

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

Michael Stark,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2014-0202
)	
Summit Natural Gas of Missouri, Inc.,)	
)	
Respondent.)	

PREHEARING BRIEF

COMES NOW the Respondent, Summit Natural Gas of Missouri, Inc. (“SNG”), by and through counsel, and, pursuant to the *Order Approving Jointly Proposed Procedural Schedule* issued hereon on July 15, 2014, by the Missouri Public Service Commission (“Commission”), respectfully submits this Prehearing Brief:

Pursuant to the List of Issues, List and Order of Witnesses, and Order of Cross-Examination agreed to by all parties and filed with the Commission on August 15, 2014, the issues before the Commission are as follows: (1) Has the Complainant shown that SNG violated any applicable statutes, tariff provisions, or Commission rules or orders in this matter? (2) If so, should the Commission assess a penalty against SNG? SNG submits that the first question must be answered in the negative. In the event the Commission determines that SNG has violated any applicable statutes, tariff provisions, or Commission rules or orders with regard to Mr. Stark’s Complaint, then SNG submits that the second question must also be answered in the negative.

I. Statement of Facts

On June 18, 2013, employees for Priority Communications, contractors working for SNG, entered upon the subject property – a road located in Camden County – and began installing pipe.¹ SNG was of the mistaken belief that this was a public roadway. SNG had relied

¹ Joint Statement of Undisputed Facts, ¶6.

on maps from the Camden County geographic information system (“GIS”) website.² Camden County does not have a consolidated map depicting county property or rights-of-way prepared by a surveyor.³

As construction was taking place, Mr. Stark talked with the Priority employees, stating that the road was his private property. The Priority employees stopped working and contacted SNG to report the claims of Mr. Stark. It was arranged for Mr. Stark to speak with SNG employee Eric Graves that same day. Mr. Graves arrived as scheduled, but Mr. Stark failed to appear. Mr. Graves and the Priority employees continued to wait for Mr. Stark, with no construction taking place. Mr. Stark did not return to the property as arranged, and the Priority employees continued with their work.

When the Priority employees left the property on June 18, 2013, the gas piping had been laid and backfilled, and some length of piping had been intentionally left unburied at each end to allow for connection to SNG’s system at a later date.⁴ The next day, Mr. Stark and Mr. Graves spoke regarding the ownership of the road.⁵ SNG had a title search performed with regard to the road and, on July 18, 2013, was informed that the road was private and was owned by Mr. Stark and Paul Goss, as joint tenants with rights of survivorship.⁶ No work was performed by or on behalf of SNG on the subject roadway after June 18, 2013.⁷

Upon learning from the title company that the subject roadway was private, SNG entered into negotiations with Mr. Stark to obtain an easement for the location of the pipe. On July 24, 2013, counsel for SNG wrote to Mr. Stark and informed Mr. Stark that SNG may need to begin the formal condemnation process in order to obtain an easement for the pipe. The letter also offered to pay \$2,000 in settlement of the dispute and as compensation for the referenced

² Joint Statement of Undisputed Facts, ¶4.

³ Joint Statement of Undisputed Facts, ¶5.

⁴ Joint Statement of Undisputed Facts, ¶8.

⁵ Joint Statement of Undisputed Facts, ¶10.

⁶ Joint Statement of Undisputed Facts, ¶¶6 and 11.

⁷ Joint Statement of Undisputed Facts, ¶9.

easement. On July 30, 2013, Mr. Stark withdrew a previous settlement offer which had been made by him, stated that heavy rain had caused erosion, and asked SNG to turn the matter over to its liability insurance carrier.

On August 1, 2013, counsel for SNG again wrote to Mr. Stark. This letter offered to pay \$8,000 to Mr. Stark to fully settle the dispute and to compensate Mr. Stark for a permanent easement. Like with the July 24 letter, the letter of August 1 acknowledged SNG's mistake, reiterated SNG's commitment to negotiating in good faith, reminded Mr. Stark of his rights pursuant to RSMo. Chapter 523, and contained contact information for the Property Rights Ombudsman within the Missouri Office of the Public Counsel.

Counsel for SNG discussed the matter with the Property Rights Ombudsman, who recommended that SNG use the public right-of-way (along Antique Road) instead of continuing to pursue an easement over Mr. Stark's property. Also, SNG employees further investigated the relative costs and benefits of keeping the pipe on Mr. Stark's property versus moving the line to the public right-of-way (which runs roughly parallel to the private road). On August 23, 2013, Mr. Stark was informed that SNG would not be needing a permanent easement over his property, but that SNG would need a temporary easement in order to return to the property to remove the mistakenly placed pipe and resurface the roadway.

