

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of June, 1997.

In the Matter of the Application of)
Ozark Natural Gas Company, Inc., for)
a Certificate of Public Convenience)
and Necessity to Construct, Own, and)
Operate an Intrastate Natural Gas)
Pipeline and Gas Utility to Serve)
Stone and Taney Counties and Portion)
of Christian County, and for the)
Establishment of Utility Rates.)

CASE NO. GA-96-264

ORDER DISMISSING APPLICATION AND CLOSING DOCKET

On February 9, 1996, Ozark Natural Gas Company, 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. On September 24, 1996 the Commission issued its Report And Order which denied Ozark's application. The Report And Order also directed that this docket remain open for a period of 180 days from the effective date of the Report And Order (October 4, 1996) to give Ozark an opportunity to rectify the deficiencies in its application consistent with the directives contained in the body of the Report And Order. On April 3, 1997,¹ Ozark filed a Motion for Expedited Decision, along with the Supplemental Testimony of Robert J. Oxford.

On April 14, 1997, Conoco, Inc. (Conoco) filed a reply to

¹The Commission notes that the 180-day period ended on April 2, 1997, therefore Ozark's filing is one day out of time. The Commission also notes that Ozark has never sought leave for its filing to be accepted out of time. Nevertheless, the Commission need not decide the matter on that basis alone.

Ozark's Motion for Expedited Decision. Conoco asks that the Commission deny Ozark's motion and reject Ozark's supplemental testimony as untimely, inadequate, and unresponsive, and further recommends that the Commission close the record with prejudice. In the alternative, Conoco contends that expedited issuance of even a conditional certificate is not warranted prior to the provision of the due process safeguards set forth in the Commission's Report And Order, i.e., a 60-day period in which to conduct discovery, and, if the parties are unwilling to stipulate to the admission of Ozark's evidence without cross-examination, a brief hearing.

In support of its prayer for relief, Conoco discusses Ozark's supplemental testimony in light of the three deficiencies noted in the Commission's Report And Order. Conoco notes that Gateway Pipeline Company (Gateway) has sold its interest to Industrial Gas Services, Inc. (IGS) and Pipeline Solutions, Inc. (PSI), thus eliminating the only deep pocket currently involved in the project, and rendering irrelevant all financial data in the record. Ozark's testimony submits Marcum Gas Transmission Co. (Marcum) and Interwest Management, Inc./Mesirow Financial, Inc. (Mesirow) as "the remaining equity holder[s]" of Ozark. However, Conoco points out that there is no indication what portion of the equity either will commit to. In addition, the financial statements of these companies are not included with the testimony, but instead will be "forthcoming." Conoco submits that this supplemental filing does nothing to satisfy the Commission's concern about Ozark's financial ability.

With regard to the Commission's concerns about delivery pressure, Conoco notes that the draft Facility Construction, Ownership, and Operating Agreement Between Ozark and Williams Natural Gas Company (Williams) contains provisions which: (1) would indicate that Ozark's operations may cause pressure problems, (2) indicate additional FERC

filings are contemplated, (3) indicate that under certain conditions, either party may cancel on 20 days' notice, (4) indicate the pressure commitment is conditional, and (5) would allow Williams to relocate the delivery point. Finally, Conoco notes that Williams filed its application with the Federal Energy Regulatory Commission (FERC) on September 9, 1996 in Docket No. CP96-776-000. However, Ozark's motion fails to address this Commission's subsequent order² which stated: "The Commission finds that it would not be in the public interest to allow Ozark to commence construction of any gas facilities 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."

On April 24, the Staff of the Commission (Staff) filed a Motion to Dismiss Application and Close Docket or Set Hearing. Staff states that based upon its initial review of the additional documentation filed by Ozark in support of its application, Staff does not believe it complies with the Report And Order. Accordingly, Staff maintains that Ozark's application should be dismissed and the docket closed. In the alternative, Staff suggests that the Commission set this case for hearing to determine if the documentation provided by Ozark satisfies the requirements of the Report And Order.

On May 5, Conoco filed a pleading concurring in Staff's motion to dismiss. On May 6, Ozark filed a motion concurring in Staff's request for an additional hearing, in order that Ozark might then present testimony to satisfy all questions concerning the proposed equity ownership for the project, and the proposed debt service to be obtained for the project.

²On November 5, 1996, the Commission issued its Order Granting Clarification and Modifying Report and Order Issued September 24, 1996.

