

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

Paul Brown and Debra Brown,	)	
	)	
Complainants,	)	
	)	Case No. GC-2017-0199
vs.	)	
	)	
Summit Natural Gas of Missouri, Inc.,	)	
	)	
Respondents.	)	

**COMPLAINANT’S REPLY IN OPPOSITION TO  
RESPONDENT’S MOTION TO DISMISS**

**COMES NOW** Paul Brown and Debra Brown (“Complainants”), by and through counsel, pursuant to Section 386.390, RSMo, RSMo 2000<sup>1</sup>, and for their Reply in Opposition to Respondent’s Motion to Dismiss offer the following:

1. On January 20, 2017, Complainants’ filed a Complaint against Summit Natural Gas of Missouri, Inc. (SNGMO).

2. On February 23, 2017, SNGMO filed their Answer along with a Motion to Dismiss, asserting Complainants did not allege a violation of any tariff, statute, rule, order, or decision.

3. Commission Rule 4 CSR 240-2.070 governs the formal complaint process.

4. Complainants’ Claim should not be dismissed because it meets the requirements for bringing a Complaint before the Commission. Section 386.390.1 permits a complaint to be made “setting forth the thing done or omitted to be done by any public utility... including any violation, or claimed... violation of any provision of law, or rule or order or decision... of the commission.”

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<sup>1</sup>Unless otherwise specified, all statutory references are to the Revised States of Missouri (“RSMo”).

5. In addition, §393.140(1) provides that “[t]he Commission shall have general supervision of all gas corporations....” Section 393.140(5), authorizes the Commission to “[e]xamine all persons and corporations under its supervision... as to the methods, practices... employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had... upon complaint, that... the acts... of any such persons or corporations are unjust [or] unreasonable,..., the commission shall determine... the just and reasonable acts and regulations to be done and observed;....

6. All that is required is that Complainant raise some matter within the Commission’s jurisdiction.<sup>2</sup> The Commission acts under the police power of the State to protect the public interest.<sup>3</sup> The facts alleged in a Complaint must be liberally construed to support the Complaint,<sup>4</sup> and the Complaint must receive the benefit of all reasonable inferences.<sup>5</sup>

7. It is undisputed that SNGMO is a regulated utility under the jurisdiction of the Commission.

8. The Complaint is sufficient in that Complainants’ alleged violations within the Commission’s jurisdiction providing the requisite notice of the issues raised.

9. Moreover, Respondent acknowledges that SNGMO is prohibited from providing service to Complainants<sup>6</sup>. Despite that prohibition, Respondent acknowledges that an employee of SNGMO spoke with Complainants regarding providing natural gas to them.<sup>7</sup> Complainants’ assert that communication was a solicitation to provide service. That solicitation is evidenced by the Summit Natural Gas Residential and Commercial Application and Usage/Sales Agreement<sup>8</sup>

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<sup>2</sup>St. Louis San Francisco Ry. Co. v. Public Service Com’n, 53 S.W.2d 868 (Mo. 1932).

<sup>3</sup> Kansas City v. Public Serv. Comm’n, 524 S.W.2d 855 (Mo. 1975).

<sup>4</sup> Nazeri v. Missouri Valley College, 860 S.W.2d 303, 306 (Mo. banc 1993).

<sup>5</sup> Id.

<sup>6</sup> See Respondent’s Answer paragraph 7 and Summary.

<sup>7</sup> See Respondent’s Answer paragraph 10 and Summary.

<sup>8</sup> Attached as Exhibit 3 to the Complaint.

that Respondent admits was provided to Complainants by SNGMO's employee<sup>9</sup>, David Wilson., as well as the installation by SNGMO of approximately 400 feet of gas lines to within twelve (12) inches of Complainants' residence.<sup>10</sup>

10. Based on Complainants' admissions, SNGMO engaged in conduct and business practices that were unjust and unreasonable causing actual damages to Complainants' and were in direct violation of SNGMO's tariff<sup>11</sup> and/or the Order of this Commission in offering service, installing gas lines on Complainants' property, and then refusing to provide service to Complainants.

WHEREFORE, based on the foregoing, Complainants submit that their Complaint is sufficient, that they have alleged and there are sufficient issues of fact to be determined by this Commission, and as a result Respondent's Motion to Dismiss should be DENIED.

Respectfully submitted,

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<sup>9</sup> See Respondent's Answer paragraph 11 and Summary.

<sup>10</sup> See Respondent's Answer paragraph 12.

<sup>11</sup> P.S.C. Mo. No. 3, Sheet No. 4J provides that Summit Gas, "...will not offer any natural gas service (sales or transportation) to any person or legal entity who is not an end-user of natural gas on [Summit Gas'] distribution system."

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been sent by electronic mail this 3rd day of March, 2017 to:

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