

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

In the Matter of the Application of	)	
Summit Natural Gas of Missouri, Inc. for	)	
an Accounting Authority Order Related to	)	Case No. GU-2014-0032
State and County Changes in Assessment	)	
Methodology.	)	

**PUBLIC COUNSEL’S MOTION TO DENY AAO REQUEST**

**COMES NOW** the Missouri Office of the Public Counsel (“OPC” or “Public Counsel”) and for its Motion to Deny AAO Request states:

1. On August 12, 2013, Summit Natural Gas of Missouri, Inc. (“SNG”) filed an Application requesting an Accounting Authority Order (“AAO”) regarding property taxes for the years 2011 and 2012. OPC opposes the authority requested because the request seeks to allow unlawful retroactive ratemaking.

2. OPC concurs with the Staff Recommendation to deny SNG’s Application, and the Staff’s conclusion that “it is simply impossible to “defer” a cost to a subsequent period when that cost has already been incorporated into the income statement of a prior period.” SNG’s Application seeks Commission approval of a textbook example of unlawful retroactive ratemaking because it seeks to force ratepayers to once again pay for services provided in 2011 and 2012. Approval of this request is unlawful, not in the public interest, and should be denied.

3. Retroactive ratemaking was explained by the Court of Appeals in *State ex rel. Utility Consumer’s Counsel of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo 1979) as follows:

However, to direct the commission to determine what a reasonable rate *would have been* and to require a credit or refund of any amount collected in excess of this amount would be retroactive ratemaking. The commission has the authority to determine the rate *to be charged*, § 393.270. In so determining it may consider past excess recovery insofar as this is relevant to its determination of what rate is necessary to provide a just and reasonable return in the future, and so avoid further excess recovery. It may not, however, redetermine rates already established and paid without depriving the utility (or the consumer if the rates were originally too low) of his property without due process. (Citations omitted).

SNG's rates for 2011 and 2012 have already been established and paid by ratepayers for service received during those years. Allowing SNG to charge future ratepayers to recover 2011 and 2012 expenses is unlawful retroactive ratemaking in that it would redetermine rates already established and paid.

4. Even if the request was not a classic example of retroactive ratemaking, SNG's request would not come close to satisfying the standards for AAOs as established by 4 CSR 240-40.040(1), and would otherwise be inconsistent with standard accounting principles regarding rate of return regulation. Rates are usually established based upon a historical test year which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses.<sup>1</sup> Under historical test year ratemaking, costs are rarely considered from earlier than the test year to determine a reasonable revenue requirement for the future.<sup>2</sup> This Commission has

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<sup>1</sup> *State of Missouri ex rel. Union Electric Co. v. Public Service Commission*, 765 S.W.2d 618 (Mo.App. W.D. 1988).

<sup>2</sup> *Sibley*, 1 Mo. P.S.C. 3d 200.

determined that the deferral of costs from one period to another period for the development of a revenue requirement violates the traditional method of setting rates.<sup>3</sup>

5. All Missouri public utility companies are required by 4 CSR 240-40.040(1) to follow the accounting procedures proscribed by the Federal Energy Regulatory Commission's (FERC) Uniform System of Accounts (USOA).<sup>4</sup> Under the USOA, deferring costs to a future period is allowed only for "extraordinary items," which are defined by USOA General Instruction Number 7:

**Extraordinary items.** It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below. 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** shall be considered extraordinary items. 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.** (In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate.) To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary. [emphasis added].

Before an item can be considered "extraordinary," it must: (1) have occurred during the current period; (2) be unusual and infrequent; (3) be abnormal and significantly different

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<sup>3</sup> *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations*, Case No. EO-91-358, and *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Purchase Power Commitments*, Case Nos. EO-91-358 and EO-91-360, 1991 Mo. PSC LEXIS 56; 129 P.U.R.4th 381; 1 Mo. P.S.C. 3d 200, December 20, 1991 ("Sibley").

from the ordinary and typical activities of the company; (4) not be expected to recur in the foreseeable future; and (5) be more than approximately 5 percent of income.

