

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Ozark Natural Gas Co., Inc.,)
For a Certificate of Public Convenience and)
Necessity to Create a New Natural Gas Utility)
to Serve Branson, Missouri, and Surrounding)
Communities.)

CASE NO. GA-96-264

REPORT AND ORDER

Issue Date: September 24, 1996

Effective Date: October 4, 1996

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APPEARANCES: **Charles J. Fain**, Attorney at Law, 118 1/2 South
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 For: Staff of the Missouri Public Service Commission.

Administrative Law Judge: Elaine E. Bensavage.

REPORT AND ORDER

Procedural History

On February 9, 1996, Ozark Natural Gas Co., Inc. (Ozark) filed an application pursuant to Section 393.170, RSMo 1994, for a certificate of convenience and necessity authorizing it to construct, own, and operate an intrastate natural gas pipeline and gas distribution facilities to serve Stone and Taney Counties and a portion of Christian County, Missouri. Ozark specifically seeks to serve the cities and villages of Branson, Hollister, Highlandville, Reeds Spring, Branson West (formerly Lakeview), Kimberling City, Bull Creek Village, Merriam Woods, Rockaway Beach, and Forsyth. The application included a number of exhibits designed to comply with 4 CSR 240-2.060(2). On February 16, 1996, the Missouri Public Service Commission (Commission) issued an Order And Notice, giving notice of Ozark's application and setting an intervention deadline of March 6, 1996.

On February 29, 1996, Williams Natural Gas Company (Williams) filed a timely request for intervention, which was granted by Commission order on March 11, 1996. Applications for intervention were filed out of time by Conoco Inc. (Conoco), Missouri Gas Energy, a division of Southern Union Company (MGE), and City Utilities of Springfield, Missouri (CU). Conoco's application was granted on the record at the early prehearing conference held on March 13, 1996. The application by MGE and CU was granted by Commission order on March 29, 1996. On March 26, 1996, the Commission issued an Order Establishing Procedural Schedule, which scheduled the hearing for June 24, 1996 through June 26, 1996.

On May 24, 1996, Conoco filed a Motion To Compel Response To Discovery Requests and a Motion For An Extension Of Time For Filing Testimony And Request For Additional Prehearing Conference. In response,

the Commission issued its Order Concerning Motion To Compel And Motion For Extension Of Time on June 4, 1996. As a result of the discovery dispute, the Commission's order extended the time for Conoco to file its rebuttal testimony, among other things, and modified the procedural schedule. However, the hearing dates remained the same. On June 14, 1996, Ozark and MGE filed a Stipulation And Agreement And Joint Recommendation, which apparently addressed MGE's concerns in this proceeding. On June 17, 1996, the Staff of the Missouri Public Service Commission (Staff) filed a Motion For Protective Order, which was granted on June 20, 1996.

On June 18, 1996, Staff filed a Motion To File Supplemental Rebuttal Testimony, stating that it had received some new information from Ozark at the prehearing conference held on June 13, 1996, and that it perceived a need to respond to this new information. On June 19, 1996, Ozark filed a Motion To File Surrebuttal Testimony Out Of Time, stating that all the information and data needed to address the various issues could not be obtained by Ozark in time to prepare and file its surrebuttal testimony on June 17, 1996. Both motions were granted on the record on June 24, 1996, prior to the commencement of the hearing. However, because of the lateness of Ozark's surrebuttal testimony, Ozark was instructed to have the witness sponsoring this testimony testify on the second day of hearing, in order to give Staff an opportunity to review the testimony, and Conoco was allowed to reserve the right to present live rebuttal testimony to Ozark's late-filed surrebuttal testimony, although it ultimately did not do so.

On June 24, 1996, a hearing was commenced on all matters respecting Ozark's application, and concluded on June 26, 1996. Subsequently, a briefing schedule was established, and simultaneous initial and reply briefs were filed by the parties.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

Ozark Natural Gas Company, Inc. is a corporation duly organized and existing under the laws of the State of Missouri, with its principal place of business located at 2584 State Highway 165, Branson, Missouri 65616. Ozark plans to construct, own, and operate an intrastate natural gas pipeline and distribution system in Southwest Missouri, and will therefore do business as a public utility in the State of Missouri.

Ozark intends to lay approximately 38.4 miles of 8-inch steel pipe from its point of interconnection with Williams Natural Gas Company's pipeline, along with 14 miles of smaller steel laterals and over 140 miles of additional polyethylene laterals. From its interconnect at Keene, near the intersection of Campbell Street and Weaver Road in Springfield, Ozark's pipeline will traverse two miles through Greene County and will proceed south along Highway 160 to Reeds Spring Junction. At that point the pipeline will leave the highway and follow country roads, power lines, and the Roark Creek Valley to Branson.

