BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Summit Natural Gas of Missouri Inc.'s Filing of Revised Tariffs to Increase its Annual Revenues for Natural Gas Service.	))))	Case No. GR-2014-0086

PUBLIC COUNSEL'S
APPLICATION FOR REHEARING

COMES NOW the Missouri Office of the Public Counsel ("Public Counsel") and for its Application for Rehearing pursuant to §386.500, RSMo. Supp. 2013, respectfully requests rehearing of the Commission's October 29, 2014 Report and Order on the matters set forth below, and in support of rehearing, Public Counsel states as follows:

1. The facts of this case show that Summit Natural Gas of Missouri Inc. (SNG) has not met the projections it forecasted to convince the Commission that the proposed expansions were economically feasible.[1] The facts of this case also show that many of SNG customers were mislead by SNG about future rate increases when initiating service.[2] Despite these facts, the Report and Order rewards SNG with a large rate increase including a high 10.8% return on equity, which will prove to be devastating for many Missouri households.[3] The Commission-approved rate increase will hit customers

[1] *See* Public Counsel Initial Brief, EFIS No. 255, pp. 12-21.

[2] Branson's Mayor Raeanne Presley testified, "Before this installation took place, the community was not given adequate notification that the cost of this construction was not built into the current rate structure. It was not clear that the utility expected to recoup these expenses in future years with rate increases…it was not made clear to our community, I think neither to our citizens, nor to our businesses, nor to our city staff." Transcript (Tr.), Vol. 6, p. 6 (June 18, 2014).

[3] Ms. Debra Warner testified at the public hearing in Gallatin: "This is a community of single parents, elderly people, disabled people. I'm a caregiver for disabled people. It's a community of widows and widowers. In the winter, you go into people's homes, and they have plastic taped

at the beginning of the winter heating season, which will further impair a low-income customer's ability to heat their home this winter. For these reasons, Public Counsel implores the Commission to rehear the rate-shock issue and phase-in the rate increase to protect customers from the combined effects of an unprecedented rate hike and a cold winter. This is a matter of public safety, and protecting against the rate shock that low-income Missouri customers will experience as a result of the Commission's Report and Order should always take precedence over investor profits.

2. Another contested issue in this case involved SNG's Rogersville service area and the gas volume imputation ordered by the Commission in 1994 to continue indefinitely in future rate cases until the company achieved the imputed level of 1,797,000 Mcf.[4] In the Commission's Report and Order issued in the present case, the Commission removed the imputation by concluding, "In the calendar year 2013, SNGMo's throughput for the service area of Rogersville *as originally certified* was 1,869,737 Mcf."[5] Public Counsel requests rehearing of this issue because this finding misstates facts, and as a result, the Commission's decision regarding Rogersville was based on an inaccurate finding of fact. The originally certified Rogersville service area included the communities of Cabool, Houston, Licking, Mountain Grove, Mountain View, West Plains, Ava, Mansfield, Marshfield, and Willow Springs, and this is the

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over their windows and doors. It's also common to go into people's homes, and they will ask you to step into a small bedroom because it's the only thing they're heating and they're heating it with a small space heater and they and their children are living in that little space. People are going without food trying to keep their utilities on. Any increase in this community is devastating." Transcript, Vol. 1, pp. 15-16 (June 19, 2014).

[4] Case No. GR-94-127, *Report and Order*, EFIS No. 75, September 16, 1994, p. 18.

[5] Case No. GR-2014-0086, EFIS No. 273, *Report and Order*, October 29, 2014, p. 17. Emphasis added.

service area upon which the volume imputation was imposed.[6] Communities that are currently served by SNG in the Rogersville service area that were *not* in the initial service area include the communities of Lebanon, Rogersville, Fordland, Diggins, Seymour and Norwood.[7] Accordingly, the 1,869,737 Mcf usage level for 2013, as found by the Commission in its Report and Order, includes a much larger service area than originally certificated. The volumes for Lebanon, Rogersville, Fordland, Diggins, Seymour and Norwood would need to be removed from the 1,869,737 Mcf to properly compare current volumes to the imposed volume imputation. Public Counsel requests that the Commission rehear this matter so that the Commission's decision on the Rogersville service area can be based upon accurate facts that recognize that the evidence does not support a finding that SNG has met the 1,797,000 imputation threshold for the originally certificated area.

3. The Report and Order also addresses whether the Commission should order revenue or volume imputations in the other non-Rogersville service areas, and the Report and Order makes several errors on this issue.[8] The first error occurred where the Commission concluded,

> OPC alleges, without citation, that feasibility studies persuaded the Commission to permit SNGMo to expand its service areas. Feasibility studies constitute no standard of any kind.[9]

Public Counsel provided multiple citations where the Commission specifically linked its order approving a certificate of convenience and necessity (CCN) to a feasibility study.

[6] Case No. GR-94-127, *Report and Order*, EFIS No. 75, September 16, 1994, pp. 2-4. Tartan Energy's July 1, 1994 First Amended Application, EFIS No. 41, removed the communities of Seymour, Fordland, Diggins, Norwood, and Rogersville from the service area request.
[7] Tr. 254, 259.
[8] Case No. GR-2014-0086, EFIS No. 273, *Report and Order*, October 29, 2014, p. 21.

