

**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.)	

**MOTION TO DISMISS
AND ANSWER TO AMENDED COMPLAINT**

COMES NOW the Respondent, Summit Natural Gas of Missouri, Inc. (“SNG”), by and through counsel, and hereby requests an order of the Missouri Public Service Commission (“Commission”) dismissing Michael Stark’s Complaint, as amended, on the basis that said Complaint fails to state a claim or cause of action against SNG upon which relief may be granted by the Commission.

Motion to Dismiss

In support of its Motion to Dismiss, SNG respectfully states to the Commission as follows:

1. Mr. Stark filed his Complaint herein on December 27, 2013. Also on said date, the Commission issued its *Notice of Small Formal Complaint and Order Directing Staff to Investigate and File a Report*. Among other things, this order directed SNG to file a response to the Complaint on or before January 27, 2014. On January 8, 2014, and in response to a filing by Mr. Stark, the Commission issued its *Notice of Complaint Status Change*. On January 17, 2014, SNG filed a Motion to Dismiss herein, and, on January 27, 2014, SNG filed its Answer to the Complaint. On February 6, 2014, Mr. Stark sent an email communication to the EFIS Messenger stating as follows:

In addition to the relief requested in the original complaint, Complainant hereby also requests that the Missouri Public Service Commission rescind [*sic*] and/or

revoke the Certificate of Convenience and Necessity that was issued to Summit Natural Gas, as well as any and all permits and authorizations to construct and install gas lines in the State of Missouri.

For purposes of this Motion to Dismiss, SNG will take Mr. Stark's email as an amendment to his Complaint.

2. Mr. Stark alleges in his Complaint that SNG installed gas piping on his property without authorization and thereby caused damage to his property. Mr. Stark is not, and has not been, a customer of SNG, and Mr. Stark does not allege that he is a SNG customer. 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.

3. The Complaint, as amended, must be dismissed for failure to state a claim. Even if all of Mr. Stark's averments are taken as true and the Commission liberally grants to Mr. Stark all reasonable inferences therefrom, the facts alleged by Mr. Stark do not satisfy the elements of any cause of action under the jurisdiction of the Commission and/or a request for relief that may be granted by the Commission.

4. 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 and cannot enter a monetary judgment in favor of a complainant. *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 58.¹

5. The Staff Recommendation to Dismiss Case was filed herein on February 10, 2014. With regard to Mr. Stark’s amended request for relief, the Staff of the Commission states that the Commission lacks the authority to revoke a CCN. SNG takes no position on this legal issue and asserts that the Commission need not dismiss Mr. Stark’s Complaint on this basis. Mr. Stark has failed to allege any facts to support his request that SNG’s CCN be revoked, thereby failing to state a claim against SNG. As noted above, Mr. Stark is not a SNG customer, and his factual allegations relate only to SNG’s construction activities regarding a non-live gas line. There is no allegation in the Complaint, as amended, that could arguably provide a basis for the revocation of SNG’s CCN.

6. Providing an additional basis for dismissal of the Complaint, there is another action pending between these parties and for the same cause in this state. On or about November 4, 2013, Mr. Stark filed his petition for trespass against SNG in the Circuit Court for Camden County, Missouri (Case No. 13CM-CC00262).

WHEREFORE, the Respondent, Summit Natural Gas of Missouri, Inc., hereby requests an order of this Commission dismissing the Complaint filed herein by Michael Stark. SNG requests such other and further relief as the Commission deems just and proper under the circumstances.

¹ See also Commission Rule 4 CSR 240-2.070 which establishes the procedures for filing formal and informal complaints with the Commission. 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 does not allege the violation of any tariff, statute, rule, order, or decision within the Commission’s jurisdiction. Although SNG is subject to the jurisdiction of the Commission as provided by law, this Commission does not have jurisdiction over claims for trespass and property damage. The Complaint, as amended, contains no allegations with regard to the provision of utility service.

ANSWER

SNG submits this Answer pursuant to the Rules of the Missouri Public Service Commission, without waiving the arguments and defenses set forth in SNG's Motion to Dismiss.