Ozark intends to construct the transmission and distribution facilities simultaneously, and plans to begin serving a major portion of the projected commercial and large general customers approximately five months after the commencement of construction. The estimated cost of the project is approximately \$18.5 million over a period of five years. Customer conversions are estimated at 65 percent of all residential customers contacted and 75 percent of all commercial customers contacted, by the end of the fifth year. Ozark submitted an economic analysis package which included more detailed information on the estimated building costs,

operation and maintenance expenses, conversion estimates, projected volume levels, and proposed rates.

In general, Staff and Conoco oppose the issuance of any certificate to Ozark, whether conditional or otherwise, while Williams supports the issuance of a conditional certificate. The Office of the Public Counsel (OPC) and MGE take no position on whether a certificate should be issued to Ozark, with the exception that MGE's neutrality is conditioned upon acceptance of the stipulation between Ozark and MGE. CU does not in principle object to the grant of a certificate to Ozark, but it is concerned that any certificate be conditioned on the ability of Ozark to provide service to its customers without adversely affecting the capacity and pressure needed on Williams' pipeline in order for CU to serve its own customers.

The criteria used in evaluating certificate applications can be generally found in Commission Rule 4 CSR 240-2.060(2) and in *In Re Intercon Gas, Inc.*, 30 Mo. P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several earlier certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. *Id.*

(1) Need For Service

Testimony was presented that there are no regulated natural gas suppliers in the area proposed to be certificated. Fuel sources are propane, electricity, fuel oil, and solid fuels, including wood. Propane

is the fuel source most similar to natural gas and is unregulated by the Commission.

With the exception of Conoco, none of the parties contest the need for this service. Conoco's premise is that since propane is available throughout the proposed service area, no need for natural gas exists. In support of its premise, Conoco argues that propane is as clean as natural gas and more efficient. It claims that natural gas prices are less stable than propane prices, and use of propane has other "advantages," such as on-site storage. In the first instance the Commission notes that the Missouri Court of Appeals has held that "[t]he term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost." *State ex rel. Intercon Gas v. Public Service Comm'n*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993). The Commission thus finds it unnecessary to debate the relative merits of natural gas and propane as fuel sources.

As a general policy, the Commission has encouraged the spread of natural gas throughout the State of Missouri. See *In Re the Application of UtiliCorp United, Inc. d/b/a Missouri Public Service*, 3 Mo. P.S.C.3d 127 (1994); and *In Re the Application of Tartan Energy Co., L.C. d/b/a Southern Missouri Gas Co.*, 3 Mo. P.S.C.3d 173 (1994). "Natural gas is a preferred energy source for both economic and environmental reasons, and Missouri is fortunate to be geographically located near several natural gas producing states. The Commission deems it to be in the long-term public interest of . . . the entire State of Missouri to encourage the availability of natural gas." *Tartan*, 3 Mo. P.S.C.3d at 191.

Finally, the Commission notes that the advent of natural gas has been considered a mark of progress for over a quarter of a century.

In an appeal of the award of a certificate of convenience and necessity to a natural gas distributor by distributors of liquefied petroleum gas (a fuel very similar to propane), the Court of Appeals declared that the Commission properly rejected the contention that the certificate be conditioned upon the natural gas distributor relieving the liquefied petroleum gas distributors of their financial loss. "LPG must give way to natural gas just as the mule breeding business vanished upon the advent of the farm tractor and truck; just as wood stoves gave way to LPG. Such casualties are the price paid for 'progress'." *State ex rel. Webb Tri-State Gas Co. v. Public Service Comm'n*, 452 S.W.2d 586, 588 (Mo. App. 1970).

(2) Applicant's Qualifications

Little or no evidence was presented refuting the qualifications of Ozark to provide the proposed service. No serious challenge was made to the accuracy of Ozark's analysis of the overall cost of the project, nor to the engineering design and technical requirements of the project.

