

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of September, 2010.

In the Matter of the Application of Missouri Gas Utility, Inc.,)
for Authority to Enter into certain Debt Instruments and to)
Issue up to and including \$26,400,000 of Long-Term) **File No. GF-2010-0334**
Indebtedness, in one or more Transactions, and to,)
among other things, Execute and Deliver a Mortgage)
and Security Agreement to Secure said Indebtedness.)

ORDER GRANTING APPLICATION

Issue Date: September 8, 2010

Effective Date: September 18, 2010

The Missouri Public Service Commission is granting the *First Amended Application* ("application") of Missouri Gas Utility, Inc. ("MGU"), to procure debt in the amount of \$26.4 million secured by Missouri assets, subject to conditions set forth in the ordered paragraphs at the end of this order.

I. Procedure

MGU filed its initial application on May 19, 2010. On July 16, 2010, MGU filed the amended application ("application"). On September 1, 2010, Staff filed its recommendation. Staff recommends that the Commission grant the application subject to conditions. On September 2, 2010, MGU filed its reply. In the reply, MGU agreed with the conditions. Neither the governing statute¹ nor any other law requires a hearing

¹ Section 393.190.1. All sections are in the 2000 Revised Statutes of Missouri unless otherwise stated.

before approving the unopposed application.² The Commission's independent conclusions and decision are as follows.³

II. Jurisdiction

The Commission has jurisdiction to decide MGU's application as follows. MGU is a Colorado corporation with its principal office at 7810 Shaffer Parkway, Suite 120, Littleton, Colorado 80127. MGU is authorized to do business in Missouri and is a gas corporation. MGU seeks authorization to incur debt secured by MGU's Missouri assets. That activity requires the Commission's authorization:

No gas corporation . . . shall hereafter . . . mortgage . . . or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the commission an order authorizing it so to do.[⁴]

Such authorization constitutes, "a special privilege, the right of supervision, regulation, restriction and control ["conditions"] of which is and shall continue to be vested in the state [⁵]" The state exercises that right through the Commission's order.⁶ The standard is whether granting the application is detrimental to the public interest.⁷

III. Merits

The burden of proof is with MGU because MGU seeks to change the status quo.⁸ The quantum of proof is a preponderance of the evidence.⁹ The evidence consists of the verified application and verified recommendation.

² ***State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n***, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989). Therefore, this action is not a contested case, and Sections 536.080 and 536.090 do not apply.

³ Section 386.420.2.

⁴ Section 393.190.1.

⁵ Section 393.180.

⁶ *Id.*

⁷ ***State ex rel. City of St. Louis v. Public Service Comm'n of Missouri***, 73 S.W.2d 393, 400 (Mo.1934).

⁸ ***Tate v. Department of Social Services***, 18 S.W.3d 3, 8 (Mo. App., E.D. 2000).

⁹ *Id.* and ***State Board of Nursing v. Berry***, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

Those documents show that the purpose of the debt is to finance two construction projects in Missouri counties for which the Commission issued certificates of need as follows:

<i>Amount</i>	<i>Counties</i>	<i>File No.</i>
\$19.2 million	Benton, Morgan, Camden and Miller	GA-2010-0012
\$ 7.2 million	Dallas, Greene and Polk	GA-2010-0189

The amounts will come from Summit Utilities, Inc., which is MGU's parent and sole shareholder; U.S. Bank National Association; and other lenders.

The parties agree on those amounts, and on the degree of Commission “supervision, regulation, restriction and control”¹⁰ (“conditions”) set forth in the ordered paragraphs below. The Commission independently finds and concludes that such amounts subject to such conditions are not detrimental to the public. Therefore, the Commission will grant the application subject to the conditions.

THE COMMISSION ORDERS THAT:

1. The *First Amended Application* (“application”) of Missouri Gas Utility, Inc., (“MGU”) is approved and the authorization sought in the application is granted. Such authorization shall be subject to the following conditions.

- a. Nothing in the Staff’s Memorandum or the Commission’s order shall be considered a finding by the Commission of the value of this transaction for rate making purposes, which includes, but is not limited to the capital structure, and that the Commission reserves the right to consider the rate making treatment to be afforded these financing transactions and their effect on cost of capital, in any later proceeding.

¹⁰ Section 393.180.

- b. MGU shall file with the Commission any information concerning communication with credit rating agencies concerning the proposed financing, and such filing may be under this file number.
- c. MGU shall file with the Commission all final terms and conditions of the proposed financing subject to this case, including, but not limited to, the aggregate proceeds received, price information, and estimated expenses.
- d. MGU shall continue the agreement with Summit Utilities, Inc., whereby Summit commits to :
 - i. be capitalized with no more debt capital as a percentage of total capital, as compared to how it capitalizes MGU and,
 - ii. Summit Utilities, Inc.'s business risk shall remain consistent with its current operations.

The debt to capital ratio shall be as defined in the Reimbursement and Pledge Agreement by and among MGU, Summit and U.S. Bank National Association. MGU shall file with the Commission both Summit's and MGU's fiscal-year end annual audited financial statements to ensure compliance with this condition.

- e. All future funds acquired through issuance of securities under this application shall be used exclusively for the benefit of Missouri Gas Utility, Inc.'s Missouri regulated operations.
- f. The amount authorized for purposes of the requested lien or encumbrance shall be limited to \$26,400,000.

g. MGU shall file with the Commission Summit Utilities, Inc.'s finalized plans for managing the consolidated variable interest rate risk exposure no later than March 31, 2011.

2. This order shall become effective on September 18, 2010.

3. This file shall close on September 19, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC. concur.

Dated at Jefferson City, Missouri,
on this 8th day of September, 2010.