By email communication dated September 5, 2013, counsel for SNG stated that she was preparing a proposed settlement agreement and a temporary construction easement, and she asked if SNG had Mr. Stark's permission to immediately come back onto his property to resurface the road or if Mr. Stark would prefer to wait until a final settlement of his claims was reached. Later in the day on September 5, Mr. Stark stated that SNG was not competent to make the necessary repairs to his road.

On September 13, 2013, counsel for SNG asked if SNG had permission to enter Mr. Stark's property to remove the mistakenly placed pipe. The communication also stated: "After SNG has had an opportunity to get back on the property, we could then discuss your trespass and

damage allegations.” On the same date, Mr. Stark stated that SNG does not have permission to “restore my property and remove their gas line.”

Also on September 13, 2013, counsel for SNG noted that SNG had never been given the opportunity to restore the road following the initial mistaken installation. Mr. Stark replied that he was not obligated to allow SNG to retrieve the pipe or repair the road. Mr. Stark followed up with pictures of the roadway. On September 17, 2013, counsel for SNG again noted that SNG did not have the opportunity to complete the project initially and had not been allowed back on the property to repair any reported damages. The letter reiterated that SNG would like to retrieve the pipe, repair the road, and then discuss Mr. Stark’s trespass and damage allegations.

On October 9, 2013, Mr. Stark spoke on the telephone with the Property Rights Ombudsman, Mr. Tom Green, and then followed-up with an email communication to Mr. Green and counsel for SNG, stating that he would not allow SNG back onto his property.

Mr. Stark then filed suit in Camden County Circuit Court asserting a civil claim for trespass against SNG. SNG filed its answer and a counterclaim for replevin, and Mr. Stark served discovery requests. Mr. Stark amended his petition, adding additional defendants, including SNG’s contractor and various individuals. The civil case remains pending.

On March 13, 2014, counsel for SNG wrote to Mr. Stark again asking for permission to retrieve the pipe which was mistakenly placed on his property. The letter also stated as follows:

As you know, SNG would like to remove the pipe and then have the opportunity to resurface the road. After that, we would be in a better position to fully resolve this matter through settlement discussions. As a possible alternative, you could obtain an estimate from a contractor of your choosing for the cost for that contractor to remove the pipe and resurface the road and then forward that estimate to me for review.

Mr. Stark replied on March 13 that SNG had no right to reclaim the pipe. Mr. Stark also stated that he would be willing to attempt to resolve the issue with the insurance carriers for SNG and its contractors. Mr. Stark stated that if the matter was not settled he would continue with his efforts “in the court of law, in addition to the court of public opinion.”

Mr. Stark is not, and has not been, a customer of SNG.⁸ The gas piping on the subject property does not now, nor has it ever had gas flowing through it, and it was never connected to SNG's system.⁹

II. Legal Discussion

Mr. Stark alleges in his Complaint that SNG installed gas piping on his property without authorization and thereby caused damage to his property. As his amended request for relief, Mr. Stark seeks to have SNG's Certificate of Convenience and Necessity ("CCN") revoked, and he also requests damages for his claims of trespass and property damage. In its *Order Denying Motions to Dismiss and Order Directing Filing*, the Commission stated that it does not have the ability to grant the relief sought by Mr. Stark, but that the Commission will determine whether SNG trespassed and, if so, whether the trespass constitutes a violation of a statute, tariff provision, Commission rule or order.¹⁰

Commission Rule 4 CSR 240-2.070 establishes the procedures for filing formal and informal complaints with the Commission, and subparts (1) and (2) of this Rule provide that a complaint may be filed with the Commission by any person who feels "aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction." Mr. Stark has not alleged the violation of any particular tariff, statute, rule, order, or decision within the Commission's jurisdiction, and Mr. Stark will not be able to demonstrate at the hearing in this matter that SNG violated any tariff, statute, rule, order, or decision within the Commission's jurisdiction with regard to the work performed on the subject property.

A. SNG Did Not Violate Any Applicable Statutes.

The Complaint, as amended, contains no allegations with regard to the provision of utility service. SNG's work on the subject property consisted of one day of installing pipe along a roadway. There will be no credible evidence presented to the Commission to demonstrate that

⁸ Joint Statement of Undisputed Facts, ¶1.

⁹ Joint Statement of Undisputed Facts, ¶¶8, 9, and 13.

¹⁰ *Order Denying Motions to Dismiss and Order Directing Filing*, p. 3 (May 21, 2014).

this work by SNG and its contractors was anything but “safe and adequate.” What will be demonstrated to the Commission, however, is that Mr. Stark has refused to allow SNG on the subject property to remove the piping and restore the roadway.

