

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

Michael Stark,

Complainant,

v.

Summit Natural Gas of Missouri, Inc.,

Respondent.

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Case No. GC-2014-0202

STAFF RECOMMENDATION TO DISMISS CASE

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and, for its recommendation that the Commission dismiss the *Complaint* against Respondent, states:

Introduction

1. The *Complaint* in this case concerns Respondents' mistakenly-installed pipe on Complainant's property and subsequent washout of parts of Complainant's private road where pipe was installed. The Complainant, Mr. Stark, alleges that Respondent committed trespass when they mistakenly installed the pipe on his property, and committed property damage to his private road when rain washed out parts of his private road where the pipe had been installed. The Respondent, SNG, admits that it entered upon a section of Complainant's property and installed pipe along Mr. Stark's private road under the belief that it had the authority to do so. SNG further states that the *Complaint* should be dismissed for failure to state a claim. For the reasons set out in its report, which is attached as Appendix A, Staff recommends the Commission dismiss the *Complaint*.

Discussion

2. On December 27, 2013, Mr. Stark filed his *Complaint* against SNG requesting that the Commission order the Respondent to pay him money damages for committing trespass and for property damage done to his private road as a result of SNG's poorly performed installation of its pipe.

3. On February 6, 2014, Mr. Stark amended his *Complaint* to request the additional relief that the Commission revoke SNG's certificate of public convenience and necessity, "as well as any and all permits and authorization to construct and install gas lines in the State of Missouri"¹.

4. "The Commission is not a court of general jurisdiction and cannot enter a monetary judgment in favor of a complainant." *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41, 58 (Mo.1937). The Commission does have "full authority to investigate complaints about rates or service and can make orders to remedy the situation for the future, but it cannot grant monetary relief . . ." *Id.*

5. Complainant's claims are civil causes of action and his requests for monetary damages are outside the jurisdiction of the Commission. As stated in Staff's Report, "There are no Commission rules that address issues relating to trespassing or compensation for property damage. Staff's analysis also indicates that SNG's tariff does not apply because Mr. Stark was not and is not a customer of SNG."² Therefore, Staff recommends that the Complainant's *Complaint* be dismissed for failure to state a claim upon which relief may be granted.

6. The Complainant has also requested that the Commission revoke or rescind SNG's certificate of public convenience and necessity (CCN).

¹ Additional Relief Requested.

² Staff's Memorandum, pg. 2.

7. The Missouri Supreme Court has held that the Commission does not have the authority to revoke the CCN of any utility company because 393.170RSMo provides no authority or standard to revoke a CCN.³

8. Staff recommends that the Complainant's *Complaint* be dismissed for failure to state a claim upon which relief may be granted, because the Commission does not have the authority to revoke a gas company's CCN.

Conclusion

9. Based upon the information available to Staff during its investigation of the *Complaint*, Staff concludes that SNG did not violate any Commission rules or utility tariffs with regard to the pipe installed on Mr. Stark's property.

WHEREFORE, Staff recommends that the Commission issue an order dismissing the *Complaint* for failing to state a claim upon which relief can be granted.

Respectfully submitted,

/s/ Alexander Antal

Alexander Antal
Assistant Staff Counsel
Missouri Bar No. 65487

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³ State ex rel. City of Sikeston v. Public Service Commission of Missouri, 336 Mo. 985, 997 (Mo.1935).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of February, 2014.

/s/ Alexander Antal

REPORT OF THE STAFF

TO: Missouri Public Service Commission Official Case File
File No. GC-2014-0202, Michael Stark vs. Summit Natural Gas
of Missouri, Inc.

