

**Exhibit No.:**

**Issue(s):**

**Witness/Type of Exhibit:**

**Sponsoring Party:**

**Case No.:**

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Affiliate Transactions

Schallenberg/Surrebuttal

Public Counsel

GO-2012-0322

**SURREBUTTAL TESTIMONY**

**OF**

**ROBERT E. SCHALLENBERG**

Submitted on Behalf of the Office of the Public Counsel

**SUMMIT NATURAL GAS OF MISSOURI, INC.**

FILE NO. GO-2012-0322

August 26, 2019

**SURREBUTTAL TESTIMONY**  
**OF**  
**ROBERT E. SCHALLENGER**  
**SUMMIT NATURAL GAS OF MISSOURI, INC.**  
**CASE NO. GO-2012-0322**

**Q. Please state your name and business address.**

A. My name is Robert E. Schallenberg. My business address is 200 Madison Street, P.O. Box 2230, Jefferson City, Missouri 65101.

**Q. By whom are you employed and in what capacity?**

A. I am employed by the Office of the Public Counsel (“OPC”) as Director of Policy.

**Q. Are you the same Robert E. Schallenberg who filed Rebuttal Testimony in this case?**

A. I am.

**Q. What is the purpose of your surrebuttal testimony?**

A. The purpose of my surrebuttal testimony is to address the rebuttal testimonies of Missouri Public Service Commission Staff (“Staff”) witnesses Jamie S. Myers and Amanda C. McMellen.

**Ms. Myers Rebuttal**

**Q. In her rebuttal testimony at page 5, line 16 through page 8, line 5, Ms. Myers has proposed two modifications to the Summit Natural Gas of Missouri, Inc.’s (“SNGMO”) Proposed Cost Allocation Manual (“CAM”). What is the first?**

A. The first modification Ms. Meyers proposes, basically, is that if SNGMO begins using a gas marketing, pipeline, or storage affiliate it will implement a Commission approved Standard of Conduct.

**Q. What is your opinion of this first modification?**

1 A. I have no objection to the first modification as long as additional language is added stating  
2 that, “SNGMO understands and agrees that it has no variances from the Commission to act  
3 other than in full compliance with the Commission’s affiliate transaction rules in the event  
4 SNGMO engages in any future transactions with a gas marketing, pipeline, or storage  
5 affiliate.”

6 **Q. Ms. Myers suggests a second modification, which is on the bottom of page 3 of**  
7 **SNGMO’s CAM. Tab A; she suggests, the Company remove the following: “SNGMO**  
8 **will be seeking a variance based on good cause to continue this practice.” What is the**  
9 **“practice?”**

10 A. The practice is “that of SNGMO and its *regulated* natural gas affiliates providing support  
11 services to one another.” Myers Rebuttal page 6, line 19 - page 7, line 3.

12 **Q. What is your opinion?**

13 A. First, my opinion is based only on a reading of Myers’ rebuttal testimony. Her testimony  
14 indicates to me that the Staff had developed a new interpretation of the Commission’s  
15 Affiliate Transaction rules (Rules) by actually disregarding the “plain language” of the  
16 Rules. Myers Rebuttal page 7, lines 7-13. I conclude that Ms. Myers has a fundamental  
17 misunderstanding of both the Rules and the nature of the affiliate transactions in which  
18 SNGMO engages.

19 **Q. What is the basis for your conclusion?**

20 A. The basis for my conclusion is contained in Ms. Myers rebuttal testimony on page 7,  
21 lines 6 -13. This testimony states:

22 While the plain language of the Affiliate Transaction Rules (“ATRs”) applies  
23 asymmetrical pricing requirements to all affiliate transactions, as noted in Staff

witness McMellen's rebuttal testimony, and the purpose section of the rule itself,<sup>7</sup> the intent of the ATRs is to prevent regulated utilities from subsidizing their non-regulated operations.<sup>8</sup> SNGMO's use of shared support services is among its regulated affiliates, and thus, are not the types of transactions intended to be covered by the ATRs. Therefore, Staff does not believe a variance would be required, especially since the rule allows for utilities, when determining fair market price, to demonstrate why competitive bids are either unnecessary or inappropriate.

7 Commission Rule 4 CSR 240-40.015.

8 See also State ex rel Atmos Energy Corp. v. PSC, 103 S.W.3d 753, 763-64 (Mo. 2003). The Court noted: In its brief, the PSC explained that the rules are a reaction to the emergence of a profit-producing scheme among public utilities termed "cross-subsidization," in which utilities abandon their traditional monopoly structure and expand into non-regulated areas. This expansion gives utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to customers.