Although SNG is subject to the jurisdiction of the Commission as provided by law, this Commission does not have jurisdiction over claims for trespass. The Commission is a body of limited jurisdiction and has only such powers as are expressly granted to it by statute and those reasonably incidental thereto. *State ex rel. Kansas City Power & Light Co. v. Buzzard*, 168 S.W.2d 1044, 1046 (Mo. 1943). The Commission is not a court of general jurisdiction. *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41, 58 (Mo. 1937); *See also American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943) (the Commission has no authority to determine damages or award pecuniary relief or consequential damages). This Commission “has full authority to investigate complaints about rates or service and can make orders to remedy the situation for the future, but it cannot grant monetary relief . . .” *May Department Stores*, 107 S.W.2d at 58. The Commission set forth these legal principles in its *Order Denying Motions to Dismiss and Order Directing Filings*.¹¹

B. SNG Did Not Violate Any Applicable Tariff Provisions.

In its *Order Denying Motions to Dismiss and Order Directing Filings*, the Commission noted the possible applicability of Missouri Gas Utility tariff sheet 73, section 19(a). This provision, which is not applicable to the new facility construction which took place in Camden County, provides that the Company will install requested extensions into or across private property “at the Company’s option, provided, that the right-of-way agreement(s) and other conditions are satisfactory.” This provision also provides that the Company will install service lines across property not owned by the applicant only when “the applicant has secured and furnished to the Company a satisfactory right-of-way agreement.”

¹¹ *Order Denying Motions to Dismiss and Order Directing Filing*, p. 3 (May 21, 2014).

This provision is for the benefit and protection of the Company. It does not impose a requirement on the Company with regard to right-of-way acquisition. Similar provisions are contained elsewhere in the tariffs. For example, section 18(a) on tariff sheet 72 provides that the Company will extend its distribution facilities across private property “at its option” and provided that “the right-of-way agreement and other conditions are satisfactory to the Company.”

C. SNG Did Not Violate Any Applicable Commission Rules or Orders.

With its *Order Denying Motions to Dismiss and Order Directing Filings*, the Commission also noted the possible applicability of Commission Rule 4 CSR 240-40.030, Safety Standards – Transportation of Gas by Pipeline. SNG, however, did not violate any provision of this rule, or any other applicable Commission rule or order, when it mistakenly laid pipe on the subject property. When the Priority employees, contactors for SNG, laid pipe on the subject roadway, there was compliance with all applicable safety and construction rules. There will be no credible evidence presented to the contrary. As noted, Mr. Stark is not, and has not been, a customer of SNG,¹² and the gas piping on the subject property does not now, nor has it ever had gas flowing through it, and it was never connected to SNG’s system.¹³

III. Conclusion

SNG mistakenly placed its pipe on a private roadway. It was an honest mistake due, in large part, to SNG’s misplaced reliance on Camden County’s GIS image. Upon determining that the pipe was mistakenly placed on a private roadway, SNG attempted to negotiate an easement for the pipe’s location, so that SNG would then be able to connect the pipe to its system and properly maintain the property. Upon determining that it would not be able to operate its pipeline across Mr. Stark’s private roadway, SNG then made repeated offers to retrieve the pipe, repair the road, and then discuss settlement, or, alternatively, to review the cost estimate from any contractor of Mr. Stark’s choosing. SNG made an honest mistake regarding the location of

¹² Joint Statement of Undisputed Facts, ¶1.

SNG's right-of-way, and SNG has taken all reasonable efforts to resolve the dispute with Mr. Stark. A court of general jurisdiction is the proper venue for Mr. Stark to further pursue his trespass and property damage allegations.¹⁴

WHEREFORE, the Respondent, Summit Natural Gas of Missouri, Inc., respectfully submits this Prehearing Brief. SNG requests that Mr. Stark's Complaint be dismissed or that an order be issued herein finding all issues in favor of SNG. SNG requests such other and further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,

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ATTORNEYS FOR SUMMIT NATURAL GAS
OF MISSOURI, INC.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via United States mail, postage prepaid, on this 29th day of August, 2014, to the Complainant, acting pro se. I further certify that a true and correct copy of the above and foregoing document was sent via electronic mail on said date to the Complainant, Counsel for the Staff of the Commission, and the Office of the Public Counsel.

/s/ Diana C. Carter

¹³ Joint Statement of Undisputed Facts, ¶¶8, 9, and 13.

¹⁴ On November 4, 2013, Mr. Stark filed his petition for trespass and property damages against SNG in the Circuit Court for Camden County, Missouri (Case No. 13CM-CC00262). Joint Statement of Undisputed Facts, ¶15.