

**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.)	

**MOTION OF SUMMIT NATURAL GAS OF MISSOURI FOR SUMMARY
DETERMINATION OR DISMISSAL**

COMES NOW Summit Natural Gas of Missouri, Inc. (“Summit”), pursuant to 4 CSR 240-2.117(1), and for its Motion for Summary Determination or Dismissal states as follows:

Summary of Argument

Summit moves for summary determination or dismissal on the single remaining claim of the Complaint filed by the Missouri Propane Gas Association (“MPGA”) – that Summit has violated the Partial Stipulation and Agreement as to Dual Fuel and Conversion of Appliances (“Agreement”) from a prior rate case (“the Rate Case”) by converting four vent-free fireplaces from propane to natural gas for Missouri residents who chose natural gas over propane. Summit moves for summary determination on the grounds that MPGA has failed to meet its burden to prove: 1) the identification of the applicable “manufacturers’ specifications for converting appliances from propane to natural gas” for each of the four fireplaces referenced in the Agreement; 2) the meaning of those specifications for each of the four fireplaces; 3) how those specifications could be “followed” by Summit “in converting appliances;” and 4) how Summit purportedly failed to follow those specifications.

MPGA has submitted its direct testimony in the case which consists solely of the testimony of Ronald G. Smith, a consulting engineer. The few pages of Mr. Smith's testimony that are even arguably directed to the elements cited above, and on which MPGA bears the burden of proof, lack any substance and contain no citations or objective basis sufficient to support a decision for MPGA on its claims. MPGA's direct case fails to present the proof on which it bears the burden, and Summit is therefore entitled to summary determination or dismissal in its favor.

MPGA has so completely failed to support its case in its direct testimony that the Commission should find that MPGA has not carried its burden of proof without requiring Summit to submit evidence into the record. This motion, brought after the submission of MPGA's direct testimony, is akin to a defendant's motion for a judgment as a matter of law in federal court made after the plaintiff rests. Commission Rule 4 CSR 240-2.116(4) provides that: "A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved." At this stage of the proceedings, the Commission should evaluate the evidence that MPGA has presented as its case-in-chief and grant this motion for summary determination or dismissal for good cause because the evidence preponderates against the MPGA, the party bringing the complaint.

Procedural Background

1. MPGA filed a formal complaint on October 2, 2015.
2. MPGA filed an amended complaint on October 30, 2015.
3. MPGA filed a Motion for Partial Summary Disposition on May 13, 2016. In

that motion, MPGA presented a single issue:

Whether Summit Natural Gas of Missouri, Inc. (SNGMO) violated this Commission's September 3, 2014, Order approving the Partial Stipulation and Agreement as to Duel

[sic] Fuel and Conversion of Appliances issued in File No. 2014-0086 [sic], by failing to follow the manufacturer's specifications in converting four unvented heating products from propane to natural gas.

4. The "four unvented heating products" referenced in the Complaint are the following four fireplaces:

Fireplace 1: a fireplace manufactured by DESA, model number VGF28PT;

Fireplace 2: a fireplace manufactured by Sure Heat, model number BIVFMV;

Fireplace 3: a fireplace manufactured by SHM International Corp, model number BIVFMV;

Fireplace 4: a fireplace manufactured by DESA, model number VMH26PRB/EFS26PRA;

5. MPGA filed a Notice of Partial Voluntary Dismissal and Request for Stay on May 20, 2016.

6. By that notice, MPGA dismissed all claims in its complaint (as amended) – including claims concerning the safety of converted appliances – with the sole exception of the claim cited in paragraph 4, *supra*. Consequently, the only question remaining for the Commission in this case is whether Summit followed manufacturers' specifications in converting the four identified fireplaces.

7. Summit filed a response to the Motion for Partial Summary Disposition with a supporting affidavit on June 13, 2016.

8. MPGA filed a reply to Summit's response on June 17, 2016.

9. Summit filed a final response to MPGA's reply on June 27, 2016.

10. On November 9, 2016, the Commission denied MPGA's Motion for Partial Summary Disposition stating:

A motion for summary determination is only proper where the moving party establishes that there is no genuine issue as to any material fact. Summit's response to MPGA's motion

demonstrates the existence of a genuine issue as to material facts. Summit argues that MPGA's motion raises at least six questions of material fact, including whether the statements in the owner's manuals constitute "manufacturers' specifications relating to the conversion of appliances" when applied to natural gas suppliers. Summit also challenges whether the affidavit of Mr. Brian Brooks that was attached in support of MPGA's motion demonstrates a requisite level of expertise to support MPGA's claims.

At this time, based solely on the pleadings and the supporting documentation submitted by the parties, the Commission is unable to make a factual determination as to what are the applicable manufacturers' specifications relating to the conversion of appliances. Therefore, the Commission will deny MPGA's Motion for Partial Summary Disposition.¹

11. On February 1, 2017, MPGA filed the direct testimony and schedules of only one witness, Ronald G. Smith, a newly-identified witness who attests to having industry experience with manufacturers.

12. Commission rule 4 CSR 240-2.130(7) requires that a party's "[d]irect testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief."

