

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

Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	
)	
Sendero SMGC LP Acquisition Company, and)	
Sendero SMGC GP Acquisition Company d/b/a)	Case No. GC-2006_____
Southern Missouri Gas Company,)	
)	
Respondent.)	
)	
)	

STAFF'S COMPLAINT AGAINST

SOUTHERN MISSOURI GAS COMPANY, L.P.

COMES NOW the Staff of the Missouri Public Service Commission (Staff) pursuant to Section 386.390.1 RSMo 2000,¹ and Commission Rule 4 CSR 240-2.070, and in support of its complaint against Sendero SMGC LP Acquisition Company and Sendero SMGC GP Acquisition Company d/b/a Southern Missouri Gas Company, (collectively SMGC), states:

1. SMGC is a local distribution company with its offices in Mountain Grove, Missouri, that owns and operates a natural-gas transmission and distribution system serving approximately 7,000 residential, commercial and industrial customers in Wright, Texas, Howell, Webster, Greene and Douglas counties.

2. SMGC is a “public utility,” as that term is defined in Section 386.020(42) and a

¹ All statutory citations are to RSMo 2000, unless otherwise noted.

“gas corporation,” as that term is defined in Section 386.020(18). SMGE is, therefore, subject to the Commission’s jurisdiction. Sections 386.020 and 386.250(1).

3. On November 17, 2004, Sendero SMGC LP Acquisition Company, LLC, Sendero SMGC GP Acquisition Company, LLC (Sendero) and DTE Enterprises, Inc., and DTE Ozark, Inc., filed an application seeking Commission authority for Sendero to acquire the partnership interests of Southern Missouri Gas Company. *In the matter of Sendero’s Application for Authority of Sendero SMGC LP Acquisition Company, and Sendero SMGC GP Acquisition Company to purchase the partnership interests of DTE Enterprises, Inc. and DTE Ozark, Inc., in Southern Missouri Gas Company, L.P., and for Southern Missouri Gas Company, L.P. to execute a Deed of Trust, Security Agreement and Financing Statement to secure a loan to complete the transaction*, Case No. GM-2005-0136.

4. On April 6, 2005, the signatory parties filed a Non-Unanimous Stipulation and Agreement with the Commission in Case No. GM-2005-0136. The remaining parties to the case did not request a hearing on the Stipulation and Agreement. The signatory Parties stipulated and agreed as follows:

Sendero shall hire a qualified full-time local general manager who will be directly responsible for the day-to-day operations of the company within three (3) months of the closing of the transaction. Sendero shall hire a full time local general manager that has at least three (3) years of management experience for a local gas distribution company. If Sendero fails to hire such a general manager within three (3) months Sendero shall report this to Commission Staff and Staff may file a complaint with the Commission.

Non-Unanimous Stipulation and Agreement, p. 5, para. 5.

5. On page 5 of *Staff’s Memorandum in Support of the Non-Unanimous Stipulation and Agreement*, the Staff explained its reasoning for entering into this particular agreement:

As a start up company, Sendero has never purchased natural gas under this name. While the proposed owners do have extensive experience in the oil and

gas business, based on the information Staff has received, Sendero's existing management has never operated an LDC

To address the concern with the loss of Mr. Scott Klemm, who negotiated the gas supply, evaluated peak day demand requirements, and directed the overall direction of the gas supply function for SMGC, Sendero has agreed in the Stipulation in paragraph 5 to hire full-time local general manager that has at least three (3) years of management experience for a local gas distribution company.

6. In its April 25, 2005 *Order Approving Non-Unanimous Stipulation and Agreement and Approving Application*, on page 4, paragraph 5, the Commission stated: "Sendero shall hire a full-time local general manager, and shall not change Southern Missouri Gas Company's key personnel...."

7. On September 17, 2005, in Case No. GR-2005-0279, SMGC filed a tariff sheet to change its PGA factors.

8. As a result of that filing, the Commission held a hearing on September 29, 2005. In that hearing, Mr. Randal T. Maffett, president and CEO of Sendero Asset Management, the managing partner for SMGC (Tr. 36, ls. 8-10, Vol. 1) in recross-examination by Commission Counsel Lera Shemwell, testified under oath as follows:

Q. The stipulation also provides that you will hire a general manager.

Have you done that to date?

A. We have not.

Tr. 106, ls. 1-3, Vol 1.

9. The proposed sale transaction, which was approved by the Commission's April 6, 2005 Order, closed in May 2005, (Tr. 50, ls. 3-4, Vol. 1). Sendero has failed to hire a full time local general manager, within 90-days after closing of the sale transaction, as required by the Stipulation and Agreement. SMGC has failed to comply with the agreement in the Non-

Unanimous Stipulation and Agreement and, consequently, SMGC is in violation of the Commission's order.

10. Section 386.600 provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

11. Missouri courts require that matters within the jurisdiction of an administrative agency, such as the Commission, must be determined by that agency and, therefore, before it may bring a penalty action in court the agency must first hold a contested case hearing to determine the matters in its jurisdiction. *See State ex rel. Sure-Way Transp., Inc v. Division of Transp., Economic Development*, 836, S.W.2d 23, 27 (Mo.App. 1992).

12. Section 386.390.1 provides, "Complaint may be made by the commission of its own motion, ..., by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility..., in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission;"

13. Section 386.240 provides, “The commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this Chapter [386] to do or perform; provided, that no order, rule or regulation of any person employed by the commission shall be binding on any public utility or any person unless expressly authorized or approved by the commission.”

14. Commission Rule 4 CSR 240-2.070(1) provides that the “commission staff through the general counsel” may file a complaint.

15. Section 386.570 provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

16. At all times relevant to this complaint, Mr. Maffett was the president and CEO of Sendero Asset Management, which is the managing partner for SMGC, and therefore, responsible for hiring a general manager within 30 days of the closing of the transaction.

17. Mr. Maffett, admitted failing to “obey, observe or comply with any order, decision, decree, rule, direction” of the Commission within the meaning of that term in Section 386.570 by his admission in the hearing in case No. GT-2005-0279.

WHEREFORE, the Staff respectfully requests that the Commission: (a) establish a case to address the allegations contained in this Complaint; (b) find that SMGC failed to observe or comply with an order or decision of the Commission within the meaning of Section 386.570; (c) schedule an early pre-hearing conference to see if resolution of this matter is possible; and (d) authorize the General Counsel of the Commission to seek the appropriate penalties against Sendero and SMGC allowed by law for this violation.

Respectfully submitted,

DANA K. JOYCE

General Counsel

/s/ Lera L. Shemwell

Lera L. Shemwell

Senior Counsel

Missouri Bar No. 43792

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7431 (Telephone)
(573) 751-9285 (Fax)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 21st day of October, 2005.

/s/ Lera L. Shemwell