

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

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

**COMPLAINANTS' SUR-REPLY IN OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS**

COMES NOW Complainants and as sur-reply in opposition to Respondent's Motion to Dismiss respectfully offers the following:

1. Respondent relies on the "original grant of the relevant certificate to Southern Missouri Gas Company, d/b/a Southern Missouri Natural Gas in Commission Case No. GA-2007-0168, along with the Stipulation and Agreement of SMNG and MGE, which the Commission ordered, as the basis for SNGMO not requesting a certificate of convenience and necessity ("CCN").¹

2. However, in that same case the Commission ordered:

SMNG shall not be authorized to provide wholesale or retail sales service... or any other type of service, or to construct or allow the construction of any laterals, taps or other connections off of its intrastate pipeline, or construct any other pipelines or facilities which are to be used, directly or indirectly, for the provision of transportation or sales service, or any other type of service, or the interconnection with any pipeline other than that of Southern Star Central Gas Pipeline, Inc. (Southern Star), on that portion of the certificate designated to be a "line certificate."²

¹ See Southern Missouri Gas Company, d/b/a Southern Missouri Natural Gas, Case No. GA-2007-0168, Report and Order (February 5, 2008), along with the Stipulation and Agreement of SMNG and MGE (December 4, 2007).

² Id., Report and Order pg. 19, Stipulation and Agreement pg. 2.

3. Respondent constructed pipelines, on and across the complainant's property, intended to be used for the provision of natural gas to Complainants.

4. Respondent's construction entailed obtaining permits to burrow under the roadway, excavation of the Complainant's yard, and installation of four hundred (400) feet of pipeline.

5. The pipelines were constructed and installed for the specific intent of providing natural gas service to the Complainants, as evidenced by SNGMO providing Complainants the completed Residential and Commercial Application and Usage/Sales Agreement.

6. Respondent's construction of the aforementioned pipelines was done without the permission of this Commission, without the consent of Laclede Gas (whose territory SNGMO was operating in) and was in violation of the Stipulation and Agreement of SMNG and MGE, as well as in violation of the Commission's Order in case GA-2007-0168.

7. Respondent and Staff assert that Complainants have misinterpreted the definition of "customer" in that Complainants are not currently end-users and were not end-users at the time SNGMO offered to provide service to the Complainants. Both Respondent and Staff assert that, "if SNGMO is not allowed to offer natural gas service to any person who is not a current end-user at the time of the offer, SNGMO would never add new customers."³ However, Respondent and Staff are overlooking the fact that, without a variance or permission from this Commission, pursuant to the Order of

³ See Report of the Staff dated March 13, 2017, pg. 4. and SNGMO's Response to Complainants' Reply to Motion to Dismiss, pg. 2-3.

February 5, 2008 and the Stipulation and Agreement of SMNG and MGE, Complainants are prohibited from ever being “new customers” of SNGMO.

8. Furthermore, Respondent would have this Commission ignore the fact that it misrepresented to Complainants that it could and would provide them natural gas.⁴

9. Respondent would have this Commission ignore the fact that six (6) days after discussing “[Complainants’] address and the Stipulation and Agreement between MGE and SNGMO’s predecessor,”⁵ Respondent continued to solicit business outside their certificated territory, installed pipelines and misrepresented to Complainants that Respondent would provide natural gas service to Complainants.⁶

10. Respondent would further have this Commission ignore the fact that Complainants relied to their detriment on the misrepresentations made by Respondent.⁷

11. As set out above, Respondent made misrepresentations and continued to make misrepresentations to Complainants knowing Complainants were in Laclede Gas tariffed territory and were outside of Respondent’s tariffed territory, knowing that Respondent would not request a CCN or variance to service Complainants, and knowing that the offering of gas service and the construction of pipeline was in violation of a Commission Order, as well as a Stipulation and Agreement.