Ozark is currently owned by Industrial Gas Services, Inc. (IGS), Pipeline Solutions, Inc. (PSI), and Gateway Pipeline Company (Gateway). Mr. Robert J. Oxford is the chairman of the board and president of IGS. Mr. Oxford is an engineer with a degree in petroleum engineering, and has worked in the energy field for approximately 40 years. At various times he worked for Socony Mobile Oil Company and McCulloch Oil Corporation, before forming the predecessor of IGS in 1971. While with McCulloch Oil, Mr. Oxford developed experience operating an intrastate gas system in northeast Wyoming, which involved the construction of a pipeline through rural, hilly terrain, much like the terrain in Ozark's proposed service area. Subsequently, Mr. Oxford was involved in building various

pipeline systems through IGS. In addition to his position with IGS, Mr. Oxford is also chairman of the board and president of Ozark.

Mr. Steven Shute holds a degree in electrical engineering, and is a registered professional engineer in three states. Mr. Shute specializes in small, rural natural gas utilities through his consulting firm, PSI. Previously Mr. Shute worked for 14 years in varying technical and executive capacities with the pipeline division of Conoco Inc. and with KN Energy, Inc., a large regional gas transmission and distribution utility. In his last position with KN Energy, Mr. Shute was general manager of its Rocky Mountain Natural Gas subsidiary, which serves about 30,000 customers in several resort communities of western Colorado. Through PSI Mr. Shute has been involved in the formation of small new gas utilities. Currently Mr. Shute is an officer and shareholder in Ozark.

Mr. J. Q. Delap, Jr., holds a bachelor of science degree in mechanical engineering, and a master of business administration degree. At various times in his career Mr. Delap worked for Panhandle Eastern Pipeline Company, Anadarko Production Company, Farmland Industries, and LEDCO, Inc. Currently Mr. Delap is president of Gateway, which is a diversified energy company involved primarily in the acquisition, ownership, and operations of natural gas gathering, delivery, and transmission systems, and in the production and marketing of natural gas.

While Conoco does not dispute the experience of Ozark's owners in the natural gas industry and their qualifications to construct and operate the proposed facilities, it does indirectly question several aspects of Ozark's qualifications. Since the majority equity ownership of Ozark has not yet been determined, Conoco questions whether Mr. Oxford or Mr. Shute -- both of whom Conoco concedes are qualified -- will actually manage or operate the company. In addition, Conoco contends that security

of gas supply and transportation are technical qualifications which must be demonstrated, and claims that Ozark has not done so. Both of these propositions may be more appropriately discussed in the Commission's consideration of Ozark's financial ability and the economic feasibility of the proposal.

Finally, Conoco questions Mr. Oxford's qualifications to oversee Ozark's gas supply procedures. The Hearing Memorandum indicates that Ozark agreed to comply with Staff's recommendation concerning the employment of an individual to oversee Ozark's gas supply policies on a full-time basis. Ex. 1, p. 3. At the hearing Mr. Oxford indicated that he would perform these duties. Conoco asserts that Mr. Oxford's experience does not include the technical aspects of negotiating a firm gas supply. However, Conoco's citation to the record does not adequately support this contention.

The Commission finds that Ozark possesses the necessary knowledge of the natural gas utility industry, as well as the requisite technical requirements regarding engineering, safety, gas acquisition, and so forth. Thus, Ozark has shown that it is qualified to provide the proposed service.

(3) Applicant's Financial Ability

The cost of Ozark's project is estimated to be between \$18.5 million and \$25 million, with the latter figure representing later extensions to serve the entire certificated area. Ozark proposes a financing structure of 70 percent debt and 30 percent equity, and estimates a 9.5 percent per annum interest rate on debt and a 12.5 percent return on equity. Ozark is currently owned by IGS, PSI, and Gateway. IGS has an 11.5 percent interest in Ozark, PSI has an 8.5 percent interest, and Gateway has an approximate 20 percent interest. IGS and PSI intend to make

their equity commitment in the form of services rather than cash. Originally Gateway proposed to contribute all or substantially all of the equity funds, which would have given it an 80 percent ownership interest in Ozark. Gateway now proposes to contribute \$1.5 million of the necessary equity funds.

The only evidence presented regarding Gateway's financial wherewithal was based on a February 1995 consolidated annual report for Gateway and its parent corporation, Gateway Energy Corporation (Gateway Energy), which showed a maximum credit line of \$500,000 and liquid assets of \$338,000. Gateway Energy is currently restructuring how debt and equity is provided to it, as a result of restricted cash flow due to the preeminence of preferred stock in its capital structure. Gateway's proposed \$1.5 million contribution represents approximately 20 to 30 percent of Ozark's total equity. Approximately 55 to 65 percent of the equity interest in Ozark is currently available to other equity investors.

