

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

| | | |
|---------------------------------------|---|-----------------------|
| MISSOURI PROPANE GAS ASSOCIATION, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | File No. GC-2016-0083 |
| |) | |
| SUMMIT NATURAL GAS OF MISSOURI, INC., |) | |
| |) | |
| Respondent. |) | |

MOTION TO FILE FIRST AMENDED COMPLAINT

COME NOW the Missouri Propane Gas Association (MPGA), by and through undersigned counsel, pursuant to Section 386.390¹, and files its First Amended Complaint. In support thereof, MPGA states as follows:

1. Attached is MPGA's First Amended Complaint with a more specific prayer for relief.
2. Clarity as to MPGA's requested relief will assist the Commission in understanding exactly what actions MPGA is asking the Commission to take.
3. The Respondent in this case will not be prejudiced as it has not yet filed an Answer to the original Complaint, and none of the factual allegations have been changed.

WHEREFORE, MPGA prays that the Commission will accept its First Amended Complaint.

¹ Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri, revision of 2000, as subsequently amended.

Respectfully submitted,

HEALY LAW OFFICES, LLC



Terry M. Jarrett MO Bar 45663
514 E. High St., Suite 22
Jefferson City, MO 65101
Telephone: (573) 415-8379
Facsimile: (573) 415-8379
Email: terry@healylawoffices.com

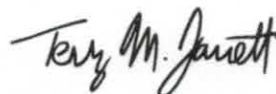
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed this 30th day of October, 2015 to:

Jeff Keevil
Jamie Myers
Staff Counsel
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Marc Poston
Office of the Public Counsel
P.O. Box 2330
Jefferson City, MO 65102
opcservice@ded.mo.gov

Dean L. Cooper
Brydon, Swearingen & England P.C.
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com



Terry M. Jarrett

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

| | | |
|---------------------------------------|---|-----------------------|
| MISSOURI PROPANE GAS ASSOCIATION, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | File No. GC-2016-0083 |
| |) | |
| SUMMIT NATURAL GAS OF MISSOURI, INC., |) | |
| |) | |
| Respondent. |) | |

FIRST AMENDED COMPLAINT

COME NOW the Missouri Propane Gas Association (MPGA), by and through undersigned counsel, pursuant to Sections 386.390, 386.400, RSMo. 2000¹, and Commission Rule 4 CSR 240-2.070, and for its first amended complaint against Summit Natural Gas of Missouri, Inc. (SNGMO), states as follows:

INTRODUCTION

1. This Complaint concerns Respondent’s violation of its tariff and violation of a Commission order by Stipulation and Agreement approved therein.

PARTIES

2. Complainant MPGA is a non-profit corporation in good standing organized under the laws of the State of Missouri. MPGA is a trade association representing members who sell propane or propane appliances and equipment in Missouri. Its website can be accessed at

¹ Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri, revision of 2000, as subsequently amended.

<http://www.missouripropane.com/>. MPGA was a party in SNGMO's most recent rate case, GR-2014-0086.

3. Respondent SNGMO is a wholly owned subsidiary of Summit Utilities, Inc., and is a corporation duly incorporated under the laws of the State of Colorado with its principal offices located at 7810 Shaffer Parkway, Suite 120, Littleton, Colorado 80127. SNGMO is a Gas Corporation as defined in Section 386.020(18), engaged in the business of owning, operating, controlling or managing any gas plant operating for public use in Missouri. SNGMO is a public utility subject to the jurisdiction of this Commission.

4. All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this matter should be directed to:

Terry M. Jarrett
Healy Law Offices, LLC
514 E. High St., Suite 22
Jefferson City, MO 65101
Phone: (573) 415-8379
Fax: (571) 415-8379
Email: terry@healylawoffices.com

JURISDICTION

5. SNGMO is a "gas corporation" within the intendments of Section 386.020(18), and a "public utility" within the intendments of Section 386.020(43), and thus subject to the jurisdiction of this Commission and to the provisions of the Public Service Commission Laws at Chapters 386 and 393, RSMo.

FACTS COMMON TO ALL COUNTS

6. This Complaint concerns the conversion by SNGMO of unvented (also known as vent free) gas heating products. Unvented gas heating products (sometimes referred to as "units"

or “products” in this Complaint) are governed by standards developed by the American National Standards Institute (ANSI), Inc., ANSI Z21.11.2-2013.

7. Unvented gas heating products include room heaters, gas logs, fireplace systems, fireplace inserts, and free-standing stoves. They are certified by third-party certification companies such as the PFS Corporation, Intertek, and the Canadian Standards Association (CSA) for compliance with ANSI Z21.11.2-2013, the American National Standard for Gas-Fired Room Heaters, Volume II, Unvented Room Heaters.

