

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

In the Matter of the Propriety of the)
Rate Schedules for Natural Gas Service of)
Summit Natural Gas of Missouri, Inc.) File No. GR-2018-0230

**PRE-ARGUMENT BRIEF OF
SUMMIT NATURAL GAS OF MISSOURI, INC.**

COMES NOW Summit Natural Gas of Missouri, Inc. (“SNGMo” or the “Company”), and offers the following written brief for the Missouri Public Service Commission’s (“Commission”) consideration regarding its April 21, 2018, *Order Scheduling Oral Argument Regarding the Issuance of Accounting Authority Orders to Address the Effect of Federal Tax Cuts* (the “Scheduling Order”):

The specific question put to SNGMo in the *Scheduling Order* is whether the Commission should issue an accounting authority order (“AAO”) to “preserve any excess revenues resulting from” the lower corporate income tax rate brought about by the federal Tax Cuts and Jobs Act of 2017. As the Commission is well-aware, Statement of Financial Accounting Standards No. 71 (“SFAS 71”) provides for the creation of regulatory deferral account balances as an asset or liability on the balance sheet of a rate-regulated entity if the expense or obligation is probable of being recognized in rates by the regulatory authority in a subsequent reporting period or periods. This allows an expense or obligation to be recognized in a period other than in the one in which it was incurred. Based on applicable authoritative accounting standards, the Commission’s criteria for granting an AAO are (1) that the cost be associated with an event that

is extraordinary, unusual and unique, and (2) that the cost to address the event have a material financial impact.

According to the FERC¹ USOA applicable to natural gas and electric utilities, a regulatory asset or liability is established when the recovery or payment is probable.² The only case of which the Company is aware of dealing specifically with the deferral of tax expense under FERC guidance is *Kansas City Power & Light v. Public Service Commission*, 509 S.W.3d 757 (Mo. App. W.D. 2016). In the underlying rate case, Kansas City Power & Light (“KCPL”) had sought authority from the Commission to implement a property tax expense “tracker”. The Commission declined to approve the tracker for KCPL and the company appealed the Commission’s order. In affirming the Commission’s order, the Court of Appeals accepted the Commission’s conclusion that the requested tracker was the functional equivalent of an AAO and concluded that the discretion to make such a determination using the Commission’s customary two-part criteria was one reserved to the judgment of the Commission.

In denying the tracker to KCPL, the Commission referred to Accounts 182.3 and 254 and, in particular, to General Instruction No. 7 that provides that “extraordinary items” are:

Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.³

Applying these principles, the Commission concluded that transmission costs and property taxes “are normal, ordinary and recurring operation costs. These recurring costs are not abnormal or

¹ Federal Energy Regulatory Commission.

² *See*, 18 CFR Part 201, Definition 31 applicable to natural gas companies subject to the federal Natural Gas Act.

³ KCPL is an electric utility, but 18 CFR Part 101 applicable to electric utilities uses the same language of guidance as appears in Part 201.

significantly different from the ordinary and typical activities of the company, so they are not extraordinary and, therefore, not subject to deferral under the USoA.”⁴

A more recent decision by the Commission provides additional and consistent insight on this question. Using similar guidance in the NARUC⁵ USOA, the Commission recently declined Missouri-American Water Company’s (“MAWC”) request for an AAO to address a significant increase in property taxes in St. Louis and Platte Counties. The applicant’s request for an AAO was denied because the Commission found that “[t]here is nothing unusual or extraordinary about paying property taxes to warrant an AAO. It is a recurring expense.”⁶ Consequently, the Commission concluded that the applicant “did not meet the standards for granting an AAO.”⁷

Income taxes, like *ad valorem* taxes, are a normal, recurring expense of doing business. As such, the Commission’s reasoning in the KCPL and MAWC cases is equally applicable in the current context. Based on these recent accounting policy determinations, there is no principled reason for the Commission to reverse itself and find that annual corporate income tax payments are other than a normal, recurring expense of doing business. Using the reasoning laid out by the Commission, the annual imposition of a tax on corporate income is not unusual or extraordinary within the meaning of Part 201. Consequently, the amount attributable to the reduction in the federal corporate income tax rate does not qualify for deferral to Account 186 (Miscellaneous Deferred Debits).⁸

⁴ In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service, File No. ER-2014-0370, *Report and Order* dated September 2, 2015, pp. 50-56. (Copy attached)

⁵ National Association of Regulatory Commissioners. Part 101, applicable to electric utilities uses the same language as is found in Part 201.

⁶ In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis and Platte Counties, File No. WU-2017-0351, *Report and Order* dated December 20, 2017, p. 15. (Copy attached)

⁷ Id. at 20.

⁸ Inasmuch as the Commission’s decisions in the KCPL and MAWC cases are essentially dispositive of the question presented in its *Scheduling Order*, it is not necessary that SNGMo address in this brief the materiality criterion.

In light of the foregoing, there are no grounds for the issuance of an AAO to create a deferral balance representing savings resulting from the lower corporate income tax rate brought about by the federal Tax Cuts and Jobs Act of 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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