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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
Hearing
June 13, 2014
Governor Office Building
Jefferson City, Missouri 65401
Volume 3

In the Matter of Summit Natural Gas of)
Missouri Inc.'s Filing of Revised)
Tariffs To Increase Its Annual) GR-2014-0086
Revenues for Natural Gas Service)

DANIEL R. E. JORDAN, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY: SARAH POKORSKI, CCR 745

1 APPEARANCES:

2

3 SUMMIT NATURAL GAS OF MISSOURI, INC.

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22 Also Present:

23 David Murray

24 Martha Wankum

25

1 P R O C E E D I N G S

2 JUDGE JORDAN: All right. Then let's go on
3 the record. Commission is calling the action File
4 Number GR-2014-0086. This is a general rate action
5 addressing pending tariffs of Summit Natural Gas,
6 Incorporated -- Summit Natural Gas of Missouri,
7 Incorporated, which seeks an increase in rates. I'm
8 Daniel Jordan. I'm the regulatory law judge assigned
9 to this action. And we are here to discuss discovery,
10 particularly the pending motion to compel that Staff
11 filed. And I'll begin with entries of appearance.
12 Let's start with the utility, Summit Natural Gas of
13 Missouri, Inc.

14 MR. COOPER: Dean Cooper, Brydon,
15 Swearngen & England, P.C., P.O. Box 456, Jefferson
16 City, Missouri 65102, appearing on behalf of Summit
17 Natural Gas of Missouri, Inc.

18 JUDGE JORDAN: Thank you. And for Staff?

19 MR. BORGMEYER: Appearing on behalf of the
20 Staff of the Missouri Public Service Commission, my
21 name is John Borgmeyer, P.O. Box 360, Jefferson City,
22 Missouri 65102.

23 JUDGE JORDAN: Thank you. And
24 intervenors. We'll start with the Missouri Propane
25 Association.

1 MR. JARRETT: Yes. Thank you, Judge.

2 Appearing on behalf of the Missouri Propane Gas
3 Association, Terry Jarrett, Healy & Healy, Attorneys
4 at Law, 514 East High Street, Suite 22, Jefferson
5 City, Missouri 65101.

6 JUDGE JORDAN: Thank you. And --

7 MS. WANKUM: Martha Wankum with Summit
8 Natural Gas of Missouri.

9 JUDGE JORDAN: Thank you. All right.
10 Pending before us is a motion to compel which Staff
11 filed. I was just looking at the date. It was the
12 10th day of June. And in this motion, Staff had also
13 asked the Commission to reconsideration -- to
14 reconsider the cancellation of a discovery conference
15 that would otherwise have been held on Thursday.
16 Today is Friday, so that part of the motion is moot
17 and is therefore denied. But the motion also includes
18 a request to compel the compliance with certain
19 discovery. And those are data requests. I will read
20 into the record the numbers that Staff has cited.
21 They are 0073, 0076, 0077, 0132 through 0139, 0178 and
22 0182. Those data requests were subject to objection
23 by Summit, and so I will begin by asking Summit
24 whether it wishes to expound on its objections.

25 MR. COOPER: It does, Your Honor. First

1 off, I think that it's important to note that while
2 some of these DRs include information -- requests for
3 information about Summit Natural Gas of Missouri,
4 Inc., that's not the portion that's been objected to
5 by the company, and it's my belief that the company's
6 responded to those portions of these DRs. The
7 portions that are objected to are the portions that
8 request information held by, created by both the
9 operating company's parent, Summit Utilities, Inc.,
10 and the operating company's parent's parent -- or
11 grandparent -- the -- The Infrastructure Investment
12 Fund. My response is really going to be a little bit
13 like two ships passing in the night with
14 Mr. Borgmeyer, because Mr. Borgmeyer has argued, in
15 his motion to compel, relevance. I don't get to
16 relevance, because I don't think Mr. Borgmeyer has
17 requested the information from the correct party. As
18 I said before, Summit Natural Gas of Missouri is the
19 party in this case, and it's the only entity that's
20 subject to data requests, a vehicle utilized within
21 Commission cases, again, only to ask parties for
22 information. The information requested resides, as we
23 said, at the parent -- the parent of the parent. And
24 those entities are not parties in this case. They --
25 that's not to whom the data request was directed, nor