The Commission has reviewed the Report And Order issued in this case on September 24, 1996, the Order Granting Clarification and Modifying Report And Order issued on November 5, 1996, the supplemental testimony filed by Ozark, and all subsequent pleadings, and finds that Ozark's application should be dismissed and this docket closed. The Commission's Report And Order found that Ozark's proposal could represent a viable project if the deficiencies in Ozark's application were corrected. The Order held 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 and directed Ozark to file supplemental evidence 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 plan 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 to begin the development and construction of Williams' Southwest Missouri expansion.

The Commission finds that the supplemental testimony filed by Ozark is inadequate and incomplete.

The Commission finds that Ozark has provided evidence of Williams' application with FERC for certification to construct the Southwest Missouri Expansion. Similarly, Ozark has provided a letter from Williams agreeing to a pressure commitment of 190 psig. The letter is dated October 25, 1996, approximately one month after issuance of the Commission's Report And Order. However, a second letter from Williams, dated February 12, 1997, states that Ozark must provide Williams with Commission approval and proof of creditworthiness by March 1, 1997. Thus,

as early as October 25, 1996, Ozark was in possession of documentation which could show that the Commission's second and third requirements had been met.³ It is telling that as late as February 12, 1997, Ozark had not satisfied Williams regarding its creditworthiness.

Even as of April 3, 1997, the date of Ozark's supplemental filing, Ozark has been unable to identify the remaining equity holders of the company, identify the percentage of equity held by each owner, and provide pertinent financial information about each equity owner. Instead, Ozark has provided letters of intent from Marcum and Mesirow not greatly different from similar letters provided as part of its original case. It is unclear whether only one or both of these entities would become equity holders. It is equally unclear what percentage of the equity would be held by either or both, since neither letter of intent even conditionally commits to a given amount or percentage of equity funding. Likewise, no financial information has been provided about either potential equity owner. Instead, Ozark merely asserts that "[f]inancial statements are forthcoming and will be submitted as soon as they are received." Supplemental Testimony of Robert J. Oxford at 3.

The purpose of holding this docket open for a period of 180 days was to allow for an expedited handling of the few remaining issues. It was contemplated that Ozark would correct all remaining deficiencies and file its supplemental evidence within that time. The purpose of the 60-day discovery period was to protect the due process rights of Staff, the Office of the Public Counsel, and intervenors Conoco, Williams, Missouri Gas Energy (MGE), and City Utilities of Springfield, Missouri (CU). None of

³Although Conoco raised concerns about the adequacy of the 190 psig pressure commitment, the Commission takes no position on whether the documentation would be sufficient to move forward with the 60-day discovery period.

the remaining parties could be required to accept Ozark's supplemental evidence at face value, and thus the Commission's 60-day discovery period was designed to allow the parties an opportunity to make whatever inquiry they deemed necessary. If, at the end of the discovery period, the parties were unwilling to stipulate to the admission of Ozark's supplemental evidence without cross-examination, the Commission expected that a brief hearing would be scheduled to allow cross-examination on that evidence. Neither the 60-day discovery period nor the possible additional hearing were intended to allow Ozark additional time to supplement its evidence. Rather, the 180-day period was intended to provide a deadline by which Ozark would be required to correct all deficiencies in its application.⁴ Ozark should not now be given a third bite at the apple.

Since Ozark has still not corrected the deficiencies in its application, the Commission finds that the application should be dismissed, and this docket closed. Nevertheless, the Commission notes that the dismissal is without prejudice, and Ozark is free to file a new application at any time. However, all future applicants, including Ozark, are again put on notice that applications which do not comply with the Commission's rules will not be looked upon favorably.

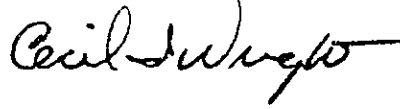
IT IS THEREFORE ORDERED:

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 dismissed for failure to comply with the Commission's directive in ordered paragraph No. 2 of the Commission's September 24, 1996 Report And Order.

⁴In this regard, the Commission notes that information concerning Ozark's plans for financing should have been filed with its initial application, as required by 4 CSR 240-2.060(2)(F)5 and (G)3.

2. That this docket is therefore closed.
3. That this order shall become effective on June 13, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton, Murray,
and Drainer, CC., Concur.

ALJ: Bensavage