

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

Ozarks Medical Center d/b/a Ozarks Healthcare,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2021-0158
)	
Summit Natural Gas of Missouri, Inc.,)	
)	
Respondent.)	
)	

Initial Brief of the Office of the Public Counsel

Issue 1: Should the Public Service Commission address OMC’s cashout imbalance by authorizing/directing SNGMO to track and defer the imbalance as a regulatory asset for recovery in SNGMO’s next general rate proceeding?

The Office of the Public Counsel (“Public Counsel”) urges the Commission to deny Ozarks Medical Center d/b/a Ozarks Healthcare’s (“OMC”) deferral request. OMC requests a deferral to require other customers to pay its bill, which is not an issue that alleges Summit Natural Gas of Missouri, Inc. (“Summit”) violated any law, rule, tariff, or order, as required by Section 386.390 RSMo. OMC requests relief based on OMC’s claim that the charges are unreasonably high - a claim prohibited by Section 386.390 RSMo. In addition, Summit’s Commission-approved tariff prohibits the relief OMC seeks in that the tariff clearly establishes OMC’s responsibility for its gas usage. Forcing other customers to pay OMC’s bill would also violate Sections 393.130 and 393.140 RSMo because it would result in rates that are discriminatory, preferential, and prejudicial.

a. OMC Lacks Standing Under 386.390

OMC filed this complaint pursuant to Section 386.390 RSMo, which states in part, that any corporation may file a complaint:

“...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 subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission;...”

OMC's Complaint alleges Summit *“is failing to comply with its tariff and Public Service Commission (“Commission”) rule by demanding that OMC pay over \$478,000 in unspecified and unsupported charges...”*¹ OMC's alleged tariff and rule violation is based on OMC's claim that it *“disputes that this charge accurately represents SNGMO's cost to serve OMC during Winter Storm Uri.”*²

Despite OMC's assertions in its Complaint, Issue 1 does not raise the accuracy of the bill or the violation of any tariff, rule, statute, or order as an issue.³ OMC's Issue 1 argument is essentially that the bill is unreasonably high, and for this reason, OMC requests the Commission defer and incorporate the bill into rates paid by all other customers.⁴ Section 386.390 RSMo, however,

¹ Complaint, filed December 10, 2021, Case No. GC-2021-0158, Electronic Filing Information System (“EFIS”) document No. 1, p. 1.

² *Id.* p. 5.

³ List of Issues, Order of Witnesses, and Order of Opening Statements and Cross-Examination, May 13, 2022, Case No. GC-2021-0158, EFIS No. 26, p. 1.

⁴ Exhibit 100, Direct Testimony of Josh Reeves, Case No. GC-2021-0158, p. 6, (“I was shocked when I saw this figure, and am frankly still unsure how that is reasonable. SNGMO attributed \$434,204.90 of the bill to so-called “Imbalance Cashout.” This was beyond my expectation given that OMC's gas bill is normally \$15,000 to \$20,000 a month. Given this discrepancy between normal billing and what OMC was assessed, I do not believe OMC's bill is reasonable or accurately reflects SNGMO's cost to serve

prohibits the Commission from entertaining this relief because OMC lacks the legal standing to raise this claim. Section 386.390, states in part:

...no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

If this were a proper complaint brought pursuant to 386.390 challenging the lawfulness of Summit's billing, the relief sought would be a correction to OMC's bill, not a request for other homes and businesses to pay OMC's bill. Since the relief sought, the subsidization of its gas usage, is solely based on a claim the bill is unreasonably high, the Commission should deny this relief because Issue 1 is not properly before the Commission under Section 386.390 RSMo.

b. Summit's Tariff Prohibits Recovery from Sales Customers

If the Commission does not deny the AAO because Issue 1 is improper under Section 386.390, the Commission should deny the relief requested under Issue 1 because OMC's requested subsidization would violate the terms of Summit's tariff, which provides the responsibility for paying a transportation customer's imbalance, as partly set forth below:

Billing shall also include any other charges incurred, and any transmission and distribution losses incurred by company from other parties for the transportation of the gas to the Shipper, including, but

OMC."); OMC's Position Statement, p.2, also states that OMC "maintains that it is unreasonable for SNGMO to expect a rural healthcare provider to pay approximately \$500,000 or fear losing service."

not limited to, supplier transportation and gathering charges, overrun penalties, balancing charges, and any governmental fees or taxes incurred by the Company on behalf of the Shipper.

