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

Ozarks Medical Center d/b/a Ozarks Healthcare,
Complainant,
v.
Summit Natural Gas of Missouri, Inc.,
Respondent.

Case No. GC-2022-0158

INITIAL BRIEF OF STAFF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Initial Brief of Staff*, respectfully states:

INTRODUCTION:

On December 10, 2021, Ozarks Medical Center d/b/a Ozarks Healthcare (“OMC”) filed a *Complaint* against Summit Natural Gas of Missouri, Inc. (“SNGMO”), pursuant to Section 386.390 RSMo., 20 CSR 4240-2.070 and 20 CSR 4240.2.080(14), and alleged, among other things, that SNGMO failed to comply with its tariff and Commission Rule by demanding that OMC pay over \$478,000 in charges.¹ OMC also stated that it and SNGMO had communicated regarding the issue of SNGMO demanding payment from OMC and had discussed payment terms but that those two parties were unable to agree on a full resolution.² OMC requested the Commission order SNGMO to defer the amount

¹ *Complaint*, paragraph 1, filed December 10, 2021, Case No. GC-2022-0158.

² *Id.* ¶ 2.

in question to a regulatory asset as an accounting authority order (“AAO”).³ Alternatively, OMC asked the Commission to order SNGMO to allow OMC to pay the amount in question through a separate payment agreement whereby OMC will pay 10% of the demanded charge within thirty days following a Commission order and pay the remainder in equal installments over a ten-year period.⁴

SNGMO filed its *Answer and Motion to Dismiss* on January 12, 2022, with the Commission denying the Motion to Dismiss in its order issued on March 9, 2022. Also on March 9, 2022, the Commission issued its *Order Setting Procedural Schedule*. The Commission held an evidentiary hearing in this matter on May 24, 2022, where all contested issues were heard and evidence was offered and admitted into the record.

The Commission issued an order on May 25, 2022 (*Post-Hearing Brief Order*), and directed all parties to address the Commission’s authority to grant an AAO or order a payment plan in post hearing briefs. Staff addresses the issues contained in the *List of Issues, Order of Witnesses, and Order of Opening Statements and Cross-Examination* filed on May 13, 2022, and the issues directed by the Commission in its *Post-Hearing Brief Order* in the Argument section below.

Argument

Commission Authority, Generally

The Commission is an administrative body created by statute and has only such powers as are expressly conferred by statute.⁵ The Commission may promulgate rules

³ Id. ¶ 3.

⁴ Id. at pp. 9-10.

⁵ *State ex rel. AG Processing Inc. v. Thompson*, 100 S.W.3d 915, 919 (Mo. App., W.D. 2003).

and such rules have the force and effect of law.⁶ A tariff is a document that lists a public utility's services and the rates for those services.⁷ Like a duly-promulgated administrative rule, a tariff has the force and effect of law and is binding on the utility, the public, and the Commission.⁸ This is the "Filed Rate Doctrine" or "Filed Tariff Doctrine".⁹ Missouri courts have uniformly applied the Filed Rate Doctrine to decisions of the Commission.¹⁰

AAOs

The Commission can "prescribe uniform methods of keeping accounts, records and books to be observed by gas corporations[.]"¹¹ The Commission can also, "after hearing ... prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."¹² Commission Rule 20 CSR 4240-40.040(1) requires gas corporations to keep all accounts in conformity with the Uniform System of Accounts ("USOA") as prescribed by the Federal Energy Regulatory Commission ("FERC") and published at 18 CFR Part 201 (1992).

USOA, General Instruction No. 7, specifically states:

It is the intent that the net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments....Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which

⁶ *State ex rel. Martin-Erb v. Missouri Com'n on Human Rights*, 77 S.W.3d 600, 607 (Mo. banc 2002).

⁷ *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 337 (Mo. App., W.D. 2006) (quoting *Bauer v. Sw. Bell Tel. Co.*, 958 S.W.2d 568, 570 (Mo. [sic] App., W.D. 1997)); *Public Service Com'n of State v. Missouri Gas Energy*, 388 S.W.3d 221, 227 (Mo. App., W.D. 2012).

⁸ *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251-252, 71 S.Ct. 692, 695, 95 L.Ed. 912 (1951).