Both Staff and Conoco claim that Ozark has not sufficiently demonstrated that it has the financial ability to provide the proposed service. Staff and Conoco, either individually or collectively, find fault with a number of aspects of Ozark's plans for debt and equity financing. Ozark, in contrast, argues that it is unable to complete the debt and equity financing for the proposed project until after the Commission has granted a certificate to it. The Commission finds that it is not necessary to separately address each contention raised by Staff or Conoco, since the main contention of both parties emphasizes the lack of equity financing.

Staff witness David P. Broadwater testified that the ratio of 70 percent debt to 30 percent equity represents the minimum percentage of equity Staff could recommend. He testified that Staff could accept the issuance of a conditional certificate with respect to the issue of debt

financing, so long as the Commission also required Ozark to file a formal financing application with respect to the debt financing. However, Mr. Broadwater consistently testified that Staff could not recommend issuance of even a conditional certificate without knowing who the equity owners of Ozark would be, and without having an opportunity to review the financial positions of those equity owners.

The Commission has grave reservations about Ozark's financial ability with respect to this project. Unlike an established, publicly-traded utility, for which financial information would be available, Ozark has no resources of its own and cannot be judged on its own merits. It must be judged by the people and entities behind it. Currently the stakeholders who will own a majority and controlling equity interest in Ozark are unknown, and thus cannot be evaluated.

The Commission is less concerned about Ozark's acquisition of debt financing, since a requirement that Ozark file a financing application would give Staff an opportunity to review Ozark's arrangements for debt financing. However, the Commission is still concerned about the lack of information with respect to the unknown equity owners. Just as a financial institution would want to know who the owners and management of a company are before lending it funds, the Commission must know who the owners of a company will be before the company is granted a certificate. Thus, the Commission finds that Ozark has not adequately demonstrated its financial qualifications.

(4) Economic Feasibility of Proposal

Numerous points have been raised by the parties regarding the feasibility of Ozark's proposal. The main issues, which have been raised either individually or collectively by Staff and Conoco, may be described as follows: (A) Ozark has not obtained the necessary franchises; (B)

Ozark's conversion estimates are unrealistically high; (C) Ozark's use of "levelized" rates is inappropriate; (D) Ozark lacks a guarantee of adequate minimum delivery pressure; and (E) Ozark lacks adequate firm transportation capacity. CU is concerned primarily that Ozark has firm transportation capacity sufficient to avoid any negative impact on CU's ability to obtain adequate gas transportation from Williams for its own needs.

(A) Franchises. In its application, Ozark proposes to serve ten communities, but has provided verification of the receipt of franchises from only four communities: Branson, Hollister, Bull Creek Village, and Forsyth. Staff and Conoco both claim that the Hollister franchise is invalid on its face, since the franchise states that failure of Ozark to apply for a certificate within one year of the voter ratification of the franchise will render the franchise null and void. Conoco also claims that Ozark has failed to comply with a specific requirement in the Branson franchise, and that Ozark's attempt to renegotiate a provision in the Branson franchise would require that a new election be held. Staff also contends that the Commission should not give a certificate to a company until the company has obtained the necessary franchises.

In *In Re the Application of Tartan Energy Co., L.C. d/b/a Southern Missouri Gas Co.*, 3 Mo. P.S.C.3d 173 (1994), Tartan amended its original application and deleted references to five communities which had not granted it a franchise. The company subsequently filed a separate application for a second certificate to serve these five omitted communities. In *In Re the Application of Tartan Energy Co., L.C. d/b/a Southern Missouri Gas Co., L.C.*, No. GA-95-349, Order Granting Certificate of Convenience and Necessity (Mo. P.S.C. Sept. 13, 1995). The five

additional communities represented approximately eight percent of the company's originally projected load. *Id.* at 3. Consequently Tartan was able to demonstrate in its original certification application that it had obtained franchises for ten of the originally proposed fifteen communities, representing the bulk of its projected load. Thus, the omitted communities did not substantially affect the feasibility of the project. Tartan was, however, granted a conditional certificate in that case with respect to one community which issued a franchise that had not yet been ratified by the voters.

