

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

MISSOURI PROPANE GAS ASSOCIATION,)	
)	
Complainant,)	
)	
vs.)	File No. GC-2016-0083
)	
SUMMIT NATURAL GAS OF MISSOURI, INC.,)	
)	
Respondent.)	

**MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY DISPOSITION**

Complainant, the Missouri Propane Gas Association (MPGA), by and through undersigned counsel, submits this Memorandum in Support of its Motion for Partial Summary Disposition (Motion) to address a threshold question: 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 Fuel and Conversion of Appliances (the Agreement) issued in File No. 2014-0086,¹ by failing to follow the manufacturer’s specifications in converting four unvented heating products from propane to natural gas.

The question is a narrow one that involves the interpretation of the language in paragraph 1 of the Agreement,² which states as follows:

For converting appliances from propane to natural gas, SNGMO agrees to follow all applicable national and local codes and manufacturers’ specifications relating to the conversion of appliances. (Emphasis added)

¹ EFIS No. 248, File No. GR-2014-0086. SNGMO’s improper conversions of unvented (also called vent-free) appliances was a contested issue in that case. *See*, EFIS No. 246, Exhibit 300, *Rebuttal Testimony of Brian T. Brooks*, page 4, lines 14-22, and page 5, lines 1-5; and EFIS No. 169, Exhibit 9, *Surrebuttal Testimony of David Moody*, page 1, lines 15-18, and page 2, lines 1-14.

² EFIS No. 148, File No. GR-2014-0086.

For purposes of the Motion, the only appliances at issue are unvented heating products that are shipped from the manufacturer for use with one gas only. Unvented heating products include gas fireplaces and room heaters. There are other gas products such as hot water heaters, furnaces, cooking stoves, and vented products. Manufacturers do not normally prohibit conversions on these types of products, and MPGA does not dispute that Summit can convert these other gas products without violating the Agreement. Again, it is only the unvented gas heating products that are at issue for purposes of the Motion.

ARGUMENT

The Agreement is Clear and Unambiguous That SNGMO Must Follow All Manufacturers' Specifications Relating to the Conversion of Appliances, Including Unvented Appliances

The Agreement is a contract, and contract interpretation is a question of law. *Newco Atlas v. Park Range Const.*, 272 S.W.3d 886, 891 (Mo. App. W.D. 2008). The primary rule of contract interpretation is that courts (in this case, the Commission) seek to determine the parties' intent and give effect to it. *Chochorowski v. Home Depot U.S.A.*, 404 S.W.3d 220, 226 (Mo. banc 2013). The parties' intent is presumed to be expressed by the plain and ordinary meaning of the language of the contract. *Id.* When the language of a contract is clear and unambiguous, the intent of the parties will be gathered from the contract alone, and a court will not resort to a construction where the intent of the parties is expressed in clear and unambiguous language. *Id.* at 226-27. "Where the parties have expressed their final and complete agreement in writing and there is no ambiguity in the contract, the intent of the parties must be determined solely from the four corners of the contract itself." *Holbert v. Whitaker*, 87 S.W.3d 360, 363 (Mo. App. E.D. 2002).

Here, the language is clear and unambiguous and can be determined from the Agreement alone. In the agreement, SNGMO agrees to follow manufacturers' specifications relating to the conversions of appliances. The owners' manuals of the manufacturers of the four unvented gas heating products (and the rating plate on one of the units) converted by SNGMO state in the specifications very clearly and unambiguously that the gas type for the units are propane/LP only and cannot be converted from one gas to another.

SNGMO also has to follow all national and local codes in addition to manufacturers' specifications. While MPGA asserts that no national or local code allows for conversions of unvented products, even if one could argue that they are allowed, no code requires them to be converted. This means that SNGMO would not be violating the code if they did not convert unvented heating products. On the other hand, it is clear that the manufacturers' specifications for the four unvented heating products that are the subject of this motion prohibit such conversions, and SNGMO violated those specifications. If there is a conflict between the national and local codes and manufacturers' specifications, then the law in Missouri is that the most specific one applies. If one of the conditions is general and one is more specific, the more specific controls over the more general. *See, State ex rel. Smith v. City of Springfield*, 375 S.W.2d 84, 91 (Mo. banc 1964). If a national or local code generally allows but does not require conversions, and the manufacturers' specifications specifically prohibit conversions, the manufacturer's specifications control. Further, this interpretation allows SNGMO to follow all national and local codes and manufacturers' specifications, since not converting a unit is not a violation of the codes. By following manufacturers' specifications to not convert unvented gas appliances, SNGMO can still also follow national and local codes, meeting the intent of the Agreement.

Finally, again assuming for purposes of argument only, that national or local codes did allow for conversions of unvented products, SNGMO is free to enter into a contractual agreement that is more stringent than any applicable codes. Here, they did, by agreeing to also follow manufacturers' specifications relating to the conversions of appliances. In the four instances described in the Motion, Summit failed to follow the manufacturers' specifications, thus violating their contractual obligations under the Agreement and this Commission's Order approving the Agreement.

CONCLUSION

In the Agreement approved by this Commission in its September 3, 2014, Order approving the Partial Stipulation and Agreement as to Duel Fuel and Conversion of Appliances issued in File No. 2014-0086, the language is clear: SNGMO must follow all manufacturers' specifications related to the conversion of appliances. If the manufacturers specifications state that an unvented gas heating product is not allowed to be converted, the clear and unambiguous language of the Agreement requires SNGMO to follow those specifications—no exceptions. The undisputed evidence is that after the Agreement was approved by this Commission, SNGMO did convert four unvented gas heating products when all four manufacturers' owners' manuals said those units (and the rating plate on one of the units) shall not be converted. SNGMO violated the Agreement and the Commission's September 3, 2014 Order.

WHEREFORE, MPGA respectfully requests that the Commission grant the Motion and determine that SNGMO has violated this Commission's September 3, 2014 Order; order SNGMO to comply with the Commission's September 3, 2014 Order; order SNGMO to cease and desist from any further conversions on all unvented propane gas heating products where

conversions are not allowed by the manufacturers of those products; and, grant any other relief that the Commission deems appropriate under the circumstances.

Respectfully submitted,



Terry M. Jarrett MO Bar 45663
Husch Blackwell LLP
235 East High Street, P.O. Box 1251
Jefferson City, MO 65102-1251
Telephone: (573) 761-1116
Facsimile: (573) 634-7854
Email: terry.jarrett@huschblackwell.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed this 13th day of May, 2016 to:

Jeff Keevil
Jamie Myers
Staff Counsel
Public Service Commission
200 Madison Street, P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Marc Poston
Office of the Public Counsel
P.O. Box 2330
Jefferson City, MO 65102
opc@ded.mo.gov

Dean Cooper
Brydon, Swearingen & England P.C.
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Lewis Mills
Bryan Cave LLP
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
lewis.mills@bryancave.com

A handwritten signature in black ink that reads "Terry M. Jarrett". The signature is written in a cursive style with a horizontal line above the first name.

Terry M. Jarrett