

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

In the matter of the Application of Summit Natural Gas of )  
Missouri Inc. for Authority to Participate in a )  
Corporate Restructuring which will result in the ) File No. \_\_\_\_\_  
Taking and Holding of all of its Capital Stock )  
by a Newly-Formed Subsidiary of Summit Utilities, Inc. )

**APPLICATION FOR AN ORDER DECLARING THE COMMISSION LACKS  
JURISDICTION TO REVIEW THE PROPOSED CORPORATE RESTRUCTURING  
OR, IN THE ALTERNATIVE, APPROVING THE PROPOSED CORPORATE  
RESTRUCTURING, AND  
A REQUEST FOR WAIVER OF NOTICE AND  
MOTION FOR EXPEDITED CONSIDERATION**

COMES NOW Summit Natural Gas of Missouri, Inc. (the “Company”), by and through its undersigned counsel, and respectfully requests an order of the Commission finding that the Commission lacks jurisdiction over this matter. Alternatively, pursuant to §393.250 RSMo, the Company requests approval of the proposed corporate restructuring described below. In support thereof, the Company states:

**THE APPLICANT**

1. The Company is a wholly-owned subsidiary of Summit Utilities, Inc. (“Summit”) and is a corporation duly incorporated under the laws of the State of Colorado with its principal offices located at 7810 Shaffer Parkway, Suite 120, Littleton, Colorado 80127. A copy of a certificate from the Missouri Secretary of State showing the Company is authorized to do business in Missouri as a foreign corporation was submitted in Case No. GA-2012-0285 and is incorporated herein by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G). Other than cases that have been docketed at the Commission, there are no pending actions or final unsatisfied

judgments or decisions issued against the Company by any state or federal agency or court that involve customer service or rates, nor have there been any such actions, judgments or decisions within the past three years. The Company has no annual report or assessment fees that are overdue.

2. The Company conducts business as a “gas corporation” and a “public utility” as those terms are defined at §386.020, RSMo, and provides natural gas service in the Missouri counties of Benton, Caldwell, Camden, Daviess, Douglas, Greene, Harrison, Howell, Laclede, Miller, Morgan, Pettis, Stone, Taney, Texas, Webster, and Wright, subject to the jurisdiction of the Commission as provided by law.

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

Summit Utilities, Inc.  
Attn: Matthew Kaply  
Senior Director, Regulatory Affairs  
2 Delorme Drive  
Yarmouth, Maine 04096  
Telephone: (207) 465-6744  
Email: [mkaply@summitnaturalgas.com](mailto:mkaply@summitnaturalgas.com)

Summit Utilities, Inc.  
Attn: Justina Waller  
Regulatory Affairs Specialist  
2 Delorme Drive  
Yarmouth, Maine 04096  
Telephone: (207) 449-5080  
Email: [jwaller@summitnaturalgas.com](mailto:jwaller@summitnaturalgas.com)

### **PROPOSED CORPORATE RESTRUCTURING**

4. Summit proposes to form a new subsidiary (referred to herein as “Midco”), and to contribute to Midco all of its interest in the capital stock of the Company. Attached hereto as

**Appendix A** is an illustrative corporate organization chart showing the current and proposed organization structures.

5. After the proposed restructuring, Midco would enter into one or more credit facilities for up to \$225 million of indebtedness, and the proceeds would be used, in part, to pay off, in full, all amounts outstanding under the Company's existing Credit Agreement (as defined below) and the Credit Agreement would be terminated and the related liens on the Company's properties would be released.

6. By virtue of an Order Granting Application in File No. GF-2018-0041 issued on December 13, 2017, the Commission authorized the Company to enter into an amended and restated Credit Agreement for up to and including \$100,000,000 of indebtedness secured by a first-priority lien on all, or substantially all, of the properties owned by the Company (the "Credit Agreement").

7. Midco would not itself own or operate any facilities for purposes of providing natural gas service to the general public and would not be a "public utility" as defined in the §393.020(43) RSMo.

8. Attached hereto as **Appendix B HC** is a draft Summary of Terms and Conditions summarizing Midco's proposed financing. The principal advantage of the proposed financing is to provide funds to Midco that it can, in turn, provide to the Company and Midco's other subsidiaries. The terms of the long-term debt are more advantageous than the terms the Company can access under the Credit Agreement. This will, in turn, tend to result in a lower cost of service for the Company than would otherwise be the case.

**GROUNDNS FOR AN ORDER DISMISSING THIS APPLICATION  
FOR LACK OF JURISDICTION**

9. The benefits to the Company and its ratepayers of the proposed Midco transaction and financing are not offset by any adverse factors. For instance, no utility plant will be pledged in support of the Midco financing. There will be no change in operations or personnel resulting from the placement of an intermediate holding company between Summit and the Company. And the transaction will not in any way diminish the Commission's ability to establish an appropriate capital structure in the Company's next rate case.

10. Midco's obligations under the proposed financing will be secured by Midco's pledge of all its interests in the capital stock of the Company and Midco's other subsidiaries. The proposed financing would not be secured by a lien on any of the Company's operational properties as is presently the case under the Company's existing Credit Agreement and, following the contemplated payoff and termination of the Company's existing Credit Agreement, the liens on the Company's operational properties would be released.

11. The Company does not believe Summit's proposed formation of Midco or Summit's proposed contribution to Midco of its interests in the capital stock of the Company would represent a "reorganization" as that term is used in §393.250 RSMo. The Company would not be converting its corporate charter, nor would it be forming Midco. The Company is presently a wholly-owned subsidiary of Summit and adding Midco into the chain of ownership between Summit and the Company would not represent any meaningful regulatory change in that the Company would continue to be a wholly-owned subsidiary of Summit, albeit as an indirect wholly-owned subsidiary as opposed to a direct wholly-owned subsidiary. After the proposed restructuring and financing, the Commission would retain the same scope of regulatory oversight over the Company's rates and service as is currently the case.