⁹ *Id.*

¹⁰ see, e.g., *State ex rel. AG Processing, Inc. v. Public Service Commission*, 311 S.W.3d 361 (Mo. App., W.D. 2010); *Bauer v. Southwestern Bell Tel. Co.*, 958 S.W.2d 568 (Mo. App., E.D. 1997).

¹¹ Section 393.140(4) RSMo.

¹² Section 393.140(8) RSMo.

would not reasonably be expected to recur in the foreseeable future.

The Uniform System of Accounts defines “extraordinary items” as:

[t]hose items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company...Accordingly, they will be events and transactions of significant effect which would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business...¹³

Consistent with the guidance found in General Instruction No. 7 of the USOA, the Commission has typically maintained a policy of limiting AAOs to costs associated with extraordinary events.¹⁴ AAOs have normally been used to allow utilities to capture certain unanticipated costs that have not been included in ongoing rate levels.¹⁵

An AAO simply gives the utility an opportunity to obtain rate recovery of the deferred item in the future.¹⁶ Furthermore, the Missouri Court of Appeals has stated that there is a distinction between granting of deferral authority for certain costs and subsequent rate treatment of the costs.

The whole idea of AAOs is to defer a final decision on current extraordinary costs until a rate case is in order. At the rate case, the utility is allowed to make a case that the deferred costs should be included, but again there is no authority for the proposition put forth here that the PSC is bound by the AAO terms.¹⁷

¹³ *State ex. rel. Office of the Pub. Counsel v. Pub. Serv. Comm'n of Mo.*, 858 S.W.2d 806, 810 (Mo. App. 1993).

¹⁴ Ex. 301, p. 3.

¹⁵ *Id.* at p. 4.

¹⁶ *Id.*

¹⁷ *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d. 434, 438 (Mo. App. W.D. 1998).

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?

No. Staff recommends the Commission deny OMC’s request that the Commission authorize, or order, SNGMO to track and defer, in an AAO, OMC’s unpaid bill.¹⁸ AAOs have usually been used in Missouri to allow utilities to capture certain unanticipated costs that have not been included in ongoing rate levels.¹⁹ Historically, the Commission has authorized AAOs when the costs in question were associated with an event that is extraordinary, unusual or unique in nature and not recurring.²⁰ Typically, the costs have also been material.²¹ The Commission, to Staff’s knowledge, has never authorized an AAO for the balance of a customer’s unpaid bill.²²

Importantly, the authorization of an AAO is not a guarantee that SNGMO will recover the costs included in an AAO.²³ Recovery is determined in a subsequent SNGMO general rate case. In its pre-filed testimony, OMC has clearly asked that in SNGMO’s next general rate case that the deferral (or AAO) with OMC’s bill be paid by all of SNGMO’s retail ratepayers.²⁴ Conceptually, Staff opposes this,²⁵ but the Commission is not in a

¹⁸ See Ex. 301 P and C.

¹⁹ Id. at p. 4.

²⁰ Id.

²¹ Id.

²² Tr. Vol 2, pp. 130-131, Staff Counsel’s question to Staff witness Kimberly Bolin. “Q: Ms. Bolin, you were asked a question about staff’s opposition to an AAO. In following up on that, from your knowledge of commission authorized AAOs, has there ever been one granted for a particular customer’s bill? A: Not in – not since I’ve been doing this, and not in any research that I have done.”

²³ Id.

²⁴ Ex. 100, p. 7.

²⁵ Tr. Vol. 2, p. 129, Chairman Silvey’s questions to Staff witness Kimberly Bolin. “Q: So if I’m understanding correctly, staff’s opposition to the AAO is if we allowed future recovery, it would then be spread to other customers who had no part or responsibility for the decision? A: That is correct. Q: And if we were to restrict recovery simply to other transportation customers, the effect of that would be other transportation customers are now paying for the decision of OMC and their risk management, as opposed to their own risk management; is that correct? A: That is correct. Q: So essentially others would be forced to pay for the decisions of OMC that they had no input in in either of those scenarios; is that correct? A: That is correct.”

position to make that determination in this case. Instead, what would happen is in SNGMO's next general rate case the costs of OMC's unpaid bill, should the Commission decide they are appropriate for recovery, will have to be allocated. Given that it is not possible in a rate case to allocate a specific cost to a particular customer and therefore charge only that specific customer, in all likelihood, the costs of OMC's unpaid bill would have to be allocated to all customers within the transportation class, which OMC is a member of, or possibly even allocated to all of SNGMO's customer classes.