13. MPGA is complainant in this case and bears the burden of proof and the burden of persuasion at all times.

Material Facts Supporting Summary Determination

Commission rule 4 CSR 240-2.117(1) provides that a motion for summary determination "shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue" The remainder of this motion sets forth these facts.

¹ *Order Denying Motion for Partial Summary Disposition*, issued November 9, 2016; page 3.

Fireplace 1

14. MPGA's direct testimony and schedules provided no evidence with respect to Fireplace 1.

Fireplace 2

15. MPGA's direct testimony and schedules provided no evidence with respect to Fireplace 2.

Fireplace 3

16. MPGA's testimony included as Schedule RGS-3 a copy of a sticker (which MPGA calls a "rating plate") attached to the fireplace manufactured by SHM International Corp. with a model number BIVFMV (Fireplace 3),

17. The only mention of this specific "rating plate" in Mr. Smith's testimony is at page 4, lines 9-10, where he states: "I have attached an example of ... a rating plate as Schedule RGS-2 ... to this testimony."

18. The only other discussion of "rating plates" is at page 4, lines 7-9, where Mr. Smith states: "The warning is also placed on the rating plate that is attached to the unit so that anyone working on the unit is informed of the conversion prohibition."

19. Mr. Smith does not assert that a "rating place" is a manufacturer's specification, and nowhere else in this testimony does he provide evidence of manufacturers' specifications for Fireplace 3.

20. MPGA has provided no evidence of the manner in which Summit converted Fireplace 3.

21. MPGA has provided no evidence of the parts used in the conversion of Fireplace 3.

Fireplace 4

22. MPGA's testimony included as Schedule RGS-2 a copy of an owner's manual that covers several fireplaces, including a fireplace manufactured by DESA with a model number VMH26PRB/EFS26PRA (Fireplace 4).

23. RGS-2 covers propane and natural gas versions of the two fireplace models that it addresses.

24. Propane versions of the fireplaces addressed in RGS-2 have the letter "P" in their model number (i.e., VMH26PRB and EFS26PRA).

25. Natural gas versions of the fireplaces addressed in RGS-2 have the letter "N" in their model number (i.e., VMH26NRB and EFS26NRA).

26. Page 34 of RGS-2 is a parts diagram for both propane and natural gas versions of the fireplaces addressed in the owner's manual.

27. Page 35 of RGS-2 is a parts list for both propane and natural gas versions of the fireplaces addressed in the owner's manual.

28. The parts list notes that it "contains replaceable parts used in your fireplace."

29. All of the parts are identical between the propane and natural gas versions of the fireplaces except:

- A. some screws (Key No. 6);
- B. the pilot regulator (Key No. 17);
- C. the injector (Key No. 19);
- D. the pilot tube to regulator (Key No. 41);
- E. the pilot tube to control valve (Key No. 42);
- F. the NG conversion plate (Key No. 43).

30. The “Lighting Instructions Plate” and the “Warning Plate” (listed under “Parts Available – Not Shown”) are identical between the propane and natural gas versions of the fireplaces.

31. The parts identified in paragraph 29, *supra*, are all discrete, replaceable parts.

32. As used in the parts list, the abbreviation “NG” in Key No. 43 (“NG conversion plate”) means “natural gas.”

33. MPGA has provided no evidence of the manner in which Summit converted Fireplace 4.

34. MPGA has provided no evidence of the parts used in the conversion of Fireplace 4.

Meaning of Manufacturer’s Specifications

35. MPGA witness Smith provides a definition of manufacturer specifications at page 7, lines 8-11 of his direct testimony.

36. MPGA provides no citation or supporting evidence for this definition. His definition does not explain any distinction between design specifications, manufacturing specifications or warnings or other instructions and information to which it refers.

37. The Business Dictionary defines “manufacturers’ specifications” as a “Documented description of performance specifications of a component, subassembly, or system that are to be met during the manufacturing process, as well as the procedure by which those specifications will be assessed.”²

² <http://www.businessdictionary.com/definition/manufacturing-test-specification-and-procedure.html>.

38. Merriam-Webster’s dictionary defines “specifications” as “a detailed description of work to be done or materials to be used in a project: an instruction that says exactly how to do or make something.”³

39. Mr. Smith provides no specific identification of manufacturer’s specifications “relating to conversions” as referenced in the Agreement.

Summary Determination

MPGA has not presented evidence to prove its sole remaining allegation in this case, namely its unsupported claim that Summit violated the Agreement reached in the Rate Case by converting from propane to natural gas four vent-free fireplaces. For the reasons more fully discussed in the accompanying Memorandum in Support and based upon these uncontested facts, the Commission should: 1) find that MPGA has failed to carry its burden of proof; and 2) dismiss all remaining allegations with prejudice.

³ <http://www.merriam-webster.com/dictionary/specifications>

WHEREFORE, Summit respectfully requests that the Commission grant this Motion for Summary Determination or Dismissal, dismiss all remaining allegations, and close this case.

Respectfully Submitted,

By: /s/ Lewis Mills

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**ATTORNEYS FOR SUMMIT NATURAL
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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 3rd day of April, 2017.

/s/ Lewis Mills
Lewis Mills