

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day
of May, 2014.

Michael Stark,)	
)	
Complainant,)	
v.)	<u>File No. GC-2014-0202</u>
)	
Summit Natural Gas of Missouri, Inc.,)	
)	
Respondent)	

**ORDER DENYING MOTIONS TO DISMISS
and
ORDER DIRECTING FILING**

Issue Date: May 21, 2014

Effective Date: May 21, 2014

Michael Stark filed a complaint against Summit Natural Gas of Missouri, Inc. alleging that the company, without authorization, entered upon his property to install a gas line on his private road. He further states that subsequent rain washed away about 500 feet of trenching where the line was installed and made his road unusable. For his relief, Complainant seeks damages and revocation of the company's Certificate of Convenience and Necessity (CCN).

The company filed its answer stating, among other things, that it did enter upon a portion of Complainant's property to install pipe, believing it had the authority to do so. With its answer, the company moved the Commission to dismiss the complaint for Complainant's failure to state a claim upon which relief can be granted.

Subsequently, the Staff of the Commission investigated the complaint and, like the company, moves the Commission to dismiss the complaint because the Commission cannot award damages. Staff also concludes that the Commission does not have the authority to revoke the company's CCN and posits that, because Complainant is not a customer, the company's tariff is inapplicable. Finally, Staff concludes the company violated no Commission rules or utility tariffs with respect to the pipe it installed on Complainant's property.

Discussion

Missouri law¹ allows any person to file a complaint with the Commission setting forth any act or omission of a public utility in violation of any provision of law. This statute does not require that the complainant request relief. And, although there is alleged damage in this case, the law does not require the Commission to dismiss the complaint because of the absence of direct damage to the complainant.² It stands to reason that a complainant need not request an award for damages in order for the Commission to consider the complaint. Though the company and Staff are correct in that the Commission cannot award monetary relief,³ the Commission need not dismiss a complaint on those grounds.

Similar reasoning is applicable to Complainant's request that the company's CCN be revoked. Both Staff and the company are correct in that the Commission does not have authority to revoke a CCN. This is supported by the absence of such grant of power by the legislature as well as case law.⁴ The Commission is purely a creature of statute and its powers are limited to those conferred by the statutes, either expressly, or by clear

¹ Section 386.390.1, RSMo.

² Section 386.390.3, RSMo.

³ *May Department Stores Co. v. Union Electric Light & Power Co.*, 107, S.W.2d 41, 58 (Mo. 1937).

⁴ *State ex rel. City of Sikeston v. Public Service Commission of Missouri*, 336 Mo. 985, 997 (Mo. 1935).

implications as necessary to carry out the powers specifically granted.⁵ Because there is no statutory authority allowing the Commission to revoke a CCN, the Commission lacks such authority.

Despite the Commission's inability to grant the relief sought by Complainant, the Commission has a duty to ensure that the law, tariffs and Commission rules and orders are followed. In this instance, the Commission has been informed that a utility, regulated by the Commission, has trespassed upon and damaged private property. The question remains of whether this is true and if so, whether it is a violation of a statute, tariff provision, Commission rule or order.

Section 393.130.1 requires gas corporations to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” Whether this statute is applicable is an open question to be resolved.

First Revised Sheet No. 73, 19(a) of the company's tariff, P.S.C. Mo. No. 1, requires the company to obtain a right-of-way when installing distribution main. Complainant states that the company did not obtain such permission. The company states that it believed it had authority. This factual finding may be at issue. Although Staff posits that the tariff is inapplicable because Complainant is not a customer, Staff's conclusion is unsupported.

Finally, because the work may have resulted in part of the private road being unusable, there may have been a violation of 4 CSR 240-40.030 (192.361). This damage could have also been the result of the company being unable to finish its work properly. The Commission cannot make this determination on the averments presented so far and is unwilling to dismiss this complaint without doing so.

⁵ *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Comm'n*, 585 S.W.2d 41, 47 (Mo banc. 1979).

The above statute, tariff provision and Commission rule are identified as examples of provisions that may have been violated. The Commission does not conclude that any of these provisions were violated or that others were not.

Toward resolution of this complaint, the Commission will direct the company to file factual or legal support for its authority to enter upon Complainant's property. The Commission will also set a prehearing conference to move this complaint toward resolution.

THE COMMISSION ORDERS THAT:

1. Summit Natural Gas of Missouri, Inc.'s motion to dismiss is denied.
2. The Staff of the Commission's motion to dismiss is denied.
3. Summit Natural Gas of Missouri, Inc., shall file, no later than June 2, 2014, any evidence of its authority to enter upon the property of Michael Stark.
4. A prehearing conference shall be held on June 3, 2014, at the Governor Office Building, 200 Madison Street, Room 305, Jefferson City, Missouri, beginning at 10:00 a.m. The hearing will be held in a building that meets accessibility standards required by the American with Disabilities Act. If you need additional accommodations to participate in this public hearing, please call the Public Service Commission's Hotline at 1 800-392-4211 (voice) or Relay Missouri at 711 prior to the hearing.

5. This order shall become effective upon issuance.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Jones, Senior Regulatory Law Judge