

**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 COMPEL**

COMES NOW the Respondent, Summit Natural Gas of Missouri, Inc. (“SNG”), by and through counsel, and requests an order of the Missouri Public Service Commission (“Commission”) compelling the Complainant, Michael Stark, to answer the data requests which were served on June 27, 2014. In support of its Motion to Compel, SNG respectfully states as follows:

1. On June 27, 2014, SNG’s data requests 1-22 were served on Michael Stark by email, in both Word and pdf formats, with a copy sent by United States mail, postage prepaid, to Mr. Stark’s last known mailing address. The document containing SNG’s data requests 1-22 directed to Mr. Stark reads, in part, as follows:

Pursuant to Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-2.090, responses to these Data Requests must be served within 20 days of receipt and must be signed by a person who is able to attest to the truthfulness and correctness of the answers; any objections and/or requests for additional time must be served within 10 days of receipt.

2. Pursuant to Commission Rule 2.090, objections and/or requests for additional time with regard to SNG’s data requests 1-22 directed to Mr. Stark were due on or before July 7, 2014, and substantive responses to the data requests were due on or before July 17, 2014. Mr. Stark, however, failed to serve any objections or make any requests for additional time to

respond on or before July 7, and, as such, Mr. Stark has waived the right to object to the requests.

Additionally, as of this date, Mr. Stark has failed to provide any answers to data requests 1-22.

3. On July 18, 2014, counsel for SNG inquired of Mr. Stark by email as follows:

I did not receive any objections or requests for additional time within ten days of the service of these data requests, but now I also have not received your responses within twenty days of service. Please let me know if there is a reason for this delay.

Mr. Stark did not reply to this email communication.

4. On July 21, 2014, counsel for SNG further inquired of Mr. Stark by email as follows:

The Commission's rule regarding discovery provides that a motion to compel may not be filed until "(c)ounsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion." Since you are not represented by counsel, I would like to try and confer with you over the telephone regarding the data requests which were served on June 27. At 1:00 today, I will try you at the phone number I have for you (\*\*\*). If there is a more convenient day or time for you for the call, or if I should be calling a different number, please let me know. Please note that I will be calling only to discuss the data requests, in an effort to resolve any dispute regarding the same.

Counsel for SNG and Mr. Stark then spoke on the telephone at approximately 1:00 p.m. on July 21, 2014. Among other things, Mr. Stark stated that he would be objecting to the data requests this week.

5. Also on July 21, 2014, and in follow up to the 1:00 telephone conversation, counsel for SNG stated the following in an email to Mr. Stark:

Since you hung up on me during our call today, I will consider that compliance with the Commission's rule about attempting to confer by telephone before filing a motion to compel.

You stated that you would allow me to amend the data requests to remove the question about the price you paid for the land. First, I believe this question is relevant to your allegations about damages. Second, the question about the price you paid for the property is only one subpart of one data request. An objection to

that one subpart should not cause you to refuse to respond to all of the other data requests.

Based on what you said regarding your intent to serve *objections* this week, I will need to go forward with filing a motion to compel. The Commission's rule provides that objections must be served within 10 days and responses within 20 days, and I included this rule language in the data requests which I served on June 27. Objections were due by July 7. On the other hand, the procedural schedule setting August 8 as the final date to object to data requests served on July 31 was not issued by the Commission until July 15. As such, this procedural schedule should not have caused you any confusion with regard to the date by which to object to the data requests served on June 27. In any event, if you plan to substantively respond to the data requests this week (as opposed to just serving objections), please let me know. If I will be receiving your substantive data request responses this week, I will not need to file a motion to compel the responses at this time.

Mr. Stark replied as follows:

yes, you certainly can consider your phone call to me as an attempt at complying with Commission rules. i clearly told you that i intended to file an objection to your discovery request, and even though there is a later date agreed upon to file those objections, i would be doing so eminently.

i, on the other hand, do not believe that there was a good faith effort on your behalf to resolve this matter. my attempts at discussing how to make your discovery requests less objectionable, was not heard, because you continued to talk over me, despite my repeated request for you to allow me a turn to speak. that being stated for the record, i will not formally contest your compliance.

you may file your motions as you so choose

6. The procedural schedule herein, which was jointly proposed by the parties and was approved in a Commission order dated July 15, 2014, provided that affidavits for all witnesses who will not be appearing at the evidentiary hearing were to be provided on or before July 20, 2014. SNG planned on having Mr. Stark's answers to data requests 1-22 before needing to make its decisions regarding the submission of said affidavits.

7. Also, the procedural schedule herein provides that all written discovery must be served by July 31, 2014. SNG will need to have Mr. Stark's answers to data requests 1-22

enough in advance of this date in order to prepare and serve any necessary follow-up data requests.

WHEREFORE, SNG respectfully requests an order of this Commission compelling Mr. Stark to answer the data requests served on June 27, 2014. SNG requests such further relief as is just and proper under the circumstances.<sup>1</sup>

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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<sup>1</sup> At this time, SNG would also like to notify the Commission of an issue regarding two potential witnesses: RJ Peters, Skid Steer Operator for Priority Communications, and Dillon West, Trencher Operator for Priority Communications. SNG has learned that these two witnesses are currently working in Maine and are scheduled to still be working in Maine on the scheduled hearing date of September 4, 2014. Counsel for SNG is gathering information regarding the possibility of these gentlemen leaving work and flying to Missouri for the hearing and regarding the date these gentlemen plan to return to Missouri. Once counsel has all pertinent information, a motion may be filed seeking: (1) to postpone the hearing date, (2) an extension of the date for the filing of affidavits for witnesses who will not appear, or (3) leave for these two gentlemen to appear and testify by telephone.

**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 22<sup>nd</sup> day of July, 2014, to the Complainant, acting pro se, to Staff counsel, and to the Office of the Public Counsel.

/s/ Diana C. Carter