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.	)	

MPGA'S MEMORANDUM IN SUPPORT OF
ITS RESPONSE IN OPPOSITION TO SNGMO'S MOTION
FOR SUMMARY DETERMINATION OR DISMISSAL

The Missouri Propane Gas Association (MPGA) submits its Memorandum in Opposition to Summit Natural Gas of Missouri, Inc.'s (SNGMO's) Motion for Summary Determination or Dismissal (SNGMO's Motion).

Summary of Response

SNGMO has not met its burden to show that it there is no genuine issue as to any material fact, that it is entitled to relief as a matter of law as to all or any part of the case, and that it is in the public interest for the Commission to grant the relief requested. There is only one material fact remaining in this case: what are the applicable manufacturers' specifications relating to the conversion of appliances. In SNGMO's motion and accompanying Memorandum in Support, SNGMO utterly fails to provide any evidence as to what the applicable manufacturer's specification is. MPGA, on the other hand, has provided more than adequate evidence by way of sworn testimony on the meaning of what manufacturers' specifications are for unvented gas heating projects, and how SNGMO is violating those manufacturers'

specifications. At the very least, MPGA has shown sufficient evidence that the material fact remaining in this case remains in dispute. Accordingly, this Commission should deny SNGMO's Motion.

Argument

I. Contrary to What SNGMO Alleges, the Agreement Applies to ALL Conversions

As has been noted on several occasions, the question in this case is a narrow one that involves the interpretation of the language in paragraph 1 of the Agreement[1] in the 2014 rate case, which states as follows:

> 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)

SNGMO argues that MPGA does not claim that the above-referenced language applies to all appliances, just "vent free" appliances. This is completely false. The language applies to all conversions without limitation, just as the plain language of the provision provides. MPGA understands that many vented appliances can be converted—clothes dryers, furnaces, hot water heaters, and vented gas logs—because the exhaust from the units are vented to the outside and not into living areas. The above-referenced language was crafted to allow SNGMO to continue conversions of vented gas products where the manufacturer does not prohibit conversions. However, unvented heating products are not vented to the outside; rather, the exhaust flows directly into the living areas of homes. These units are designed to much more exacting standards, and safety is much more important because the exhaust is not vented outside. Safety is the reason why manufacturers of unvented gas heating products specify that unvented units cannot be converted. They were not designed to be converted, and any alteration of the product could lead to tragic consequences.

[1] EFIS No. 148, File No. GR-2014-0086 (the "2014 rate case").

SNGMO justifies its disregard of the manufacturer's explicit warnings against converting the unvented products by saying that they are simply helping Missouri customers who want to benefit from natural gas by converting their existing, propane-fueled appliances. However, such consumers have a right to know all of the information before making such a decision. Customers do not come to SNGMO and ask for their appliances to be converted. These customers are considering whether to switch to natural gas, and as an enticement, SNGMO offers to convert all of their appliances. It is a sales pitch. Importantly, SNGMO does not inform these customers that the manufacturers of their unvented appliances prohibit such conversions, that the appliances were not designed to be converted, that their warranty could be voided, or of any other potential negative consequences. This would be akin to a surgeon not providing adequate information to a patient about a surgical procedure. There is no informed consent.

MPGA has been consistent during and after the 2014 rate case in which the Agreement was approved. MPGA's position has always been that it is improper for SNGMO, or anyone else, to convert unvented gas heating products from one fuel to another, because the manufacturers of those products do not permit such conversions. As for vented gas products, MPGA's position has always been that if the manufacturer approves conversions, MPGA has no problem with such conversions.

II. MPGA Witness Ronald G. Smith's Testimony is Undisputed on the Issue of What the Relevant Manufacturers' Specifications are for Unvented Gas Heating Appliances

In its Memorandum, SNGMO attempts to make much of the fact that while MPGA witness Ronald G. Smith addresses safety and safety standards in his testimony, MPGA elected not to pursue potential safety violations by SNGMO for improperly converting unvented appliances. This decision had nothing to do with any change in position—MPGA continues to

believe that SNGMO is violating safety standards. For other reasons, MPGA decided not to pursue that claim in this case, instead focusing on the Agreement.

However, that does not mean that safety is not an issue in this case. Safety is the rationale behind the manufacturers' specifications, and especially the specification that conversions of unvented heating products are not permitted. In his testimony, Mr. Smith provides the background behind why this prohibition exists, and explains the relevant safety standards pertaining to all unvented gas heating products as support of why the prohibition exists.