Those citations include the first CCN issued for the Rogersville service area, where the Commission tied the CCN to the gas volume imputation and concluded that the imputation protects "customers against the possibility that Tartan has overestimated the conversion rates reasonably attainable."[10] Additionally, Public Counsel's initial brief cited to the following:

- **Gallatin and Hamilton (2005)**

  "The Company shall be responsible in future rate cases for any failure of this system to achieve forecasted conversion rates and/or its inability to successfully compete against propane."[11]

- **Lebanon, Licking and Houston (2007)**

  "…the shareholders, rather than the ratepayers, being deemed responsible for the detrimental effects of a loss resulting from inaccurate estimations of customer conversion or usage rates."[12]

- **Branson, Branson West and Hollister (2008)**

  "SMNG's shareholders bear the economic risks associated with the expansion of its service area to the Branson area (just as in the Lebanon case), including a failure to achieve forecasted conversion rates and/or customer growth projections."[13]

The Report and Order erroneously concluded that Public Counsel did not provide citations to where the feasibility studies persuaded the Commission to grant a CCN. As shown above, Public Counsel's citations were clearly set forth in its initial brief. Due to

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[9] *Id.*, pp. 21-22.

[10] Public Counsel Initial Brief, EFIS No. 255, p. 5, *citing* Case No. GR-94-127, *Report and Order*, September 16, 1994, pp. 17-18.

[11] Public Counsel Initial Brief, EFIS No. 255, p. 6, *citing* Case No. GO-2005-0120, Order Approving Stipulation and Agreement, December 14, 2004. Emphasis added.

[12] Public Counsel Initial Brief, EFIS No. 255, p. 6, *citing* Case No. GA-2007-0212, Report and Order, August 16, 2007, pp. 25-26. Emphasis added.

[13] Public Counsel Initial Brief, EFIS No. 255, p. 6, *citing* Case No. GA-2007-0168, Report and Order, June 24, 2008, p. 10. Emphasis added.

this error, the Commission should rehear this issue to properly recognize that the feasibility studies were central to the Commission's orders granting expansion.

4. In addition, the Commission's conclusion that "feasibility studies constitute no standard of any kind" is incorrect because it ignores the standard long-employed by this Commission when considering requests for service authority. That standard was set forth in Public Counsel's initial brief, where Public Counsel cited to the Commission's five criteria: "(1) There is a public need for the proposed service; (2) The applicant is qualified to provide the proposed service; (3) The applicant has the financial ability to provide the proposed service; (4) The applicant's proposal is economically feasible; and (5) The proposed service promotes the public interest."[14] This is the same standard that the Commission continues to employ today when considering whether to grant a CCN, and it was used by this Commission as recently as April when the Commission granted a CCN to Missouri Gas Energy to expand its service area in Lawrence County.[15] The feasibility studies are a key piece of any Commission grant of a CCN since one criteria considered by the Commission is whether the proposed expansion is economically feasible. Public Counsel seeks rehearing of this case so that the Commission can accurately recognize and incorporate into its decision-making the fact that economic feasibility is a standard employed by this Commission when considering CCN applications.

[14] Public Counsel Initial Brief, EFIS No. 255, p. 6, *citing* GA-2007-0168, Report and Order, February 5, 2008, p.7. Emphasis added.

[15] Case No. GA-2014-0232, *In the Matter of the Application of Missouri Gas Energy, a Division of Laclede Gas Company for a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Natural Gas Distribution System to Provide Gas Service in Lawrence County, Missouri, as an Expansion of its Existing*

5. The Report and Order addresses the issue of an excess capacity adjustment to recognize that the Branson and Warsaw systems were overbuilt, and the Report and Order responds to Public Counsel's argument that the excess capacity adjustment should also be adjusted for operating and management expenses associated with the overbuilt assets.[16] The Report and Order concludes, "OPC offers no evidence quantifying or otherwise supporting that allegation."[17] Here the Report and Order concludes that excess capacity should not be included in rate base, but that Public Counsel is responsible for generating evidence showing the full extent of the costs caused by such excess capacity. This places the burden of proof onto Public Counsel to disprove the amount of the rate increase, when such quantification should be the responsibility of SNG since SNG carries the burden of proof in this case. §393.150.2 RSMo. Supp. 2013. Accordingly, the Report and Order is unlawful and in violation of §393.150.2 RSMo, and should be reheard to properly apply the burden of proof. This could be accomplished by requiring SNG to file a late-filed exhibit quantify all costs incurred as a direct result of the excess capacity, and those amounts should be included in the excess capacity adjustment. Proving these amounts is not the ratepayer's burden.

6. Allowing SNG to recover from ratepayers certain costs incurred due to excessive plant that is not used and useful in the provision of gas service to SNG's customers is contrary to the Court of Appeals decision in *State ex rel. Union Electric Co. v. PSC*, 765 SW2d 618 (Mo. App. 1988), where the Court concluded:

Certified Area, Order Granting Certificate of Convenience and Necessity, EFIS No. 9, April 16, 2014, p.3.