1 do I think it would have been proper had it been
2 directed to them. And that's why in the company's
3 objections, the first reason for -- on each of those
4 objections is that the request asks for information
5 concerning entities other than SNGMO, and the
6 information requested is not in the possession,
7 custody or control of SNGMO. I think that the Ameren
8 case that's cited by the Staff is a -- is a wonderful
9 example of what I'm talking about, and -- and -- and
10 similar -- very similar to my argument. Because when
11 you look at that -- that order, it's not a question of
12 Union Electric Company -- or doing business as Ameren
13 Missouri, the operating company -- being requested to
14 provide information; it's a decision regarding a
15 subpoena duces tecum that has been served upon a
16 representative of Ameren Corporation, the parent
17 company. So I -- I think it certainly doesn't prove
18 what the Staff indicates it -- it shows. It's not
19 good for that proposition. And as I said, I think it
20 shows that if Staff wants the information that's
21 requested in these DRs, it's not a DR to southern --
22 or to Summit Natural Gas of Missouri that's
23 appropriate, it's something else.

24 JUDGE JORDAN: Okay. Okay. Maybe this is
25 a good time for me to clarify the entities that are

1 involved here. And if someone disagrees with the
2 characterizations, feel free to chime in. I
3 understand that the applicant -- entity that filed
4 these tariffs -- is Summit Natural Gas of Missouri,
5 Incorporated.

6 MR. COOPER: It is.

7 JUDGE JORDAN: Okay. And then other
8 entities involved in these data requests include the
9 parent, which is Summit Utilities, Inc. Is that
10 correct?

11 MR. COOPER: That's correct.

12 JUDGE JORDAN: And then the grandparent to
13 which you referred, there's a couple of names given.
14 One of them is a J.P. Morgan name. And the other is a
15 name without the J.P. Morgan part.

16 MR. COOPER: And they are far enough
17 removed from me, I cannot tell you, Your Honor, what
18 the formal, official, absolute name is.

19 JUDGE JORDAN: Okay.

20 MR. COOPER: But I know them as IIF, or
21 IIF2, I think.

22 MR. BORGMEYER: Your Honor, I think -- I
23 can tell you that that stands for Infrastructure
24 Investment Fund.

25 MR. MURRAY: Full title is The

1 Infrastructure Investment Fund.

2 JUDGE JORDAN: It has a "the."

3 MR. MURRAY: Yes, it does.

4 JUDGE JORDAN: It has a "the." J.P. Morgan
5 the --

6 MS. WANKUM: Operated by.

7 JUDGE JORDAN: I'm sorry?

8 MS. WANKUM: It's operated by J.P. Morgan.

9 MR. MURRAY: Well, it's advised by J.P.
10 Morgan.

11 MS. WANKUM: Right.

12 MR. MURRAY: They're an asset manager of
13 the -- the fund itself. J.P. Morgan does not provide
14 a -- financing to -- to The Infrastructure Investments
15 Fund. They have an asset manager that advises -- it's
16 a private equity infrastructure fund.

17 JUDGE JORDAN: Okay. Let me see if I
18 understand how this works. The Infrastructure
19 Investment Company, is that what that --

20 MR. MURRAY: Investment Fund.

21 JUDGE JORDAN: Investment Fund. That's the
22 grandparent. Is that correct?

23 MR. COOPER: Is that your understanding?

24 MS. WANKUM: Yeah.

25 MR. BORGMEYER: It's basically the sole

1 shareholder.

