

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

In the Matter of Summit Natural Gas of)
Missouri Inc.’s Filing of Revised Tariffs) File No. GR-2014-0086
To Increase its Annual Revenues For)
Natural Gas Service)

**MOTION FOR RECONSIDERATION,
OR, IN THE ALTERNATIVE, APPLICATION FOR REHEARING
AND MOTION FOR STAY OF COMMISISON ORDERS**

COMES NOW Summit Natural Gas of Missouri, Inc. (“SNGMO”) and respectfully requests reconsideration and/or rehearing with regard to the *Order Granting Motion to Compel* issued herein by the Missouri Public Service Commission (“Commission”) on June 19, 2014, effective June 19, 2014, and the *Order Extending Time for Compliance to July 2, 2014*, issued herein by the Commission on June 25, 2014. SNGMO also requests that the Commission stay the effectiveness of these orders pending the Commission’s decision on SNGMO’s request for reconsideration. In support of its requests, SNGMO respectfully states as follows:

1. On June 10, 2014, the Staff of the Commission filed its Statement Describing Discovery Concern and Motion for Reconsideration (“Staff Pleading”). The Commission treated this filing as a motion to compel and held an oral argument on June 13, 2014.
2. On June 19, 2014, the Commission issued the *Order Granting Motion to Compel* stating that it would be “effective immediately upon issuance” and directing SNGMO to comply with the subject discovery requests by the following day, June 20, 2014.
3. With its *Order Granting Motion to Compel*, the Commission overruled SNGMO’s objections regarding: (1) the requested information not being in the possession, custody, or control of SNGMO; and (2) the requested information being neither relevant to the subject proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

4. The *Order Granting Motion to Compel* relies on the Missouri Supreme Court's decision in *Hancock v. Shook*, 100 S.W.3d 786 (Mo. 2003), with regard to the issue of possession, custody, or control under Missouri Rule of Civil Procedure 58.01(a). The Commission also stated that SNGMO objected that the requested information was not in its possession, custody, or control "*because* the information is in the hands of another person." (emphasis added) SNGMO, however, objected on the basis that the requested information concerns an entity other than SNGMO *and* because the requested information is not within the possession, custody, or control of SNGMO.

5. On June 25, 2014, the Commission issued its *Order Extending Time for Compliance to July 2, 2014*, extending the date for compliance with the *Order Granting Motion to Compel* to July 2, 2014. With the *Order Extending Time for Compliance to July 2, 2014*, the Commission noted Staff's argument that SNGMO should have already delivered the requested information, since Staff served the subject data requests long ago.

6. The subject of the Staff Pleading is 13 data requests requesting: documents belonging to Summit Utilities, Inc.; information regarding Summit Utilities "awareness" of certain subjects; information regarding the "expectations" of IIF; IIF "requirements"; rates used by IIF; the "basis" for IIF discount rates; IIF methods of reconciliation; and, projected financial statements for Summit Utilities. Three of these data requests were served on SNGMO on January 29, 2014, with timely objections from SNGMO being lodged on February 5, 2014 (DRs 73, 76, and 77). Eight of these data requests were served on SNGMO on March 12, 2014, with timely objections from SNGMO being lodged on March 21, 2014 (DRs 132-139). The final two of the subject data requests were served on SNGMO on May 2, 2014, with timely objections being

lodged by SNGMO on May 12, 2014 (DRs 178 and 182). The Staff Pleading regarding all of these data requests was not filed with the Commission until June 10, 2014.

7. SNGMO is a party to this case. Summit Utilities, Inc. and IIF are not. Therefore, and pursuant to Commission Rule 4 CSR 240-2.090, only SNGMO is subject to the data request process. The documents and information being requested are not in the possession, custody, or control of SNGMO. Additionally, some of the data requests seek mental impressions and other intangible information concerning an entity other than SNGMO. Lastly, the requested documents and information are neither relevant to the subject proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

8. With its *Order Granting Motion to Compel*, the Commission found that SNGMO has a “close relation” to both Summit Utilities, Inc. and IIF and that this “close relation” shows that SNGMO has the “practical ability to obtain” the information sought by Staff. These findings by the Commission, however, were not based on record evidence. The only facts before the Commission in this regard are that Summit Utilities, Inc. is the parent of SNGMO and that IIF is the parent of Summit Utilities, Inc. There was no evidence presented, requested, or received by the Commission at its oral argument or otherwise as to SNGMO’s “practical ability to obtain” the documents and mental impressions of Summit Utilities, Inc. and/or IIF – entities over which SNGMO has no corporate control.