[16] Case No. GR-2014-0086, EFIS No. 273, *Report and Order*, October 29, 2014, p. 27.

[17] *Id.*

> The utility property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful. This used and useful concept provides a well-defined standard for determining what properties of a utility can be included in its rate base.[18]

To do otherwise, the Court concluded, "would make the investment practically risk-free."[19] By allowing SNG to recover from ratepayers costs caused by SNG's excess capacity, the Commission's Report and Order and the rate increase it approves is unjust and unreasonable because it ensures a risk-free investment for SNG's shareholders.

7. The Report and Order is also unlawful in that it authorizes SNG to raise rates by over $19 million for costs that SNG *never incurred*, which is a violation of §393.270.4 RSMo. Supp. 2013. The Commission reaches its conclusion that §393.270.4 RSMo is inapplicable by concluding that the statute applies only to complaint cases.[20] While the Commission's interpretation is somewhat understandable given the reference to complaints in the statute, those references do not limit the application of the statute to complaint cases. First, the statute, §393.270, is titled, "Notice and hearing – order fixing price of gas, water, electricity or sewer service, or requiring improvement", and makes no reference limiting the statute to complaints. Second, Missouri courts have repeatedly applied §393.270 to cases that do not involve a complaint. The Missouri Supreme Court found that §393.270 applies to rate cases filed under the "file and suspend" method:

> Somewhat in conclusion, we make our own observation. Section 393.270(3), by its terms, applies to a "price fixed by the commission under sections 393.110 to 393.285." A price fixed by the file and suspend method -- § 393.140 -- falls within the classification noted. This court has so held.[21]

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[18] *State ex rel. Union Electric Co. v. PSC,* 765 SW2d 618, 622 (Mo. App. 1988), *citing*, Colton, *Excess Capacity: Who Gets the Charge From the Power Plant?*, 34 Hastings L.J. 1133 (1983).

[19] *Id.*

[20] Case No. GR-2014-0086, EFIS No. 273, *Report and Order,* October 29, 2014, p. 31.

[21] *State ex rel. Jackson County v. PSC.*, 532 S.W.2d 20, 28 (Mo. 1975). *See also, State ex rel. Valley Sewage Co. v. PSC*, 515 S.W.2d 845 (Mo. Ct. App. 1974).

Likewise, §393.270.4 is also not limited to complaint cases. The language of the statute references complaints because the facts to be considered in the case are not to be limited even if not set forth in any complaint to which the statute applies. This is not the same as stating that the subsection applies *only* to complaint cases. Moreover, Missouri's courts have specifically applied §393.270.4 to "file and suspend" rate cases initiated by the utility. The Court of Appeals concluded in a rate case initiated by a utility that, "Section 393.270.4 requires the Commission to give due regard, in determining the price to be charged for gas, "to a reasonable average return upon capital actually expended," among other matters."[22] Accordingly, the Report and Order misinterprets and misapplies §393.270 and is therefore unlawful because it authorize SNG to earn a return on capital never expended.

8. The Report and Order should be reheard because it unravels two decades of customer protections placed on this new and developing system. The facts of this case provided the Commission with multiple reasons and opportunities to protect customers by minimizing the amount of the rate increase. Instead, the Commission's Report and Order rewards SNG with much higher rates than what should be forced upon SNG's customers at this time. SNG's direct testimony filing requested a $7,472,133 rate increase, and the Commission's Report and Order gives SNG a $7,082.047 rate increase, or approximately 95% of SNG's original request.[23] Public Counsel urges the

[22] State ex rel. Mo. Gas Energy v. PSC, 186 S.W.3d 376, 384 (Mo. Ct. App. 2005). *See also, State ex rel. Public Counsel v. PSC*, 274 S.W.3d 569 (Mo. Ct. App. 2009); *State ex rel. AG Processing, Inc. v. PSC*, 276 S.W.3d 303 (Mo. Ct. App. 2008); and *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63 (Mo. Ct. App. 2009).

[23] Exhibit 4, Moorman Direct, p. 8. Case No. GR-2014-0086, EFIS No. 273, *Report and Order*, October 29, 2014, p. 17.

Commission to rehear this case so that the Commission can properly recognize that the policy behind the PSC law was "created to protect the public first and concerning itself with the existing utility only in an incidental manner."[24]

9. For the reasons stated herein, the Commission's Report and Order is unlawful because certain legal conclusions misapply the law, and the Report and Order is unreasonable because it is arbitrary, capricious, not based on competent and substantial evidence, misstates facts, and constitutes an abuse of the Commission's discretion.

WHEREFORE, the Office of the Public Counsel respectfully submits this Application for Rehearing.

Respectfully submitted,

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[24] *State ex rel. Public Water Supply Dist. No. 8 v. Public Service Com.*, 600 S.W.2d 147, 155 (Mo. Ct. App. 1980).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this November 6, 2014:

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