

**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.	)	

**MPGA’S RESPONSE IN OPPOSITION TO  
SNGMO’S MOTION FOR SUMMARY DETERMINATION OR DISMISSAL**

COMES NOW the Missouri Propane Gas Association (MPGA), and for its response to the Motion for Summary Determination or Dismissal filed by Summit Natural Gas of Missouri, Inc. (SNGMO) on April 3, 2017, states as follows:

**MPGA RESPONSE TO SNGMO’S SUMMARY OF ARGUMENT**

The first portion of SNGMO’s Motion is a section entitled “Summary of Argument.” Although it is argument and MPGA is not required to provide a response, MPGA denies any and all allegations contained therein.

**MPGA RESPONSE TO SNGMO’S NUMBERED FACTUAL STATEMENTS**

Pursuant to 4 CSR 240.2.117(1)(C), MPGA makes the following response to SNGMO’s statement of material facts that SNGMO asserts are not in dispute.

1. In response to paragraph 1 of SNGMO’s Motion, MPGA admits that on October 2, 2015, it filed a Complaint against SNGMO, pursuant to Sections 386.390, 386.400, RSMo.

2000<sup>1</sup>, and Commission Rule 4 CSR 240-2.070, alleging that, among other things, SNGMO converted vent-free gas heating products which violated the *Partial Stipulation and Agreement As To Dual Fuel and Conversion of Appliances* (the Agreement) with MPGA filed in Case No. GR-2014-0086 because the manufacturers' specifications do not permit such conversions.

2. In response to paragraph 2 of SNGMO's Motion, MPGA admits that on October 30, 2015, MPGA filed a Motion to File First Amended Complaint, which the Commission granted by order on November 17, 2015.

3. In response to paragraph 3 of SNGMO's Motion, MPGA admits that, pursuant to 4 CSR 240-2.117, on May 13, 2016, MPGA filed a Motion for Partial Summary Disposition 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 Dual Fuel and Conversion of Appliances issued in File No. 2014-0086, by failing to follow the manufacturer's specifications in converting four unvented heating products from propane to natural gas.

4. In response to paragraph 4 of SNGMO's Motion, MPGA admits that the "four unvented heating products" at issue in this case are as follows:

- a. Fireplace 1: a fireplace manufactured by DESA, model number VGF28PT;
- b. Fireplace 2: a fireplace manufactured by Sure Heat, model number BIVFMV;
- c. Fireplace 3: a fireplace manufactured by SHM International Corp, model number BIVFMV;
- d. Fireplace 4: a fireplace manufactured by DESA, model number VMH26PRB/EFS26PRA.

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<sup>1</sup> Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri, revision of 2000, as subsequently amended.

MPGA further states that all four of these fireplaces were converted by SNGMO after the Agreement in Case No. GR-2014-0086 was approved by the Commission.<sup>2</sup>

5. In response to paragraph 5 of SNGMO's Motion, MPGA admits that on May 20, 2016, it filed a Notice of Partial Voluntary Dismissal and Request for Stay.

6. In response to paragraph 6 of SNGMO's Motion, MPGA admits that it narrowed the scope of the proceeding to one 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 Dual Fuel and Conversion of Appliances issued in File No. 2014-0086, by failing to follow the manufacturer's specifications in converting unvented heating products from propane to natural gas.

7. In response to paragraph 7 of SNGMO's motion, MPGA admits that on June 13, 2016, SNGMO file a Response to Motion for Partial Summary Disposition. Included with that filing was a Legal Memorandum in Support of its Response in Opposition to the Motion for Partial Summary Determination and an Affidavit of David W. Meyer. MPGA further states that in its Response to Motion for Partial Summary Disposition, SNGMO admitted that it converted the Fireplaces 1, 2, 3 and 4 referenced in paragraph 4 above.<sup>3</sup>

8. In response to paragraph 8 of SNGMO's Motion, MPGA admits that on June 17, MPGA filed a Motion to File Reply in Support of Motion for Partial Summary Disposition.

