

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

In the Matter of Roeslein Alternative Energy)
Services, LLC's Request for a Commission Order)
Declining Jurisdiction, or, in the Alternative,)
Roeslein Alternative Energy Services, LLC's)
Application for Permission and Approval and a) File No. _____
Certificate of Convenience and Necessity to)
Construct, Install, Own, Operate, Maintain, and)
Otherwise Control and Manage a Gas Gathering)
System.)

**REQUEST FOR ORDER REGARDING LACK OF JURISDICTION,
OR, IN THE ALTERNATIVE, APPLICATION FOR A CCN**

COMES NOW Roeslein Alternative Energy Services, LLC ("RAES"), by and through counsel, and respectfully requests an order of the Missouri Public Service Commission ("Commission") holding that it lacks jurisdiction over this matter. Alternatively, pursuant to RSMo. §393.170 and Commission Rules 4 CSR 240-2.060 and 240-3.205, RAES requests permission and approval and a certificate of convenience and necessity ("CCN") to construct, install, own, operate, maintain, and otherwise control and manage a gas gathering system facility. In support thereof, RAES respectfully states as follows:

THE APPLICANT AND THE PROJECT

1. RAES is a Missouri Limited Liability Company, organized and existing under the laws of the state of Missouri, with a registered address of 9200 Watson Road, Suite 200, St. Louis, Missouri, 63126. Roeslein's Certificate of Organization from the Missouri Secretary of State's Office is attached hereto as **Appendix A**. RAES is not a "public utility" and is not currently subject to the Commission's jurisdiction. As such, RAES has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates and has no overdue annual reports or assessment fees.

2. Pleadings, notices, orders, and other correspondence and communications

regarding this docket should be addressed to the undersigned counsel for RAES and also to:

Chris Roach, Director
Roeslein Alternative Energy Services, LLC
9200 Watson Road, Suite 200
St. Louis, MO 63126-1528
(314) 270-9133
croach@roesleinae.com

3. RAES is an affiliate company to Roeslein Alternative Energy, LLC (RAE). The mission of RAE is to discover and implement alternative biomass and energy solutions, with the goal of restoring millions of acres of grasslands on marginal land throughout the midwest region. RAE creates renewable natural gas (“RNG”), pipeline-quality natural gas produced from organic inputs and natural processes. The complimentary mission of RAES is to gather this RNG to a point where it may either be compressed and injected into an interstate transmission pipeline, an intrastate transmission pipeline, or a local natural gas distribution system.

4. RAE works directly with farmers to implement alternative management practices of highly erodible land that delivers superior ecological benefits and sustainable returns on the farmers’ investments. RAE serves those seeking the economic and environmental advantages of compressed or liquefied natural gas (“CNG” or “LNG”) for trucking, marine, and rail transportation fuel. RNG, which is substantially cleaner than diesel, may also be used for electricity and heat.

5. RAE, in collaboration with Murphy-Brown of Missouri, LLC (“MBM”), the livestock production subsidiary of Smithfield Foods, Inc., will construct in northern Missouri an innovative renewable energy project. The estimated cost of the project is \$120 million.

6. Impermeable covers are being installed on 88 existing lagoons to harvest RNG from MBM’s hog finishing farms, using best in class anaerobic digestion technology developed

and installed by RAE. The covers turn the lagoons into anaerobic digesters, where naturally occurring microorganisms decompose the manure in an oxygen free environment. Bio-gas rises to the top where it will be collected and cleaned of impurities. What remains is more than 98 percent methane, with approximately the same chemical composition as natural gas, that can be used for vehicle fuel or injected into the natural gas grid system. The un-digestible solid residue can be used by local farmers as a natural fertilizer, and the water can be safely used for irrigation.

7. RAE believes the project is the largest of its kind, utilizing manure from one of the biggest concentrations of finishing hogs in the midwest. Several hundred million cubic feet of RNG, approximately 2.2 million MMBtu, will be generated annually for regional distribution. RAE anticipates that the first RNG from the project will be injected into the ANR Pipeline in July of 2016 at a site north of Albany, MO. This site is unique in that the facility to process the RNG is immediately adjacent to the ANR Pipeline right-of-way and will require no gathering system.

8. For the remainder of the RNG production sites, which are located at the livestock production facilities of MBM, RAES will construct a RNG gathering system to bring this gas to one of several sites for injection into ANR Pipeline or into one of the several municipal natural gas distribution systems in the area shown on the attached **Appendix B HC**. Appendix B HC is identified as Highly Confidential in accordance with Commission Rule 4 CSR 240-2.135(1)(B).6. No RNG generated from the project will be made available to the general public. A portion of the gas will also be delivered back to the RAE facilities for use in the process. RAES anticipates that construction will be complete during the fourth quarter of 2018. Drawings and specifications for the project are set forth in the attached **Appendix C**.