In contrast, as of the close of the hearing, Ozark had obtained franchises from only four of the ten proposed communities for which it seeks a certificate. The record indicates that ratification elections were scheduled for two additional communities in August, 1996. Section 393.170.2, RSMo 1994, and 4 CSR 240-2.060(2)(H)1 require that information regarding the receipt of the requisite franchises be filed with an application for a certificate. Thus, it appears Ozark's application was filed prematurely. Nevertheless, the Commission finds that the franchise issue is not dispositive. Rather, the Commission finds that it could at a minimum issue a conditional certificate for service to the communities of Branson, Hollister, Bull Creek Village, and Forsyth, as well as the communities of Reeds Spring and Branson West, which had voter ratification elections scheduled for August, 1996. In addition, with respect to the specific deficiencies claimed regarding the Branson and Hollister franchises, the Commission simply notes that it has no authority to adjudicate the validity of a franchise. *State ex rel. Electric Company of Missouri v. Atkinson*, 275 Mo. 325, 204 S.W. 897, 898 (banc 1918). Thus, the Commission finds that the lack of franchises for all of the requested

communities does not require the Commission to deny Ozark's application in its entirety.

(B) Conversion Estimates. Conoco contends that Ozark's conversion estimates are unrealistically high, which could negatively impact the overall feasibility of the project. Staff witness Randy Flowers testified that Ozark's estimate of potential customers is reasonable, and its conversion estimates are optimistic but reasonable. Mr. Flowers also testified that based on his familiarity with other natural gas projects in the State of Missouri, the low end of conversions has been 40 to 50 percent, with the high in the mid-90s, but added that there were some unusual circumstances involved with the project which had the lowest conversion rates.

The Commission finds that Ozark's conversion estimates are reasonable, and notes that the estimates are actually lower than other estimates approved by the Commission in prior cases. Conoco has not shown that conversion estimates for other natural gas projects in Missouri have been shown to be wrong, nor has it presented any evidence that Ozark's conversion estimates are unrealistic. The Commission also points out that Ozark has not included any growth factor in its calculation of customer loads, even though the requested certificated area has experienced rapid growth in the recent past. Thus, even if Ozark's actual conversion rates are somewhat lower than estimated, it is still likely that Ozark will acquire the load it has projected as the basis of the feasibility of the project.

(C) Levelized Rates. Conoco opposes the use of what it terms "levelized rates." Ozark designed its initial rates to be value-based and competitive with other energy sources available in the requested certificated area. Conoco asserts that these rates are unrealistically

low, and will result in a "death spiral," where the project begins to collapse as rates are raised higher to cover the cost of service. Conoco further alleges that Ozark has not even attempted to determine its actual cost for providing the proposed gas service.

It is difficult to calculate cost-based rates for a start-up company, since the actual costs are not and cannot be known with any certainty until the company is operating. The question is whether the cost estimates and initial rates are reasonable. Staff did not dispute either of these, and Conoco has presented no independent evidence that Ozark's estimated costs or initial rates are unreasonable. As a practical matter, it is inevitable that some people will convert at an earlier point in time than others. The early converters enable the system to get up and running as quickly as possible, thus making future conversions more economic and efficient. It is important to the overall feasibility of the project that momentum be established as quickly as possible. The overall feasibility of a project such as this is based on estimated costs and revenues over a period of years. The mere use of value-based rates as initial rates is insufficient, without more, to demonstrate that a proposed natural gas project is not feasible.

(D) Minimum Delivery Pressure. Ozark intends to take delivery of natural gas from Williams at the Keene Town Border Station, near the intersection of Campbell Street and Weaver Road. The Keene Station is approximately five miles downstream from the Hazeltine/Weaver Road Town Border Station, the point at which Williams has guaranteed gas deliveries at 400 psig to CU. Ozark testified that it believed it would receive a minimum pressure of 250 pounds based on correspondence with Williams, but admitted that there was no guarantee or commitment on the part of Williams to maintain pressure at 250 pounds.

Staff witness Warren Wood testified that the absolute minimum level of pressure needed by Ozark is 190 psig. In the event Ozark took delivery upstream of the Hazeltine/Weaver Road Town Border Station, Ozark would effectively have a guarantee of 400 psig, since Williams is required to provide this pressure level to CU at Hazeltine/Weaver. Ozark testified that it had not decided to change the location of its interconnect with Williams upstream of Hazeltine/Weaver. Ozark explained that to do so would add an additional \$160,000 to the cost of the project to add an approximate 9.3 miles of line cross-country, and to pay for the pipe, ditch lay, backfill, and right-of-way.