In its Memorandum, SNGMO makes various attacks on Mr. Smith's sworn testimony. As noted in his testimony, Mr. Smith has over 35 years in the heating appliance industry. Since 1981 he has worked for various manufacturers globally that manufacture gas heating and cooking appliances for both the U.S. and European markets. The primary gas heating appliance he has the most extensive experience with is Unvented (vent-free) Gas-Fired Heaters. He is currently the senior member and active participant of the Z21 Technical Advisory Group (TAG) for the ANSI Z21.11.2 Standards for Unvented Gas-Fired Heating Appliances. Since 1987 he has chaired or taken the lead participation in every major substantive issue under the Unvented Room Heater TAG, from N02 emission coverage, to developing coverage for hearth type unvented room heaters and up to submitting the coverage for Universal Unvented Room Heaters. His curriculum vitae is provided in Schedule RGS-1 to his Direct Testimony.

Mr. Smith's sworn testimony, as filed in this case, addresses the question of what the relevant manufacturers' specifications are for unvented gas heating appliances. He sets out the background and relevant safety standards behind why manufacturers' prohibit the conversions behind unvented gas heating products, and why those prohibitions are part of the manufacturers'

specifications for the products. Conversely, SNGMO's attack on various aspects of Mr. Smith's testimony is only argument made by SNGMO's lawyers. It is not supported by any sworn testimony or actual evidence. For example, in its Memorandum SNGMO offers two generic definitions of "specifications" from a general dictionary and a business dictionary, but offers no actual evidence that these are commonly used in the unvented gas heating manufacturing industry, or that they are even used at all in the industry. The same goes for all of the other attacks on Mr. Smith's testimony—all legal argument, no evidence or facts.

III. SNGMO's Apparent Interpretation of the Agreement Defies Logic

SNGMO's strained interpretation of the Agreement, again offered without any evidence or facts to support its interpretation, leads to an absurd result. As noted in its Memorandum, SNGMO agrees that MPGA's position in the 2014 rate case was that conversions of unvented appliances were improper. Then, SNGMO would have this Commission believe that MPGA would agree to let SNGMO continue to perform conversions just as they had always done, without changing its conduct at all. This is simply absurd. The testimony in the 2014 rate case showed that the improper conversions of unvented appliances was a classic contested issue in a contested case—MPGA claimed that Summit was improperly converting unvented appliances because the manufacturers do not permit conversions, and SNGMO claimed it was following manufacturers' guidelines.[2] It is readily apparent that SNGMO fully understood MPGA's position that SNGMO was performing improper conversions of unvented appliances because they are not allowed by the manufacturers, and that MPGA believed Summit should convert only appliances where the manufacturer approves conversions (vented products, for example). That is the context behind the language of the Agreement between SNGMO and MPGA that was

[2] See, MPGA's Reply in Support of Motion for Partial Summary Disposition, paragraph 2, File No. GC-2016-0083, EFIS No. 30.

approved by the Commission. As with any negotiated agreement, there was mutual consideration. SNGMO agreed to follow manufacturers' specifications (including manufacturers' prohibition of converting unvented propane gas heating products) in exchange for MPGA not taking the issue to hearing. The language of the Agreement allows SNGMO to perform conversions on some appliances (such as the vented appliances discussed above) where it is appropriate to do so, while requiring Summit to refrain from performing conversions when it is not appropriate to do so (as in the four conversions of unvented gas heating products at issue in this case). That is the only reasonable and plausible interpretation of the language. If SNGMO's interpretation is correct, then SNGMO did not agree to give anything or change its conduct in any way to reach a settled resolution to a disputed issue, meaning that it did not give valuable consideration. It is clear that there was in fact mutual consideration given, and now that SNGMO has been caught violating the Agreement, it is making excuses.

Unfortunately, SNGMO has a sad history of violating its Tariff, the law, agreements it has made, and has skirted the bounds of acceptable business practices. Following is a partial list of examples of SNGMO's questionable conduct towards customers, the public, this Commission, and contractors:

- On July 15, 2016, SNGMO filed an application with the Commission requesting approval of a Certificate of Convenience and Necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system. The CCN would be an expansion of SNGMO's existing certificated area in Barry, Daviess, Laclede, Lawrence, Pettis, Stone, Taney and Webster Counties, Missouri. SNGMO stated that natural gas service is currently not offered in any of the areas for which it was seeking a CCN. In the course of its investigation, Staff discovered that SNGMO had

served and billed one hundred and sixty (160) persons or entities for natural gas utility service that were located outside the boundary of its certificated service area in violation of several state laws. SNGMO admitted that without the Commission's approval, it constructed and installed a gas plant used to service customers outside of its certificated service area. SNGMO also admitted that, in violation of statutes, it served and billed one hundred and sixty customers for natural gas utility service outside of its certificated service area. Further, in lieu of Staff filing a complaint to collect penalties for these violations of law, SNGMO agreed to forfeit the sum of Seventy-Five Thousand Dollars ($75,000) to various Community Action Program Agencies.[3]

