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 August, 2016.

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 Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Gas Gathering System	)))))))	File No. GA-2016-0271

ORDER DENYING APPLICATION IN PART AND DISMISSING APPLICATION IN PART

Issue Date: August 3, 2016 Effective Date: August 16, 2016

Roeslein Alternative Energy Services, LLC's ("RAES") proposes gas pipeline projects in three corridors: East, West, and Central ("projects"). RAES requests an order either ruling that the Commission has no jurisdiction, or granting a certificate of convenience and necessity ("certificate"). As to all the projects, the Commission has jurisdiction. But the Central Corridor pipeline will not be operating for public use, so the law does not require or authorize the grant of a certificate. As to a certificate for the East and West Corridors, RAES does not offer enough information to decide the application on the merits. Therefore, the Commission will deny the application in part and dismiss the application without prejudice in part.

A. Procedure

Roeslein Alternative Energy Services, LLC's ("RAES") filed its *Request for Order Regarding Lack of Jurisdiction, or, in the Alternative, Application for a Certificate*

("application").[1] The application seeks a certificate for construction and operation of a gas pipeline system. In the alternative, the application seeks a ruling that no certificate is required.

The Commission's staff ("Staff") filed a recommendation favoring the application in part.[2] RAES filed a reply to the recommendation,[3] and a clarification of that response.[4] Staff filed a sur-reply.[5] The Office of the Public Counsel ("OPC") informed the regulatory law judge assigned to this action, by email copied to the other parties, that OPC does not oppose the recommendation.

As to the Central Corridor project, no hearing is necessary to grant relief that no party opposes: construction and operation without a certificate. [6] As to the East and West Corridors, no hearing is necessary to dispose of this action on the pleadings.[7] Therefore, based on the verified filings,[8] the Commission independently finds and concludes as follows.

B. Projects

RAES is an active Missouri limited liability company. An affiliate of RAES is constructing bio-methane production sites at livestock facilities by installing an impermeable cover over existing lagoons, turning them into an anaerobic digester.

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[1] Electronic Filing Information System ("EFIS") No. 1 (April 12) *Request for Order Regarding Lack of Jurisdiction, or, in the Alternative, Application for a Certificate*. All dates are in 2016.

[2] EFIS No. 6 (June 28) *Staff Recommendation*.

[3] EFIS No. 7 (July 7) *Response to Staff Recommendation*.

[4] EFIS No. 11 (July 13) *Clarification of Response to Staff Recommendation*.

[5] EFIS No. 10 (July 12) *Staff Response*.

[6] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n,* 776 S.W.2d 494 (Mo. App., W.D. 1989).

[7] 4 CSR 240-2.117(2).

[8] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n,* 776 S.W.2d 494 (Mo. App., W.D. 1989).

Naturally occurring microorganisms decompose manure. Bio-gas rises to the top to be collected and cleaned of impurities. What remains is bio-methane, which is more than 98 percent methane and has approximately the same chemical composition as natural gas. For all but one[9] of those production sites, RAES will construct a pipeline system. The system will gather bio-methane to be compressed or injected into an interstate transmission pipeline. RAES plans 148 miles of pipeline across the projects.

C. Jurisdiction

The Commission has jurisdiction over the projects generally because pipelines constitute gas plant.

> "Gas plant" includes **all** real estate, fixtures and personal **property** owned, operated, controlled, used or to be used for or **in connection with or to facilitate** the manufacture, distribution, sale or furnishing of gas, natural or manufactured [.[10]]

That describes the projects because the projects—property to be used in connection with the manufacture, distribution, sale, or furnishing of gas, natural or manufactured—constitute gas plant.

Gas plant is generally subject to the Commission's jurisdiction:

> The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:
>
> (1) To the manufacture, sale or distribution of gas, natural and artificial, . . . within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to **gas** . . . **plants**, and to persons or corporations owning, leasing, operating or controlling the same [.[11]]

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[9] One site requires no gathering system because it is immediately adjacent to the interstate pipeline.

[10] Section 386.020(18), RSMo Supp. 2014(emphasis added).

[11] Section 386.250, RSMo 2000 (emphasis added).

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> The commission shall have power, . . . by general or special orders, rules or regulations, or otherwise, to require every [entity] to maintain and operate its line, **plant**, system, equipment, apparatus, and premises in such manner as to promote and safeguard the **health and safety** of its employees, customers, and the public [.[12]]

Under that authority, regulations on incident reporting,[13] pipeline safety,[14] and drug testing[15] apply to the projects.

Therefore, the Commission will deny the request for a ruling that the Commission lacks jurisdiction.

D. Certificate

RAES argues that no certificate is needed to construct or operate the projects, and asks the Commission to issue such a ruling, or to grant a certificate for the projects.

1. Central Corridor

Staff agrees with RAES as to the Central Corridor pipeline, because a certificate to construct and operate a gas pipeline is necessary only for a gas corporation.

The certificate statute provides:

> 1. No **gas corporation** . . . shall begin construction of a gas plant . . . without first having obtained the permission and approval of the commission.
>
> 2. No such corporation shall [operate] without first having obtained the permission and approval of the commission [.]
>
> 3. The commission shall have the power to grant the permission and approval herein specified whenever it shall

[12] Section 386.310.1, RSMo 2000 (emphasis added).

[13] 4 CSR 240-40.020.

[14] 4 CSR 240-40.030.

[15] 4 CSR 240-40.080.

> after due hearing determine that such construction or such [operation] is necessary or convenient for the public service . . . by such **certificate** of convenience and necessity issued by the commission [.[16]]

The distinguishing feature of a gas corporation is operating gas plant for public use:

> "Gas corporation" includes every [entity], owning, operating, controlling or managing any gas plant **operating for public use** [.[17]]

The Central Corridor pipeline will only operate under one private contract, pursuant to which it will connect with one other pipeline, and will serve no retail consumers in Missouri. On those facts, the Central Corridor pipeline will not be operating for public use.[18]

Therefore, the certificate statute neither requires nor authorizes a certificate for the Central Corridor project, and Commission will deny the application for a certificate for the Central Corridor project.

2. East and West Corridors

As to a certificate for the East Corridor and West Corridor projects, the application is not ripe for a decision. That is because RAES has not provided enough information, including information regarding who these projects will serve and whether the projects will operate for public use, to support any decision on the merits. Therefore, the Commission will dismiss the application without prejudice as to a certificate for the East Corridor and West Corridor projects. [19]

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[16] Section 393.170, RSMo 2000 (emphasis added).

[17] Section 386.020(18), RSMo Supp. 2014.

[18] *Hurricane Deck Holding Co. v. Pub. Serv. Comm'n*, 289 S.W.3d 260, 264-67 (Mo. App., W.D. 2009)..

[19] 4 CSR 240-2.116(4).

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THE COMMISSION ORDERS THAT:

1. The request for an order ruling that the Commission lacks jurisdiction is denied as to all projects.

2. The application for a certificate of convenience and necessity is:

    a. Denied as unnecessary as to the Central Corridor project; and

    b. Dismissed without prejudice as to the East and West Corridor projects.

3. This order shall be effective on August 16, 2016.

4. This file may close after August 16, 2016.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and Coleman, CC., concur.

Jordan, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 3rd day of August 2016.

Morris L. Woodruff
Secretary

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MISSOURI PUBLIC SERVICE COMMISSION

August 3, 2016

File/Case No. GA-2016-0271

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.