The agreement between CU and Williams is not a blanket guarantee of 400 psig minimum delivery pressure at all times, but contains a number of conditions. The 400 psig guarantee is contingent upon the following conditions: (1) that CU not exceed its total maximum daily transportation quantity (MDTQ); (2) that CU take 40,000 decatherms of its peak load from NorAm, unless that requirement is waived by Williams; (3) that all the quantities CU has nominated are received; (4) that CU give at least an hour's notice if it is going to make a significant increase in its load; and (5) that CU's load not exceed 5,700 decatherms an hour. In addition, the agreement between CU and Williams contains an attachment which states that, in the event CU meets the first four requirements mentioned above, Williams agrees to use every reasonable effort to maintain minimum hourly pressure of 260 psig at maximum hourly deliveries of five percent of CU's contracted MDTQ. The attachment goes on to state that Williams' facilities are not designed to be able to make hourly deliveries of five percent of CU's MDTQ at a minimum pressure of 260 psig under all circumstances. Under certain conditions, Williams will only be able to

provide the five percent of CU's MDTQ at 260 psig for a very limited period (and then only from linepack).

Staff witness Wood testified that the CU pressure guarantee is 260 psig if CU is taking more than 1/24th of its daily allowance, which would not be an unreasonable occurrence during peak hours. He further testified that, based on Williams' model, at 260 psig there are pressure drops high enough to come close to the margin of Ozark's needs, and added that the pressure could drop well below 260 psig. Ozark witness Steven Shute testified that he was unaware of the provisions of the contract between CU and Williams, including the provision detailing the circumstances under which the minimum delivery pressure would be 260 psig rather than 400 psig.

The Commission finds the evidence regarding Ozark's ability to receive gas delivery at adequate minimum pressures is equivocal at best. While Williams claims in its briefs that delivery pressure to Ozark will be adequate, the Commission is not reassured by Williams' apparent unwillingness to guarantee that Ozark will receive a minimum pressure of 190 psig at the Keene Town Border Station. The Commission is reluctant to issue a certificate where there is a distinct possibility that the company requesting certification will not be able to receive gas at minimum pressures adequate to serve its customers. The Commission finds that a certificate should not be issued to Ozark unless it can show either that it has received some type of formal assurance or guarantee from Williams that a minimum delivery pressure of 190 psig will be maintained at the Keene Town Border Station, or that Ozark has relocated its delivery point upstream of the Hazeltine/Weaver Road Town Border Station.

(E) Firm Transportation Capacity. Ozark's proposal is unusual in that the pipeline with which Ozark seeks to interconnect has no firm

transportation capacity available to move gas to Ozark's delivery point. The area in which Ozark seeks to interconnect has historically been somewhat of a bottleneck with respect to Williams' facilities in the area. While Williams is in the process of constructing a Springfield extension, all firm capacity is fully subscribed on that extension, and only interruptible service is available. In order to obtain delivery in Springfield, Ozark would need to acquire released firm capacity in the market area from one of eight shippers which hold firm capacity between Saginaw and Springfield. The only alternative to released firm capacity is a further extension of Williams' facilities in the area.

The evidence presented by Ozark on the availability of released firm capacity is sketchy at best, and does not demonstrate that Ozark could obtain firm transportation capacity sufficient to meet the needs of its customers. Ozark presented some evidence regarding the existence of three potential providers of released firm capacity. However, Ozark's witness Oxford testified that he did not know for sure whether one of the three, PanEnergy, a marketer, is even a shipper. He also testified that he did not know how much firm transportation capacity the three potential suppliers of released firm capacity currently subscribe to, did not know the specific delivery and receipt points for each supplier, and, with one exception, did not know how much of the suppliers' capacity is currently committed to serve the needs of existing customers. There was also evidence that two of the three potential suppliers, PanEnergy and Summit Energy, are not shippers over the Saginaw to Springfield route. The Commission finds that the evidence is insufficient to support a finding that Ozark could obtain released firm capacity adequate to meet its needs.

Evidence was also presented regarding the possibility of an extension of Williams' facilities in the area. This extension was referred

to as the Southwest Missouri expansion. Ozark presented evidence that it had entered into a Precedent Agreement with Williams. The Precedent Agreement is essentially an agreement to execute a firm transportation service agreement within 15 days after a number of conditions precedent have been fulfilled. The Precedent Agreement contemplates that Williams will obtain the necessary certificates from the Federal Energy Regulatory Commission (FERC) to build both the Springfield expansion and the Southwest Missouri expansion. CU's witness Ms. Cathleen F. Meyer testified that if both the Springfield expansion and Southwest Missouri expansion are completed, CU's concerns about the quality of service from Williams to CU will be alleviated, even if Ozark takes the load that it has contracted for under the Precedent Agreement. Thus, it is clear that if both the Springfield expansion and Southwest Missouri expansion go through, Ozark will have available to it the necessary firm transportation capacity. .

