

**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.)	

**CLARIFICATION OF THE
OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and for its Clarification in this case states Summit Natural Gas of Missouri (SNGMO) has violated Missouri statutes, rules regulations and charged customers contrary to law. It has done so over an extended period of time. On December 15, 2016, in resolution of these violations and in lieu of a Complaint case, Commission Staff (Staff) and Summit Filed an Amended Stipulation and Agreement proposing Summit pay a certain sum instead of recommending the Commission Order a statutory penalty. (Amended Stipulation para. 5)(Stip). At the April 19, 2017 Agenda the Commission stated its opinion that the proposed payment constitutes a penalty. Below, Public Counsel discusses its opinion that payment to the local Community Action Agencies is not a penalty in conformance with the Commission’s statutorily established penalty provisions.

INTRODUCTION

Public Counsel submits its Clarification in this case for the purpose of stating its position that the alternative offered by the Company, Staff and Pubic Counsel is a solution to a

Commission ordered penalty. The Commission is responsible for assuring regulated operate in compliance with Missouri statutes and Commission rules. These statutes, generally found in Chapters 386 and 393 RSMO, and the PSC's rules at 4 CSR 240 are designed to direct the activities of monopolies that provide essential services to captive customers.

Customers of regulated state sponsored monopolies should be and deserve to be served by utility corporations that operate in substantial if not full compliance with all relevant statutes and Commission rules. A utility's provision of safe and adequate customer service at just and reasonable rates is best assured conformance to these statutes and the PSC's rules. As discussed below, when companies violate rules or statutory provisions the legislature has provided for Commission imposition of penalties.

DISCUSSION

1. In its recent Certificate of Convenience and Necessity (CCN) case, GA-2017-0016, Summit asked the PSC to grant it a certificate to serve territory and bill customers for natural gas service in areas where Summit has served customers without the approval or authorization of the Commission. Summit acknowledged that Section 393.170 contains this provision. Stip. at 1.

2. In its discussions with Commission Staff, and as reflected in the December 15, 2016 Amended Partial Stipulation and Agreement filed in this case, Summit acknowledged: "that it has constructed and installed gas plant for the purpose of providing, and has provided utility service to customers outside its certificated service area without receiving Commission approval in advance of construction in violation of statutes." Stip. at 3.

3. Summit also stated that "a portion [but not all] of the gas plant at issue was installed by Summit's predecessors and never effectuated through a certificate" [of convenience

and necessity]. Stip. at All these activities occurred prior to Summit obtaining the Commission's Summit has submitted an Application for a CCN to lawfully serve these customers. *Id.*

4. Summit further admits it billed these customers in contravention of Commission Rule 4 CSR 240-13.020(1) in that it did not have an approved tariff through which it could bill these customers. Summit acknowledges it billed one hundred and sixty (160) "persons or entities for natural gas service that were located outside its certificated service.

5. Under the Commission determination that the proposed payment is, in fact a penalty, and not a payment in lieu of a penalty, it is necessarily governed by its enabling statute which requires a minimum payment of \$100.00 per violation. In the Amended Partial Stipulation and Agreement, Staff identifies the offenses in paragraph 9, (A), (B) and (C).

6. The Commission's enabling statute provides a penalty of not less than one hundred dollars per day for each offense:

386.570. 1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

7. Public Counsel does not question Summit served these customers inadvertently, however, it also seems prudent that an acquiring utility would review the certificates, boundaries of the certificated area and all Commission Orders granting the certificates to the utility acquired. This is necessary to assure continued or improved compliance with Missouri statutes and Commission regulations, and Commission Orders including any conditions the Commission may have imposed in its Orders.

8. A conservative estimate of the statutory penalty for one year at the minimum penalty of \$100, calculated as follows $\$100 \times 365 \text{ days} \times 160 \text{ customers} \times 3 \text{ violations}$, equals \$17,520,000. Summit has been serving customers in the Lebanon area since 2011. The penalty for the least amount provided in statute - \$100 per offence, over a five year period would be in the range of \$87,000,000.

9. Public Counsel, of course, does not support imposition of such a penalty on Summit.

10. Respectfully, the Office of the Public Counsel did not and would never recommend the Commission “skirt” the Missouri Constitution or any Missouri statute. In this case the OPC suggests the proposed payment is not a statutory penalty as described in Section 386.570 but is a payment in recognition by Summit utilities that it may not operate with impunity and Public Counsel is willing to not oppose the Partial Stipulation and agreement as a reasonable and necessary resolution of the violations to which Summit has admitted.

11. Public Counsel supported payment of this settled amount to the local Community Action Agencies that operate in the areas where Summit served and billed customers without Commission approval of either a CCN or tariffs governing service and billing.

WHEREFORE Public Counsel states its position that the payment agreed to in the Amended Partial Stipulation and Agreement as a just and reasonable settlement of the issues regarding of statutory and Commission rule violations through a payment to the State School Board, but that it is a payment in settlement instead of a statutorily driven penalty.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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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 25th day of April 2017:

/s/ Lera Shemwell
