

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 15th day
of August, 2018.

In the Matter of the Application of Summit Natural Gas of)
Missouri Inc., for Permission and Approval and a)
Certificate of Convenience and Necessity to Construct,)
Install, Own, Operate, Maintain, and Otherwise Control) **File No. GA-2018-0396**
and Manage a Natural Gas Distribution System to Provide)
Gas Service to One Property in Lawrence County as an)
Expansion of its Existing Certificated Areas)

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AND GRANTING WAIVERS**

Issue Date: August 15, 2018

Effective Date: August 25, 2018

On June 28, 2018, Summit Natural Gas of Missouri, Inc. (Summit), a successor to Missouri Gas Utility, Inc. and Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas, filed an application with the Commission requesting a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service to one particular property in Lawrence County, Missouri. Summit also requested a waiver from certain provisions of the Commission-approved stipulation and agreement in File No. GA-2007-0168,¹ the requirement to file a plat and feasibility study as set out in Commission rule 4 CSR 240-3.205(1)(A), and the requirement to give 60-days' notice prior to filing the application as required in Commission rule 4 CSR 240-4.017(1).

¹ The approved stipulation and agreement is between Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas, and Missouri Gas Energy the predecessors to Summit and Spire Missouri, respectively.

The Commission provided notice and set a deadline for filing intervention requests. On July 20, 2018, Spire Missouri Inc. filed an application to intervene. As the holder of a CCN for the area covering the subject property and a party to the stipulation and agreement for which waivers are requested, Spire Missouri was determined to be a proper party and was granted intervention.

The Commission directed its Staff to file a recommendation with regard to Summit's application, which Staff filed on July 27, 2018. Although Staff would not usually support granting a CCN to serve only one residence or to serve a residence in the service territory of another natural gas local distribution company, due to the circumstances surrounding this application, Staff recommended approval. Staff also recommended the Commission grant waivers of the terms of the stipulation and agreement and the Commission's rules. Additionally, Staff noted that Spire Missouri stated in its motion to intervene that it could support Summit's request for a waiver of the terms of the approved stipulation and agreement subject to certain conditions that would encourage future compliance with the stipulation and agreement. Spire Missouri, however, did not specifically state those conditions in its motion to intervene.

On August 6, 2018, Spire Missouri responded to Staff's recommendation. Spire Missouri stated that it is generally supportive of Summit's request to serve this customer given the circumstances of the homeowners. However, Spire Missouri stated that during the course of another proceeding involving Summit, File No. GA-2017-0016, it became aware that Summit may have been serving five other customers contrary to the stipulation and agreement between Summit and Spire Missouri. Because of this, Spire Missouri requests that the Commission "defer approval of the requested variance . . . , or

condition approval of the variance on, a solution reasonably acceptable to Spire Missouri.”²

Filing this application was contemplated in the stipulation and agreement approved by the Commission on June 6, 2018, in File No. GC-2017-0199, involving the property that is the subject of the CCN. In that case, the owners of the subject property filed a complaint against Summit for failing to provide natural gas service to their newly constructed home even though Summit had run a service line to within one foot of the complainants’ home. The subject property is located in the certificated service territory of Spire Missouri.³ However, Summit holds a line certificate for the area and has the authority to provide service to individuals from its pipeline (known as “farm taps”) if necessary to gain right-of-way to construct a pipeline.⁴ The subject property is not related to pipeline construction. Thus, Summit seeks a waiver from this provision of the Commission-approved stipulation and agreement between Spire Missouri and Summit in File No. GA-2007-0168 for this single instance.

Summit will not need to install or construct any new facilities other than extending the service line in order to provide service to the subject residence. Additionally, no financing will be required. Therefore, Summit requests a waiver of Commission rule 4 CSR 240-3.205(1)(A) requiring Summit to provide a plat and a feasibility study. Summit will also not require additional franchises or permits from municipalities, counties, or other authorities. Summit attached a description of the subject property as Appendix 1 and the name and address of the property owners as Appendix 3

² *Spire Missouri Inc.’s Response to Staff Recommendation*, (filed August 6, 2018), para. 6.

³ Spire Missouri Inc. is the predecessor of Missouri Gas Energy (MGE).

⁴ File No. GA-2007-0168, *Stipulation and Agreement of SMNG and MGE*, (filed December 4, 2007), para. 3.A.

(Confidential) to its application. The customers will be charged the current tariffed Residential Service rate for Summit's Branson division.

No party objects to Summit being granted a CCN to provide service to this residence. Additionally, no party has requested an evidentiary hearing, and no law requires one.⁵ Therefore, this action is not a contested case,⁶ and the Commission need not separately state its findings of fact.