Notwithstanding the existence of the Precedent Agreement, there are a number of uncertainties as to whether the matters contained in the agreement will reach fruition. The Precedent Agreement is conditioned upon Williams obtaining similar Precedent Agreements from other parties. Williams has sole discretion to terminate the Precedent Agreement if it determines the Southwest Missouri expansion is or will become uneconomical, even if it has already applied for FERC approval. At the time of the hearing, no internal decision had been made by Williams to proceed with the Southwest Missouri expansion and apply for FERC approval. Even if FERC approval is obtained, construction of the Southwest Missouri expansion will not begin unless Williams has obtained execution of sufficient firm transportation service agreements in the aggregate, which would, in the judgment of Williams, economically justify the expansion. Any firm

transportation service agreement with Ozark would not commence until construction of the facilities is complete.

There is also conflicting evidence from Ozark's own witnesses concerning whether Ozark plans to wait until Williams obtains FERC approval before commencing construction of its facilities, or whether Ozark will begin construction and commence service to interruptible customers prior to that time. Since the overall feasibility of the project is based on Ozark's plans to build a market of firm users, Ozark could be placed in a position of being unable to continue providing service to its customer base if Williams' Southwest Missouri expansion is not built.

The Commission finds that the Southwest Missouri expansion is crucial to Ozark's ability to obtain firm transportation capacity sufficient to meet the needs of its customers. The Commission finds that it would not be in the public interest to issue Ozark even a conditional certificate without evidence that Williams has received FERC's authorization for the construction of the Southwest Missouri expansion or that Ozark had obtained released firm capacity to meet its needs for the foreseeable future. Thus, on the record before it, the Commission finds that Ozark has failed to assure the Commission of the availability of firm transportation capacity, which is a necessary component of the overall feasibility of the project.

(5) Promotion of the Public Interest

The requirement that an applicant's proposal will promote the public interest is a conclusory finding, based upon the totality of the evidence. Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest. From a review of the evidence as a whole, the Commission finds

that it is in the public interest to develop a natural gas distribution system in the requested certificated area. However, the Commission cannot find that it is in the public interest to grant a certificate to Ozark at this time.

Ozark has made reference to the Commission's decision in *In Re the Application of Tartan Energy Co., L.C. d/b/a Southern Missouri Gas Co.*, 3 Mo. P.S.C.3d 173 (1994), in support of its request for a conditional certificate. The Commission's decision in *Tartan* is, however readily distinguishable. In *Tartan*, the company entered into a comprehensive stipulation and agreement with Staff and OPC, which substantially addressed the concerns originally raised by these parties. The source of the company's equity funding was essentially known, and no issue was raised regarding minimum delivery pressure. Similarly, the company had entered into an agreement with Williams for firm transportation service prior to the hearing in that case.

The Commission finds that Ozark's application, like the original application in *Tartan*, was prematurely filed, as many of the required elements were filed on a tardy basis or not at all. The Commission reminds Ozark of the statement it made in *Tartan*: "[T]he Commission puts future applicants on notice that applications which change drastically or are filed without the required documents will not be looked upon favorably." *Tartan*, 3 Mo. P.S.C.3d at 190.

The Commission finds that Ozark's application presents a situation more akin to *In Re the Application of Missouri Pipeline Co.*, No. GA-96-130, Report and Order (Mo. P.S.C. June 5, 1996). In *Missouri Pipeline*, the Commission determined as follows:

In the hearing memorandum the parties agreed to a lengthy series of conditions and filings to be imposed on MPC prior to the issuance by the Commission of a certificate. Without setting forth the details of these conditions, suffice it is to say that most of the conditional requirements, including proper contracts, agreements, and operating tariffs, are basic to the issuance of the certificate as proposed and, in addition, constitute information which must be evaluated by the Commission prior to, not after, the issuance of a certificate.

Id. at 4. The Commission concluded: "It is impossible for the Commission to evaluate the proposed transaction with regard to any possible public necessity or benefit." *Id.* at 5.

The Commission is concerned that a trend has developed with respect to the premature filing of certification applications. The Commission reiterates that it must have sufficient information before it in order for there to be meaningful review of the certification process. The Commission recognizes that some of the problems with Ozark's application are not within the direct control of the company. Rather, the issues of minimum delivery pressure and firm transportation capacity depend to a great extent on the cooperation of Williams. Nevertheless, it will always be the case that a company seeking certification will necessarily require the cooperation of a number of entities, including municipalities and other governmental entities, investors, and suppliers of natural gas and firm transportation capacity. The Commission finds that Ozark's proposal could represent a viable project if the deficiencies in Ozark's application are corrected. The Commission encourages Ozark to work with Williams towards a resolution of the issues that require Williams' cooperation.

