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

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| 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 indebtedness, in one or more transactions, and to, among other things, execute and deliver a mortgage and security agreement to secure said indebtedness. | ) ) ) ) ) ) ) | Case No. ____________ |

## APPLICATION

COMES NOW Missouri Gas Utility, Inc. ("MGU" or "Applicant"), by and through its undersigned counsel, pursuant to §§ 393.180 and 393.190, RSMo (2000) and Missouri Public Service Commission ("Commission") rules 4 CSR 240-2.060, 2.080 and 3.210 and for its application to issue up to and including an aggregate of $26,400,000 in some combination of (1) fixed-interest-rate, tax-exempt Recovery Zone Facility Bonds ("Facility Bonds"), (2) fixed-interest-rate revenue bonds ("Revenue Bonds") under the terms of a Loan Agreement with Summit Utilities, Inc., and related debt instruments and (3) a bank loan from CoBank, ACB ("Bank Loan"), all such indebtedness to be secured by a mortgage, lien and encumbrance upon its Missouri operating properties, states as follows:

## The Applicant

1. MGU is a corporation duly incorporated under the laws of the State of Colorado with its principal office located at 7810 Shaffer Parkway, Suite 120, Littleton, Colorado 80127. A copy of a certificate from the Missouri Secretary of State that MGU is authorized to do business in Missouri as a foreign corporation was submitted in Case No. GA-2007-0421 and is incorporated by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G). Other than cases that have been docketed at the Commission, MGU has no pending action or final unsatisfied judgments or decisions

against it from any state or federal agency or court within the past three (3) years that involve customer service or rates. MGU has no annual report or assessment fees that are overdue.

2. MGU conducts business as a "gas corporation" and a "public utility" as those terms are defined at § 386.020 RSMo and, generally, provides natural gas service in the Missouri counties of Harrison, Daviess, Caldwell, Pettis and Benton, subject to the jurisdiction of the Commission as provided by law. Its current and planned operations in the State of Missouri have been authorized in the context of Cases Nos. GO-2005-0120, GA-2007-0421, GA-2008-0321, GA-2008-0322, GA-2008-0348, GA-2009-0264 and GA-2010-0189.

3. MGU is a wholly-owned subsidiary of Summit Utilities, Inc., (f/k/a CNG Holdings, Inc.), a Colorado corporation ("Summit").

4. All correspondence, communications, notices, orders and decisions of the Commission with respect to this matter should be sent to the undersigned counsel and:

Kenneth C. Wolfe
Vice President and General Counsel
Missouri Gas Utility, Inc.
7810 Shaffer Parkway, Suite 120
Littleton, CO 80127
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Cell: (303) 847-8787
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## **Capitalization of Applicant**

5. Applicant had outstanding, as of December 31, 2009, $10,120,000 of long-term secured indebtedness. Of this, $4,670,000 is in the form of Bonds which are due in 2038 all in accordance with the authority of the Commission given in Case No.

GF-2009-0057.[1] The balance of $5,450,000 is in the form of Bonds which are due in 2038 in accordance with the authority of the Commission given in Case No. GF-2009-0331.[2]

6. As of December 31, 2009, Applicant had no outstanding short-term unsecured indebtedness.

7. Applicant's authorized capital stock consists of 10,000,000 shares of common stock, no par value, 58,342 shares of which were issued and outstanding as of December 31, 2009. During the current fiscal year, the value of equity in MGU has increased to $7,201,813 as a result of an additional investment of $5,662,860 in paid-in capital by Applicant's parent company, Summit.

## The Construction Program Financing

8. MGU anticipates that it will have available to it a short-term, unsecured bridge loan to draw upon during the initial stages of its Commission-authorized service expansions to be used for construction financing. These projects include MGU's authorization from the Commission to expand its operations in and into Benton, Morgan, Camden and Miller counties, including to the communities of Camdenton, Osage Beach and Lake Ozark[3] and to its service expansion into the counties of Greene, Polk and Dallas, including the communities of Bolivar and Buffalo[4] (collectively, the "Construction Program"). Any short-term construction financing shall be replaced by long-term,

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[1] This series of Bonds is designated as "$4,670,000 Variable Rate Demand Revenue Bonds (Missouri Gas Utility, Inc. Project) Series 2008B."
[2] This series of Bonds is designated as "$10,120,000 Variable Rate Demand Revenue Bonds (Missouri Gas Utility, Inc. Project) Series 2009B."
[3] Case No. GA-2009-0264.
[4] Case No. GA-2010-0189.

secured indebtedness.

