

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

Paul Brown and Debra Brown,	)	
	)	
Complainants,	)	
	)	
v.	)	<b>Case No. GC-2017-0199</b>
	)	
Summit Natural Gas of Missouri, Inc.,	)	
	)	
Respondent.	)	

**SNGMO’S RESPONSE TO COMPLAINANTS’ REPLY  
TO MOTION TO DISMISS**

**COMES NOW** Summit Natural Gas of Missouri, Inc. (“SNGMO” or “Company”), and, in response to Complainants’ Reply in Opposition to Respondent’s Motion to Dismiss, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. On February 23, 2017, in conjunction with its answer in this matter, SNGMO moved to dismiss the underlying Complaint on the following basis:

. . . as its Motion to Dismiss, SNGMO states that the Complaint fails to state a claim upon which relief may be granted because the Complaint does not allege a violation of any tariff, statute, rule, order, or decision in that the Complainants’ allege that their residence is not located within SNGMO’s certificated service territory (Complaint, para. 6 and 7) and, therefore, SNGMO has no right or obligation to serve Complainants at that location; and, further in that the Commission has no authority to determine damages or award pecuniary relief or consequential damages.

2. “A motion to dismiss is an attack on the petition and solely a test of the adequacy of the pleadings.” *MECG v. Great Plains, Inc., Order Denying Motion to Dismiss and Scheduling Evidentiary Hearing*, File No. EC-2017-0107 (Issued January 4, 2017), *citing Rychnovsky v. Cole*, 119 S.W.3d 204, 208 (Mo.App. W.D. 2003). When evaluating the merits of a Motion to Dismiss, the Commission will treat all facts contained in the Complaint as true. *See Id., citing Lynch v. Lynch*, 260 S.W.3d 834 (Mo. Banc 2008). “It is improper to weigh or

determine the credibility or persuasiveness of the factual allegations.” *Id.*, citing *Nazeri v. Mo. Valley Coll.*, 860 S.W.2d 303, 306 (Mo. banc 1993).

3. In this matter, the Commission need not weigh credibility of the factual allegations. The only facts relevant to this matter are clearly not in dispute – 1) Complainants’ residence is not located within SNGMO’s certificated territory (Complaint, para. 6 and 7; Complainants’ Reply, para. 9); and, 2) SNGMO is not providing natural gas service to Complainants at their residence (Complaint, para. 6 and 7).

4. A decision as to the Complainants’ allegations in regard to solicitation and installation of gas lines is not necessary to dismiss this matter. While SNGMO would argue that the Browns’ first approached SNGMO to ask that SNGMO provide service to the property in question, even if SNGMO did “solicit” the Browns, there is no violation of law or tariff. Solicitation of, and even executing contracts with, potential customers outside a utility’s existing service territory almost always precede an expansion of a utility’s service territory. This is one of the ways in which a utility is able to establish a need for a proposed service. Without resulting service outside the utility’s existing service territory, there is no violation of law or tariff.

5. The Complainants allege that “solicitation” is an issue in this matter because of the language of SNGMO’s tariff sheet 61. A more complete recitation of the provision partially quoted by Complainants is helpful to this analysis. The full section states:

Customer. Any person or legal entity responsible for payment for service at any single specified location on Summit Natural Gas of Missouri, Inc.’s distribution system, except one denoted as a guarantor. A customer of Summit Natural Gas of Missouri, Inc. must be the end-user of natural gas at any single specified location on its distribution system. Summit Natural Gas of Missouri, Inc. 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 Natural Gas of Missouri, Inc.’s distribution system.

6. This definition merely clarifies that SNGMO may only serve customers who are “end-users of natural gas” as opposed, for instance, to those who would take gas for resale as is common in the water industry. If provided service, Complainants would have been end-users of natural gas. To interpret this provision as Complainants have suggested would prohibit the Company from ever bringing service to a new user, as a new user would not be an existing end-user of natural gas. This is an absurd interpretation of this language when viewed in context.

7. Likewise, the installation of gas lines that flow no gas and provide no service is not a violation of law or tariff. Section 393.170.1, RSMo, states, “No gas corporation . . . shall begin construction of a gas plant . . . without first having obtained the permission and approval of the commission.” Section 382.020, RSMo, defines “gas plant” to include “all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power.” The gas lines installed by SNGMO are not, and will not be, “. . . used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power.” Their installation is not unlawful.

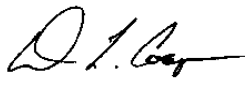
8. For the reasons stated above and in SNGMO’s Motion to Dismiss, the Complaint should be dismissed because it does not allege a violation of tariff, statute, rule, order, or decision in that the subject residence is not within SNGMO’s certificated territory and SNGMO

is not providing service to that residence.

**WHEREFORE**, SNGMO asks that the Complaint be dismissed.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

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ATTORNEYS FOR SUMMIT NATURAL GAS  
OF MISSOURI, INC.

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 13<sup>th</sup> day of March, 2017, to:

General Counsel's Office  
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