9. In response to paragraph 9 of SNGMO's Motion, MPGA admits that on June 27, SNGMO filed a Response to Reply in Support of its Motion for Partial Summary Disposition.

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<sup>2</sup> Smith Supp. Direct, page 3.

<sup>3</sup> EFIS No. 29, *Response of Summit Natural Gas of Missouri Inc. in Opposition to Motion for Partial Summary Determination*, paragraph 3; EFIS No. 33, *Order Denying Motion for Partial Summary Disposition*, page 2.

10. In response to paragraph 10 of SNGMO's Motion, MPGA admits that on November 9, 2016, the Commission issued its Order Denying Motion for Partial Summary Disposition, stating:

In its Response of Summit Natural Gas of Missouri, Inc. in Opposition to Motion for Partial Summary Determination, Summit acknowledges that it converted four unvented gas-heating products from propane to natural gas, but disagrees with MPGA's framing of the issue... 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.

11. In response to paragraph 11 of SNGMO's Motion, MPGA admits that on February 1, 2017, it filed the Direct Testimony and Schedules of Ronald G Smith. MPGA further states that Mr. Smith has over 35 years in the heating appliance industry. Since 1981 he has worked for various manufacturers globally that manufacture gas heating and cooking appliances for both the U.S. and European markets. The primary gas heating appliance he has the most extensive experience with is Unvented (vent-free) Gas-Fired Heaters. He is currently the senior member and active participant of the Z21 Technical Advisory Group (TAG) for the ANSI Z21.11.2 Standards for Unvented Gas-Fired Heating Appliances. Since 1987 he has Chaired or have taken the lead participation in every major substantive issue under the Unvented Room Heater TAG, from NO2 emission coverage, to developing coverage for hearth type unvented room heaters and up to submitting the coverage for Universal Unvented Room Heaters. His curriculum vitae is provided in **Schedule RGS-1** to his Direct Testimony. The main purpose of Mr. Smith's testimony was to address what the Commission, in its November 9 Order Denying Motion for Partial Summary Disposition, stated

was the sole remaining disputed issue in the case: what are the applicable manufacturers' specifications relating to the conversion of appliances.

12. In its response to paragraph 12 of SNGMO's Motion, MPGA admits that Commission Rule 4 CSR 240-2.130(2) provides as follows: "Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief". MPGA further states that according to the Commission's November 9 Order Denying Motion for Partial Summary Disposition, the entire case-in-chief for this case is answering the question of what are the applicable manufacturers' specifications relating to the conversion of appliances.

13. In response to paragraph 13 of SNGMO's Motion, MPGA states that in a Complaint case, a Complainant has the burden of proof.<sup>4</sup>

**MPGA RESPONSE TO SNGMO'S MATERIAL FACTS SUPPORTING  
SUMMARY DETERMINATION**

14. In response to paragraph 14 of SNGMO's Motion, MPGA denies SNGMO's allegation and states that the Direct Testimony of Ron Smith does provide evidence with respect to Fireplace 1. **Schedule RGS-4** to Mr. Smith's Direct Testimony is SNGMO's response to Data Request No. 4 of MPGA's First Set of Data Requests, which asked "Please provide a list of all vent-free appliances, including date of conversion, type of appliance, name of manufacturer, model and serial number for each such appliance converted by SNGMO in the past 5 years." In response, SNGMO provided a spreadsheet ("spreadsheet") showing that it had converted 109 vent-free appliances. The spreadsheet shows that between September 29, 2014 and September 4, 2015 (after the Agreement between MPGA and SNGMO was approved in Case No. GR-2014-

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<sup>4</sup> See *AG Processing, Inc. v. KCP&L Greater Missouri Operations Company*, 385 S.W. 3d 511 (Mo. App. 2012); *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W. 3d 680 (Mo. App. W.D. 2003).