8. These ANSI national product standards are adopted by unvented gas heating products manufacturers. These standards expressly prohibit field conversion of a unit from one type of gas to another, as exemplified in these warnings that manufacturers of the units are required to provide in printed instructions to buyers of the products:

a. ANSI Z21.11.2-2013, section 1.2: “This standard covers unvented room heaters and gas-fired unvented decorative room heaters that comply with either of the following types: a) shipped from the factory equipped specifically for use with one gas only. Field conversion of gas types by any means including the use of a kit shall not be permitted; or b) a universal unvented room heater shipped from the factory equipped with a switching means for selecting the type of gas to which it is being connected.”² (Emphasis added).

b. ANSI Z21.11.2-2013, section 4.20.2 g): “WARNING: Any change to this heater or its controls can be dangerous.”

c. ANSI Z21.11.2-2013, section 4.20.4: “WARNING: If the information in this manual is not followed exactly, a fire or explosion may result causing property damage, personal injury or loss of life.”

² The universal unvented room heaters are not applicable in this Complaint. This Complaint only concerns units shipped from the factory equipped specifically for use with one gas only (propane).

d. ANSI Z21.11.2-2013, section 4.20.5: “WARNING: This appliance is equipped for (natural or propane) gas. Field conversion is not permitted.”

9. Because of the ANSI national standards, MPGA is unaware of any unvented gas heating products manufacturers that permit field conversions of their products from propane to natural gas or vice versa.

10. SNGMO has performed and continues to perform conversions of unvented propane gas heating products at its Sunrise Beach, Missouri office. SNGMO employees remove the units from a customer’s location, take them to SNGMO’s Sunrise Beach, Missouri office, perform the conversion of the units from propane to natural gas, and then install the converted units back at the customer’s location. If the unit cannot be removed, SNGMO employees perform the conversion at the customer’s location.

COUNT I VIOLATION OF TARIFF

11. SNGMO’s Tariff, specifically P.S.C. MO No. 3, sheet nos. 82 – 83, provides that it may perform fuel conversions of gas appliances, subject to certain conditions and limitations.

12. Paragraph (25) (b) (2) of P.S.C. MO No. 3, sheet no. 83 provides:

Installations and conversions are performed for residential, commercial, and industrial customers. Unit conversions are limited to the availability to standard orifice conversion kits and to specific qualifications of certified personnel. Under no circumstances will the Company authorize any customer units to be converted that adversely affect manufacturer’s warranties, specifications, or safety of the unit. (Emphasis added).

A copy of P.S.C. MO No. 3, sheet nos. 82 – 83 is attached hereto as **Exhibit 1**.

13. In approximately April, 2014, SNGMO converted several unvented gas heating products from propane to natural gas for the Avila Condominiums at the Lodge of Four Seasons, Lake Ozark, MO.

14. The unvented propane gas heating products converted by SGMO at the Avila Condominiums are 30-inch Flint Hill Logs/Burners, #VFDR30LBP-2, manufactured by Empire Comfort Systems, Inc. (the “manufacturer”). The rating plates on the units indicated that they were propane units.

15. The Installation Instructions and Owner’s Manual (the “Manual”) for the Empire units contains the following specifications:

a. Page 1: “This appliance is only for use with the type of gas on the rating plate. This appliance is not convertible for use with other gases.” (Emphasis added).

b. Also on Page 1: “WARNING: If the information in this manual are not followed exactly, a fire or explosion may result causing property damage, personal injury or loss of life.”

c. Also on Page 1: WARNING: If not installed, operated and maintained in accordance with the manufacturer's instructions, this product could expose you to substances in fuel or from fuel combustion which can cause death or serious illness.

d. Page 5: “Failure to follow these installation instructions may result in a possible fire hazard and will void the warranty.” (Emphasis added).

e. Also on Page 5: “This appliance is only for use with the type of gas indicated on the rating plate. This appliance is not convertible for use with other gases.” (Emphasis added).

f. Page 7: “This appliance is equipped for (natural or propane) gas. Field conversion is not permitted.”

16. The warranty for the units is found on page 34 of the Manual. The warranty plainly states that instructions in the Manual must be followed:

a. “Hearth products must be installed by a qualified technician and must be maintained and operated safely, in accordance with the instructions in the owner’s manual.”

(Emphasis added). A copy of the Empire Manual is attached hereto as **Exhibit 2**.

17. SMGMO never sought or received authorization from the manufacturer to convert the units from propane to natural gas.

18. The parts used by SNGMO to convert the units from propane to natural gas did not come from the original manufacturer.

19. On March 19, 2015, a meeting was held in SNGMO’s office in Sunrise Beach, Missouri. In attendance were: Daniel Fitzpatrick of the MOPSC; Martha Davis, Brent Mahn, Janice Smith, and the Head of Service for the Branson area (name currently unknown), all from SNGMO; Charlie Wormek from HMI Fireplace; and Brian Brooks from Brooks Gas, who is a Propane Gas Dealer and Board Member for the MPGA. In that meeting, personnel from SNGMO stated that they had been converting unvented propane gas heating products for five years and are continuing to do so. SNGMO performed a demonstration where they converted an unvented propane gas heating product to natural gas. When confronted with the fact that the manufacturers of the unvented propane gas heating products prohibit conversion to natural gas, SNGMO’s Head of Service for the Branson area admitted he knew that manufacturers did not allow the kind of conversions that SNGMO was performing, but said that the only reason manufacturers placed that prohibitive language in their manuals was so that the manufacturers could sell more products.

