

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

Missouri Propane Gas Association,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2016-0083
)	
Summit Natural Gas of Missouri, Inc.,)	
)	
Respondent.)	

**SUMMIT NATURAL GAS OF MISSOURI’S REPLY IN SUPPORT OF ITS MOTION FOR
SUMMARY DETERMINATION**

COMES NOW Summit Natural Gas of Missouri, Inc. (“Summit”) and submits its Reply in Support of its Motion for Summary Determination.

Introduction

MPGA’s Opposition is long on rhetoric but light on facts and does nothing to avoid Summit’s Motion for Summary Determination. MPGA acknowledges it has a “narrow” case and indeed it does—the entire action seeks to prove that the conversion of four vent-free fireplaces from propane to natural gas violated an agreement between the parties in another action (“the Rate Case”). The language from the Rate Case does not prohibit all conversion of vent-free fireplaces, instead the agreement envisions that conversions will occur and Summit simply agrees to follow “manufacturers’ specifications” relating to conversions. MPGA’s paltry nine pages of testimony submitted to support its direct case does nothing to support its claim that the language was intended to and should be interpreted to mean “do not convert vent-free fireplaces.” Accordingly, summary determination is required.

Additionally, despite MPGA's reference to safety issues, this case *does not* include any claims that the four conversions at issue were unsafe. Indeed, MPGA dropped all claims that the conversions were in any way unsafe, and well it should, since there is no evidence that there are any safety concerns if such conversions are done properly by a qualified natural gas system operator. In contrast to the utter lack of evidence that such conversions are unsafe, there is ample affirmative evidence that they are safe. Summit demonstrated its conversion process for the Safety Staff, produced its conversion procedures, and also produced the results of its post-conversion safety audit of those vent-free fireplaces showing they are safely burning natural gas. Safety is Summit's priority and it is not at issue here.

MPGA's Opposition boldly and clearly attempts to bias the Commission against Summit. A full three-plus pages of its nine-page memorandum in opposition to summary disposition is dedicated to a smear campaign against Summit. MPGA apparently seeks to have this tribunal influenced by press reports of grievances that have nothing whatsoever to do with MPGA or this proceeding. MPGA's effort is a transparent attempt to distract the Commission and Summit from the real issues by baiting it to address the snippets of information it tossed in its brief. Summit declines to be baited into re-litigating these irrelevant matters, other than to state that the MPGA's skewed and selective characterizations of the circumstances of these matters do not reflect the merits of those matters, each of which was properly resolved by the parties to those disputes. MPGA may wish to turn this proceeding into a circus, but Summit trusts that the Commission will not allow MPGA to make a mockery of its adjudicatory process.

Indeed, the behavior of MPGA demonstrates an astounding lack of regard for this Commission's well-earned reputation as a serious and dispassionate adjudicative body that is charged with making just decisions under the rule of law. Here, Summit has asked the

Commission to consider whether MPGA has carried in its direct case the burden it bears as the complainant, to prove: (1) the meaning of the phrase “applicable manufacturers’ specifications...relating to conversions;” and (2) that Summit’s actions were contrary to “manufacturers’ specifications” with respect to the conversion of four vent-free fireplaces.

The tactics of MPGA do reveal two truths. First, MPGA’s case is defective (and it knows it) and its resort to a smear campaign is a desperate effort to prevent dismissal of the single claim remaining in this matter. Second, MPGA, whose unregulated members owe no duty to the Commission or to the laws it administers, is driven to co-opt the Commission’s authority in furtherance of its members’ commercial interest in staving off the competitive threat that natural gas poses to propane dealers in the home heating market – commercial interests that are the proper province of the marketplace and which the authority of the Commission is not intended to protect. Summit urges the Commission to look at the merits and put an end, finally, to the charade.