0083), SNGMO converted the four vent-free heating products at issue. Fireplace 1 is Item no. 56 on the spreadsheet. MPGA further states that additional information surrounding the conversion of Fireplace 1 is detailed in the Supplemental Direct Testimony of Ronald G. Smith that is filed concurrently with this Response.<sup>5</sup> MPGA further states that SNGMO has already admitted that it converted Fireplace 1.<sup>6</sup>

15. In response to paragraph 15 of SNGMO's Motion, MPGA denies SNGMO's allegation and states that the Direct Testimony of Ron Smith does provide evidence with respect to Fireplace 2. **Schedule RGS-4** to Mr. Smith's Direct Testimony is SNGMO's response to Data Request No. 4 of MPGA's First Set of Data Requests, which asked "Please provide a list of all vent-free appliances, including date of conversion, type of appliance, name of manufacturer, model and serial number for each such appliance converted by SNGMO in the past 5 years." In response, SNGMO provided a spreadsheet ("spreadsheet") showing that it had converted 109 vent-free appliances. The spreadsheet shows that between September 29, 2014 and September 4, 2015 (after the Agreement between MPGA and SNGMO was approved in Case No. GR-2014-0083), SNGMO converted the four vent-free heating products at issue. Fireplace 2 is Item no. 37 on the spreadsheet. MPGA further states that additional information surrounding the conversion of Fireplace 2 is detailed in the Supplemental Direct Testimony of Ronald G. Smith that is filed concurrently with this Response.<sup>7</sup> MPGA further states that SNGMO has already admitted that it converted Fireplace 2.<sup>8</sup>

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<sup>5</sup> Smith Supp. Direct, page 4.

<sup>6</sup> EFIS No. 29, *Response of Summit Natural Gas of Missouri Inc. in Opposition to Motion for Partial Summary Determination*, paragraph 3; EFIS No. 33, *Order Denying Motion for Partial Summary Disposition*, page 2.

<sup>7</sup> Smith Supp. Direct, pages 4-5.

<sup>8</sup> EFIS No. 29, *Response of Summit Natural Gas of Missouri Inc. in Opposition to Motion for Partial Summary Determination*, paragraph 3; EFIS No. 33, *Order Denying Motion for Partial Summary Disposition*, page 2.

16. In response to paragraph 16 of SNGMO's Motion, MPGA admits that **Schedule RGS-3** of Ronald G. Smith's Direct Testimony is a copy of Fireplace 3's rating plate that was attached to it by the manufacturer.

17. In response to paragraph 17 of SNGMO's Motion, MPGA denies SNGMO's allegation and states that the rating plate for Fireplace 3 is referenced and/or discussed by Mr. Smith in his Direct Testimony in two places: page 4, lines 7-11; and **Schedule RGS-2**.

18. In response to paragraph 18 of SNGMO's Motion, MPGA denies SNGMO's allegation and states that the reference to rating plates at page 4, lines 7-9 of Mr. Smith's Direct Testimony applies to all unvented appliances, including the four unvented heating appliances converted by SNGMO that are at issue in this case.

19. In response to paragraph 19 of SNGMO's Motion, MPGA denies SNGMO's allegation and states that MPGA Witness Ronald G. Smith provides the following testimony relating to the definition of manufacturers' specifications at issue in this case at page 7, lines 7-14 of his Direct Testimony:

**Q19: What is a manufacturer specification?**

A: A manufacturer specification is a document that provides critical defining information about a product and can include identification of the manufacturer; a list of rules, bans and standards that apply to the item; and design specifications and product images that visually illustrate the product and note distinguishing characteristics.

**Q20: Is this definition of manufacturer specification widely accepted in the unvented gas heating products manufacturing industry?**

A. Yes, it is.

MPGA further states that under this definition, the rating plate is a manufacturers' specification.