9. In that regard, MGU proposes to enter into one or more long-term debt instruments to fund its planned operations in the State of Missouri. The long-term financing contemplated by this Application calls for several Missouri counties to issue Facility Bonds in 2010, on behalf of MGU in an aggregate amount of up to $5,407,000, for Summit to issue its Revenue Bonds on behalf of MGU and/or for MGU to enter into a Bank Loan such that the combined total of additional bonded and other secured indebtedness from all such sources shall not exceed an additional $26,400,000.[5] The new series of Facility Bonds and Revenue Bonds will be issued, and the Bank Loan shall be entered into, during the course of calendar years 2010 through 2012, as availability, need and market conditions warrant. In doing so, Applicant's objective is to maintain a total debt to total capitalization ratio not to exceed sixty (60) percent.

**The Fixed-Interest-Rate Recovery Zone Facility Bonds**

10. Recovery Zone Facility Bonds have been created by the American Recovery and Reinvestment Act of 2009 (the "ARRA") and may be issued for private projects. The ARRA created a volume cap for facility bonds allocated among the States and counties and large municipalities within the states, including the State of Missouri. The projects financed by facility bonds must be located within the jurisdiction of the political subdivision which has received a volume cap allocation from the Missouri Department of Economic Development (the "Department"). The Facility Bonds are tax-exempt private activity bonds that are expected to offer lower interest rates than are available through taxable bonds. This program expires on December 31, 2010, but

[5] $19.2 million of this amount is expected to be used for the Lake of the Ozarks project and the balance, $7.2 million, is expected to be utilized in connection with Applicant's expansion of operations into Dallas, Greene and Polk counties.

under Missouri law all unused county Facility Bond allocations revert back to the State on July 1, 2010. Consequently, the practical deadline for issuing Facility Bonds to finance the projects described herein is June 30, 2010.

11. The Facility Bonds will be issued by the counties of Benton, Camden and Morgan (sometimes hereinafter referred to as the "Counties") for MGU's benefit and use. Camden County is a county of the first class. The Benton County and Morgan County are counties of the third class. The Counties are political subdivisions having the authority under Article VI Section 27(b) of the Constitution of the State of Missouri and §§100.010 through 100.200 of the Revised Statutes of Missouri, as amended (hereinafter the "Act") to issue and sell industrial development bonds to promote economic development.

12. It is anticipated that the total of Facility Bonds in dollars to be issued on behalf of MGU by the Counties will be as follows:

| County | Facility Bonds from County Allocation |
|---|---|
| Benton | $1,490,000 |
| Camden | 2,293,000 |
| Morgan | 1,624,000 |
| Total | $5,407,000 |

There will be three series of Facility Bonds, one for each of the counties, however, there will be a single offering memorandum in the aggregate amount of all series of Facility Bonds.

13. During the Construction Program, the Facility Bonds may be offered on an unrated basis. In such a circumstance, the Facility Bonds may be repurchased by Applicant and resold at a lower cost once MGU has completed the Construction

Program and secured its own credit rating.[6] The Facility Bonds are exempt from registration with the United States Securities and Exchange Commission, thus saving MGU the cost of a securities registration.

**The Revenue Bonds**

14. As noted above, the project financing may include, in addition to the use of Facility Bonds, the issuance of one or more new series of fixed-interest-rate Revenue Bonds by Summit. The Revenue Bonds will be of the same general type, and issued in the same manner, as was authorized by the Commission in its Cases Nos. GF-2009-0057 and GF-2009-0331. The Revenue Bonds would be issued by Summit on behalf of MGU and loaned to MGU pursuant to the terms of a loan agreement. Each new series of Revenue Bonds shall be issued and sold to investors in a public offering or to a purchaser or purchasers in a private placement.

15. The Revenue Bonds are expected to have a single credit rating and a single CUSIP number if a credit rating for Summit is obtained. It is anticipated that the Revenue Bonds will be supported by an investment grade rating for MGU at this time of issuance.