In short, AAOs deviate from the Commission's general ratemaking methodology, and because of this, Staff recommends the Commission only utilize AAOs in limited circumstances.²⁶ While the Storm Uri event itself was extraordinary, OMC choosing to take on the risk of being a transportation customer and further being unable to minimize its cashout imbalances is not an occurrence Staff recommends should warrant the use of an AAO.²⁷

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?

As discussed above, and briefly again below in Issue 3, the Commission likely does not have the authority in this instance to order SNGMO to enter into a payment arrangement with the terms requested by OMC. Staff notes that a payment arrangement acceptable to all parties is the ideal solution, but as noted in the *Complaint*, parties' pre-filed testimony, and statements and testimony at the evidentiary hearing, parties have been unable to agree on mutually acceptable payment terms to resolve this matter.

²⁶ See Ex. 301 P and C.

²⁷ *Id.*

Issue (3): The Commission’s authority to grant an AAO or order a payment plan.

The Commission likely has the authority to grant an AAO in this instance. There is a basis in statute, Commission rule, and recognition by reviewing Courts for the Commission to grant AAOs. However, the question before the Commission is ***should*** the Commission grant an AAO. To this question, Staff believes the appropriate answer is “No.” Staff does not believe the circumstances of OMC’s unpaid bill warrant the use of an AAO.

The Commission likely does not have the authority to order a payment plan in this instance. Counsel for OMC cites SNGMO’s Tariff Sheet No. 37 arguing that SNGMO’s tariff provides that cashout imbalances may be addressed through agreements that consider “special circumstances”.²⁸ Further, OMC’s counsel asks that the Commission use its authority to interpret and apply tariff provisions.²⁹ Staff agrees that the Commission should use its authority to interpret and apply SNGMO’s tariff provision, but importantly, the actual language of Tariff Sheet No. 37, quoted in part below, does not support OMC’s request.

Company reserves the right to, and at its sole discretion, enter into separate Imbalance Agreements with Shipper(s) that take into consideration special circumstances.³⁰

²⁸ See Ozarks Medical Center d/b/a Ozarks Healthcare’s Position Statement, p. 8, referring to Ex. 100, Schedule JR-2, Tariff Sheet No. 7.

²⁹ See Id. p. 8., referring to *Union Elec. Co.*, 399 S.W.3d at 477.

³⁰ Ex. 100, Schedule JR-2.

The plain language is clear that it is within SNGMO's sole discretion as to when and whether it will enter into separate payment agreements. Further, Staff's review of SNGMO's other tariff provisions found no provision the Commission could rely upon to order a payment plan. Further, the Commission has not promulgated any rules requiring utilities to enter into payment plans with natural gas transportation customers, nor does any such statute exist with such a requirement.

Additionally, SNGMO's tariff addresses a transportation natural gas customer's imbalance between its use of natural gas and the actual delivered amount through its "cashout" provision.³¹ If a transportation customer uses more gas than it delivered to SNGMO's system, then the cashout provision requires a transportation customer to pay for the gas SNGMO must supply.³² This "imbalance" is then reflected in the customer's monthly bill.³³ OMC used 3,693 Dth of natural gas during February 2021 and delivered only 2,413 Dth of natural gas to SNGMO's system during that same month.³⁴ Applying SNGMO's tariff results in OMC being subject to the cashout provision and ultimately results in OMC owing SNGMO.

CONCLUSION

Staff recommends the Commission reject OMC's request for the Commission to order, or authorize, SNGMO to track and defer OMC's unpaid balance. Staff does not believe the circumstances warrant the use of an AAO. Staff maintains that a mutually acceptable payment arrangement is the ideal solution but parties have been unable to

³¹ *Joint Stipulation of Facts*, p. 3, ¶10.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at p. 4, ¶15.

agree on such terms, and notes that the Commission likely cannot order SNGMO to accept a payment plan in this circumstance.

WHEREFORE, Staff submits its *Initial Brief of Staff* for the Commission's information and consideration.

Respectfully Submitted,

/s/ Jamie S. Myers

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all parties and/or counsel of record this 17th day of June, 2022.

/s/ Jamie S. Myers