

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

Paul Brown and Debra Brown,)	
)	
Complainants,)	
)	
v.)	Case No. GC-2017-0199
)	
Summit Natural Gas of Missouri, Inc.,)	
)	
Respondent.)	

SNGMO’S RESPONSE TO COMPLAINANTS’ SUR-REPLY

COMES NOW Summit Natural Gas of Missouri, Inc. (“SNGMO” or “Company”), and, in response to Complainants’ Sur-Reply in Opposition to Respondent’s Motion to Dismiss, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. On February 23, 2017, in conjunction with its answer in this matter, SNGMO moved to dismiss the underlying Complaint on the following basis:

. . . as its Motion to Dismiss, SNGMO states that the Complaint fails to state a claim upon which relief may be granted because the Complaint does not allege a violation of any tariff, statute, rule, order, or decision in that the Complainants’ allege that their residence is not located within SNGMO’s certificated service territory (Complaint, para. 6 and 7) and, therefore, SNGMO has no right or obligation to serve Complainants at that location; and, further in that the Commission has no authority to determine damages or award pecuniary relief or consequential damages.

2. On March 3, 2017, Complainants filed their *Reply in Opposition to Respondent’s Motion to Dismiss*. SNGMO filed its *Response to Complainants’ Reply to Motion to Dismiss* on March 13, 2017.

3. Complainants have now extended the process having filed their *Sur-Reply in Opposition to Respondent’s Motion to Dismiss* on March 17, 2017. Given that SNGMO is the

movant in this matter, has the burden as to the motion and, therefore, should be given the “last word,” SNGMO provides this response to the Complainants’ Sur-Reply.

4. SNGMO observes that the relevant matters remain unchallenged in Complainants’ Sur-Reply. That is, the following facts are not in dispute: 1) Complainants’ residence is not located within SNGMO’s certificated service territory (Complaint, para. 6 and 7; Complainants’ Reply, para. 9); and, 2) SNGMO is not providing natural gas service to Complainants at their residence (Complaint, para. 6 and 7).

5. SNGMO previously addressed Complainants’ attempt to establish a cause of action in regard to their allegations concerning solicitation and installation of gas lines. These matters were also addressed in the Staff Report.

6. In spite of this, Complainants’ Sur-Reply continues the suggestion that there is a violation of Commission order, rule, or law associated with the installation of pipe near the Browns’ residence. (Sur-Reply, para. 3-6) However, Complaints never allege that the pipe was used for the distribution of natural gas (nor could they, as it was not). Because the lines installed by SNGMO are not, and will not be, “. . . used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power,” it is not gas plant and does not support Complainants’ allegation of a violation of any Commission order, rule, or law. (Section 386.020, RSMo)

7. Complainants’ Sur-Reply does attempt to add a new dimension to this case by injecting the threat of criminal prosecution. (Sur-Reply, para. 12). Specifically Complainants suggest that the facts of this matter “could constitute a crime” under the Missouri Merchandising Practices Act (Section 407.020.1, RSMo). This threat is misplaced for several reasons:

(a) Section 407.020.3, RSMo, requires a person to “willfully and knowingly engage” in unlawful conduct with an “intent to defraud” in order for the Merchandising Practices Act to

form a basis for a criminal charge, something that just does not exist in this case. The communications found in the Staff Report (Schedule KC1-KC8) do not represent anything that even approaches criminal conduct. Rather, they reflect an organization attempting to provide service to Complainants, in an area where the Company has a gas line, but which is subject to a not so obvious limitation (the Stipulation and Agreement from Case No. GA-2007-0168 (*See Report and Order* (February 5, 2008); and *Stipulation and Agreement of SMNG and MGE* (December 4, 2007)));

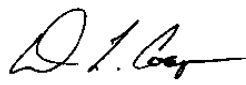
(b) Fundamentally, Section 407.020.1, RSMo, requires a “sale,” something that SNGMO did not make in this case. Indeed, it is SNGMO’s failure to make a sale, which is the basis of the underlying Complaint. Further, the only sale transaction was between the Browns and unnamed sellers of appliances. *Barnes v. Fed. Home Loan Mortg. Corp.*, 2013 U.S. Dist. LEXIS 44446, *18, 2013 WL 1314200 (W.D. Mo. Mar. 28, 2013) (“An MMPA claim may not be brought against a third-party that was not part of the initial transaction.”); and, finally,

(c) This Commission does not possess jurisdiction over criminal matters.

WHEREFORE, SNGMO asks that the Complaint be dismissed.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

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ATTORNEYS FOR SUMMIT NATURAL GAS
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 27th day of March, 2017, to:

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