9. The 148 miles of piping for the project will be operated for RAES by Utility Safety and Design Incorporated (“USDI”) as a Type B Regulated Gathering Line.

REQUEST FOR ORDER REGARDING LACK OF JURISDICTION

10. Section 393.170.1, RSMo, provides that no gas corporation “shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.” Section 386.020(18), RSMo, provides that a “gas corporation” includes only those “owning, operating, controlling or managing any gas plant operating for public use . . .” (emphasis added)

11. An activity may be regulated by the Commission only if the business offers utility services for public use. *State ex rel. M. O. Danciger & Co. v. Public Service Commission*, 205 S.W. 36 (Mo. 1918). *Danciger* held that a company supplying utility service to specific businesses or individuals under a private contract does not fall under the jurisdiction of the Commission, when no public offering or use occurs. *Id.* at 40. Missouri courts consistently have refused to find jurisdictional authority on behalf of the Commission or confer public utility status upon a company when the business in question contracts privately with individuals or other entities and does not make the contracted services available for public use.¹

12. The application of the “public use” standard to RAES’s project, as described above, requires a finding that this Commission lacks jurisdiction over the project and the operations of RAES in this regard. RAES made this filing with the Commission out of an abundance of caution, and RAES respectfully requests an order of this Commission holding that it lacks jurisdiction over this matter.

¹ See *State ex rel. Lohman & Farmers Mutual Telephone Company v. Brown*, 19 S.W.2d 1048 (Mo. 1929); *Khulusi v. Southwestern Bell Yellow Pages*, 916 S.W.2d 227 (Mo. App. 1996); *State ex rel. Buchanan Power Transmission Company v. Baker*, 9 S.W.2d 589 (Mo. App. 1928); *State ex rel. Cirese v Public Service Commission*, 178 S.W.2d 788 (Mo. App. 1944).

IN THE ALTERNATIVE, REQUEST FOR A CCN

12. As set forth above, RAES believes the Commission lacks jurisdiction over the project and the operations of RAES in this regard. In the event the Commission finds that it does have jurisdiction over this matter, pursuant to Commission Rule 4 CSR 240-3.205, RAES requests permission and approval and a CCN to construct, install, own, operate, maintain, and otherwise control and manage a bio-energy generation facility as described above.

13. The project will be constructed and operated in compliance with all applicable safety and environmental requirements and all other applicable laws and regulations.

14. RAES has requested or soon will request all of the permits and approvals required for the construction and operation of the project. RAES will provide such permits to the Commission as they are obtained.

15. A listing of all electric and telephone lines of regulated and non-regulated utilities, railroad tracks, or other underground facility, as defined in RSMo. §319.015, which the proposed construction may cross, will be provided as the routes are finalized. RAES will provide to the Safety Staff of the Commission as-built drawings with the actual crossings noted along with the ownership of those crossings. RAES will also become a member of the Missouri One-Call system and provide these as-built drawings for that purpose.

16. The facts set forth in this pleading demonstrate that the issuance of a CCN for the project is highly important to the public convenience and desirable for the public welfare.

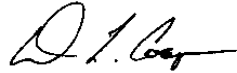
WHEREFORE, RAES requests an order of the Commission holding that it lacks jurisdiction over this matter, or, alternatively, an order granting RAES permission and approval and a CCN to construct, install, own, operate, maintain, and otherwise control and manage a bio-

energy generation facility as described above. RAES requests such additional relief as is just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

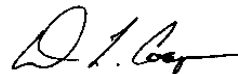
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS and that a copy of the same was sent via electronic mail on this 12th day of April, 2016, to Counsel for the Staff of the Commission and the Office of the Public Counsel.



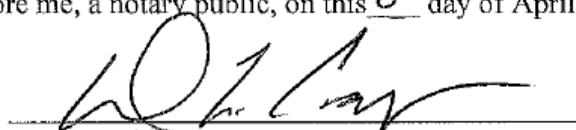
VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

I, Chris Roach, having been duly sworn upon my oath, states that I am the Director for Roeslein Alternative Energy Services, LLC ("RAES"), and that the matters and things stated in the foregoing pleading are true and correct to the best of my information, knowledge, and belief and that I am authorized to execute this verification on behalf of RAES.


Chris Roach, Director

Subscribed and sworn to before me, a notary public, on this 8th day of April, 2016.


Notary Public

My Commission expires: _____