12. Under Missouri law, Respondent’s conduct could constitute a crime.⁸

⁴ See email discussion previously provided by Staff and marked schedule KC1.

⁵ See Report of the Staff dated March 13, 2017, pg. 2.

⁶ See previously provided Commercial Application and Usage/Sales Agreement dated February 18, 2016, marked as Complainants’ exhibit 1 and attached to Complaint.

⁷ See verified complaint filed by Complainants.

⁸ Section 407.020.1, RSMo provides, “The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for

13. Respondent and Staffs' interpretation of the relevant statutes and tariff renders an absurd result, particularly when coupled with Respondent's egregious behavior. For this Commission to ignore the facts and law in this case is to implicitly condone and sanction conduct that is against public policy, not in the public's best interest, and possibly criminal.

14. As the Missouri Supreme Court has repeatedly held:

It is so elementary as to... require no citation of authority that the basic rule of construction of an ordinance or statute is to first seek the lawmakers' intention, and if possible to effectuate that intention. The law favors constructions which harmonize with reason, and which tend to avoid unjust, absurd, unreasonable or confiscatory results, or oppression.⁹

15. Respondents have asserted that they would reimburse Claimants for the appliances purchased and to convert those appliances to propane. But that offer does not comport to the damages allowed under Section 407.025.1, RSMO, which allow for Complainants to recover actual damages, punitive damages, and attorney fees.¹⁰

16. It is understood this Commission does not have the jurisdiction to award damages. However, pursuant to the general powers of the Public Service Commission afforded under Section 393.140(2), RSMo, this Commission has the authority to investigate the methods employed by SNGMO in its distribution and supplying of gas

any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation."

⁹ Laclede Gas Co. v. St. Louis, 253 S.W. 832, 847-848 (Mo. 1953).

¹⁰ Section 407.025.1, RSMo, provides: "Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper."

and to order reasonable improvements and extension of the property of such gas corporations.¹¹

17. All appreciate the fact that Respondent stopped the unlawful activity it had been engaged in. Unfortunately, Respondent did not stop the unlawful activity until after they had caused harm and actual damages to Complainants.

18. Because Laclede Gas recognizes the harm done to Complainants, Laclede Gas has offered their consent and support to Respondent providing natural gas service to Complainants.

19. It would be cost prohibitive for Laclede Gas to provide this service to Complainants.

20. If this Commission will allow for a variance of the previous Order dated February 5, 2007, and allow Respondent to request a CCN with the consent and approval of Laclede Gas; Respondent can economically provide natural gas service to Complainants and, at least in part, remedy some of the harm that has been caused to Complainants.

WHEREFORE, Complainants respectfully request this Commission deny Respondent's Motion to Dismiss and for such further relief as this Commission deems just and proper.

¹¹ Section 393.140(2) states that: "The commission shall investigate and ascertain, from time to time, the quality of gas or water supplied and sewer service furnished by persons and corporations, examine or investigate the methods employed by such persons and corporations in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same, and in supplying and distributing water for any purpose whatsoever, and in furnishing a sewer system, and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas, electricity, water, or sewer system, and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations, water corporations, and sewer corporations.

Respectfully submitted,

HEALY LAW OFFICES, LLC



Terry M. Jarrett MO Bar 45663



Penny M. Speake MO Bar 37469

3010 E. Battlefield, Suite A
Springfield, MO 65804
Telephone: (417) 864-7018
Fax: (417) 864-7018
Email: terry@healylawoffices.com
penny@healylawoffices.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent by electronic mail this 17th day of March, 2017 to:

Kevin Thompson
Chief Staff Counsel
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

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

Andrew S. Hagler
Sr. Legal Counsel
Summit Utilities
7810 Shaffer Pkwy, #120
Littleton, CO 80127

Dean L. Cooper,
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue,
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

A handwritten signature in black ink, reading "Terry M. Jarrett". The signature is written in a cursive, flowing style.

Terry M. Jarrett