

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

In the Matter of Summit Natural Gas of	)	
Missouri, Inc.'s Proposed Conversion	)	Case No. GT-2013-
Rebate Program	)	

**MOTION TO SUSPEND TARIFF  
AND REQUEST FOR EVIDENTIARY HEARING**

**COMES NOW** the Missouri Office of the Public Counsel (OPC) and for its Motion to Suspend Tariff states:

1. On December 28, 2012, Summit Natural Gas of Missouri, Inc. (SNG) filed a proposed Promotional Practices Tariff Sheet, P.S.C MO No. 1, Fifth Revised Sheet 71, seeking to extend its previously expired Conversion Rebate Program. SNG's proposed tariff sheet is attached as Attachment A.

2. The proposed tariff sheets purport to allow SNG to re-establish a conversion program that expired on December 31, 2012, which authorized SNG to offer rebates to encourage any propane or electric customer within the former Southern Missouri Gas Company portion of SNG's service territory to become a new SNG customer by converting to natural gas.<sup>1</sup>

3. Public Counsel seeks suspension of these proposed tariff sheets for several reasons. First, the proposed tariff sheets should be suspended to give SNG an opportunity to seek the necessary variance from the Commission's Promotional Practices Rules since the conversion program is a prohibited promotional practice that can not be

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<sup>1</sup> For simplicity, references to SNG in this pleading to not attempt to distinguish between SNG and SNG's predecessor, Southern Missouri Gas Company.

offered to SNG's customers without a variance. Commission Rule 4 CSR 240-40.020(1) specifically prohibits public utilities from offering or granting promotional practices for the purpose of inducing any person to select and use the service or use additional service of the utility. If approved, or allowed to take effect, SNG's proposed tariff would authorize SNG to give consideration for the installation and use of appliances and equipment in direct violation of the Promotional Practices Rule. SNG must request and receive a variance from the rule before it can lawfully offer conversion rebates under the proposed tariff. SNG has not requested a variance.

4. Second, the proposed tariff should be suspended because SNG has neither requested nor established good cause for granting the variance. A request for a variance is authorized by Commission rule 4 CSR 240-40.010(2), which specifically states, "On written application by a utility the commission may grant variances from the rules contained in this chapter for good cause shown." SNG has not established that good cause exists for granting the variance. Moreover, SNG has not established how good cause exists to allow a promotional practice for SNG within the service territory of another regulated public utility, as discussed below.

5. A request for a variance also requires, "The utility filing the application [for variance] 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." This proof of service requirement is necessary to put all regulated public utilities that also provide service within SNG's service territory on notice that SNG seeks to offer a prohibited promotional practice within that utility's service territory. This rule provides protections for other regulated utilities that may want

to intervene in the variance request case to protect their interests. In the past SNG has asserted that there were no other public utilities providing service within SNG's service territory. It appears now, however, that SNG currently shares service territory with a public utility in that SNG provides service within the service territory of Empire District Gas Company (Empire) in the City of Branson and in Taney County. Requiring SNG to seek a variance will put Empire on notice of a promotional practice that may impact Empire's interests. Furthermore, prior Commission orders granting variances to the promotional practice rule for similar conversion policies generally note that there is no competition with regulated utilities in the geographic area where the conversion policy would be implemented and/or that only non-regulated utilities such as propane dealers or electric coops are providing service in the same area.

6. SNG may assert that it already received a variance in a prior case; however, prior variances do not apply to this new request. Nowhere has the Commission stated that any past variance should apply beyond the effective date of the prior tariffs that were filed with a specific limited duration. SNG's proposed tariff sheet references two prior cases, Case Numbers GA-94-127<sup>2</sup> and GO-98-172, for the assertion that a variance was granted in those cases. However, the variances granted in those cases were for the limited duration of the tariffs authorized by the variances.

7. OPC seeks suspension so that the Commission may follow a lawful procedure. Granting the proposed, or allowing the tariff to go into effect by operation of law, would be unlawful and in violation of 4 CSR 240-40.010(2) and 40.020(1) without SNG first requesting and receiving a variance.

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<sup>2</sup> SNG's proposed tariff cites to Case Number GR-94-127, however, it appears SNG intended to cite to Case Number GA-94-127.

8. OPC first brought its concerns with the proposed tariff to SNG and the Commission's Staff. Unfortunately, OPC and SNG were unable to come to an agreement regarding whether SNG needed to seek a variance under 4 CSR 240-40.010(2).

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission suspend the tariff; schedule a conference of the parties to meet and discuss the matters raised herein; and schedule an evidentiary hearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 18<sup>th</sup> day of January 2013:

/s/ Marc Poston