

**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.	)	

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

Complainant, the Missouri Propane Gas Association (MPGA), by and through undersigned counsel, submits this Reply in Support of its Motion for Partial Summary Disposition.

1. In its Response In Opposition to MPGA’s Motion for Partial Summary Disposition and Legal Memorandum in Support of its Opposition, Summit Natural Gas of Missouri, Inc. (Summit), attempts to expand the scope of MPGA’s Motion for Partial Summary Disposition (the Motion) well beyond what is a very narrow and simple issue: whether Summit followed the manufacturers’ specifications when they converted four unvented heating products from propane to natural gas as detailed in the Motion. Whether by design or effect, Summit’s filings attempt to deflect, obscure, cloud, complicate, and shift the focus from that one narrow and simple issue. The undisputed facts are that Summit did not follow manufacturers’ specifications when they converted those four unvented heating products, because the manufacturers do not allow those units to be converted from propane to natural gas.

2. Summit tries to create confusion and ambiguity about the language of the Stipulation and Agreement that this Commission approved in its September 3, 2014, Order approving the Partial Stipulation and Agreement as to Duel Fuel and Conversion of Appliances (the Agreement) issued in Case No. GR-2014-0086, when in fact there is no confusion or ambiguity. The record in Case No. GR-2014-0086 is clear that one of the disputed issues in that case was whether Summit was improperly converting unvented (also known as vent-free) appliances from propane to natural gas. As referenced in footnote 1 of MPGA’s Memorandum in Support of Motion For Partial Summary Disposition, the Rebuttal Testimony of MPGA Witness Brian Brooks unambiguously laid out that Summit’s improper conversions of vent-free appliances was an issue:

Q4: What is the purpose of your testimony?

A: The purpose of my testimony is to respond to the Applicant’s witnesses and some of the witnesses who testified at the local public hearings. In particular, I address issues relating to policy and certain business practices of Summit Natural Gas of Missouri, Inc. (“SNG”) that make it difficult for propane providers to compete on a fair and level playing field. These include:

(1) Conversion costs, improper conversions of customer appliances, and other business practices;<sup>1</sup> (emphasis added)

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Q10: Are you aware of any other conversion issues?

A: Yes. There have been instances of SNG improperly converting vent-free appliances. I can recount one from my personal experience. See Exhibit 3 attached. In addition, in the summer of 2012, I had a brief informal conversation with the President of SNG, David Moody. When I asked Mr. Moody about SNG and their practice of converting vent-free appliances, Mr. Moody told me that they used proper pilots, orifice and followed manufacture guidelines. I respectfully suggested that he review the practice and that most vent-free appliance companies do not allow conversion of their products...SNG should be required to convert

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<sup>1</sup> File No. GR-2014-0086, EFIS No. 246, Exhibit 300, *Rebuttal Testimony of Brian T. Brooks*, page 1, lines 20-23 and page 2, lines 1-5.

only appliances that are approved and listed to be converted by, but not limited to national codes, certification agencies, and manufacturers.<sup>2</sup> (emphasis added).

Also as referenced in footnote 1 of MPGA’s Memorandum in Support of Motion For Partial Summary Disposition, it is clear that in his Surrebutal Testimony, Summit Witness David Moody understood that the Summit’s improper conversions of vent-free appliances was an issue in the case:

Q: In his rebuttal testimony on page 4, lines 15-22, and page 5, lines 1-5, MPGA witness Brooks describes a conversion issue where he alleges that SNG representatives improperly converted a vent free appliance. Mr. Brooks further alleges that he had a brief, informal conversation “with the president of SNG, David Moody” regarding the issue and that Mr. Moody told him that SNG “used proper pilots, orifices and followed manufacture guidelines.” Are you the Dave Moody to which Mr. Brooks refers?

A: I assume that I am.

Q: Do you agree that SNG uses proper pilots, orifices and followed manufacture guidelines in conversion activities?

A: I do.<sup>3</sup> (emphasis added)

The testimony showed that the improper conversions of vent-free appliances was a classic contested issue in a contested case—MPGA claimed that Summit was improperly converting vent-free appliances because the manufacturers do not allow it, and Summit claimed it was following manufacturers’ guidelines. It is readily apparent from this exchange in testimony in Case No. GR-2014-0086 that Summit fully understood MPGA’s position was that Summit was performing improper conversions of unvented (vent-free) appliances because they are not allowed by the manufacturers, and that MPGA believed Summit should convert only appliances where the manufacturer approves conversions (meaning that when the manufacturer does not

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<sup>2</sup> *Id.* at page 4, lines 14-22, and page 5, lines 3-5.

<sup>3</sup> File No. GR-2014-0086, EFIS No. 169, Exhibit 9, *Surrebuttal Testimony of David Moody*, page 1, lines 16-18, and page 2, lines 1-10.

allow conversions of unvented appliances, Summit could not convert them).<sup>4</sup> That is the context behind the language of the Agreement between Summit and MPGA that was approved by the Commission. As with any negotiated agreement, there was mutual consideration. Summit agreed to follow manufacturers' specifications (including manufacturers' prohibition of converting unvented propane gas heating products) in exchange for MPGA not taking the issue to hearing. The language of the Agreement allows Summit to perform conversions on those appliances where it is appropriate to do so, while requiring Summit to not perform conversions when it is not appropriate to do so (as in the four instances detailed in MPGA's Motion).

