

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

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

RESPONSE TO COMMISSION ORDER

COMES NOW the Respondent, Summit Natural Gas of Missouri, Inc. (“SNG”), by and through counsel, and, in response to the *Order Denying Motions to Dismiss and Order Directing Filing* (the “Order Directing Filing”) issued herein on May 21, 2014, effective May 21, 2014, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. The Order Directing Filing directs SNG to “file factual or legal support for its authority to enter upon Complainant’s property.”

2. As set forth in SNG’s Answer filed herein, SNG admits that it entered upon a portion of property owned by the Complainant, Michael Stark (“Stark”), under the mistaken belief that it had the right and authority to do so, to install pipe. SNG later determined, however, that the pipe was not being placed within the public right-of-way, and SNG did not possess an easement across Mr. Stark’s property.

3. When designing its “map book” for a pipeline construction project, SNG uses a variety of sources, including county GIS (geographic information systems) sites. Camden County’s GIS image for the subject area is attached hereto as Exhibit A, with Camden County’s property line boundaries shown in yellow. Based on this information, SNG was of the mistaken belief that the Stark road (thought at the time to be part of Blue Haven Beach Rd.) was a Camden County road and not privately owned property. The “map book” for the project was designed accordingly and given to SNG’s contractors.

4. Upon determining that the pipe was not being placed within the public right-of-way, and being aware of the fact that SNG did not have an easement to install its pipe on Mr. Stark's property, SNG ceased performing its work and left the property. SNG workers were on the Stark property for part of one day.

5. The pipe placed on Mr. Stark's property was never connected to SNG's system and never had gas running through it. The mistakenly placed pipe was never used in SNG's provision of utility service to the public.

6. SNG subsequently installed its pipe within the nearby public right-of-way (along Antique Rd.). Exhibit B attached hereto depicts the mistakenly placed pipe (shown in red) and the active pipeline system along Old Route 5, Antique Road, and Blue Haven Beach Road (shown in yellow). SNG did not voluntarily abandon the pipe mistakenly placed on Mr. Stark's property. To the contrary, SNG has made numerous efforts to retrieve the mistakenly placed pipe and restore Mr. Stark's roadway to its original condition.

7. On July 18, 2013, Mr. Stark contacted SNG and made a "demand for payment in the settlement amount of \$15,000 as restitution." Mr. Stark stated that the offer would expire at close of business the following day. On July 19, 2013, counsel for SNG contacted Mr. Stark and said that she would get back with Mr. Stark as soon as possible the following week. Mr. Stark stated that he would wait seven days "before taking further legal action."

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

9. 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 Office of the Public Counsel.

10. Later in the day on August 1, 2013, Mr. Stark stated that he had discussed the matter with his attorney and referenced a Mediacom Productions case. Mr. Stark's letter also contained the following counteroffer: \$9,500 for an easement and \$10,000 for settlement of the trespass allegations. The letter further stated: "It must be further stipulated that my road in question will be restored and maintained as necessary."

11. On August 5, 2013, Mr. Stark's email communication to SNG's legal counsel stated as follows:

please be advised that after numerous consultations with several authorities on this matter, i have come to the conclusion that my immediate previous offer to settle this issue in the amount of \$19,500 is much lower than it's potential value. i am therefore withdrawing this offer. when i am able to redetermine a settlement amount, i will communicate that to you."

12. On August 18, 2013, Mr. Stark stated that he met with Mr. Tom Green, the Missouri Property Rights Ombudsman. Mr. Stark also stated that he believed SNG should *not* relocate the pipe to the public right-of-way, and he offered to settle the dispute for \$25,000.

13. On August 19, 2013, counsel for SNG stated that she would not be able to further communicate directly with Mr. Stark, since Mr. Stark had stated on August 1 that he was represented by legal counsel. Mr. Stark stated in reply that he only discussed the matter with his attorney and was not being represented by his attorney in this matter.