Any penalties or other charges incurred by the Company related to the transportation of a customer's natural gas before its delivery to the Company's City gate **will be charged to the individual customer who causes such penalties or other charges**. The Company shall credit any revenues collected from Transportation customers (including schools) for any cashouts, imbalances, penalties, overrun charges and other similar charges to be used in the development of the Actual Cost Adjustment ("ACA") factor of the Company's Purchased Gas Adjustment ("PGA") Clause and **will not be recoverable from sales customers**.⁵

These terms make obvious OMC's obligation to pay the charges in question, and clearly indicates that sales customers are *not* to pay for OMC's imbalances.⁶

c. OMC's Requested AAO Would Violate 393.130 RSMo

OMC's witness, Mr. Reeves, testified, "I understand that a deferral of OMC's disputed cashout debt would shift the costs onto other customers..."⁷ OMC's clear intent with the requested AAO is to relieve it of its legal obligation to

⁵ Summit's Transportation Service tariff, P.S.C. MO No. 3, Original Sheet No. 30, applicable to All Towns and Communities within SNG-MO Certificated Service Areas (emphasis added); See also Sheet No. 34, "All resulting Month End Imbalance Volumes shall be cured through Company's Cashout Provisions. Cashout shall be the sole means of correcting month end imbalances so that Shipper's imbalance for the subsequent Delivery Month shall begin at 0%."

⁶ "A schedule of rates and charges filed and published in accordance with the foregoing provisions acquires the force and effect of law; and as such it is binding upon both the corporation filing it and the public which it serves. It may be modified or changed only by a new or supplementary schedule, filed voluntarily, or by order of the Commission." *State ex rel. St. Louis County Gas Co. v. Public Service Com.*, 286 S.W. 84, 86 (Mo. 1926)

⁷ Ex. 101, Reeves Surrebuttal, p. 5.

pay for the gas it used and require all other Summit customers to pay the bill.

Such relief would violate Section 393.130 RSMo, which states in part:

1. ...All charges made or demanded by any such gas corporation...for gas...shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.
2. No gas corporation...shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas...or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.
3. No gas corporation...shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Requiring Summit's other customers to pay for OMC's gas usage would violate Subsection 1 of Section 393.130 RSMo because it would require an "unjust and unreasonable" charge on all other gas customers that bear no responsibility for the gas usage incurred by OMC.

Requiring Summit's other customers to pay for OMC's gas usage would also violate Subsection 2 of Section 393.130 RSMo because it would constitute a special rate, rebate, drawback or other device used for the purpose of allowing

OMC to not pay for its gas usage while requiring all other transportation and all other sale customers to pay for their usage according to the terms of the tariff.

Lastly, requiring Summit's other customers to pay for OMC's gas usage would also violate Subsection 3 of Section 393.130 RSMo because it would provide an unreasonable preference for OMC over all other customers that are already paying for their own increased gas bills due to Storm Uri, and it would force an unreasonable prejudice and disadvantage upon all other customers required to pay for OMC's Storm Uri gas usage.⁸

Missouri's courts interpret 393.130 RSMo to prohibit the relief requested. In 2005, the Missouri Court of Appeals opined:

Under section 393.130.3, water corporations are forbidden from granting undue preference or advantage to any ratepayer, just as they may not unduly or unreasonably prejudice or disadvantage any ratepayer in the provision of services. Hence, the Commission lacks statutory authority to approve discriminatory rates, and its approval of the rates herein, required Joplin ratepayers to pay significantly more than the actual cost of service in that district for the express purpose of subsidizing the services provided in other Company districts that were only paying for the actual cost of service arguably exceeded its authority.⁹

The Missouri Supreme Court concluded that customers are to pay no more than the lawfully established rate.

If a public utility has collected more from anyone than the full amount of the rate established by the commission for the service rendered,

⁸ "The purpose of the Public Service Commission Law, Sections 386 through 394, RSMo 1978, is to secure equality in service in rates for all who need or desire these services and who are similarly situated." *Reinhold v. Fee Fee Trunk Sewer, Inc.*, 664 S.W.2d 599, 604 (Mo. App. 1984), *citing May Department Stores Co. v. Union Electric Light and Power Co.*, 107 S.W.2d 41, 49 (1937)

⁹ *State ex rel. City of Joplin v. PSC of Mo.*, 186 S.W.3d 290, 296 (Mo. App. 2005)

such customer may recover the excess by appropriate action in the courts upon proof of a lawfully established rate applicable to such service and proof that more has been collected.¹⁰

d. OMC's Requested AAO Would Violate 393.140 RSMo

Section 393.140(5) RSMo prohibits the Commission from authorizing rates that are "unjust, unreasonable, unjustly discriminatory or unduly preferential."