2 MS. WANKUM: Yeah. It's the one private
3 equity investor --

4 JUDGE JORDAN: Okay. And --

5 MS. WANKUM: -- of Summit Utilities, Inc.

6 JUDGE JORDAN: Which is in turn --

7 MS. WANKUM: The parent company of --

8 JUDGE JORDAN: Summit Natural Gas.

9 MR. BORGMAYER: Of several regulating
10 utilities --

11 JUDGE JORDAN: Including --

12 MR. BORGMAYER: -- including Summit Natural
13 Gas of Missouri.

14 JUDGE JORDAN: Right. Right.

15 MR. COOPER: Of which, yeah, Summit Natural
16 Gas of Missouri is one.

17 JUDGE JORDAN: Let's see. And
18 Infrastructure Investment Funds wholly owns Summit
19 Utilities, Inc.

20 MR. MURRAY: Yes.

21 JUDGE JORDAN: If I remember correctly.

22 And Summit --

23 MS. WANKUM: Is the sole --

24 JUDGE JORDAN: Yes. And Summit Utilities,
25 Inc. wholly owns Summit Natural Gas of Missouri.

1 MR. COOPER: The sole shareholder.

2 JUDGE JORDAN: Right. And then there's a
3 sort of a sibling or a cousin organization in
4 Colorado. Is that correct?

5 MR. COOPER: Colorado Natural Gas would be,
6 I guess, sort of a sister organization to this
7 operation.

8 MR. BORGMEYER: Yeah. I believe that's one
9 of the subsidiaries --

10 MS. WANKUM: Summit Utilities.

11 MR. BORGMEYER: -- owned by Summit
12 Utilities.

13 JUDGE JORDAN: Very good. And I think
14 that's everyone involved. Am I correct about that?

15 MS. WANKUM: Well, there's Summit Natural
16 Gas of Maine --

17 MR. COOPER: I think those are the only
18 ones that have been mentioned in the DRs.

19 JUDGE JORDAN: That's my question.

20 MS. WANKUM: Okay.

21 JUDGE JORDAN: I seemed to remember there
22 was a Maine corporation, but I didn't remember whether
23 it was subject to the -- whether information about
24 that was -- okay. That's fine. Okay. That gives me
25 a picture of these entities. That's -- that's --

1 that, I think -- okay. Well, while we're talking
2 about these entities, is -- Summit Natural Gas of
3 Missouri has been asked for this information. Are we
4 saying that the information is physically not in
5 Summit's offices in a file cabinet somewhere?

6 MR. COOPER: That's correct.

7 JUDGE JORDAN: Does Counsel happen to know
8 where it is physically located?

9 MR. COOPER: I do not. I can tell you
10 that.

11 JUDGE JORDAN: Okay. And you know, my --
12 I'm sorry? Okay. And my question may reveal my age,
13 because documents don't necessarily exist in file
14 cabinets alone anymore. They can be anywhere in
15 electronic form, and accessible anywhere else in
16 electronic form. So I'm afraid I date myself with
17 that question. That, I think, is what I had for
18 Summit Natural Gas. Is there anything you want to add
19 based on --

20 MR. COOPER: No, Your Honor.

21 JUDGE JORDAN: Well, I'll hear from Staff,
22 then.

23 MR. BORGMEYER: Okay. Thank you, Your
24 Honor. Let's see. Well, Staff's motion did generally
25 go to the relevance. That was an objection raised by

1 Summit Natural Gas in their objection letter. So I do
2 think the Commission can rule on whether or not these
3 data requests are relevant. And as to the issue of --
4 of who has the information, I think, you know, the --
5 the associated natural gas case in there has some good
6 language about how a regulated utility shouldn't be
7 able to essentially hide behind their corporate
8 structure to avoid providing the Commission with the
9 information they need to set a proper return for the
10 regulated entity. And so -- you know, and as you
11 mentioned, the way that data is kept electronically,
12 and the relationship between a parent that wholly owns
13 a subsidiary, I -- I guess it's not for us to know
14 exactly what information Summit Natural Gas has in
15 their possession or not. If Summit Natural Gas says
16 they don't have access to this information, then I do
17 think they should be able to tell the Staff who does
18 have access to that information, so that we're not
19 involved in an endless kind of game of I don't have
20 it, I don't have it either, I don't have it either,
21 and then we're at the end of the rate case without the
22 information that the Commission does need to set a
23 just -- a just and reasonable rate for this utility.
24 So if the Commission rules that the -- that the
25 information requested is relevant and that it should

1 be provided, I guess if Summit is saying that they
2 physically cannot provide that information, I would
3 think they would be able to get it from the entities
4 that have it, because the entities are the owners and
5 operators of Summit Natural Gas. They're the ones,
6 essentially, who requested the rate increase. And
7 they're the ones who have the burden to support that
8 rate increase request. So if they -- if Summit says
9 they don't have it, then the parent company should be
10 able to provide it to them when the Commission says
11 that -- that it's information that they need to make
12 the determination. And at the very least, I think
13 Summit should be able to point the Staff to the entity
14 that does have it, so that we can seek it from that
15 entity in a timely -- in a timely way, and make sure
16 that it's -- that we seek it from the right party, and
17 that, like I said, it's not an endless game of who's
18 got the information.