20. In response to paragraph 20 of MPGA's Motion, MPGA states that it has insufficient knowledge with which to admit or deny the allegations pertaining to "the manner in which" SNGMO converted Fireplace 3 contained in Paragraph 20 and, therefore, denies the same. MPGA states that the Direct Testimony of Ron Smith does provide evidence with respect to Fireplace 3. Fireplace 3 is a unit converted in front of several witnesses, including a MO PSC employee and MPGA's Brian Brooks, at SNGMO's office in Sunrise Beach, MO, on March 19, 2015. SNGMO did not include this conversion in its Spreadsheet (**Schedule RGS-4**), but did provide a copy the rating plate attached to the unit in response to a MPGA data request. The rating plate shows that this is a fireplace manufactured by SHM International Corp. The copy of the rating plate is attached to Mr. Smith's direct testimony as **Schedule RGS-3**. MPGA further states that additional information surrounding the conversion of Fireplace 3 is detailed in the Supplemental Direct Testimony of Ronald G. Smith, which is filed concurrently with this Response.<sup>9</sup> MPGA further states that SNGMO has already admitted that it converted Fireplace 3.<sup>10</sup>

21. In response to paragraph 21 of SNGMO's Motion, MPGA states that it has insufficient knowledge with which to admit or deny the allegations contained in Paragraph 21 and, therefore, denies the same. MPGA further states that "Evidence of parts used in the conversion" is not a relevant issue in the case, in that according to the manufacturers' specifications for Fireplace 3, the unit should never had been converted.<sup>11</sup>

22. In response to paragraph 22 of SNGMO's Motion, MPGA admits that **Schedule RGS-2** of Ronald G. Smith's Direct Testimony is a copy of the Owner's Manual for Fireplace 4.

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<sup>9</sup> Smith Supp. Direct, pages 5-6.

<sup>10</sup> EFIS No. 29, *Response of Summit Natural Gas of Missouri Inc. in Opposition to Motion for Partial Summary Determination*, paragraph 3; EFIS No. 33, *Order Denying Motion for Partial Summary Disposition*, page 2.

<sup>11</sup> Smith Supp. Direct, Schedule RGS-5, pages 7, 9 and 37.



MPGA further states that a copy of the Owner's Manual for Fireplace 4 is also included in the Supplemental Direct Testimony of Ronald G. Smith, which is concurrently filed with this Response.<sup>12</sup>

23. In response to paragraph 23 of SNGMO's Motion, MPGA admits that the Owner's Manual in **Schedule RGS-2** of Ronald G. Smith's Direct Testimony is for Fireplace 4 and does cover both propane and natural gas models. MPGA further states that the Owner's Manual for Fireplace 4 provides:

- a. On page 2 of the Owner's Manual, it states: "This appliance is only for use with the type of gas on the rating plate. This appliance is not convertible for use with other gases."<sup>13</sup>
- b. On page 4 of the Owner's Manual, it states: "1. This appliance is only for use with the type of gas on the rating plate. This appliance is not convertible for use with other gases."<sup>14</sup>
- c. On page 32 of the Owner's Manual, under the "**Specifications**" section for model no. VMH26PRB/EFS26PRB it states:  
  
"Type of Gas      Propane /LP gas only."<sup>15</sup>

24. In response to paragraph 24 of SNGMO's Motion, MPGA admits the Owner's Manual for Fireplace 4 uses a "P" to designate the propane version of the model. MPGA further

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<sup>12</sup> Smith Supp. Direct, Schedule RGS-5, pages 6-45.

<sup>13</sup> *Id.* at page 7.

<sup>14</sup> *Id.* at page 9.