20. By having performed, and continuing to perform, conversions of unvented gas heating products from propane to natural gas, SNGMO has adversely affected and is adversely

affecting manufacturer's warranties, specifications, and safety of the units, in violation of its Tariff.

WHEREFORE, the Complainant prays that the Commission: Find and order that SNGMO has violated its Tariff; Order SNGMO to stop converting unvented propane gas heating products; Order SNGMO to notify all customers for whom SNGMO performed conversions on unvented propane gas heating products that the units may be unsafe; Order SNGMO to replace said converted unvented propane gas heating products upon customer request; and grant any other relief the Commission deems appropriate under the circumstances. Further, Complainants pray that the Commission will deem the violation to be a continuing one.

COUNT II
VIOLATION OF THE COMMISSION'S ORDER OF SEPTEMBER 3, 2014

21. Complainant hereby re-alleges and incorporates by reference the allegations set out in paragraphs 1 through 20, above.

22. On January 2, 2014, SNGMO filed tariff sheets in Case No. GR-2014-0086, *In the Matter of Summit Natural Gas of Missouri Inc. 's Filing of Revised Tariffs To Increase its Annual Revenues For Natural Gas Service.*

23. On January 21, 2014, MPGA filed an application to intervene in the case.

24. On February 3, 2014, the Commission issued an order granting MPGA's application to intervene.

25. On August 18, 2014, SNGMO entered into a *Partial Stipulation and Agreement As To Dual Fuel and Conversion of Appliances* (the Agreement) with MPGA filed in Case No. GR-2014-0086. A copy of the Agreement is attached hereto as **Exhibit 3**.

26. Among the provisions of the Agreement was Paragraph 1, which provides:

For converting appliances from propane to natural gas, SNGMO agrees to follow all applicable national and local codes and manufacturers' specifications relating to the conversion of appliances. (Emphasis added)

27. On September 3, 2014, The Commission issued an order approving the Agreement, ordering the respective signatories to comply with the substantive provisions of the partial settlement. The order was effective immediately upon issuance.

28. After the September 3, 2014 Commission order became final, SNGMO, by its own admission during the March 19 meeting referenced in paragraph 19 above, did convert, and continues to convert, appliances (unvented gas heating products) from propane to natural gas in violation of manufacturer's specifications, as detailed in paragraphs 19-20 above.

WHEREFORE, Complainant prays that the Commission: Find and order that SNGMO has violated the Commission's order of September 3, 2014, by violating the *Partial Stipulation and Agreement As To Dual Fuel and Conversion of Appliances* approved therein; Order SNGMO to stop converting unvented propane gas heating products; Order SNGMO to notify all customers for whom SNGMO performed conversions on unvented propane gas heating products that the units may be unsafe; Order SNGMO to replace said converted unvented propane gas heating products upon customer request; and grant any other relief the Commission deems appropriate under the circumstances. Further, Complainants pray that the Commission will deem the violation to be a continuing one.

COUNT III
AUTHORITY FOR GENERAL COUNSEL TO SEEK PENALTIES

29. Complainant hereby re-alleges and incorporates by reference the allegations set out in Paragraphs 1 through 28, above.

30. Section 386.570, RSMo., 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.

31. Section 386.600, RSMo., 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.

WHEREFORE, Complainant prays that the Commission will give such notice to Respondent as is required by law, and, after hearing, in the event that any of the conduct described herein is determined to be a violation of any law of the State of Missouri or of any

order, decision, or rule of the Commission, deem that each improper conversion performed by Respondent to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Respectfully submitted,

HEALY LAW OFFICES, LLC



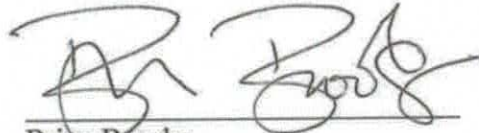
Terry M. Jarrett MO Bar 45663
514 E. High St., Suite 22
Jefferson City, MO 65101
Telephone: (573) 415-8379
Facsimile: (573) 415-8379
Email: terry@healylawoffices.com

VERIFICATION

COUNTY OF WEBSTER

STATE OF MISSOURI

Brian Brooks, of lawful age, being duly sworn, deposes and says that he is the Hearth Products Manager for Brooks Gas Company, has knowledge of the facts stated in the foregoing First Amended Complaint, and that said facts are true to the best of his knowledge, information, and belief.


Brian Brooks

Subscribed and sworn to me before this 28th day of October, 2015.


Notary Public

My commission expires:



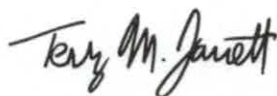
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed this 30th day of October, 2015 to:

Jeff Keevil
Jamie Myers
Staff Counsel
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Marc Poston
Office of the Public Counsel
P.O. Box 2330
Jefferson City, MO 65102
opcservice@ded.mo.gov

Dean L. Cooper
Brydon, Swearingen & England P.C.
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com



Terry M. Jarrett