

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



Michael Stark,

Complainant,

v.

Summit Natural Gas of Missouri, Inc.,

Respondent.

File No. GC-2014-0202

REPORT AND ORDER

Issue Date:

June 11, 2015

Effective Date:

June 21, 2015

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Michael Stark,)	
Complainant,)	
v.)	<u>File No. GC-2014-0202</u>
Summit Natural Gas of Missouri, Inc.,)	
Respondent.)	

Appearances

Michael Stark, *pro se* Complainant.

Diana C. Carter, Brydon, Swearengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, Attorney for Respondent, Summit Natural Gas of Missouri, Inc.

Alexander Antal and John D. Borgmeyer, Attorneys for the Staff of the Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102.

JUDGE: Kennard Jones, Senior Regulatory Law Judge

REPORT AND ORDER

Syllabus: The Commission concludes that Summit Natural Gas of Missouri, Inc. has not violated its tariff, any statute, or any rule or order of the Commission.

Background

Michael Stark filed a complaint with the Missouri Public Service Commission alleging that Summit Natural Gas of Missouri, Inc., installed a gas line on his property without authorization. For his relief, Mr. Stark sought compensation for the company's trespass upon, and damage to, his property. The company moved the Commission to dismiss the complaint because the Commission is without jurisdiction to award damages. The Staff of the Commission recommended that the Commission dismiss the complaint for the same reason. Mr. Stark then requested that the Commission revoke or rescind the company's

certificate of convenience and necessity. Because the Commission is unable to revoke the company's certificate, the company again moved to dismiss the complaint and Staff agrees.

In its *Order Denying Motions to Dismiss and Order Directing Filing*, issued in this case, the Commission points out that it does not have the authority to award monetary relief or revoke the company's certificate. However, to ensure that no statute, tariff, Commission rule or order was violated, the Commission proceeded with this case to hearing.

Findings of Fact

*Stipulated Facts*¹

1. Summit Natural Gas of Missouri, Inc. is engaged in the business of selling retail natural gas service in the state of Missouri and is a public utility under the jurisdiction of the Missouri Public Service Commission.

2. Michael Stark is a resident of Camden County, Missouri, residing at 44 Sycamore Road, Camdenton, Missouri, and is not a customer of Summit.

3. On July 17, 2012, the Commission granted Summit a certificate of convenience and necessity ("certificate") authorizing it to construct, install, own, operate, control, manage and maintain a distribution system to provide gas service in Benton, Morgan, Camden and Miller counties in Missouri, as a service area (Lake Ozark Division).

4. Summit relied on maps from the Camden County geographic information systems (GIS) website to create its map book for the Lake Ozark Division.

¹ *Joint Statement of Undisputed Facts*, filed August 22, 2014.

5. Maps on the Camden County GIS website give approximate locations of parcels of property for real estate tax purposes, but the locations on these maps have not been located by a surveyor.

6. Maps printed from this site have a disclaimer that they may or may not be accurate, current, or reliable.

7. Camden County does not have a consolidated map depicting county property or county rights-of-ways prepared by a surveyor.

8. On June 18, 2013, Priority Communications ("Priority"), contractors working for Summit, entered upon a portion of Mr. Stark's property and installed a section of gas piping approximately 1,000 feet in length, along a road located in Camden County, which was intended to be a part of Summit's initial build-out of the Lake Ozark Division under its CCN.

9. During the morning of June 18, 2013, while the gas piping was being installed, Mr. Stark spoke with Priority's employees and notified them that they were installing the gas piping on his private property and that they had no authority to do so.

10. When Priority's employees left Mr. Stark's property on June 18, 2013, the gas piping had been laid, backfilled, and some length of gas piping was intentionally left unburied at each end for connecting the section of piping to other sections on a later date.

11. No work was performed by or on behalf of Summit on Mr. Stark's property after June 18, 2013.

12. On June 19, 2013, Mr. Stark met with Mr. Eric Graves, Summit's State Construction Manager, and stated that the property on which the gas piping was being installed belonged to him.

13. Summit had a title search conducted and determined that the piping was not laid on a public right-of-way but was laid on Mr. Stark's private property.

14. The gas piping on Mr. Stark's property does not now, nor has it ever had gas flowing through it.

15. On September 17, 2013, John Kottwitz and Rick Fennel of the Safety/Engineering Section of the Commission met with Mr. Stark and observed that portions of the backfill washed out where the piping was being installed.

Additional Facts Found from the Hearing

16. The maps used by Summit are not construction-grade maps.²

17. Utilities could do a title search for every foot of pipe that they install,³ but it is not feasible for Summit to perform a title search before laying pipe along a public right-of-way.⁴

18. Although the purpose of the maps is for assessment purposes,⁵ they may be used to determine who owns a particular piece of property.⁶

19. Neither the contractor nor Summit saw any purple markings, which indicate private property, when accessing Mr. Stark's road.⁷

20. When Mr. Stark approached the contractor, informing them that the road was his, Priority had trenched 900 feet.⁸

² Transcript, page 35, lines 14-16.

³ Transcript, page 38, line 18 – page 39, line 1.

⁴ Transcript, page 124, lines 2-17.

⁵ Transcript, page 44, lines 2-8.

⁶ Transcript, page 52, lines 8-12.