**The Bank Loan**

16. Applicant may also borrow a portion of the requested long-term financing through a secured credit facility from CoBank, ACB ("CoBank"). CoBank is part of the Farm Credit System which is a nationwide financial cooperative that lends money and provides financial services to agriculture and rural America. In such an event, Applicant would enter into a master loan agreement. The proceeds from the Bank Loan would be available in one or more tranches having varying terms. As security for the loan,

[6] Applicant anticipates that it will be applying to Standard & Poor's for an investment

Applicant proposes to execute and deliver a mortgage and security agreement for the benefit of CoBank.

**The Loan Agreements and Other Matters Applicable To the Facility Bonds, the Revenue Bonds and the Bank Loan**

17. The Facility Bond and Revenue Bond issuances on behalf of MGU (collectively, the "Bonds") and the Bank Loan tranches will be facilitated and evidenced by various debt instruments including (i) one or more loan agreements by and between MGU, Summit, the Counties and/or CoBank; (ii) one or more reimbursement agreements, which includes an $8,000,000 line of credit to be made available to MGU by UMB Bank-Colorado, N.A.; (iii) one or more notes and a mortgage and/or deed of trust from MGU to UMB Bank, N.A. ("UMB"), the Counties and/or CoBank; (iv) a trust agreement by and between Summit, MGU and The Bank of New York, Mellon, N.A.; and (v) and one or more general security agreements by and between MGU and UMB (hereinafter, collectively and variously, the "Debt Instruments").[7] Marked **Appendix 1**, and attached hereto for all purposes, is a schematic of the loan structure that illustrates the relationships and interplay of the Debt Instruments and other documentation as is relevant to the $5,407,000 of Facility Bonds for the Company's Lake of the Ozarks project authorized by the Commission in Case No. GA-2009-0264.

18. The mortgage and/or deed of trust and security agreements will constitute a first mortgage lien on substantially all of the properties presently owned and subsequently acquired by MGU, including its certificates of convenience and necessity. Consequently, all of the Bonds and the Bank Loan will be secured by a lien or encumbrance on MGU's existing utility franchises, works and system used to provide

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grade bond rating in late June of 2010.

[7] Copies of the Debt Instruments are provided as identified in ¶24, *infra.*

service to its customers and, also, on the new plant and operations the proceeds from the financing will fund. The Bonds will be on parity with the bonded indebtedness issued by MGU in 2009. The mortgage includes accrued interest on the Bonds for approximately 45 days. Therefore, the lien is for an amount greater than the face amount of the Bonds.

19. The costs associated with the authorization and issuance of the Bonds and Bank Loan referenced herein, including legal, adminstrative, filing and mailing costs, are not known at this time. MGU estimates that the total costs for the new series of Bonds contemplated by this application will not exceed $675,000.

20. Because the market for the Bonds is constantly changing, MGU cannot, at this time, forecast the interest rate or rates or other terms and provisions of the Bonds; thus, the terms and provisions shall be determined at the time of sale. The maturities of the various Bonds are anticipated to be up to thirty years. The interest rate or rates of any series of Bonds, including any applicable discount, shall be consistent with rates for similar securities of comparable credit quality and maturities issued by other companies.

**Statutory Authority for Commission Action**

21. The Commission has jurisdiction in this case because MGU will create a lien or encumbrance on its Missouri properties to secure payment of the Bonds and the Bank Loan. *See*, § 393.190.1, RSMo 2000. Therefore, MGU seeks approval from the Commission to mortgage its Missouri properties to secure its obligations under the Debt Instruments.

**Filing Requirements and Related Materials**

22. Marked **Appendix 2**, attached hereto and made a part hereof for all purposes, is information regarding MGU's capital stock outstanding, bond indebtedness,

long-term secured indebtedness and short-term indebtedness and other financial information including a balance sheet for the twelve month period ending December 31, 2009 and financial statements with adjustments showing the *pro forma* effect of the issuance of up to $26,400,000 of additional long-term indebtedness.

23. Marked **Appendix 3**, attached hereto and made a part hereof for all purposes, is a statement of MGU's capital expenditures for the acquisition of property and the construction, completion, extension and improvement of its plant and systems for the five-year period immediately prior to the filing of this Application, as well as the amount of retirements and permanent financing for the indicated period and the statement of MGU's net property additions.

