

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

In the Matter of)	
Summit Natural Gas of Missouri Inc.'s)	<u>File No. GR-2014-0086</u>
Filing of Revised Tariffs to Increase Its)	Tracking No. YG-2014-0285
Annual Revenues for Natural Gas Service)	

**STAFF RESPONSE TO SNGMO'S MOTION FOR
EXTENSION OF TIME TO RESPOND TO DATA REQUESTS**

COMES NOW the Staff (Staff) of the Missouri Public Service Commission (Commission), by and through counsel, and for its response to the June 19, 2014, *Motion for Extension of Time to Respond to Data Requests and Motion for Expedited Treatment* hereby states:

1. On June 19, the Commission issued its *Order Granting Motion to Compel* ordering Summit Natural Gas of Missouri (SNG) to produce responses to certain Staff data requests no later than Friday, June 20.

2. SNG asks that the Commission grant an extension of time to allow SNG to provide the responses by July 15, 2014. The Commission should deny SNG's motion because it seeks to unreasonably delay, until late in this case, the Commission's review of relevant information necessary to set just and reasonable rates for SNG. For the reasons articulated below, the Commission should order SNG to comply with the Commission's order no later than July 1, 2014, so that the information can inform Staff's and other parties' rebuttal testimony in this matter.

3. SNG first argues that it has no authority over its parent company Summit Utilities Inc. (SUI) or over SUI's only shareholder, IIF. The issue is not SNG's authority over its parent and sole investor, but rather those entities' authority over SNG. IIF and SUI direct and control SNG's activities, including SNG's decision to file this rate case

and SNG's decision to seek a particular rate of return.¹ The operations and decisions of IIF and SUI bear directly on SNG's capital structure and risk profile. In such a situation, information must flow freely from shareholder (IIF) to parent (SUI) to subsidiary (SNG).² The fact of this close relationship supports the relevance of Staff's data requests and the practical ability of SNG to obtain the response. The Staff and the Commission typically review the same kind of parent company financial data in other rate cases that the Commission has ordered SNG to produce, and SNG should not be allowed to use its corporate structure to evade this routine review.³ Missouri law⁴ places the burden upon SNG—and the people who actually control its operations—to produce information that supports its rate increase request. The Commission should not permit SNG to wait until after rebuttal testimony to meet this statutory burden.

4. Next, SNG claims that the Commission has ordered the company to produce information that will require time to prepare. Staff disagrees. Staff data requests 0073, 0076, 0077 and 0178 relate to SUI's financial information and analysis. This information relates to information that already exists and analysis that should have already been performed. Similarly, Staff data requests 0132 through 0139⁵ relate to analysis that should have already been performed by IIF. Staff data request 0182 simply asks for analysis already performed at SUI regarding a fair value for equity

¹ Some of the same people make decisions for all these entities. For example, Kenneth I. Bonn is a vice president and senior asset manager for IIF. He is also on the board of directors for Summit Utilities, Inc., and formerly on the board with Southern Missouri Natural Gas (which merged with Missouri Gas Utility to form Summit Natural Gas of Missouri). See <http://www.summitutilitiesinc.com/board-directors>. This close relationship is one of the key facts that show why Staff's data requests are relevant and why SNG has the practical ability to obtain this information.

² If the Commission grants SNG's requested rate on equity, no doubt the profit paid by Missouri ratepayers will also flow freely from SNG to its parent entities.

³ *State ex rel. Associated Natural Gas Co. v. Public Service Commission of Missouri*, 706 S.W.2d 870, 881 (Mo.App. W.D. 1985).

⁴ Section 393.150.2 RSMo.

⁵ Staff notes that its data request 0133 is the same as 0132, so SNG need only provide a response either 0132 or 0133.

interest in SUI. There should be no need to perform additional analysis or create new documents in order to comply with the Commission's order. Moreover, requests for such data are a routine part of the Commission's investigation of a utility's rate increase request, and in this case Staff submitted its DR's well in advance of its motion to compel, so SNG and its parent companies should be prepared to provide the information.

5. There is nothing new about the "practical ability to obtain" legal standard the Commission applied in that case. The Commission has applied this standard recently.⁶ Moreover, the idea that "possession" of information includes "the practical ability to obtain" the information is contained in the text of Rule 58.01(a)⁷ and in Missouri case law.⁸ This legal principle is deeply ingrained in civil discovery law because it is critical to overcoming the kind of self-serving argument and management-created corporate structure that the *Associated Natural Gas* court expressly said should not impede the Commission's ability to review information relevant to a rate increase request.⁹

6. The Commission should not allow SNG to wait until July 15 to comply with the Commission's order, because that will make the information unavailable for Staff's rebuttal testimony.

⁶ GR-2010-0171, *Order Granting Motion to Compel and Denying Motion to Quash*, June 19, 2010.

⁷ Mo. R. Civ. Pro. 58.01(a)(1): "Any party may serve on any other party a request to produce.. any designated documents... that are in the possession, custody or control of the party upon whom the request is served..."

⁸ In *Hancock v. Shook*, the Missouri Supreme Court cited sources dating back more than 50 years in support of the idea that the possession includes the *practical* ability to obtain the documents, and does not depend on a party's *legal entitlement* to the documents. *Hancock v. Shook*, 100 S.W.3d 786, 796-97 (Mo. 2003).

⁹ *Associated Natural Gas* at 881.

WHEREFORE, Staff hereby requests that the Commission order SNG to comply with its order and produce responses to Staff's data requests no later than July 1, 2014.

Respectfully Submitted,

/s/ John D. Borgmeyer

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 24th day of June, 2014.

/s/ John D. Borgmeyer