

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 13th day of
March, 2019.

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 Taking and Holding of All Its Capital Stock by)
A Newly-Formed Subsidiary of Summit Utilities, Inc.)

File No. GO-2019-0216

ORDER GRANTING APPLICATION

Issue Date: March 13, 2019

Effective Date: March 23, 2019

On January 24, 2019, Summit Natural Gas of Missouri, Inc. ("Company") filed an application seeking an order from the Missouri Public Service Commission ("Commission") finding that the Commission lacks jurisdiction over this matter or, in the alternative, approving the proposed corporate restructuring described in the application. Due to market conditions, the Company specifically requests that the Commission either dismiss the application for lack of jurisdiction or approve its application no later than March 15, 2019.

The Company is a wholly-owned subsidiary of Summit Utilities, Inc. ("Summit"). In the application, Summit proposes to form a new subsidiary ("Midco") and to contribute to Midco all of its interest in the capital stock of the Company. After the 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 all amounts outstanding under the Company's existing credit agreement, which would be terminated and the related liens on the Company's properties would be released. Midco would not itself own or operate any

facilities for purposes of providing natural gas service to the general public. The Company alleges that the principal advantage of the proposed financing is that the terms of Midco's long-term debt are more advantageous than the terms of the Company's credit agreement, which would tend to result in a lower cost of service for the Company.

On February 22, 2019, the Staff of the Commission filed a Memorandum and recommendation that the Commission approve the application, subject to a condition stating that Staff's access to Summit Utilities, Inc.'s books, records, and information shall be no less after the creation of Midco than Staff's access before the creation of Midco. Staff's recommendation concludes that the Commission has the authority to review and approve the proposed corporate restructuring under Section 393.250, RSMo,¹ and under a condition in paragraph 16 of the Nonunanimous Stipulation and Agreement approved in Case No. GO-2005-0120², which prohibited Missouri Gas Utility, Inc. (the Company's predecessor in interest) from pledging that company's equity as collateral or security for holding company debt or any other subsidiary debt without Commission approval.

After considering Summit's proposed reorganization plan to create an intermediate holding company, Midco, and financing plan to issue holding company debt financing to fund investment in the Company and other subsidiaries, Staff recommends that the

¹ Section 393.250, RSMo, states that: "1. Reorganizations of gas corporations, electrical corporations, water corporations and sewer corporations shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which in making its determinations, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash; provided, however, that the commission may make due allowance for the discount of bonds.

3. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary."

² Nonunanimous Stipulation and Agreement, Attachment 1 to Order Approving Stipulation and Agreement, issued on December 14, 2004 in GO-2005-0120, EFIS Item No. 38.

application be approved as not detrimental to the public, subject to Staff's condition. On February 26, 2019, the Company filed a reply to Staff's recommendation stating that it accepts Staff's condition. The Company also states that it no longer contests the Commission's authority to review and approve the transaction described in the application based on the provision in the stipulation and agreement from Case No. GO-2005-0120. Ten days have elapsed and no party has objected or responded to either the application or Staff's recommendation.³

Neither the governing statute⁴ nor any other law requires a hearing before approving the unopposed application.⁵ Because this is a non-contested case, the Commission acts on evidence that is not formally adduced and preserved.⁶ There is no evidentiary record.⁷ Consequently, the Commission bases its decision on the parties' verified filings.

The Commission has reviewed and considered the Company's verified application and Staff's verified recommendation. Based on the Commission's review of these unopposed pleadings, the Commission finds that the Company's proposed transaction is not detrimental to the public interest and concludes that the Company's application should be approved, subject to Staff's condition.⁸

The Company has requested a waiver of the 60-day notice requirement of Commission Rule 4 CSR 240-4.017(1). The Company states that good cause exists for the

³ Commission rule 4 CSR 240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.

⁴ Sections 393.190 and 393.200, RSMo. All sections are in the 2016 Revised Statutes of Missouri as subsequently revised and supplemented unless otherwise stated.

⁵ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

⁶ *State ex rel. Public Counsel v. Public Service Comm'n*, 210 S.W.3d 344, 353-355 (Mo. App. 2006).

⁷ *Id.* The competent and substantial evidence standard of Article V, Section 18, does not apply to administrative cases in which a hearing is not required by law." *Id.*

⁸ The Commission has the authority to review and approve the application under either Section 393.250, RSMo, or the provision of the stipulation and agreement in Case No. GO-2005-0120.

waiver because it has had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be raised in this case. No party has opposed the waiver. The Commission finds that good cause exists for the waiver, so it shall be granted. The Commission will make this order effective in ten days, as the Company has requested expedited treatment and Commission action by March 15, 2019, which request was not opposed by any party.

THE COMMISSION ORDERS THAT:

1. Summit Natural Gas of Missouri, Inc.'s motion for waiver of the 60-day notice requirement of Commission Rule 4 CSR 240-4.017(1) is granted.
2. Summit Natural Gas of Missouri, Inc.'s application, filed on January 24, 2019, is granted subject to the following condition recommended by the Commission's Staff: Staff's access to Summit Utilities, Inc.'s books, records, and information shall be no less after the creation of Midco than Staff's access before the creation of Midco.
3. This order shall become effective on March 23, 2019.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

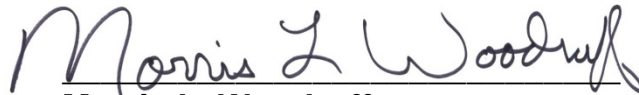
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 13th day of March 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 13, 2019

File/Case No. GO-2019-0216

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.