⁷ Transcript, page 83, lines 2-20; page 89, lines 6-23; and page 95, line 19 - page 96, line 1.

⁸ Transcript, page 84, Lines 14-22.

21. Approximately 150 feet was left to trench, in order to finish the job.⁹
22. Summit instructed the contractor to finish the job.¹⁰
23. Summit believed Mr. Stark's road to be a county road and a better road than Antique Road (a public road) to use for laying pipe.¹¹
24. The public right-of-way (Antique Road) and Mr. Stark's road are about 20 feet apart and it is feasible for two public rights-of-way to run parallel that close to one another.¹²
25. Summit did not use maps to establish boundaries, because it mistakenly believed the road on which pipe was to be laid was a public right-of-way.¹³

Conclusions of Law

Jurisdiction

As the Commission sets out in its *Order Denying Motions to Dismiss and Directing Filing*, Missouri law allows any person to file a complaint with the Commission setting forth any act of a public utility in violation of any provision of law.¹⁴ The Public Service Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by statute and powers reasonably incidental thereto.¹⁵ The Commission cannot award monetary relief to a complainant.¹⁶ However, the law does not require the Commission to dismiss a complaint because of the absence of direct damage to the

⁹ Transcript, page 85, lines 14-19.

¹⁰ Transcript, page 92, line 20 – 93, line 6.

¹¹ Transcript, page 96, line 2-15; page 117, lines 1-6; and, page 112, lines 18 – page 113, line 8.

¹² Transcript, page 130, line 15 - page 131, line 1.

¹³ Transcript, page 125, line 25 - page 126, line 11.

¹⁴ Section 386.390.1, RSMo.

¹⁵ *State ex rel. Empire District Electric Co. v. Public Service Commission, et al.* 100 S. W. 2d 509 (Mo. 1936).

¹⁶ *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41, 58 (Mo. 1937).

complainant.¹⁷ The Commission therefore concludes that its inability to award the damages that Mr. Stark seeks does not necessitate dismissal of this complaint.

With regard to Mr. Stark's request for revocation of the company's certificate of convenience and necessity, the Commission has only that power granted to it by the Legislature.¹⁸ There is no such explicit grant of legislative power for the Commission to order such relief in this case. Further, the circumstances surrounding this case do not warrant revocation.

Although the Commission cannot grant the requested relief, the Commission has the power to investigate to determine whether there has been a violation of any provision of law within the Commission's jurisdiction, or order of the Commission.¹⁹

Burden of Proof

In cases where a complainant alleges that a regulated utility is violating the law, its own tariff, or it is otherwise engaging in unjust or unreasonable action, the burden of proof rests with the complainant.²⁰

Discussion

During these proceedings, there has been no indication that the company has violated any statute within the Commission's jurisdiction or order of the Commission. Whether or not the company violated any provision of its tariff was, however, considered by Staff and the company.

¹⁷ Section 386.390.3, RSMo.

¹⁸ *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Comm'n*, 585 S.W.2d 41, 47 (Mo banc 1979).

¹⁹ Section 386.390.1 RSMo.

²⁰ *State ex rel GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

Staff argues that the tariff does not apply because Mr. Stark is not a customer. That argument stands on an analysis of sheet 58 of the company's tariff. That tariff sheet defines "customer extensions" "[a]s any branch from, or continuation of, existing facilities to the point of delivery to the customer. . . . including all mains, service pipe, pressure regulators and meters." Staff argues that, because Mr. Stark is not a customer, the pipe being laid by the company was not a "customer extension" and that the tariff sheets concerning rights-of-way are not applicable. Summit argues that obtaining rights-of-way is within its discretion.

Mr. Stark argues that the company may have mistakenly entered upon his property. However, after he informed the company the property was his and protested their being there, the company continued to finish their work.

It is clear that the company was upon Mr. Stark's property without authorization. The company relied on maps, as it does in its normal course of business. It is not feasible, due to costs, for the company to perform title searches each time it lays pipe, nor is it ordinarily necessary. There were no markings to show that the property was private. And, the road chosen by the company was the better road to trench and lay pipe. However, as agreed by the parties, the company has clearly entered upon Mr. Stark's private property without a right-of-way.

Conclusion

Although it is clear that the company entered upon the private property of Mr. Stark, the Commission cannot conclude that there has been a violation of the company's tariff, a Commission rule, or any statute within the Commission's jurisdiction. As the Complainant,

Mr. Stark bears the burden of showing any violation. He has not carried this burden. The Commission must therefore find in favor of Summit.

This order will become final unless an application for rehearing is filed prior to the effective date set out below. Information regarding the rehearing and appeal process can be found at 4 CSR 240-2.160 and Chapter 386 of the Revised Statutes of Missouri.

THE COMMISSION ORDERS THAT:

1. Summit Natural Gas of Missouri has not violated its tariff, any Commission rule or order or any statute within the Commission's jurisdiction.
2. This order shall become effective on June 21, 2015.
3. This file shall be closed on June 22, 2015.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff". The signature is fluid and cursive.

Morris L. Woodruff
Secretary

R. Kenney, Chm., W. Kenney,
Hall, and Rupp, CC., concur.;
Stoll, C., absent;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 11th day of June, 2015.