

**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**

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 the Complaint filed herein by Michael Stark 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. 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*.

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 request for relief, Mr. Stark states as follows: “S.N.G. should be required to compensate me for their trespass and property damage, or turn this issue over to their insurance carrier to settle.”

3. The Complaint 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 in the Complaint 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.<sup>1</sup>

5. 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 Court deems just and proper under the circumstances.

---

<sup>1</sup> *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 contains no allegations with regard to the provision of utility service.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: /s/ Diana C. Carter

Diana C. Carter #50527

Dean L. Cooper #36592

312 East Capitol Avenue

P.O. Box 456

Jefferson City, MO 65102

Telephone: (573) 635-7166

Facsimile: (573) 634-7431

E-mail: DCarter@BrydonLaw.com

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 17<sup>th</sup> day of January, 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