

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of May, 2017.

In the Matter of the Application of Summit Natural Gas)
Of Missouri Inc., for Permission and Approval and 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.)

**ORDER REJECTING AMENDED
PARTIAL STIPULATION AND AGREEMENT**

Issue Date: May 3, 2017

Effective Date: June 2, 2017

Summit Natural Gas of Missouri, Inc. (“Summit” or the “Company”) and the Staff of the Missouri Public Service Commission submitted for the Commission’s approval an *Amended Partial Stipulation and Agreement* (hereinafter, the “Amended Agreement”). The signatories to the Amended Agreement acknowledge that although not a party to the Amended Agreement, the Office of the Public Counsel does not oppose the Amended Agreement. The Amended Agreement resolves issues identified by Staff during its investigation of Summit’s application for a Certificate of Convenience and Necessity.¹

In the Amended Agreement, Summit admits that without the Commission’s approval, the Company constructed and installed a gas plant used to service customers

¹ On April 13, 2017, the Commission issued an order granting a CCN to Summit.

outside of its certificated service area. Summit also admits that, in violation of statutes,² it served and billed one hundred and sixty customers for natural gas utility service outside of the Company's certificated service area. While a complaint was never filed against Summit, the signatories appeared to have entered into the agreement in hopes of efficiently resolving the matter without initiating a separate contested case. By law, parties are authorized to enter into settlement agreements to resolve a contested case or what has the potential to become a contested case.³

Paragraph 5 of the Amended Agreement states in pertinent part that in lieu of a penalty, Summit agrees to forfeit the sum of seventy-five thousand dollars to community action program agencies. In return, under Paragraph 9 of the Amended Agreement, Staff agrees not to seek or support the imposition of penalties against Summit for the provision or billing of service beyond its certificated area. Staff also agrees not to seek penalties against Summit for failure to obtain the Commission's permission before construction and installation of gas plant outside of its certificated area.

Article IX, section 7 of the Missouri Constitution (hereafter, "Section 7") states that "[a]ll penalties, forfeitures, and fines collected hereafter for any breach of the penal laws of the state, shall be distributed annually to the schools of the several counties...." The courts have stated that the unequivocal purpose of Section 7 is to make the proceeds of penalties, forfeitures, and fines collected for a violation of a penal law available only for school purposes. *Reorganized School District No. 7 Lafayette County v. Douthit*, 799 S.W.2d 591 (Mo. Banc 1997).

² Section 393.170.1, RSMo, states that no gas corporation shall construct a gas plant without having first obtained the approval of the Commission. Sections 393.130 and 393.140, RSMo, requires a public utility, such as Summit, to service and bill customers in accordance with tariffs approved by the Commission.

³ *Bodenhausen v. Missouri Bd. of Registration for Healing Arts*, 900 S.W.2d 621 (Mo. 1995).

In *Missouri Gaming Com'n v. Missouri Veterans' Com'n*,⁴ the Missouri Supreme Court addressed a challenge to administrative penalties imposed by the Missouri Gaming Commission. By statute, the penalties were required to be paid to the Veterans Commission. The court analyzed a prior court holding and stated that when fines and penalties are prescribed as a punishment for a violation of public rights, and such penalties or fines are to be recovered by a public authority, the recovered fines come within the scope of Section 7 and may not be used in a manner not prescribed by the constitution. The court in *Missouri Gaming Com'n* held that the pertinent statute was a penal law since it authorized penalties, the assessment of, and the collection of penalties against a casino by the Gaming Commission for the violation of a public right that was recoverable by a public authority. Similar to violations of the laws of the Gaming Commission, by statute, violations of the Public Service Commission Law⁵ are subject to penalty.

Summit acknowledges that it is a gas corporation subject to the jurisdiction of the Commission. Section 386.570.1, RSMo,⁶ states that any corporation, person or public utility that fails to comply with any law or fails to obey any order of the Commission is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense. Once recovered, those funds are designated for use by the public school fund. Section 386.600, RSMo, states:

“An action to recover a penalty or forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit in this state in the name of the state of Missouri and prosecuted to final judgment by the general counsel to the

⁴ 951 S.W.2d 611 (Mo. En banc. 1997).

⁵ Section 386.010, RSMo states that Chapter 386 shall be known as the “Public Service Commission Law” and shall apply to the public services herein described and the commission herein created, and to the public service corporations, persons and public utilities mentioned and referenced to in this chapter.

⁶ All statutory references are to the 2016 Missouri Revised Statutes.

commission.... All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state.”

OPC contends that the proposed payment under the Amended Agreement is not a statutory penalty, as described in Section 386.570, but “a payment in recognition by Summit utilities that it may not operate with impunity.”⁷ This recognition by Summit will hopefully occur regardless of the recipient of its “forfeiture.” However, should OPC’s interpretation be correct, the Commission must still evaluate how to best serve the public interest.⁸ Both Section 386.600 and Section 7 designate the public school fund as the recipient of penalties and forfeitures collected on behalf of the state. This is a clear expression by lawmakers of this state’s public policy to ensure a source of funding for the public schools.⁹ By distributing funds to community action agencies, the Amended Agreement ignores that public policy.

As worthy of financial assistance as the community action agencies may be, the Amended Agreement disregards the purpose of Section 7. Finding the forfeiture in Paragraph 5 of the Amended Agreement to be inconsistent with the intentions of the requirements of Section 7, the Commission will reject the Amended Agreement.

⁷ See *State v. Hendrix*, 944 S.W.2d 311 (Mo.App. W.D. 1997) (Where county prosecutor agreed to not bring charges against defendant in exchange for money paid to law enforcement fund, court stated that counties are prohibited from circumventing through plea bargain process legislative scheme that allocates forfeited funds to schools.)

⁸ See *State ex rel. Public Water Supply Dist. v. Public Service Comm’n*, 600 S.W.2d 147 (Mo.App. 1980). The public interest is a matter of policy to be determined by the Commission.

⁹ See *In re Rahn’s Estate*, 291 S.W. 120, 123 (Mo. 1927) (Describing an act as being against public policy if it contravenes a well-defined expression of the settled will of the people which expression must be looked for in the Constitution, statutes, or judicial decisions of the state.)

THE COMMISSION ORDERS THAT:

1. The *Amended Partial Stipulation and Agreement* is rejected.
2. This order shall become effective on June 2, 2017.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style.

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, and Coleman, CC., concur;
Rupp, C., dissents.

Burton, Senior Regulatory Law Judge.

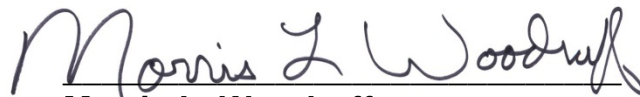
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 3rd day of May 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

May 3, 2017

File/Case No. GA-2017-0016

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.