The property owners began their attempt to receive natural gas service from Summit in February 2016.⁷ Although Spire Missouri suggests the Commission "defer" or "condition" the granting of a variance from the earlier stipulation and agreement between Summit and Spire Missouri, the Commission finds no reason for further delay in granting this CCN so that the property owners can finally receive natural gas service. The Commission strongly encourages Spire Missouri and Summit to continue discussions outside the confines of this proceeding and return to the Commission with further modifications, if any, of their stipulation and agreement in File No. GA-2007-0168. Alternatively, if Spire Missouri is concerned that Summit has violated the terms of the Commission's order with regard to the stipulation and agreement, Spire Missouri can file a complaint with the Commission alleging such. However, the Commission will not further delay the grant of this authority pending those negotiations and further proceedings.

⁵ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

⁶ Section 536.010(4), RSMo.

⁷ See File No. GC-2017-0199.

The Commission may grant a CCN to operate after determining that the operation is either “necessary or convenient for the public service.”⁸ The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case 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.⁹

Based on the verified application and Staff’s recommendation, the Commission finds that Summit possesses adequate technical, managerial, and financial capacity to operate the natural gas systems to serve one additional property in Lawrence County, Missouri.

The Commission concludes that the factors for granting an addition to Summit’s CCN has been satisfied and that it is in the public interest for Summit to provide natural gas service to the subject property. Based on the Commission’s independent and impartial review of the verified filings, the Commission will grant Summit’s CCN to provide natural gas service to the property as described in Appendix 1 to its application.

Summit also requests a waiver of the feasibility study requirements in Commission rule 4 CSR 240-3.205(1)(A)(5). This specific rule requires the submission of a feasibility study containing plans and estimates for the cost of construction for a three-year period. No objections to Summit’s request for a waiver of the feasibility

⁸ Section 393.170.3, RSMo 2000.

⁹ The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

requirement were filed. The Commission finds good cause exists to grant the requested waiver of the feasibility study requirements in 4 CSR 240-3.205(1)(A)(5).

Further, Summit asks the Commission to waive the 60-day notice requirement under 4 CSR 240-4.020(2). Summit asserts that good cause exists for granting such waiver as it filed this application to comply with a Commission-approved stipulation and agreement in File No. GC-2017-0199. Summit also states that it did not engage in conduct that would constitute a violation of the Commission's ex parte rule. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.020(2) is granted. Additionally, the Commission finds that good cause exists to expedite the effective date of this order so that gas service may be provided to this property without further delay.

THE COMMISSION ORDERS THAT:

1. Summit Natural Gas of Missouri, Inc., is granted a waiver of the provisions of the Commission-approved stipulation and agreement in File No. GA-2007-0168 in order to provide natural gas service to a single property as described in Appendix 1 to its application in this proceeding.

2. All other provisions of the Commission-approved stipulation and agreement in File No. GA-2007-0168 remain in effect.

3. Summit Natural Gas of Missouri, Inc., is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, maintain, control, and manage a natural gas distribution system to provide gas service to one property in Lawrence County, Missouri, as described in Appendix 1 to its application.

4. No later than September 24, 2018, Summit Natural Gas of Missouri, Inc. shall amend its tariff to add to its service area the property as described in Appendix 1 to its application.

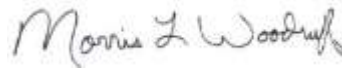
5. Nothing in the Staff Recommendation or this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

6. Commission Rule 4 CSR 240-4.017(1) is hereby waived for purposes of this application.

7. Commission Rule 4 CSR 240-3.205(1)(A) is hereby waived for purposes of this application.

8. This order shall become effective on August 25, 2018.

BY THE COMMISSION



Morris Woodruff
Secretary



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

Dippell, Senior Regulatory Law Judge

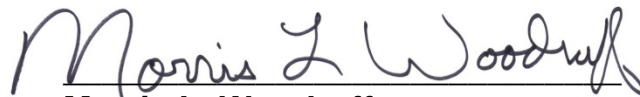
STATE OF MISSOURI

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 15th day of August 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 15, 2018

File/Case No. GA-2018-0396

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Missouri Public Service Commission
Jeff Keevil
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jeff.keevil@psc.mo.gov

Spire
Rick E Zucker
14412 White Pine Ridge Ln
Chesterfield, MO 63017-6301
zuckerlaw21@gmail.com

Spire Missouri, Inc.
Michael C Pendergast
423 Main Street
St. Charles, MO 63301
mcp2015law@icloud.com

Summit Natural Gas of Missouri, Inc.
Diana C Carter
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
DCarter@brydonlaw.com

Summit Natural Gas of Missouri, Inc.
Dean L Cooper
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

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.