

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

In the Matter of the Application of Summit Natural Gas)
Of Missouri, Inc., for Permission and Approval of a)
Certificate of Convenience and Necessity to Construct) File No. GA-2017-0016
Install, Own, Operate, Maintain, and Otherwise Control)
And Manage a Natural Gas Distribution System to)
Provide Gas Service in Various Counties as an)
Expansion of its Existing Certificated Areas)

**RESPONSE IN OPPOSITION TO THE MISSOURI
PROPANE GAS ASSOCIATION’S APPLICATION TO INTERVENE**

COMES NOW Summit Natural Gas of Missouri, Inc. (“SNGMO” or “the Company”), and, in accordance with 4 CSR 240-2.080, responds in opposition to the Missouri Propane Gas Association’s (“MPGA”) August 12, 2016, Application to Intervene. In support of its filing, SNGMO states:

1. The core statutory mandate of the Missouri Public Service Commission (“Commission”) is to ensure that Missouri’s public utility companies offer safe and reliable service on terms and at rates that are just and reasonable. When propane dealers, whose prices and practices are not subject to regulation by the Commission, attempt to utilize the Commission’s legitimate regulatory authority, along with its process and resources, to further their obvious and anticompetitive effort to prevent Missouri consumers from having the choice to purchase a non-propane heating fuel, the Commission should refuse to asset this effort. The question presented in this case is whether SNGMO should be authorized to provide gas service as a public utility in the specific geographic areas identified in its petition. MPGA’s only interest in this issue is anticompetitive, and its request to intervene should be denied.

2. The Application to Intervene identifies MPGA as “a trade association representing members who sell propane or propane appliances and equipment in Missouri.” MPGA’s website, which is cited in its Application, further states, “[w]e exist to serve the propane industry by promoting safety education and public awareness of the uses of propane,” and consistent with those purposes, the website also shows that all of MPGA’s officers and its board members are associated with propane dealers around the state. The Application does not allege MPGA or any of its members would be a potential customer of SNGMO in any area covered by the Company’s application for a certificate of convenience and necessity. Therefore, neither the trade association nor its members would be directly affected if SNGMO’s application were granted. Instead, any effect granting the application would have on MPGA would be indirect; i.e., it would potentially create or increase competition for MPGA’s members in areas where SNGMO has requested authority to provide regulated natural gas service.

3. The Commission Rule governing intervention, 4 CSR 240-2.075, states the Commission may grant an application to intervene if: (1) the applicant shows it has an interest different from that of the general public, which may be adversely affected by a final order arising from the case; or, (2) granting the application is in the public interest. MPGA’s Application relies exclusively on a claim that its interests are different from those of the general public. The application does not allege making MPGA an intervener would otherwise be in the public interest.

4. The portion of the Commission’s Rule on which MPGA relies requires an applicant demonstrate three things in order to be made an intervener. As noted in the preceding paragraph, it must show its interest(s) are different from the general public and would be adversely affected if the Commission grants the relief requested. In addition, the rule implicitly

requires a prospective intervener must show its interest(s) are among those the Commission is authorized to protect. Although MPGA's Application appears to show the interests of a trade association and its members differ from those of customers who potentially might be served by the Company and that creating or adding a competitor would potentially adversely affect existing propane suppliers, the Application fails to fulfill the final requirement.

5. When considering an application for a certificate of convenience and necessity, the law requires the Commission to focus on the needs of *consumers* in areas the applicant proposes to serve. In *State ex rel. Public Water Supply District No. 8 v. Public Service Commission*, 600 S.W.2d 147 (1980) (rehearing and transfer denied), the Missouri Court of Appeals held when the Commission determines what is necessary and convenient for the public service its primary focus must be on potential consumers' concerns they will be served by adequate utility facilities. In contrast, the interests of potential competitors are of no more than secondary importance, if they are important at all. *Id.* at 154-55.

6. MPGA's Application does not allege SNGMO cannot or will not provide adequate utility facilities to serve customers in areas it proposes to serve. In fact, MPGA's application is not concerned at all with the needs of SNGMO's potential customers. Instead, MPGA seeks to protect the interests of its members by shielding those members from competition in areas the Company proposes to serve. Shielding unregulated propane companies from competition is not an interest the Missouri's Public Service Commission Law authorizes the Commission to consider and is not relief it authorizes the Commission to grant.

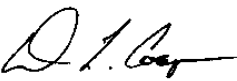
7. Denying or restricting the authority SNGMO seeks in this case – which most certainly is what MPGA hopes to achieve through its intervention – would limit choices available to consumers in areas identified in the Company's application. But limiting

consumers' choices would be antithetical to what the Court of Appeals determined in *Public Water Supply District No. 8* should be the Commission's objective when considering whether to grant a utility's request for a certificate serves the public convenience and necessity.

WHEREFORE, for all the reasons stated above, the Commission should deny MPGA's Application to Intervene.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: 

Dean L. Cooper #36592
L. Russell Mitten #27881
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
Telephone: (573) 635-7166
E-mail: dcooper@brydonlaw.com

ATTORNEYS FOR SUMMIT NATURAL
GAS OF MISSOURI, INC.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent by electronic mail this 22nd day of August, 2016, to the Office of the General Counsel, the Office of the Public Counsel, and Terry M. Jarrett (terry@healylawoffices.com).