Section 393.140(11) RSMo states in part:

No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

Since the sole purpose of the AAO requested by OMC is to pass its charges onto other customers, such relief should be denied because it would be premised upon an ultimate result that is not permitted by Section 393.140(5) and (11) RSMo. The Missouri Supreme Court explained:

Once such rules and regulations are filed and approved, then the public utility is prohibited by law from changing them without filing the new rule with the commission, and it is also prohibited from extending "to any person or corporation * * * any privilege * * * except such as are regularly and uniformly extended to all persons and corporations under like circumstances."¹¹

¹⁰ *May Dep't Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 332, 107 S.W.2d 41, 58 (Mo. 1937).

¹¹ *Fields v. Missouri Power & Light Co.*, 374 S.W.2d 17, 31 (Mo. 1963)

There is no question that OMC provides a valuable service to the communities it serves. The same holds true for most businesses and services in Summit's territory. Schools, grocery stores, dentists, farms, gas stations, doctors, animal shelters, police, fire departments, restaurants, churches, mechanics, daycares, etc. all provide services valued by the communities they serve, but providing value to the community does not justify having their bills subsidized by all other Summit customers. Likewise, the financial strain of Winter Storm Uri was not specific to OMC, and negatively affected low-income and fixed-income households across Summit's territory – customers that OMC now wants to pay its bill. In addition to being unlawful as explained above, there is simply no reasonable justification for the relief requested by OMC.

Public Counsel urges the Commission to deny the relief requested by OMC under Issue 1 because the relief sought is unlawful and unreasonable.

Issue 2: Should the Public Service Commission order SNGMO to address OMC's cashout imbalance through a separate payment arrangement? If so, what should the length and payment terms be for any ordered payment arrangement?

Similar to Issue 1, the question posed by Issue 2 does not raise the question of whether Summit violated any law, rule, tariff, or order. As explained above, Section 386.390 limits OMC to complaints:

“...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 subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission;...”

Issue 2 appears to raise a question of reasonableness – whether the bill is so unreasonably high that the Commission should order Summit to offer an extended payment arrangement. If the Commission concludes that the basis of this issue is a challenge to the reasonableness of OMC’s bill, the relief requested is not permitted under Section 386.390 RSMo. However, unlike Issue 1, it is possible to consider this issue as a determination of whether Summit violated its tariff or a Commission rule regarding a payment arrangement.

Payment plan arrangements for transportation customers is addressed by Summit’s tariff, P.S.C. MO No. 3, Original Sheet No. 37, Transportation Service, which states in part, “*Company reserves the right to, and at its sole discretion, enter into separate Imbalance Agreements with Shipper(s) that take into consideration special circumstances.*” This language clearly establishes that Summit reserves the right to determine whether to enter into a payment arrangement with a transportation customer. Summit has not violated its tariff by not offering a payment arrangement acceptable to OMC.

In addition, Public Counsel is aware of no Commission rule or statute that would require Summit to enter into a payment arrangement with OMC. Without a violation of any law, tariff, or order, there is no relief available to OMC under Section 386.390 RSMo because the basis for any other determination by the Commission requiring Summit to enter into a payment arrangement with OMC would be based upon the reasonableness of OMC’s bill.

Public Counsel previously indicated its support for a payment arrangement between Summit and OMC that would allow OMC to pay its bill over a number of

years. Public Counsel still supports that outcome. However, considering the limitations on complaints under Section 386.390 RSMo, and the terms of Summit's tariff, Public Counsel questions whether a legal basis exists for ordering this relief. Fortunately, during the evidentiary hearing and in the position statements, all parties appear to agree that a five-year payment plan term is acceptable. Accordingly, there does not appear to be disagreement over the length of a payment arrangement between Summit and OMC.

Disagreement likely still exists between Summit and OMC regarding an appropriate interest rate, if any, to apply to OMC's bill if the parties agree to an extended payment arrangement. Public Counsel takes no position at this time on the interest rate applicable to OMC;¹² however, OMC's payments should include any interest paid by Summit's sales customers for OMC's gas usage through the Purchased Gas Adjustment (PGA) mechanism to ensure sales customers are made whole.

Respectfully submitted,

/s/ Marc Poston

Marc Poston (Mo Bar #45722)
Missouri Office of Public Counsel
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5318
(573) 751-5562 FAX
marc.poston@opc.mo.gov

¹² An appropriate interest rate to apply to Summit's Storm Uri gas costs is an issue before the Commission in Summit's PGA/ACA review, Case No. GR-2022-0122, wherein Public Counsel submitted testimony in that case regarding an appropriate rate to apply to a five-year recovery of Storm Uri gas costs, however, that evidence is not before the Commission in this complaint case.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 17th day of June, 2022.

/s/ Marc Poston