6. In the landmark 1991 *Sibley* case, the Commission determined that AAO's are allowed only when the event is extraordinary, unusual and unique, and not recurring.<sup>5</sup>

The Commission referenced the USOA definition of extraordinary items and noted:

The USOA recognizes that only extraordinary items should be deferred. The definition cited earlier states the intent of the USOA that net income shall reflect all items of profit and loss during the period and exceptions are only for those items which are of significant effect, not expected to recur frequently, and which are not considered in the evaluation of ordinary business operations.<sup>6</sup>

The Commission also stated, "The decision to defer costs associated with an event turns on whether the event is in fact extraordinary and nonrecurring."<sup>7</sup>

7. The USOA definition of extraordinary requires that the item to be deferred would not recur in the foreseeable future. SNG's property tax expense will recur annually and would therefore fail to satisfy the requirement that extraordinary items be non-recurring. SNG states in its Application that the property tax changes for which it seeks an AAO will continue to be paid by SNG in future years.<sup>8</sup> In 2001 the Commission rejected an AAO application filed by the St. Louis County Water Company (SLCW) because SLCW sought to defer expenses that would be recurring, rather than non-recurring. The Commission concluded:

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<sup>4</sup> Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 C.F.R. Part 201.

<sup>5</sup> *Sibley*, 1 Mo.P.S.C. 3d 200, 205 (1991).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

The record makes it abundantly clear that the Commission should not grant the requested third AAO for infrastructure replacement because the circumstances are recurring, not nonrecurring. The Company has presented ample evidence as to the magnitude of the infrastructure replacement undertaking in terms of cost. However, the record also shows that infrastructure replacement will necessarily continue for years as a series of successive projects. This is not an appropriate case for an AAO.<sup>9</sup>

Likewise, SNG's property tax increase will necessarily continue for years to come.

8. The USOA definition of extraordinary items also prohibits the deferral of typical and customary business activities. SNG already pays property taxes, and therefore property taxes are not "abnormal and significantly different from the ordinary and typical activities of the company" as required by the USOA for deferral. Property taxes are a normal part of the ordinary business operations of a regulated local distribution company. The USOA has two accounts that deal with property taxes, Account 236 Taxes Accrued and Account 408.1 Taxes (other than income taxes). Moreover, SNG has a certain level of property tax expense built into its revenue requirement. As noted by this Commission, "It is not appropriate for a utility to defer normal, ongoing expense items. If a utility is allowed to defer those ongoing costs, it will result in the recouping of past losses in a subsequent rate case."<sup>10</sup>

9. Extraordinary items are defined in part as, "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 shall be considered extraordinary

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<sup>8</sup> Application, p. 3.

<sup>9</sup> *In the Matter of the Consideration of an Accounting Authority Order Designed to Accrue Infrastructure Replacement Costs for St. Louis County Water Company*, Case No. WO-98-223, Report and Order, February 13, 2001, p. 29.

<sup>10</sup> *In the Matter of the Application of United Water Company, Inc. for an Accounting Authority Order Relating to FAS 106*, Case Number WA-98-187, Report and Order, p. 6, April 20, 1999.

items.”<sup>11</sup> The property tax expenses incurred in 2011 and 2012, not the current period, and therefore an AAO is improper. SNG’s Application seeks to defer amounts *already* entered into the books of the utility during the periods in question, and as stated above, it would constitute unlawful retroactive ratemaking to allow SNG to alter those closed books by recording 2011 and 2012 expenses in future periods.

WHEREFORE, the Office of the Public Counsel moves to deny SNG’s AAO Application because it seeks relief that is unlawful and otherwise inconsistent with standard accounting principles.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 23rd day of October 2013:

/s/ Marc Poston

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<sup>11</sup> Emphasis added.