3. Summit attempts to impugn the qualifications of MPGA Affiant Brian T. Brooks. However, as noted in paragraph 2 above, Mr. Brooks offered rebuttal testimony on the improper conversions issue in Case No. GR-2014-0086, and Summit did not challenge his qualifications then, even though it had ample opportunity to do so. In fact, Mr. Brooks' rebuttal testimony was admitted in that case without objection. Mr. Brooks is certainly more experienced and qualified now than two years ago.

4. In its response, Summit provides the affidavit of David W. Meyer from the state of Minnesota. Mr. Meyer states that he read the Partial Stipulation and Agreement from Case No. GR-2014-0086, and then proceeds to attempt to interpret the phrase "manufacturers' specifications." With all due respect to Mr. Meyer, he was not involved at all in Case No. GR-2014-0086, did not provide any testimony in that case on the conversion issue or any other issue, and was not involved at all in the negotiations that led to the Partial Stipulation and Agreement. It is clear he was not aware of the context surrounding the Agreement as outlined in paragraph 2 above, and thus is not in a position to interpret the intent of the parties.

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<sup>4</sup> As noted in MPGA's Memorandum in Support of Motion for Partial Summary Disposition at page 2, some appliances, such as hot water heaters, furnaces, cooking stoves, and vented products are easily and safely converted and such conversions are not prohibited by the products' manufacturers.

5. In essence, Summit’s position is that the term “manufacturers’ specifications” should be interpreted in a way that allows it to ignore the manufacturers’ prohibition on converting unvented gas heating products from propane to natural gas. However, Summit does not offer any evidence from the only relevant source—the manufacturers themselves. The manufacturers themselves decide what the specifications are for the products they design, manufacture and sell. In the four instances detailed in MPGA’s motion, MPGA offers evidence from the actual manufacturers of those units. The owners’ manuals for the units are unanimous in repeating multiple times that the units are for the type of gas listed only, and that the appliances are not convertible for use with other gases. Three of the four manuals have pages labeled, “specifications” and the two DESA models, on the specifications pages, state that the units are “Propane/LP gas only” and “Propane Gas only.”<sup>5</sup> (emphasis added). The third one, manufactured by SHM, has a specifications page that states that the unit’s gas type is “Propane/LP.”<sup>6</sup> The owners’ manuals for all three state in multiple places that the appliances are not convertible for use with other gases.<sup>7</sup> Further, the dictionary definition of “specifications” is simply “an act of specifying.”<sup>8</sup> The manufacturers in all four instances detailed in the Motion clearly specify multiple times in their owners’ manuals that the appliances are not convertible for use with other gases.<sup>9</sup>

6. Summit goes through a tortured analysis that, despite what the manufacturers specify, it should be allowed to convert unvented gas heating products from propane to natural gas for several reasons that are, frankly, irrelevant to the narrow issue set out in MPGA’s Motion. The fact is, Summit voluntarily entered into the Agreement in Case No. GR-2014-0086,

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<sup>5</sup> Exhibit A to MPGA’s Motion, *Affidavit of Brian T. Brooks*, paragraphs 4-6.

<sup>6</sup> *Id.*, paragraph 6.

<sup>7</sup> *Id.*, paragraphs 4-6.

<sup>8</sup> American Heritage Dictionary, Second College Edition, page 1173 (1982).

<sup>9</sup> Exhibit A to MPGA’s Motion, *Affidavit of Brian T. Brooks*, paragraphs 4-7.

where they promised to follow all manufacturers' specifications. Even if the conversions could be performed safely (which MPGA disputes), that was not what Summit agreed to. It agreed to follow all manufacturers' specifications, period. Furthermore, MPGA submits that the manufacturers of the products that they designed, manufactured and sold are more qualified than Summit to determine whether unvented propane gas heating products can be converted to natural gas. If, as Summit alleges, these conversions are entirely appropriate, then why doesn't Summit have any evidence from the manufacturers themselves that they are appropriate? Summit provides no evidence to answer that question.

7. Finally, Summit wants the Commission to believe that the conversion of unvented heating products from propane to natural gas is a common practice. In Mr. Meyer's Affidavit at paragraph 13, he states: "Conversion of appliances from propane to natural gas has been routinely and safely done since at least 1945". This is only half true. What Mr. Meyer omits is that unvented appliances were not used until 1980.<sup>10</sup> Furthermore, as MPGA pointed out in footnote 4 of this Reply, some appliances, such as hot water heaters, furnaces, cooking stoves, and vented products are easily and safely converted and such conversions are not prohibited by the products' manufacturers. MPGA does not claim, nor does the Agreement prohibit, the conversion of those types of products. The Agreement prohibits Summit from converting unvented propane gas heating products because the manufacturers of those products do not allow such conversions. Summit provides no evidence that any other gas utility or company anywhere in Missouri or the rest of the United States of America routinely performs conversions on unvented propane gas heating products to natural gas or has a conversion program to convert unvented propane gas heating products to natural gas.

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<sup>10</sup> Vent Free Gas Products Alliance, "Answers to Comments Concerning Vent Free Safety," <http://www.ventfree.org/content/view/42/18/>, accessed June 15, 2016 ("These heaters were the first "new generation" vent-free gas products introduced in 1980.").

8. It is undisputed that Summit failed to follow the manufacturers' specifications in the four instances detailed in the Motion. In doing so, Summit violated the Partial Stipulation and Agreement it entered into with MPGA, and it violated the Commission's order approving that Partial Stipulation and Agreement. It is in the public interest for a regulated utility like Summit to follow the Commission's orders, and in the public interest for the Commission to enforce its orders when they have been violated. MPGA is entitled to a judgment as a matter of law. Accordingly, MPGA respectfully requests that the Commission grant its 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,



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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed this 17<sup>th</sup> day of June, 2016 to:

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