19 JUDGE JORDAN: Okay. Thank you. Anything
20 from the intervenor, Missouri Propane Association?

21 MR. JARRETT: Yeah. I think our -- our
22 position would be -- would be with -- with Staff's
23 position. I think that's -- that's right. Especially
24 the last part where, you know, if Summit doesn't have
25 the information --

1 JUDGE JORDAN: Uh-huh.

2 MR. JARRETT: -- the party here before us
3 doesn't have the information, they don't have it. But
4 I think it is discoverable. It is important to the
5 rate case. And -- and certainly to the extent that
6 Summit can -- can find out which entity has this
7 information and provide that to Staff, Staff has other
8 tools of discovery available to them to get the
9 information --

10 JUDGE JORDAN: Uh-huh.

11 MR. JARRETT: -- from the appropriate
12 parties.

13 JUDGE JORDAN: Okay. Okay. And I'll give
14 Summit the last word on this as rebuttal, if you have
15 anything to add that we --

16 MR. COOPER: Real briefly, Your Honor. I
17 think in regard to that last point about who -- who
18 has the information, I think some of this is going to
19 be self-evident from Staff's own -- own data request
20 and the construction of the data request. It's not
21 all documents that are being sought. For example,
22 0139, you know, how does J.P. Morgan, IIF reconcile
23 certain things. You know, 137, you know, the discount
24 rate J.P. Morgan, IIF uses. There's a -- just a few
25 examples of what continues through a lot of these data

1 requests. I think it's very evident from the text of
2 the question itself whose information they're seeking,
3 and it's not Summit Natural Gas of Missouri's
4 information, so --

5 JUDGE JORDAN: Okay. I will now address
6 the Commission and the RLJ's concerns. And we'll
7 start with a reference to something that Mr. Jarrett
8 mentioned, which is the practice, the devices for
9 getting these -- getting such information from someone
10 else. And I -- if I understand -- and the parties can
11 fill me in on this -- when a party -- typically when a
12 utility makes an objection like this, if the
13 Commission sustains it, Staff gets this information
14 from the party named by subpoena, perhaps by subpoena
15 duces tecum. I think that's been the practice. Am
16 I -- am I right about that?

17 MR. COOPER: It has happened that way.

18 JUDGE JORDAN: It has happened.

19 MR. BORGMEYER: We know there is a
20 provision for -- in the civil rules for the subpoena
21 of information from a non-party --

22 JUDGE JORDAN: Right.

23 MR. BORGMEYER: -- and so given that the
24 Commission operates its discovery rules based on the
25 civil rules, I think the Commission has acknowledged

1 that Staff has that power to seek information from a
2 non-party to a rate case.

3 JUDGE JORDAN: All right. Okay. Okay. I
4 thought that was the case. Now, I want to talk about
5 another matter of practice that I am seeing here, and
6 which I have seen in previous cases. And I'll -- I'll
7 tell you what it is -- I'll first ask about it. Let
8 me lay this groundwork, first. I notice that these
9 objections go back to February 5th of this year. And
10 the motion to compel did not occur until June 10th of
11 this year. Is there a reason for the -- for that
12 delay in bringing the motion on the --

13 MR. BORGMEYER: Well, I guess --

14 JUDGE JORDAN: -- on the objections?

15 MR. BORGMEYER: -- you know, from the --
16 there's been two different attorneys basically working
17 on this case. And so I think that from one attorney
18 leaving it off and one attorney picking it up, I think
19 that's probably where the -- where the delay took
20 place. And I guess from my point of view, I was
21 trying to time it with -- to coincide with the -- with
22 the -- with the next available discovery conference
23 that was on the docket, so that we'd be able to have a
24 situation where we'd be -- have time scheduled for it
25 already. So I guess --