<sup>15</sup> *Id.* at page 37.

states that according to the manufacturers' specifications for Fireplace 4, the unit should never have been converted.<sup>16</sup>

25. In response to paragraph 25 of SNGMO's Motion, MPGA admits that the Owner's Manual for Fireplace 4 uses "N" to designate the natural gas version of the model. MPGA further states that this not a relevant issue in the case, in that according to the manufacturers' specifications for Fireplace 4, the unit should never have been converted.<sup>17</sup>

26. In response to paragraph 26 of SNGMO's Motion, MPGA admits that page 34 of the Owner's Manual for Fireplace 4 contains a parts diagram for both propane and natural gas versions of the models. MPGA further states that this not a relevant issue in the case, in that according to the manufacturers' specifications for Fireplace 4, the unit should never have been converted.<sup>18</sup>

27. In response to paragraph 27 of SNGMO's Motion, MPGA admits that page 35 of the Owner's Manual for Fireplace 4 contains separate parts lists for the propane version of the model and the natural gas version of the model. MPGA further states that this not a relevant issue in the case, in that according to the manufacturers' specifications for Fireplace 4, the unit should never have been converted.<sup>19</sup>

28. In response to paragraph 28 of SNGMO's Motion, MPGA admits that page 35 of Fireplace 4's Owner's manual states that "This list contains replaceable parts used in your fireplace. When ordering parts, follow the instructions listed under *Replacement Parts* on page 33 of this manual." MPGA further states that SNGMO is misconstruing the meaning of

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<sup>16</sup> See paragraph 23, *supra*.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

“replacement” parts. Nothing on that page says that it is appropriate to substitute a part designed for a natural gas model for a part that is designed for a propane gas model. MPGA further states that this not a relevant issue in the case, in that according to the manufacturers’ specifications for Fireplace 4, the unit should never have been converted.<sup>20</sup>

29. In response to paragraph 29 of SNGMO’s motion, MPGA states that it has insufficient knowledge with which to admit or deny the allegations contained in Paragraph 29 and, therefore, denies the same. MPGA further states that this not a relevant issue in the case, in that according to the manufacturers’ specifications for Fireplace 4, the unit should never have been converted.<sup>21</sup>

30. In response to paragraph 30 of SNGMO’s Motion, MPGA states that the “Lighting Instructions Plate” and the “Warning Plate” are the same for both propane and natural gas models, but further states that this is not at all relevant to whether the manufacturer permits conversions of its products.

31. In response to paragraph 31 of SNGMO’s Motion, MPGA states that it has insufficient knowledge with which to admit or deny the allegations contained in Paragraph 3 and, therefore, denies the same. MPGA states that whether the parts listed in paragraph 29 of SNGMO’s Motion are “discrete, replaceable parts” is not at all relevant to whether the manufacturer permits conversions of its products.

32. In response to paragraph 32 of SNGMO’s Motion, MPGA admits that “NG” stands for “Natural Gas” but states that the use of “NG” does not imply that field conversion is

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

permitted. MPGA further states that use of “NG” in Key No. 45 is not at all relevant to whether the manufacturer permits conversions of its products.

33. In response to paragraph 33 of SNGMO’s Motion, MPGA states that it has insufficient knowledge with which to admit or deny the allegations contained in Paragraph 33 and, therefore, denies the same. MPGA states that the “manner in which” SNGMO converted Fireplace 4 is not relevant. MPGA further states that the conversion should never occurred at all according to the manufacturer’s specifications for Fireplace 4.<sup>22</sup>

34. In response to paragraph 34 on SNGMO’s Motion, MPGA states that it has insufficient knowledge with which to admit or deny the allegations contained in Paragraph 34 and, therefore, denies the same. MPGA states that “evidence of the parts used” to convert Fireplace 4 is not relevant. MPGA further states that the conversion should never occurred at all according to the manufacturer’s specifications for Fireplace 4.<sup>23</sup>

**MPGA RESPONSE TO SNGMO’S MEANING OF  
MANUFACTURER’S SPECIFICATIONS**

35. In response to paragraph 35, of SNGMO’s Motion, MPGA admits SNGMO’s allegation and states that MPGA Witness Ronald G. Smith provides the following testimony relating to the definition of manufacturers’ specifications at issue in this case at page 7, lines 7-14 of his Direct Testimony:

**Q19: What is a manufacturer specification?**

A: A manufacturer specification is a document that provides critical defining information about a product and can include identification of the manufacturer; a list of rules, bans and standards that apply to the item; and design specifications and product images that visually illustrate the product and note distinguishing characteristics.