9. *Hancock v. Shook*, 100 S.W.3d 786 (Mo. 2003), the case cited in the *Order Granting Motion to Dismiss* for support of the “practical ability” standard applied by the Commission, is not a case analyzing discovery objections in the context of corporate structure. Instead, that case involved individuals, not corporate entities, and a situation where a party did not produce *all* documents responsive to a request, but then tried to use the non-produced

documents at trial. The case did not deal with a discovery objection. In this regard, the *Hancock* court held as follows:

The record indicates no objection to these requests for production. In fact, both Mr. Hancock and Dr. Mozier responded to the Shooks' requests and each produced a number of documents. Having acquiesced to the requests for production, both Mr. Hancock and Dr. Mozier were under a duty to respond completely and truthfully after having made a reasonable inquiry. . . . If Mr. Hancock had an objection to the manner in which the Shooks used [Rule 58.01], it was incumbent upon him to raise it at that time and to preserve it here in the record for review. He did neither.

Id. at 797. SNGMO, on the other hand, timely raised its objections. Further, contrary to the statement in the *Order Granting Motion to Compel* that the served party and possessing non-party were unrelated in the *Hancock* case, the possessing non-party was the served party's retained expert witness, who was wholly in the control of the served party. *Id.* The factual scenario of *Hancock* is unrelated to that presented to the Commission in this case.

10. In its *Order Extending Time for Compliance to July 2, 2014*, the Commission notes that the "practical ability" standard was utilized by the Commission in Laclede Gas Company's rate case, Case No. GR-2010-0171. In that case, the Commission cited to the distinguishable *Hancock* holding. The Laclede decision itself is also distinguishable from the case at hand. In the Laclede case, Staff had served subpoenas on Laclede Gas and two affiliates. Immediately after its citation to *Hancock*, the Commission stated as follows in its Laclede decision:

That language describes the scope of a document production request which applies to a subpoena duces tecum, which applies before the Commission. Moreover, the same documents are subject to the subpoenas served on Energy Resources and Group, neither of which has joined in the motion to quash. Therefore, the Commission will overrule Laclede Gas's objection, deny the motion to quash on that basis, and grant the motion to compel as to any subpoenaed documents in the possession of any Laclede Gas affiliate.

Order Granting Motion to Compel and Denying Motion to Quash in Case No. GR-2010-0171, In *the Matter of Laclede Gas Company's Tariff* (internal citations omitted) (emphasis added). Although the Commission cites a portion of this language in its *Order Extending Time*, the Commission omits the distinguishing elements.

11. A Missouri federal court, in analyzing the nearly identical federal document production rule in the context of corporate structure, has noted that control includes a “practical ability to obtain [the documents] from another source on demand.” *Handi-Craft Company v. Action Trading, S.A.*, 2003 U.S. Dist. Lexis 28263, 13 (E.D. Mo. 2003) (internal citations omitted). However, a multi-factor and highly fact-specific test has been utilized in this context, and includes an analysis of the degree of control. *Id.* Relevant factors are: “(1) commonality of ownership, (2) exchange or intermingling of directors, officers, or employees of the two corporations, (3) exchange of documents between the corporations in the ordinary course of business, (4) benefit or involvement by the non-party corporation in the transaction, and (5) involvement of the non-party corporation in the litigation.” *Id.* (internal citations omitted).

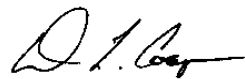
12. A separate issue beyond the issue of the possession, custody, or control of actual physical documents being requested by Staff, is that Staff is also requesting the awareness, expectations, and other mental impressions of entities other than SNGMO. While Rule 58.01 provides that one may seek documents in the possession, custody, or control of the served party, Rule 57.01 governs interrogatories and provides that the party answering shall furnish only such information as is available to the party.

13. With regard to the data requests which are akin to document production requests and the data requests which are akin to interrogatories, no evidence has been presented which would allow the Commission to make the necessary findings. Further, the issues of control and

information availability should not be decided solely on the basis of the parent-subsiary relationship. The inquiry as to practical ability is a data request-specific factual inquiry. The ability of SNGMO to obtain the requested documents and information, as well as the lawfulness and reasonableness of a Commission decision compelling the production of the same, may change from data request to data request, depending upon the subject matter of the request and the relationship between SNGMO and the entity in possession of the material.

WHEREFORE, SNGMO respectfully requests that the Commission grant its request for reconsideration and/or rehearing and, thereafter, either receive evidence of SNGMO's lack of control over the requested documents and information, and/or deny the relief sought in the Staff Pleading. SNGMO further requests that the Commission stay the effectiveness of its *Order Granting Motion to Compel*, as modified by its *Order Extending Time for Compliance to July 2, 2014*, to allow the Commission sufficient time to consider SNGMO's request for reconsideration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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