**Q. Is Ms. Myers' statement that the SNGMO's use of shared support services is among its regulated affiliates correct?**

A. No. Ms. Myers actually completely misstates the type of affiliate transactions occurring between SNGMO and Summit Utilities Inc. ("Summit"). Where she states "SNGMO's use of shared support services is among its regulated affiliates, and thus, are not the types of transactions intended to be covered by the ATRs." Myers Rebuttal page 7, lines 9-11. This is incorrect and is a direct contradiction to Ms. McMellen's testimony at page 3, lines 14-15. Ms. McMellen states: "the majority of the affiliate transactions entered into by SNGMO are with its parent company . . ." These transactions between a SNGMO and Summit are the very definition of affiliate transactions:

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated gas corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated gas corporation and the regulated business operations of a gas corporation. 4 CSR 240-40.015 (1) (B) (Emphasis added.)

1  
2 **Q. Do you have any other observations?**

3 Yes. Her testimony on page 6 lines 8 to 14 is contrary to the provisions of the Ameren  
4 Missouri Stipulation and Agreement (“Ameren Agreement”).<sup>1</sup> Ms. Meyers states:

5 [T]he agreed upon language in Ameren Missouri’s CAM would require  
6 Ameren Missouri, and in this situation, SNGMO, to implement a  
7 Commission approved Gas SOC before it could conduct affiliate transactions  
8 which would impact Ameren Missouri’s PGA/ACA cost, and in this situation  
9 SNGMO’s PGA/ACA cost.

10 The Commission should disregard this testimony because the Ameren Agreement in  
11 paragraph 20 states specifically that it shall *not* be cited as precedent or referred to in  
12 testimony in any subsequent or pending . . . administrative proceeding:

13 Because this is a Stipulation for the purpose of settling matters in this case, it  
14 shall not be cited as precedent or referred to in testimony in any subsequent  
15 or pending judicial or administrative proceeding, except that this shall not be  
16 construed to prohibit reference to its existence in future proceedings,  
17 including proceedings to enforce compliance with its terms.

18 The Stipulation and Agreement without the appendices is provided in the attachment to  
19 Schallenberg Rebuttal RES-S-1.

20 **Ms. McMellen Rebuttal**

21 **Q. What is your understanding regarding the purpose of Ms. McMellen’s rebuttal**  
22 **testimony?**

23 A. Ms. McMellen describes the purpose of her rebuttal testimony on page 2, lines 13-18,  
24 where she states that her rebuttal testimony is designed to explain why she recommends

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<sup>1</sup> Case No. EO-2017-0176, EFIS 34, *Stipulation and Agreement*, page 8, para. 14(Nov. 30, 2018).

Commission approval of the SNGMO CAM with inclusion of the changes in Ms. Myers' rebuttal testimony.

**Q. What Rule waivers does Ms. McMellen recommend for the Commission to approve the proposed CAM with Staff's suggested language changes?**

A. None.

**Q. How do you respond to Ms. McMellen's testimony regarding the purpose of the Rule?**

A. Ms. McMellen cites only to some specific portions of the Rule. The Rule's entire PURPOSE section reads:

PURPOSE: This rule is intended to prevent regulated utilities from subsidizing their nonregulated operations. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record keeping requirements applicable to any Missouri Public Service Commission (commission) regulated gas corporation whenever such corporation participates in transactions with any affiliated entity (except with regard to HVAC services as defined in section 386.754, RSMo Supp. 1998, by the General Assembly of Missouri). The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities. (Emphasis added)

**Q. Do you agree with Ms. McMellen's recommendation that the Commission should approve the Summit CAM with the additions of Myers proposed modifications?**

A. No. The proposed CAM has numerous non-complying elements as cited in my rebuttal testimony, including that SNGMO has not followed the Rules' variance requirements (4 CSR 240-40.015 (10)) and SNGMO should not be participating in these affiliate

1 transactions (4 CSR-240-40.015 (2) (D)). The Commission should not approve a CAM  
2 that fails to protect SNGMO customers from paying more than just and reasonable rates.

3 **Q. Do you have other reasons for your disagreement with Ms. McMellen's rebuttal**  
4 **testimony?**

5 A. Yes. Summit's proposed CAM with Staff's second modifications would actually *increase*  
6 Summit's level of non-compliance with the Rule because Ms. Myers suggests the Company  
7 not seek a waiver that is necessary. A utility may not engage in an affiliate transaction not  
8 in conformance with the Rule. But, SNGMO has no control over its compliance with the  
9 rule. SNGMO has relinquished control of its books and records to Summit. In addition to  
10 surrendering control of its books and records to Summit, SNGMO has also ceded  
11 purchasing decisions, accounting procedures, payroll, and communications to Summit.