**IN THE ALTERNATIVE, REQUEST FOR APPROVAL  
OF THE PROPOSED CORPORATE RESTRUCTURING  
AND FOR EXPEDITED CONSIDERATION**

12. If the Commission determines it *does* have subject-matter jurisdiction over the proposed corporate restructuring, pursuant to §393.250 RSMo, the Company requests permission and approval to implement the proposed corporate restructuring and financing as soon as practicable.

13. Attached as **Appendix C HC** and incorporated herein are copies of the Company's audited financial statements for the twelve-month period ended December 31, 2017. Attached as **Appendix D HC** and incorporated herein are copies of the Company's financial statements with adjustments showing the *pro forma* effect of the proposed financing.

14. No corporate resolutions of the Company are required in order for Summit to form Midco.

15. Summit's formation of Midco and Summit's contribution to Midco of all its interests in the capital stock of the Company would not be detrimental to the public interest, and in fact would be beneficial to the public interest because the public health, safety and welfare would be served by the Company's ability to access debt capital on favorable terms. Granting the authority requested would be transparent to the Company's customers in that the proposed corporate restructuring and financing would not cause any adverse impact on customer service or rates.

16. The proposed corporate restructuring and financing would have no material impact on the tax revenues of the political subdivisions in which any of the structures, facilities or equipment of the companies involved are located.

17. The Company respectfully requests an order from the Commission declining jurisdiction or, in the alternative, approving the proposed corporate restructuring and financing by no later than March 15, 2019, to enable the Company to meet its commitments to its lenders and to take advantage of the lower cost debt capital at the earliest possible opportunity. A recent, and likely temporary, softening in the market has resulted, for the moment, in attractive borrowing rates. Additionally, the capital markets are supportive of holding company financing structures in the utility industry, which means that the Company would benefit from substantially lower borrowing costs that the market would extend to Summit's platform through a Midco financing structure. Moreover, a Midco-level line of credit can be used to satisfy unforeseen one-off cash needs which would permit optimization of jurisdictional growth opportunities in Missouri.

18. This Application has been filed as soon as circumstances could reasonably allow. The Company has identified a borrowing on favorable market terms and seeks to complete the regulatory process within the window that such terms remain consistent. In addition, the question of the Commission's subject-matter jurisdiction over this matter is legitimate and warrants a prompt review and resolution.

#### **MOTION FOR WAIVER**

19. Rule 4 CSR 240-4.017(1) provides that "(a)ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case." A notice was not filed 60 days prior to the filing of this Application, and the Company seeks a waiver of the 60-day notice requirement.

20. Rule 4 CSR 240-4.017(1)(D) provides that a waiver may be granted for good cause. Good cause exists in this case. The Company declares, as verified below, that it has had no communication with the office of the Commission (as defined by Commission Rule 4 CSR 240-

4.015(10)) within the prior 150 days regarding any substantive issue likely to be raised in this case, other than those pleadings filed for record. Accordingly, for good cause shown, the Company moves for a waiver of the 60-day notice requirement of Rule 4 CSR 240-4.017(1) and acceptance of this Application.

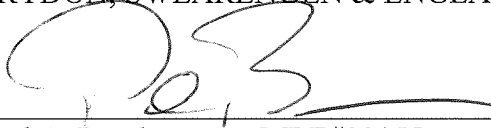
WHEREFORE, the Company requests that the Commission issue an order:

- A. Declining jurisdiction over this matter and dismissing this Application on the grounds specified above, or, alternatively;
- B. Waiving, for good cause shown, the 60-day notice required by Commission Rule 4 CSR 240-4.017(1);
- C. Finding that the proposed corporate restructuring is not detrimental to the public interest;
- D. Authorizing Midco to take and hold all the capital stock of the Company;
- E. Granting such other relief as may be necessary or appropriate in the circumstances and further granting such orders and relief by no later than March 15, 2019, bearing an effective date of March 26, 2019.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.


By:

  
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Paul A. Boudreau      MBE#33155  
Dean L. Cooper      MBE #36592

BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
Phone: (573) 635-7166  
Fax: (573) 634-7431  
E-Mail: [dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)  
[paulb@brydonlaw.com](mailto:paulb@brydonlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 24<sup>th</sup> day of January 2019, the foregoing document was filed in EFIS, and that a copy of the same was sent via electronic mail to counsel for the Staff of the Commission and the Office of the Public Counsel.

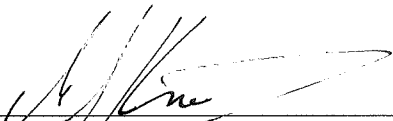
  
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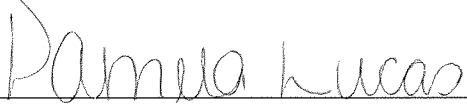
**VERIFICATION**

STATE OF MISSOURI     )  
  ) ss  
COUNTY OF COLE     )

I, Matthew Kaply, having been duly sworn upon my oath, states that I am the Senior Director of Regulatory Affairs of Summit Natural Gas of Missouri, Inc., and that the matters and things stated in the foregoing pleading are true and correct to the best of my information, knowledge, and belief and that I am authorized to execute this verification on behalf of Summit Natural Gas of Missouri, Inc.

  
\_\_\_\_\_  
Matthew Kaply  
Senior Director of Regulatory Affairs

Subscribed and sworn to before me, a notary public, on this 24<sup>th</sup> day of January 2019.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 4-5-2021