1. SNG admits that Mr. Stark resides in Camdenton, Missouri, at the address stated in the Complaint.
2. With regard to paragraph 1 of the Complaint, SNG admits that it is a public utility under the jurisdiction of the Commission. SNG further states that it is a wholly owned subsidiary of Summit Utilities, Inc., and is a corporation duly incorporated under the laws of the State of Colorado with its principal offices located at 7810 Shaffer Parkway, Suite 120, Littleton, Colorado, 80127.
3. With regard to paragraph 2 of the Complaint:
 - a. SNG admits that it entered upon a portion of Mr. Stark's property, believing it had the right and authority to do so, to install pipe;
 - b. SNG denies that it ignored any protest from Mr. Stark and denies that any of its work was performed poorly;
 - c. SNG admits it ceased performing work on Mr. Stark's property upon being informed that SNG did not have an easement to install its pipe on said property, and SNG admits that it installed its pipe elsewhere as a result of being informed that it did not have an easement on Mr. Stark's property;
 - d. SNG denies abandoning its personal property;
 - e. SNG admits that Mr. Stark has had numerous communications with SNG's counsel, Diana Carter; and

- f. SNG is otherwise without sufficient knowledge or information to admit or deny the allegations contained in paragraph 2 of the Complaint and must, therefore, deny the same.
- 4. With regard to paragraph 3 of the Complaint:
 - a. SNG admits that it has negotiated, and continues to negotiate with Mr. Stark in good faith and in an attempt to settle this matter;
 - b. SNG admits that this matter has not been fully settled or resolved;
 - c. SNG admits that it has repeatedly requested permission to re-enter Mr. Stark's property to remove the mistakenly installed pipe and resurface the road;
 - d. SNG denies that removal of the mistakenly installed pipe would cause any permanent damage to Mr. Stark's property;
 - e. SNG denies that any of its work on Mr. Stark's property was performed poorly; and
 - f. SNG is otherwise without sufficient knowledge or information to admit or deny the allegations contained in paragraph 3 of the Complaint and must, therefore, deny the same.
- 5. With regard to Mr. Stark's EFIS submission on February 6, 2014, SNG denies that its CCN should be rescinded or revoked and denies that the Commission has the jurisdiction or authority to rescind or revoke SNG's other permits and authorizations to construct and install gas lines in the State of Missouri.
- 6. SNG denies all allegations of the Complaint, as amended, not specifically admitted above.
- 7. Assuming the truth of all facts alleged in the Complaint, as amended, and according Mr. Stark all favorable inferences fairly deducible from those facts, the

Complaint fails to state a claim upon which relief may be granted by this Commission, and, as such, the Complaint should be dismissed for failure to state a claim.

8. There is another action pending between these parties and for the same cause in this state, in that on or about November 4, 2013, Mr. Stark filed his petition for trespass against SNG in the Circuit Court for Camden County, Missouri (Case No. 13CM-CC00262).
9. Further answering, SNG states that any damages which may have been sustained by Mr. Stark were the direct and proximate result of the acts and/or omissions of Mr. Stark or others for which SNG is not responsible or of an intervening act, and SNG is entitled to the defenses of comparative fault, contributory negligence, and/or assumption of risk.
10. Further answering, SNG states that Mr. Stark has failed to mitigate any damages suffered by him, in that SNG has repeatedly offered to remove the pipe which was mistakenly installed on Mr. Stark's property and restore the roadway, and Mr. Stark has refused SNG access to the property and, upon information and belief, has not done the work himself or engaged another to perform the work.

WHEREFORE, having fully answered, SNG requests an order of this Commission dismissing the Complaint filed herein by Michael Stark. SNG requests such other and further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: /s/ Diana C. Carter

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ATTORNEYS FOR SUMMIT NATURAL GAS
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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 18th day of February, 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, the General Counsel for the Staff of the Commission, and the Office of the Public Counsel.

/s/ Diana C. Carter