24. Marked as indicated, attached hereto and made a part hereof for all purposes are copies of the following Debt Instruments and related documents in substantially final form:

**Appendix 4**: Mortgage, Security Agreement, Assignment of Profits and Proceeds, Financing Statement and Fixture Filing from MGU to UMB ("Mortgage");

**Appendix 5**: General Security Agreement from MGU to UMB ("Security Agreement");

**Appendix 6**: Master Trust Indenture by and between Summit and The Bank of New York Mellon Trust Company, N.A.;

**Appendix 7**: Bonds Supplement by and between Summit and The Bank of New York Mellon Trust Company, N.A.; and

## The Use of Proceeds from the Sale of the Bonds

25. The net proceeds from the Bank Loan and sale of the Bonds issued by the Counties and/or Summit on MGU's behalf will be added to Applicant's general funds for use in connection with the acquisition of property, construction, completion or improvement of its plant or system, or the improvement or maintenance of service, or the reimbursement of monies actually expended from income or any other monies in the treasury not secured or obtained from the issuance of stocks, bonds, notes or other evidences of indebtedness. Specifically, MGU contemplates that the proceeds obtained through its loan agreements with the Counties and/or Summit will be used to provide financing for its ongoing Construction Program and other corporate purposes. The proceeds from the Bank Loan and the issuance and sale of the Bonds by the Counties and/or Summit on Applicant's behalf are reasonably required for the purposes specified in this Application and such purposes are not in whole or in part reasonably chargeable to operating expense or income.

26. Marked **Appendix 8**, attached hereto and made a part hereof for all purposes, is a certified copy of the resolutions of Applicant's Board of Directors which authorize the filing of this Application.

27. Marked **Appendix 9**, attached hereto and made a part hereof for all purposes, are certified copies of resolutions from each of the Counties authorizing the amount from each county's Facilities Bond allocation to be issued on behalf of MGU.

28. Subjecting MGU's Missouri properties to the mortgage and/or deed of trust and Security Agreement to secure its additional obligations under the Debt Instruments will have no impact on the tax revenues of the political subdivisions in which any of the

structures, facilities or equipment of MGU are located. The mortgage and/or deed of trust and Security Agreement will not result in a change of ownership of MGU's Missouri properties nor will they result in the change of the present location of the affected utility assets.

29. Subjecting MGU's Missouri properties to the additional lien of the Mortgage and Security Agreements will not be detrimental to the public interest, and in fact will be beneficial to the public interest because the public health, safety and welfare will be served by the ability of MGU to obtain access to the capital markets on the most favorable terms available. Granting the authority requested will be transparent to MGU's customers in that it will not cause any adverse impact on customer service or rates.

WHEREFORE, Applicant requests that the Commission approve this Application and issue an order that:

a) Authorizes MGU to enter into, execute and deliver Loan Agreements with the Counties, Summit and/or CoBank to incur indebtedness provided that the aggregate principal amount of such debt obligation shall not exceed $26,400,000 bearing interest, including any applicable discount, at a rate consistent with the rates for similar securities of comparable credit quality and maturities issued by other companies, having a maturity of not more than thirty years for the loan relating to the Bonds and having such designation and redemption, purchase and other terms as shall be determined by MGU;

b) Authorizes MGU to create and make effective the lien of the mortgage and/or deed of trust and the Security Agreement on all of the franchises, certificates of convenience and necessity, works and system of MGU in the State of Missouri to secure its obligations under the Bonds and the possible CoBank loan, provided the aggregate principal amount of all such issuances does not exceed $26,400,000;

c) Authorizes MGU to perform in accordance with the Mortgage and the Security Agreements;

d) Authorizes MGU to enter into, execute, deliver and perform the necessary promissory notes, agreements and other documents necessary to effectuate the described transactions; and

e) Authorizes MGU to take such other actions as may be reasonably incidental, necessary or appropriate to complete the transaction; and

f) Finding that the money, property or labor to be procured or paid for by MGU through the issuance of the Debt Instruments is reasonably required and necessary for the purposes set forth above and will be used therefor and that such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

Respectfully submitted,

/s/ Paul A. Boudreau

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Attorneys for Missouri Gas Utility, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 19th day of May, 2010, to the following:

Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
Jefferson City, MO 65102-2230

/s/ Paul A. Boudreau
Paul A. Boudreau