14. 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. On August 23, 2013, Mr. Stark was informed that SNG would not be

needing a permanent easement over his property, but would need a temporary easement in order to return to the property to remove the mistakenly placed pipe and resurface the roadway.

15. By email communication dated August 23, 2013, Mr. Stark expressed concern that his trespass allegations were not being addressed and suggested the possibility of a class action suit and a Commission complaint. Also by email communication of August 23, Mr. Stark stated that he was talking with a County Commissioner regarding the matter.

16. On September 2, 2013, Mr. Stark stated that he was revising his settlement demand in light of the fact that SNG was no longer seeking a permanent easement. Mr. Stark requested \$23,000 for a temporary easement and damages.

17. 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.

18. Later in the day on September 5, Mr. Stark stated that SNG was not competent to make the necessary repairs to his road. By email communication dated September 6, 2013, Mr. Stark reiterated his concerns regarding erosion and again mentioned the possibility of a class action suit.

19. 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."

20. 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. Also on September 17, Mr. Stark reiterated his \$23,000 settlement offer and stated that the offer would remain open for three days.

21. On October 1, 2013, Mr. Stark wrote to the Property Rights Ombudsman and requested that he inform counsel for SNG that she was mistaken regarding the facts of the matter. Mr. Stark wrote to Tom Green, the Property Rights Ombudsman, again on October 9. Later on October 9, Mr. Stark spoke on the telephone with Mr. Green and then followed-up with an email communication, stating that he would not allow SNG back onto his property. Counsel for SNG replied by email to Mr. Stark and Mr. Green reiterating that SNG would need to remove its pipe and attempt to resurface the road before making a settlement payment. SNG and its counsel believed this position was necessary considering Mr. Stark's conduct to date.

22. By email communication of October 9, 2013, Mr. Stark stated that Commission staff members told him that the mistakenly placed pipe should not be removed.

23. 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. Mr. Stark filed his Complaint herein on December 27, 2013.

24. 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.”

25. On May 22, 2014, Mr. Stark forwarded a link of the news story “Camden Co. man fights gas company over pipeline” to Summit employees Eric Earnest, Tim Johnston, and Kevin Stocker. On May 28, 2014, Mr. Stark sent an email communication to the same Summit employees, provided a link to another news story, and stated: “and if you think this makes summit look bad, wait until you see the story (or stories) that i’ll be sending you tomorrow!”

26. On May 29, 2014, Mr. Stark forwarded another news article link to the Summit employees, along with a message about representatives, senators, and members of this Commission seeing the various news articles. Mr. Stark also said that SNG will be paying him much more now than they would have if they had accepted his settlement offer last summer or turned his claim over to SNG’s insurance carrier. On May 30, 2014, Mr. Stark sent two emails to the Summit employees, forwarding additional press information.

27. In the article forwarded by Mr. Stark to the Summit employees on May 22, 2014, Mr. Stark is quoted as saying: “The bottom line is that they haven’t even made one single offer to settle. . . . They have no excuse not to take care of it.” In the article forwarded to Summit employees on May 28, Mr. Stark is quoted as saying that he estimates the cost of removing the pipe and repairing the road to be approximately \$5,000. As noted above, SNG offered to settle for \$2,000 on July 24, 2013, and offered to settle for \$8,000 on August 1, 2013. Since determining that it would not be able to operate its pipeline across Mr. Stark’s property, SNG has 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.

28. SNG mistakenly placed its pipe on Mr. Stark's property. It was an honest mistake due, in large part, to SNG's reliance on Camden County's GIS image attached hereto as Exhibit A. The pipe was never connected to SNG's system and was never used to provide utility service to SNG's customers. Commission Rule 4 CSR 240-40.030, Safety Standards, applies only to facilities actually used in the transportation of gas. SNG made an honest mistake regarding the location of SNG's right-of-way, and SNG has taken all reasonable efforts to resolve the dispute with Mr. Stark.

WHEREFORE, SNG respectfully submits this Response to Commission Order. SNG requests such relief as is 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
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 2nd day of June, 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