger of Tartan Energy Company of Missouri, L.C., d/b/a Southern Missouri Gas Company, L.C. with and into Southern Missouri Gas Company, L.P., with Southern Missouri Gas Company, L.P. as the surviving entity, is hereby approved, subject to the conditions set forth in the body of this order, and in the remaining ordered sections.

3. That the proposed Missouri limited partnership of Southern Missouri Gas Company, L.P. shall be formed as a legal entity in the State of Missouri sufficiently in advance of the planned date of merger to enable it to comply with the remaining ordered paragraphs.

4. That after Southern Missouri Gas Company, L.P. has formed as a legal entity, it shall forthwith file a certified copy of its partnership agreement with the Commission.

5. That after Southern Missouri Gas Company, L.P. has formed as a legal entity, it shall forthwith file an adoption notice adopting the existing tariff of Tartan Energy Company of Missouri, L.C., d/b/a Southern Missouri Gas Company, L.C. The adoption notice shall contain an effective date concurrent with the planned date of merger, and the adoption notice shall be filed at least fifteen (15) days in advance of the planned date of merger.

6. That the certificates of convenience and necessity granted to Tartan Energy Company of Missouri, L.C., d/b/a Southern Missouri Gas Company, L.C. in Case Nos. GA-94-127, GA-95-349, and GM-96-61 shall be

transferred to Southern Missouri Gas Company, L.P., subject to all the terms and conditions of those certificates, including, but not limited to, the terms of the Stipulation and Agreement approved in Case No. GA-94-127, as of the effective date of the adoption notice required to be filed in Ordered Paragraph 5 above.

7. That Southern Missouri Gas Company, L.P. shall file a pleading with the Commission indicating the date the merger was completed, within ten (10) days after the completion of the merger.

8. That all records pertaining to this merger shall be made available to the Staff of the Missouri Public Service Commission during the next rate proceeding.

9. That the effective date of the authority to merge granted in Ordered Paragraph 2 above shall be concurrent with the effective date of the adoption notice required to be filed by Ordered Paragraph 5 above.

10. That this Order shall become effective on April 19, 1996.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe,  
Crompton, and Drainer, CC., Concur.