1 JUDGE JORDAN: Okay. I'm not here to scold
2 anyone. I'm not scolding anyone. I just wanted to
3 know if there was some practice that I needed to know
4 about, some mechanics behind the scenes, because I'm
5 in front of the scenes, and seeing, from my
6 perspective, only the tip of the iceberg, and there
7 are many practicalities with which I'm completely
8 unfamiliar. So I wanted to inquire about that. And
9 I'll tell you why. I don't want us to get into a
10 situation such as I've experienced in the past where
11 we have a deadline for all discovery motions five days
12 before the evidentiary hearing. I wouldn't want then
13 to see matters that have been deferred or banked for
14 many, many months in the past brought up then. I
15 don't want to get into a situation where the
16 Commission must appoint another regulatory law judge
17 as a special master and have him go through many,
18 many, many boxes with many thousands of documents the
19 week before the evidentiary hearing. So I think I'm
20 going to modify the terms governing discovery in this
21 fashion. What I'm going to do is I'm going to set a
22 number of days, and that number of days will
23 constitute a deadline, and the deadline will be for
24 filing a discovery motion. And the motion that will
25 be subject to that number of days -- that deadline --

1 will be any motion that relates either to a request
2 for discovery or a response to a request for
3 discovery, so that we have a deadline not only for all
4 discovery motions a few days before the hearing, but
5 we have a deadline for each discovery dispute, within
6 a certain time of which it arises. I don't -- I
7 haven't set the number of days. The parties can
8 certainly give me some input on that. And I -- the
9 parties know these practicalities better than I do.
10 So I will give the parties some time to come up with a
11 number of days that they feel is appropriate. I'll
12 ask Staff to coordinate that communication amongst all
13 the parties and file something Thursday of next week.
14 Would that be time enough?

15 MR. BORGMEYER: And just to be clear, Your
16 Honor, you're asking for some number of days prior to
17 the hearing?

18 JUDGE JORDAN: No. Some -- some number of
19 days after the service of a discovery request or a
20 discovery response to file a motion related to the
21 request or response.

22 MR. BORGMEYER: I see.

23 JUDGE JORDAN: And the absence of a
24 discovery motion as to such request or response will
25 constitute a waiver of a dispute with regard to that

1 discovery request or response, and I think will help
2 keep everyone on track and prevent the situation that
3 we saw with Kansas City Power & Light and KCPL-GMO a
4 couple years ago. Thursday? Is that time enough?

5 MR. BORGMAYER: I think so, Your Honor.

6 JUDGE JORDAN: You can always ask for more
7 time. I don't need to issue a written order on that;
8 do I?

9 MR. BORGMAYER: I don't believe so.

10 JUDGE JORDAN: Good. All right. That
11 is -- that is what I have to say. And that's what I
12 have to ask of the parties. Anything else that we can
13 do while I'm -- for you while I'm with you while we're
14 here on the record? Anything from the utility?

15 MS. WANKUM: No.

16 MR. COOPER: No. The only thing, you know,
17 we -- we said there'd be no need for a written order.
18 Certainly there's no need for me for a written order.
19 But we are missing a couple of parties here. To the
20 extent we want them to chime in, we're going to have
21 to --

22 JUDGE JORDAN: I can take care --

23 MR. COOPER: Maybe Mr. Borgmeyer can be in
24 charge of contacting them. But somehow, they're going
25 to have to be roped in, I guess.

1 JUDGE JORDAN: Well, if you're suggesting
2 that I issue a written order, I'm certainly not averse
3 to that, and I can do that this afternoon.

4 MR. BORGMEYER: That would be fine, Your
5 Honor. I'd be happy to -- Staff's going to coordinate
6 this anyway. I can relay to the other parties what
7 was communicated here, and -- and if it would be
8 easier just to do it that way, I think Staff could
9 relay what the -- what the RLJ has said he wants, and
10 tell him that's what we'll do.

11 JUDGE JORDAN: I'd appreciate that. But to
12 make sure that nothing gets lost in translation or
13 through the telephone line, Mr. Cooper's got a good
14 idea. I should write it down. Anything else
15 before -- before we go off the record, before I leave
16 the room? No?

17 MR. BORGMEYER: Not from Staff, Your Honor.

18 JUDGE JORDAN: All right. Will the parties
19 need the room? I think it's available until 5:00.

20 MR. COOPER: I think we will be well gone
21 by then.

22 JUDGE JORDAN: Very good. All right. That
23 being the case, then I will adjourn this conference.
24 Thank you for attending. Thank you for being
25 helpful. And we will go off the record.

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)
) ss.
COUNTY OF FRANKLIN)

I, Sarah J. Pokorski, Certified Court Reporter within and for the State of Missouri, do hereby certify that the proceedings appearing in the foregoing transcript were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Sarah Pokorski, CCR 745

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