In the **Missouri Pipeline** case, the Commission noted that Missouri Pipeline could refile its application once the threshold problems

have been rectified. As indicated previously, the Commission finds that Ozark's proposal presents a potentially viable project. The Commission's major concerns involve the questions of equity financing, minimum delivery pressure, and firm transportation capacity. Given the fundamental nature of these concerns, it would not be appropriate to grant Ozark a certificate, whether conditional or otherwise. The public interest would not be served by granting what in essence would be a monopoly certificate to a company which has not made a threshold showing of its ability to successfully complete the project. If a certificate is made conditional upon a further showing with respect to these threshold issues, other potential competitors are effectively prevented from attempting to provide the necessary service. The Commission recognizes that no start-up company endeavoring to undertake a project of this nature can make a showing which eliminates all risks and uncertainty, and the Commission does not expect perfection. Nevertheless, a conditional certificate will not be granted where certain threshold issues have not been adequately addressed.

Under the particular circumstances of this case, the Commission finds that the public interest will be promoted by holding this docket open for a period of 180 days, in order to give Ozark an opportunity to come into compliance with the Commission's requirements for issuance of a certificate. Holding the current docket open will allow for an expedited handling of the few remaining issues. Requiring the filing of an entirely new application by Ozark would serve no purpose where many of the issues have been litigated and found in Ozark's favor. Within 180 days, Ozark should file with the Commission supplemental testimony or exhibits addressing the following issues:

(1) Evidence identifying the remaining equity holders of the company, the percentage of equity held by each owner, and pertinent financial information about each equity owner;

(2) Evidence showing an additional assurance or guarantee from Williams that Ozark's minimum delivery pressure will be at least 190 psig, or revised plans showing that Ozark's delivery point will be upstream of the Hazeltine/Weaver Town Border Station; and

(3) Evidence that Williams has filed an application with FERC for the necessary certification needed to begin the development and construction of Williams' Southwest Missouri expansion.

The parties will be allowed a period of sixty days in which to conduct discovery regarding Ozark's supplemental testimony or exhibits. After the completion of the discovery period, the Commission will expect written positions from the parties indicating whether they are willing to stipulate to the admission of Ozark's evidence without cross-examination. If all parties do not so agree, the Commission will schedule a brief hearing to allow for the admission of Ozark's supplemental testimony or exhibits into evidence, and cross-examination on that evidence. The Commission would expect to issue a second Report and Order shortly thereafter.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

Ozark Natural Gas Company, Inc. has sought authority to do business as a public utility in the State of Missouri, and therefore would be subject to the general jurisdiction of the Commission pursuant to Chapters 386 and 393, RSMo 1994.

The Commission has authority under Section 393.170, RSMo 1994, to grant permission and approval for the construction for gas plant and the exercise of a franchise relating thereto whenever the Commission determines

after due hearing that such construction or franchise is necessary or convenient for the public service. The Commission also has authority under this section to impose such condition or conditions as it may deem reasonable and necessary.

Orders of the Commission must be based on competent and substantial evidence on the record as a whole, must be reasonable, and must not be arbitrary or capricious or contrary to law. In this regard, the Commission has considered all the competent, substantial, and relevant evidence in this matter, and concludes that insufficient evidence exists to show that Ozark's application is necessary and convenient for the public service and in the best interest of the public. Therefore, the certificate cannot be granted. However, the Commission also concludes that it would be reasonable and in the public interest to hold this docket open for a period of 180 days to allow Ozark an opportunity to rectify the deficiencies in its application, in accordance with the Commission's factual findings.

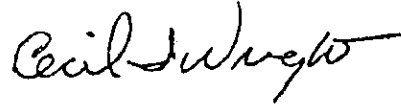
IT IS THEREFORE ORDERED:

1. That the application of Ozark Natural Gas Company, Inc. for a certificate of public convenience and necessity, as filed on February 9, 1996, is hereby denied for the reasons set forth in the body of this Report and Order.

2. That this docket shall remain open for a period 180 days from the effective date of this Report and Order in order to give Ozark Natural Gas Company, Inc. an opportunity to rectify the deficiencies in its application consistent with the directives contained in the body of this Report and Order.

3. That this Report and Order shall become effective on the 4th day of October, 1996.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Cecil I. Wright".

Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe,
Crumpton, and Drainer, CC., Concur,
and certify compliance with the provisions
of Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 24th day of September, 1996.