Finally, MPGA’s case is not saved by its belated “Hail Mary” submission of a motion for the Commission to “order” it a second-chance to prolong this attack against Summit. First, there is no valid basis for MPGA to make the request and its flagrant attempt to twist the rules of the Commission and violate the rights of Summit should not be validated. (See Summit’s contemporaneously filed reply opposing MPGA’s motion for a Commission order requiring MPGA to supplement the record). But even if considered, the request to be “ordered” to submit testimony of its member Brian Brooks does nothing to answer the questions raised by its Complaint. Indeed, that testimony was previously before the Commission on MPGA’s motion for summary determination and was found inadequate to address the questions in the case. (See Commission Order dated November 9, 2016.) The testimony is not now properly before the

Commission, but even if it were, it does not prove MPGA's case, which should be dismissed with prejudice at this time.

A. MPGA's Opposition Does Not Raise Any Genuine Issues.

MPGA spends nearly the entirety of its Opposition arguing about the intent of the Agreement and what it believes is a reasonable interpretation, yet it does so with exactly zero citations to Mr. Smith's Direct Testimony (its only proffered proof) to support its claims. MPGA's Opposition contains argument about its version of the issues in the Rate Case, now arguing that the Agreement applies to all conversions notwithstanding that MPGA intervened to protest the issue of vent-free appliances. Additionally, the Opposition argues that Mr. Smith's testimony is undisputed and that Summit fails to support its interpretation of manufacturer's specifications. It also argues that Summit has failed to prove "its burden" in proving its interpretation of the Agreement. MPGA's response misses the point entirely; the burden to prove its case in chief lies entirely with MPGA, and Summit's motion establishes how MPGA has failed to carry that burden.

The Commission's order on MPGA's motion for summary determination clearly set forth the positions of the parties with respect to manufacturer's specifications relating to conversions and demonstrated that the issues in the case were not resolved by MPGA's proof. Indeed, the Commission noted that it was "unable to make a factual determination as to what are the applicable manufacturers' specifications relating to the conversion of appliances" based on the materials submitted by MPGA. Thus, MPGA was called upon to provide direct testimony to prove at a minimum that the language in owner's manuals it relies on are "manufacturers' specifications relating to conversions" rather than simply language in owner's manuals directed to "owners" or consumers. And Summit argued further, that MPGA must demonstrate that any

relevant specifications were intended to apply to natural gas utilities and also that they were not followed for each of the four conversions. Yet, MPGA proffered *even less proof* in its direct testimony than it had offered in support of its motion and no proof whatsoever on those key issues.

Mr. Smith's Direct Testimony provided only general statements about owner's manuals, and nothing to distinguish "specifications" from the other items he himself notes are included in those materials, namely "a list of rules, bans, standards, design specifications, and product images." (Smith, p.7, lines 8-12). Indeed, MPGA's Opposition provided no citation to show Smith's proof on this point, because there simply is none. MPGA failed to cite even a single sentence of Mr. Smith's Direct Testimony—it just argues that he has experience and that he is a senior member of various committees and points to his *curriculum vitae*. (MPGA Opposition at p. 4). However, none of that proves the narrow issue in the case: namely what is meant by "applicable ... manufacturer's specifications relating to conversions." He simply does not address even the question clearly framed by the Commission.

MPGA's Opposition does even not address the fact that Mr. Smith did not provide a single sentence from an owners' manual. Nor does it address that Smith's single reference to a "design specification" for one of the four fireplaces does not establish that a "design specification" is the equivalent of a manufacturer's specification relating to conversions. (Smith page 7, lines 20-21). Instead, MPGA's position is simply that un-vented fireplaces cannot be converted. Despite this, Mr. Smith does not confront the reality that the fireplaces are *in fact* convertible, as is demonstrated by the fact that the one fireplace to which he did direct his direct testimony is in all material respects identical in its "propane" and "natural gas" versions, but for parts specific to the type of fuel that is used and these parts are easily purchased from the

manufacturer and easily replaced to effect a conversion. Indeed, Mr. Smith offers no evidence whatsoever to explain why it is that among the items available for purchase from the manufacturer is a natural gas conversion plate that can have no purpose other than to be part of the conversion from propane to natural gas. MPGA's feeble response (indeed the concession) to Summit's argument regarding this extremely pertinent and persuasive fact is merely to assert that it is irrelevant.