FROM: Tom Imhoff, Tariff/Rate Design Section
John Kottwitz, Safety/Engineering Section

/s/ Natelle Dietrich 02/10/2014
Tariff, Safety, Economic and
Energy Analysis Department/Date

/s/ Alexander Antal 02/10/2014
Staff Counsel's Office/Date

DATE: February 10, 2014

Background

On December 27, 2013, a formal complaint was filed with the Missouri Public Service Commission ("Commission") by Michael Stark and assigned File No. GC-2014-0202. Mr. Stark stated that Summit Natural Gas ("SNG") installed a gas line on his property without authorization. A subsequent rain washed out his private road at locations where the gas line had been installed. Mr. Stark notes that the Commission Staff came to the site and took pictures. SNG installed a different gas line at a location not on Mr. Stark's property and will not use the gas line along his private road. Mr. Stark requests to be compensated by SNG for trespass and property damage, or for the issue to be turned over to SNG's insurance carrier.

After filing a motion to dismiss on January 17, 2014, SNG filed an answer to the complaint on January 27, 2014. SNG indicated that the pipe was mistakenly installed on Mr. Stark's property. They have requested permission from Mr. Stark to remove the mistakenly-installed pipe and resurface the road. SNG indicated that negotiations were continuing with Mr. Stark in an attempt to settle this matter.

Photographs

As noted in the complaint, Staff from the Tariff, Safety, Economic and Engineering Analysis Department ("Staff") has photographs of the pipe installation and washouts on Michael Stark's property (see Attachment 1). These photographs were taken when John Kottwitz and Rick Fennel of the Staff Safety/Engineering Section met with Mr. Stark on September 17, 2013.

Staff Findings and Recommendation

Staff finds that the pipe installed on Mr. Stark's property is not connected to the natural gas system operated by SNG and will not be used at that location by SNG. Therefore, the Commission's rules

and SNG's tariff do not apply to this pipe. SNG has indicated its willingness to remove the mistakenly-installed pipe and resurface the road, which should eliminate the wash-outs on the private road that could present hazards to persons using the private road.

Staff's analysis indicates the initial principal issues of this complaint are Mr. Stark's claims that SNG trespassed and damaged his property, and that he should be compensated for these damages. There are no Commission rules that address issues relating to trespassing or compensation for property damage. Staff's analysis also indicates that SNG's tariff does not apply because Mr. Stark was not and is not a customer of SNG.

On February 6, 2014, Mr. Stark amended his complaint seeking additional relief such that the Commission rescind and/or revoke SNG's Certificate of Convenience and Necessity ("CCN"), "as well as any and all permits and authorizations to construct and install gas lines in the state of Missouri". Staff Counsel's cover pleading addresses Mr. Stark's additional relief.

Staff concludes that SNG did not violate any Commission rules or utility tariffs with regard to the pipe installed on Mr. Stark's property. Staff will continue to monitor construction practices for installation of pipe that SNG will operate under the Commission's jurisdiction.

Staff recommends that the case be dismissed, with no further action required.

Attachment 1 - Photographs











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vs.

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Respondent

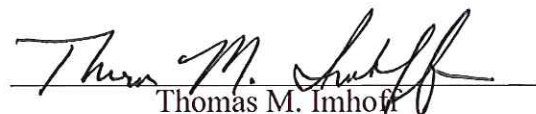
AFFIDAVIT OF THOMAS M. IMHOFF

STATE OF MISSOURI

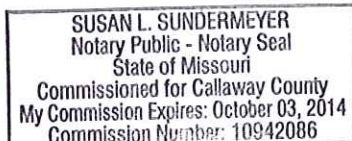
COUNTY OF COLE

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Thomas M. Imhoff, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.


Thomas M. Imhoff

Subscribed and sworn to before me this 10th day of February, 2014.




Notary Public

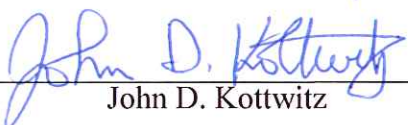
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AFFIDAVIT OF JOHN D. KOTTWITZ

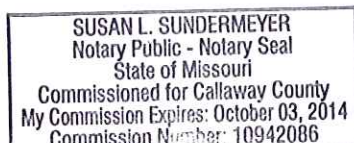
STATE OF MISSOURI)
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John D. Kottwitz, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



John D. Kottwitz

Subscribed and sworn to before me this 10th day of February, 2014.





Notary Public