12 **Q. On page 3, line 16-23 of Ms. McMellen's rebuttal testimony she discusses the**  
13 **concept of corporate support functions. Do you agree with her testimony?**

14 A. I would agree that shared services provides an opportunity to produce positive results for  
15 some of the participants. But, importantly, there is no evidence at all that there are lower  
16 costs because of this corporate support. In fact, Ms. McMellen has no supporting  
17 documentation or supporting work papers for any of her testimony on this subject. Instead,  
18 she has relied solely on Summit's witness, Mr. Birchfield, to support her sworn testimony.  
19 The only conclusion is that Ms. McMellen's testimony is based on her unquestioning  
20 acceptance of the Company's testimony.

21 **Q. Do you agree corporate support may be provided at lower cost?**

1 A. Yes, when properly planned, organized, directed, and controlled. On the other hand, it is  
2 also true that a corporate support function may result in higher costs, especially when the  
3 corporate support is poorly planned, organized, directed, and controlled.

4 **Q. Does the Rule allow SNGMO, the Missouri regulated natural gas company to give**  
5 **its non-regulated service company, Summit, preferential service or treatment?**

6 A. No. The Rule provides the definition: “preferential service means information or  
7 treatment or actions by the regulated gas corporation which places the affiliated entity at  
8 an unfair advantage over its competitors.” 4 CSR 240-40.015(1)(H).

9 **Q. Does SNGMO give Summit preferential treatment?**

10 A. Summit is certainly at an advantage over any business that might wish to provide services  
11 to SNGMO. This results in the conclusion that the regulated gas corporation, SNGMO,  
12 has effectively taken actions which places the affiliated entity at an unfair advantage over  
13 its competitors. This is a violation of 4 CSR 240-40.015(1)(H).

14 **Q. In her rebuttal testimony on page 6, lines 9-11, Ms. McMellen further testifies that**  
15 **Summit should be allowed to continue using Distrigas as a general allocator to**  
16 **assign costs to SNGMO. Do you agree?**

17 A. No. Distrigas is an inappropriate general allocator is due to the fact that it does not  
18 attribute costs to the goods and services Summit actually provides to SNGMO. Instead,  
19 Distrigas is designed to charge costs to different utilities to develop a cost of service to  
20 determine rates at the federal level. Distrigas does not consider the goods and services  
21 used by the utility.

22 **Q. Does Distrigas assign costs to its non-regulated entities such as Summit?**



1 A. No .Distrigas does not recognize that these common costs should be assigned not only to  
2 the regulated utility companies but also to Summit, the holding company's and all other  
3 non-regulated affiliates' activities as well. For example, the holding company's direct and  
4 indirect costs should be a factor in assigning any common costs of the goods and services  
5 Summit produces each year. That is not Summit's practice. See DR.

6 **Q. Ms. McMellen on page 7, lines 1-8 testifies that the proposed CAM includes the**  
7 **required policies, procedures and internal controls that are necessary to minimize**  
8 **the potential for SNGMO to subsidize non-regulated operations and ensure**  
9 **compliance with the Commission's ATR for gas utilities. Do you agree?**

10 A. No. These policies, procedures, and internal controls are not specifically identified, or  
11 explained in Summit's proposed CAM, so it is impossible to conclude that the proposed  
12 CAM contains the procedures "necessary to minimize the potential for SNGMO to  
13 subsidize non-regulated operations and ensure compliance with the Commission's"  
14 Rules.

15 **Q. What is your conclusion?**

16 A. The Commission should not accept SNGMO's proposed CAM. It is not in compliance  
17 with the rules and Summit has not requested variances from the Rules.

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

In the Matter of the Application of Summit )  
Natural Gas of Missouri, Inc. for Approval ) File No. GO-2012-0322  
Of Its Cost Allocation Manual )

**AFFIDAVIT OF ROBERT E. SCHALLENBERG**

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

Robert E. Schallenberg, of lawful age and being first duly sworn, deposes and states:


1. My name is Robert E. Schallenberg. I am a Director of Policy for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
Robert E. Schallenberg  
Director of Policy

Subscribed and sworn to me this 26<sup>th</sup> day of August 2019.



JERENE A. BUCKMAN  
My Commission Expires  
August 23, 2021  
Cole County  
Commission #13754037

  
Jerene A. Buckman  
Notary Public

My Commission expires August 23, 2021.