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<sup>22</sup> Smith Supp. Direct, Schedule RGS-5, pages 7, 9 and 37.

<sup>23</sup> Smith Supp. Direct, Schedule RGS-5, pages 7, 9 and 37.

**Q20: Is this definition of manufacturer specification widely accepted in the unvented gas heating products manufacturing industry?**

B. Yes, it is.

36. In response to paragraph 36 of SNGMO's Motion, MPGA denies SNGMO's allegation and states that Mr. Smith has over 35 years in the heating appliance industry. Since 1981, he has worked for various manufacturers globally that manufacture gas heating and cooking appliances for both the U.S. and European markets. The primary gas heating appliance he has the most extensive experience with is Unvented (vent-free) Gas-Fired Heaters. He is currently the senior member and active participant of the Z21 Technical Advisory Group (TAG) for the ANSI Z21.11.2 Standards for Unvented Gas-Fired Heating Appliances. Since 1987 he has Chaired or taken the lead participation in every major substantive issue under the Unvented Room Heater TAG, from NO<sub>2</sub> emission coverage, to developing coverage for hearth type unvented room heaters and up to submitting the coverage for Universal Unvented Room Heaters. His curriculum vitae is provided in **Schedule RGS-1** to his Direct Testimony. MPGA further states that Mr. Smith is a recognized leader and expert in the field of unvented gas heating appliances (including both propane and natural gas models) and bases his definition on his qualifications and experience in the industry.

37. In response to paragraph 37 of SNGMO's Motion, MPGA states that it has insufficient knowledge with which to admit or deny the allegations contained in Paragraph 37 and, therefore, denies the same. MPGA further states that SNGMO has provided no evidence to support whether the definition it lists in paragraph 37 is a definition that is commonly used in the unvented gas heating products manufacturing industry, or if it is even recognized at all in the industry.

38. In response to paragraph 38 of SNGMO's Motion, MPGA states that it has insufficient knowledge with which to admit or deny the allegations contained in Paragraph 38 and, therefore, denies the same. MPGA further states that SNGMO has provided no evidence to support whether the definition it lists in paragraph 38 is a definition that is commonly used in the unvented gas heating products manufacturing industry, or if it is even recognized at all in the industry.

39. In response to paragraph 39 of SNGMO's Motion, MPGA denies SNGMO's allegation and states that MPGA Witness Ronald G. Smith provides the following testimony relating to the definition of manufacturers' specifications at issue in this case at page 7, lines 7-14 of his Direct Testimony:

**Q19: What is a manufacturer specification?**

A: A manufacturer specification is a document that provides critical defining information about a product and can include identification of the manufacturer; a list of rules, bans and standards that apply to the item; and design specifications and product images that visually illustrate the product and note distinguishing characteristics.

**Q20: Is this definition of manufacturer specification widely accepted in the unvented gas heating products manufacturing industry?**

C. Yes, it is.

40. By way of further response, MPGA denies each and every allegation in SNGMO's Motion that is not specifically admitted herein.

**MPGA'S RESPONSE TO SNGMO'S SUMMARY DETERMINATION**

The last portion of SNGMO's Motion is a section entitled "Summary Determination" Although it is argument and MPGA is not required to provide a response, MPGA denies any and all allegations contained therein.

WHEREFORE, as set out in this response and accompanying Memorandum in Support, MPGA respectfully requests that the Commission deny SNGMO's Motion for Summary Determination or Dismissal, and grant any other relief that the Commission deems appropriate under the circumstances.

Respectfully submitted,



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#### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties on the official service list this 3<sup>rd</sup> day of May, 2017.



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Terry M. Jarrett