

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

In the Matter of Summit Natural Gas of)	
Missouri, Inc.'s Proposed Conversion)	<u>Case No. GO-2013-0360</u>
Rebate Program)	Tariff No. JG-2013-0300

STAFF REQUEST FOR ORDER DIRECTING NOTICE

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), through the undersigned counsel, and respectfully submits this *Staff Request for Order Directing Notice*. In support hereof, Staff respectfully states as follows:

1. On December 28, 2012, Summit Natural Gas of Missouri, Inc. ("Summit") filed a tariff to "extend"¹ its conversion policy promotional practice. On December 31, 2012, Summit filed a "substitute" tariff to replace the tariff filed on December 28, which would also "extend" its conversion policy promotional practice. The tariff had an effective date of January 29, 2013.

2. On January 18, 2013, the Office of the Public Counsel ("OPC") filed a Motion to Suspend Tariff and Request for Evidentiary Hearing ("Motion") regarding the tariff filed by Summit. On January 22, 2013, the Commission issued its *Order Directing Filing* herein, in which the Commission ordered Summit and Staff to respond to OPC's Motion no later than January 24, 2013.

3. Pursuant to the *Order Directing Filing*, Staff filed its Response on January 24, 2013, in which Staff generally agreed with OPC's Motion. Summit filed a

¹ Although Summit refers in its cover letter to "extending" the program, the program expired on December 31, 2012.

Response in which it disagreed with OPC's motion. Thereafter, OPC filed a Reply to Summit's Response, and Summit then filed a Reply to OPC's Reply.

4. On January 28, 2013, the Commission issued an *Order Suspending Tariff and Setting Prehearing Conference*; at the request of Summit, on January 30, 2013, the Commission issued an *Order Rescheduling Prehearing Conference*. However, neither Order directed that notice be sent to other potentially interested parties, such as other public utilities in the Summit service territory.

5. As previously mentioned in Staff's and OPC's pleadings in this case, the Commission's Rules on Utility Promotional Practices (4 CSR 240, Chapter 14) specifically state, in pertinent part, as follows:

4 CSR 240-14.010

(1) This rule and the other rules contained in [this] chapter govern promotional practices of all gas and electric utilities under the jurisdiction of the Public Service Commission.

(2) **On written application** by a utility the commission may grant variances from the rules contained in this chapter **for good cause shown. The utility filing the application shall show proof of service of a copy of the application on each public utility providing the same or competing utility service in all or any portion of the service area of the filing utility.** (Emphasis added)

6. Summit claims, however, that 4 CSR 240-3.255 provides an alternative to the above rule. 4 CSR 240-3.255 provides in pertinent part as follows:

4 CSR 240-3.255

(1) Any promotional practices offered by a gas utility must meet the requirements set out in the commission's rules regarding utility promotional practices (4 CSR 240-14).

(2) No gas utility or its affiliate shall offer or grant any additional promotional practice or vary or terminate any existing promotional practice, directly or indirectly, or in concert with others, or by any means whatsoever, until

a tariff filing showing the addition or variation or termination in the form prescribed by this rule has been made with the commission and a copy furnished to each other gas utility providing the same or competing utility service in any portion of the service area of the filing utility.

Summit claims the foregoing rule allows it to simply file a tariff to provide the promotional practice, without filing an application for variance, and that any “notice” required is only required to be sent to competing “gas” utilities. However, such an interpretation ignores subsection (1) of the rule, which clearly requires compliance with the requirements of Chapter 14 in addition to the requirements set out in 4 CSR 240-3.255. In other words, the rules are cumulative rather than alternatives as Summit contends. Without first obtaining a variance as provided in 4 CSR 240-14.010, the promotional practices tariff does not meet the “requirements set out in the commission’s rules regarding utility promotional practices” and cannot be filed pursuant to 4 CSR 240-3.255. The rules envision a two-step process: obtain the necessary variance, and then file a tariff to reflect the promotional practice so that the public (and Staff, and OPC, and any interested parties) can tell from simply reading the company’s tariff book what promotional practices have been authorized by the Commission for that company. Without the tariff filing requirement in Chapter 3, there would be no practical way for the public and other interested parties to know that a company had received a variance through the application procedure in Chapter 14 and would actually be misled by the company’s tariffs.

7. Chapter 3 also provides, in 4 CSR 240-3.015, as follows:

4 CSR 240-3.015

(1) The requirements for filing applications for waivers or variances from commission rules and tariff provisions, as well as those statutory provisions that

may be waived, are contained in Chapter 2 of the commission's rules in rule 4 CSR 240-2.060.

4 CSR 240-2.060 in turn provides as follows:

4 CSR 240-2.060

(1) All applications shall comply with the requirements of these rules and shall include the following information:

* * *

(4) In addition to the requirements of section (1), applications for variances or waivers from commission rules and tariff provisions, as well as those statutory provisions which may be waived, shall contain information as follows:

(A) Specific indication of the statute, rule, or tariff from which the variance or waiver is sought;

(B) The reasons for the proposed variance or waiver and a complete justification **setting out the good cause for granting the variance or waiver**; and

(C) **The name of any public utility affected by the variance or waiver.** (Emphasis added)

8. It seems clear that the rules governing applications for variances, 4 CSR 240-14.010(2) and 4 CSR 240-2.060(4), contemplate notice to any competing public utility in the area, not just gas utilities in the area; in fact, 4 CSR 240-14.010(2) requires the utility filing the application for variance to serve its application on competing utilities in any portion of the service area of the filing utility. Summit has sought to avoid this requirement, as well as the other application requirements, by simply not filing an application.

9. As stated in Staff's Response filed on January 24, 2013, when Summit (then known as Southern Missouri Gas Company, L.P. ("SMGC")) apparently last received a promotional practices variance for its conversion program, in Case No. GE-2006-0189, there were no other Commission-regulated energy utility companies in SMGC's/Summit's certificated area. This is no longer true, as Summit and The Empire

District Electric Company ("Empire") are both certificated for at least a portion of the same territory. As far as Staff knows, Empire has not received notice of Summit's current effort to extend or vary the promotional practice at issue in this case.

10. Based on the rules set forth above, in its Response filed on January 24, 2013, Staff requested the Commission issue an order which, among other things, ordered Summit to file an Application for variance and serve it according to the Commission's rules. Staff continues to believe the Commission should so order. However, at the very least, Staff believes that the Commission should order that notice of this case be given to each public utility providing the same or competing utility service in all or any portion of the Summit service area (which would include The Empire District Electric Company) and to anyone else the Commission deems proper, and that such parties be given the opportunity to intervene in this case.

WHEREFORE, Staff respectfully requests the Commission issue an order directing Summit to file an Application for variance and serve it according to the Commission's rules or, in the alternative, ordering that notice of this case be given to each public utility providing the same or competing utility service in all or any portion of the Summit service area (including The Empire District Electric Company) and to anyone else the Commission deems proper, and that such parties be given the opportunity to intervene in this case.

Respectfully submitted,

/s/ Jeffrey A. Keevil

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 6th day of February, 2013.

/s/ Jeffrey A. Keevil