Mr. Smith certainly offers the opinion that vent-free products should not be converted, and while he is entitled to that opinion, his opinion does nothing to prove whether or not Summit's conversion of the four fireplaces at issue comports in all respects with the manufacturer's specifications for critical operational points such as (a) supply pressure, (b) operating pressure (c) dimensions of the opening in the pilot orifice spud and (d) dimension of the opening in the main burner orifices spud. Mr. Smith doesn't even mention such technical specifications or address their import. He does not distinguish such specifications from warnings or illustrations or other contents of owner's manuals he himself cites. And finally, Mr. Smith provides no evidence on the proper technical interpretation of the Agreement at issue in this case. There simply is no there, there when it comes to Mr. Smith's Direct Testimony (the only properly submitted testimony), on whose testimony MPGA's whole case rests.

B. MPGA's Opposition Relies Entirely on its Improper Submission Which Should Not Be Considered.

As Summit articulated in its Opposition to MPGA's Motion to File Supplemental Testimony, MPGA's proffer of Supplemental Testimony is improper and should be denied. MPGA's Response in Opposition cites to Smith's Supplemental Testimony 19 times and never once cites to Smith's Direct Testimony on which MPGA's entire claim was based. Thus, it is

crystal clear that MPGA's case fails if it is based on its Direct Testimony alone—which it should. The Commission rules are set up to allow fairness to both parties in presenting their respective case and having the opportunity to challenge and refute it. MPGA's request to be allowed a do-over thwarts the rules, the intent behind the rules and fundamental fairness. Moreover, on its face the proposed supplemental testimony is untrue and unreliable. For all the reasons set for the Summit's Opposition, MPGA's case should rest on the Direct Testimony it chose to submit after having 16 months to do so. Its "new" testimony should not be considered.

C. Even with MPGA's Improper Submission Summary Determination is Required.

Although improper, MPGA's proffered supplemental testimony does not save it from summary determination. Indeed, the "new" proposed Supplemental Testimony simply consists of an affidavit of Mr. Brooks' (who MPGA elected not to offer as a witness in its direct case), repackaged as belonging to Mr. Ronald Smith. But the Commission already considered this affidavit when it was submitted in support of MPGA's motion for summary determination and determined that *it did not answer the question at issue*. Put another way, Mr. Brook's affidavit was not sufficient to prove MPGA's complaint and its claimed interpretation of the Agreement in the Rate Case. Indeed, just like Mr. Smith's Direct Testimony, Mr. Brook's affidavit does nothing to answer the question of what are "applicable ... manufacturers' specifications" relating to conversions as distinct from other contents of owner's manuals such as design specifications, warnings, illustrations and the like. Among other things, the affidavit does nothing to address the role of a gas supplier such as Summit in connection with conversions, rather than the consumer for whom the manual is written, and of course it does not address an interpretation of the Agreement whatsoever.

As discussed above, the Commission laid a roadmap for MPGA but MPGA decided to go off-road instead. Owners' manuals are just that, manuals for owners (consumers) and MPGA has not addressed any of the issues relating to what "specifications" must be followed by a gas supplier in performing conversions from propane to natural gas, which a consumer cannot and should not do, but a gas supplier like Summit does routinely. The burden to prove its case remains MPGA's as the Complainant in this case. Summit's motion demonstrates why MPGA has not made its case even if all its "evidence" is considered. Therefore, summary determination and dismissal is appropriate and required.

Conclusion

For the reasons set forth herein, Summit respectfully requests the Commission grant its Motion for Summary Determination or Dismissal.

Respectfully Submitted,

By: /s/ Lewis Mills

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed to all parties of record this 26th day of May, 2017.

/s/ Lewis Mills

Lewis Mills