

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

In the Matter of the Application of)	
Summit Natural Gas of Missouri, Inc., for)	
Permission and Approval if a Certificate)	
of Convenience and Necessity to)	
Construct, Install, Own, Operate, Maintain)	Case No. GA-2017-0016
and Otherwise Control and Manage a)	
Natural Gas System to Provide Gas)	
Service in Various Counties as an)	
Expansion of its Existing Certificated)	
Territory.)	

**PUBLIC COUNSEL’S BRIEF RESPONDING TO THE COMMISSION’S
ORDER REQUIRING BRIEFS OR OBJECTIONS TO AMENDED
PARTIAL STIPULATION AND AGREEMENT**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and in Response to the Commission’s *Order Setting Deadline for Filing Briefs or Objections to Amended Partial Stipulation and Agreement* (“Order”) states the following as to the issue of whether the statute creating and guiding the Public Service Commission (“PSC”) is remedial or penal in nature:

I. INTRODUCTION

On December 15, 2016, the Staff of the Commission (“Staff”) and Summit Natural Gas of Missouri, Inc. (“Summit”) filed an Amended Partial Stipulation and Agreement (“Agreement”). On that same day the Commission responded with its Order questioning whether paragraph 5 of the Agreement violates “Article IX, section 7 Section of the Missouri Constitution” (“Order p. 2.). In its Order, the Commission cites the *Missouri Gaming Com’n v. Missouri Veterans Com’n* 951 S.W.2d 611 (Mo. 1997) (“*Gaming Comm’n*”) case. In that case, the Supreme Court rejected the argument that penal laws were strictly criminal and also noted its earlier decision in *New Franklin School Dis. No. 28 v. Bates*, 225 S.W.2d 769 (Mo. 1950), which

explained that penal laws are not strictly criminal. *Gaming Comm’n* at 613. In this regard, the Court explained “the words ‘penal laws of the state’ as used in Sec. 7, art IX of the . . . Constitution refer to statutory enactments fixing or providing for penalties, forfeitures and fines and for their assessment and collection.” *Gaming Comm’n* at 613. As discussed below, the Gaming Commission statute contains just such a statutory enactment and the Public Service Commission Law (“PSC Law”) does not.

A. Background

In this CCN case, Summit asks the Commission to approve its request to construct . . . and otherwise control and manage a natural gas system in what is an expansion of its existing certificated service areas. As part of its Application, Summit acknowledges it has violated several sections of Chapter 393 and Commission rules because it constructed plant and served customers outside its certificated service area. Public Counsel does not doubt this was done inadvertently and agrees the Partial Stipulation and Agreement filed in the case on is a just resolution of the case. In order to settle this matter, Summit is voluntarily agreeing to pay money to local Community Action agencies in the areas where it served customers beyond the boundaries of its certificated area. As a result, Public Counsel agree this settlement is just and reasonable.

B. The Public Service Commission law is not a penal statute.

The Public Service Commission Law (Section 386.010 RSMo) is a remedial statute. It could only be a “penal law of the state” if, in the PSC Law, the Legislature had specifically granted the PSC authority to assess and collect penalties. The Legislature did not.

“The Public Service Commission Law of Missouri has been uniformly held and recognized by this court to be a remedial statute, which is bottomed on, and is referable to, the

police power of the State, and under well-settled legal principles, as well as by reason of the precise language of the Public Service Commission Act itself, is to be "liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities." *State ex rel. Laundry, Inc. v. Public Service Comm'n.* 327 Mo. 93, 104 (Mo. 1931)(emphasis added).

The rule of liberal construction thus uniformly accorded by this court to the PSC Law is consonant with the universal rule applicable to similar remedial statutes, which is to the effect that "laws enacted in the interest of the public welfare or convenience should be liberally construed with a view to promote the object in the mind of the Legislature." In contrast, to the PSC Law, the Legislature did grant the Gaming Commission authority to assess and collect penalties.

C. The Missouri Gaming Commission statute does contain a penal provision.

In *Gaming Comm'n*, the issue before the Supreme Court was whether the administrative penalty the Gaming Commission had assessed against a casino company was a violation of a penal law, requiring distribution of the penalty to as directed by Mo. Const art IX, sec. 7. As a result of its analysis, the Court held that "section 313.805(6) is a statutory enactment . . . which provides for . . . the assessment and collection [of penalties]." *Id.* The Court further found the penalty assessed to be a "violation of a public right" and to be "recoverable by public authority." *Id.* This discussion lead the Court to conclude section 313.805(6) is "a penal law of the state within the meaning of article IX, section 7" of the Missouri Constitution.

Under specific Legislative authority, Section 313.805(6) RSMo, the Gaming Commission has authority to:

assess any appropriate administrative penalty . . . including, but not limited to, suspension, revocation, and penalties of an amount as determined by the commission up to three times the highest daily amount of gross receipts derived from wagering on the gambling games, whether unauthorized or authorized . . . as well as confiscation and forfeiture of all gambling game equipment used in the conduct of unauthorized gambling games. Forfeitures pursuant to this section shall be enforced as provided in sections 513.600 to 513.645.

In contrast, under its enabling statute, Chapter 386 RSMo, this Commission does not have statutory authority to assess and collect penalties. Consequently, the PSC Law is a remedial and not a penal law of the state within the meaning of article IX, sec. 7. Since the PSC Law is a remedial statute, the foundation for a violation of the provisions of article IX, sec. 7, simply is not present.

WHEREFORE Public Counsel, in response to the Commission's question, states the PSC Law is a remedial statute, not a penal law, and urges the Commission to accept the Partial Stipulation and Agreement as a just and reasonable settlement of the issues in this case.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Lera Shemwell
Lera L. Shemwell (#43792)
Senior Public Counsel
PO Box 2230
Jefferson City MO 65102
(573) 751-5565
(573) 751-5562 FAX
lera.shemwell@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 22nd day of December 2016:

Missouri Public Service Commission

Staff Counsel Department
200 Madison Street, Suite 800
PO Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Missouri Propane Gas Association

Terry M Jarrett
514 E. High Street, Suite 22
Jefferson City, MO 65101
terry@healylawoffices.com

Missouri Public Service Commission

Jeff Keevil
200 Madison Street, Suite 800
PO Box 360
Jefferson City, MO 65102
jeff.keevil@psc.mo.gov

Summit Natural Gas of Missouri, Inc.

Dean L Cooper
312 East Capitol
PO Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Summit Natural Gas of Missouri, Inc.

Russ Mitten
312 E. Capitol Ave
PO Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.com

/s/ Lera Shemwell