- On June 18, 2013, Priority Communications (Priority), contractors working for SNGMO, entered upon a portion of Mr. Michael 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. The problem was, neither SNGMO nor SNGMO's contractor performed an adequate search to know that Mr. Stark's property was private and SNGMO had no easement to install such pipe. Mr. Stark informed the company the property was his and protested their being there, but the company continued to finish their work. Over the next few months, rains washed away the gravel surrounding the pipeline, which Mr. Stark said indicated workers rushed to finish the job. The road became impassable due to SNGMO's contractor's shoddy work. Mr. Stark finally filed a Complaint[4] with the Commission. The Commission found the company trespassed on Mr. Stark's property without authorization, but did not find a violation of the company's tariff, a Commission rule, or

[3] File No. GA-2017-0016.
[4] File No. GC-2014-0202.

any statute within the Commission's jurisdiction. Troubling is that SNGMO did not immediately fix the damage done to Mr. Stark's property. Mr. Stark said, "They have no excuse for what they've done here, they've admitted that they've done this after I told them not to. This damage is very visible. It's obvious. They have no excuse not to take care of it."[5]

- SNGMO customer Theresia May filed a lawsuit[6] against SNGMO on May 21, 2014. SNGMO's contractors buried a gas service line on Ms. May's property in the spring of 2013. According to the complaint she filed, the contractors did not replace the timbers she had installed to prevent soil erosion and did not install check dams or other erosion control devices. When it rained, water carried mud and debris downhill and through a side door, flooding her basement. That caused $29,698.18 in damage, including buckled wooden floors, ruined carpets and mold.[7] Ms. May dismissed her lawsuit without prejudice on February 5, 2016, so it is unclear whether the case settled.
- A Lake of the Ozarks woman said contractors for SNGMO dug up her yard without telling her and did not repair the damage. Vicki Sucher told KRCG 13 when a neighbor wanted to get onto the natural gas line serving her cul-de-sac in the winter of 2013-14, SNGMO's contractor discovered it needed to modify the natural gas line at a point in her front yard. Ms. Sucher was spending the winter in Tennessee, and she said workers dug up her yard without first contacting her. They damaged her irrigation system and her electric dog fence in the process. Ms. Sucher discovered the damage when she returned home on April 4 and had been trying to get the SNGMO contractor to repair the damage.

[5] "Camden Co. Man Fights Gas Company over Pipeline," http://krcgtv.com/news/local/camden-co-man-fights-gas-company-over-pipeline?id=1047573 (May 21, 2014).
[6] Case No. 14MG-00024, Morgan County Circuit Court.
[7] "Homeowner Sues Summit Natural Gas," http://krcgtv.com/news/local/homeowner-sues-summit-natural-gas (June 1, 2014).

At the time the article was published, they had not yet done so. “I had big hopes that natural gas would be great, but right now, I think I’d rather have my propane back,” she said.[8]

- A sewer district manager told KRCG 13 a gas company's contactors damaged clearly marked sewer lines on several occasions. Ray Metscher, the operator/manager of the Gravois Arms Sewer District, said contractors working for SNGMO struck sewer lines in at least 10 to 12 places during the summer and fall of 2013. In some cases, those strikes broke the sewer line entirely. Moreover, Mr. Metscher said in some cases, a gas line was buried on top of a sewer line, preventing crews from servicing the sewer line. The district has a two-foot variance around its sewer lines, meaning any other utility lines need to be at least two feet away. "When I asked them how long they were going to continue to operate in the fashion they were, they told me until somebody told them to stop," he said. Mr. Metscher said he has never had this issue with contractors working for any other utility company.[9]
- And Missouri is not the only state where Summit Natural Gas has gotten crossways with authorities. In the state of Maine, as a result of a lawsuit, Summit Natural Gas of Maine had to pay tens of millions of dollars to contractors that had been owed money for months. In fact, the Governor’s office became involved in the situation after it received complaints.[10]

[8] “Lake Area Woman Says Contractor Not Repairing Damage,” http://krcgtv.com/news/local/lake-area-woman-says-contractor-not-repairing-damage?id=1051182 (May 29, 2014).
[9] “Gas Company Accused of Sewer Damage,” http://krcgtv.com/news/local/gas-company-accused-of-sewer-damage?id=1050554 (May 28, 2014).
[10] “Summit Natural Gas of Maine Agrees to Pay Millions Owed to Contractors for Pipeline Work,” http://www.centralmaine.com/2014/01/05/summit_natural_gas_of_maine_agrees_to_pay_millions_owed_to_contractors_for_pipeline_work_/ (January 5, 2014).

CONCLUSION

As set out above, SNGMO has provided no evidence to show that it is entitled to Summary Determination or Dismissal, while MPGA has provided expert witness testimony to show (1) what the relevant manufacturers' specifications are for unvented gas heating products; that the manufacturers' specifications include that conversions of the products are not permitted; and (3) SNGMO did in fact perform conversions of unvented gas heating products in violation of those manufacturers' specifications. This Commission should deny SNGMO's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties on the official service list this 3rd day of May, 2017.

Terry M. Jarrett