
**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

REPLY BRIEF OF STAFF

Respectfully Submitted,

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June 27, 2022

**TABLE OF CONTENTS OF
REPLY BRIEF OF STAFF
CASE NO. GC-2022-0158**

INTRODUCTION..... 2

RESPONSE 3

Response (1): The circumstances of OMC’s unpaid bill do not warrant the use of an Accounting Authority Order (AAO). 3

Response (2): A mutually acceptable payment arrangement is the ideal solution but the Commission cannot order SNGMO to accept a payment plan in this circumstance..... 5

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COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and submits the following *Reply Brief of Staff* in response to the initial briefs of the Ozarks Medical Center d/b/a Ozarks Healthcare (“OMC”), Summit Natural Gas of Missouri, Inc. (“SNGMO”), and the Office of the Public Counsel (“OPC”):

INTRODUCTION

The purpose of a Reply Brief is for a party to respond to the opposing arguments made by the other parties to a proceeding. Rather than replying to every individual statement made by the other parties in their initial briefs, having presented and argued its positions in its *Initial Brief of Staff*, Staff is limiting its replies to those matters which Staff believes will most aid the Commission in its determinations. Therefore, the failure of this *Reply Brief of Staff* to address any matter raised in the initial briefs of the other parties should not be construed as agreement in any way unless otherwise stated herein.

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.¹ If a transportation customer uses more gas than it delivered to SNGMO's system, the cashout provision requires a transportation customer to pay for the gas SNGMO must supply.² 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.³ Applying SNGMO's tariff results in OMC being subject to the cashout provision and ultimately results in OMC owing SNGMO.

Staff, SNGMO, and OPC all recommend the Commission deny OMC's request for the Commission to order, or authorize, SNGMO to track and defer OMC's unpaid balance.⁴ Staff, SNGMO, and OPC all also acknowledge that the Commission likely cannot order SNGMO to accept a payment plan, like the one OMC is requesting, in this circumstance.⁵

RESPONSE

Response (1): The circumstances of OMC's unpaid bill do not warrant the use of an Accounting Authority Order (AAO).

In its initial brief OMC states that “[a]n AAO is warranted in this instance to provide a means for SNGMO to seek recovery, while permitting Ozarks [or OMC] to maintain operations without fear of a service disconnection or curtailment.”⁶ However, Staff maintains that when considering the full circumstances it is not appropriate for the Commission to order an AAO for OMC's unpaid bill.

¹ *Joint Stipulation of Facts*, p. 3, ¶10.

² *Id.*

³ *Id.* at p. 4, ¶ 15.

⁴ See *Initial Brief of Staff; Summit Natural Gas of Missouri, Inc.'s Initial Brief; Initial Brief of the Office of the Public Counsel*; all filed on June 17, 2022.

⁵ *Id.*

⁶ *Ozarks Medical Center D/B/A Ozarks Healthcare's Initial Post-Hearing Brief*, p. 7.

Staff reiterates that AAOs deviate from the Commission’s general ratemaking methodology, and because of this, Staff recommends the Commission only utilize AAOs in limited circumstances.⁷ Importantly, OMC knowingly made a choice to become transportation customer of SNGMO that utilizes a gas marketer. There are certain risks with becoming a transportation customer as “transportation customers must manage their own gas supply needs and must secure natural gas supply directly from a pipeline supplier or through the use of a marketer who secures supply from a pipeline supplier on behalf of the transportation customer. [I]t is the transportation service customer’s obligation to nominate appropriate amounts of gas supply so that there is neither an over, nor under, supply of natural gas on SNGMO’s system for that customer to use.”⁸ OMC was willing to take on this risk because it believed it could achieve cost savings.⁹ OMC also consumed more natural gas during the month of February 2021 than it provided to SNGMO’s system during that same month.¹⁰

In essence, OMC willingly availed itself of the transportation provision of SNGMO’s tariff but now argues that it should be shielded from the consequences of its decision and that the Commission should order an AAO for its unpaid balance. Staff disagrees and maintains that while the Storm Uri even itself was extraordinary, OMC choosing to take on this risk of being a transportation customer and further being unable to minimize is

⁷ See Ex. 301 P and C.

⁸ Ex. 200, p. 5.

⁹ Tr. Vol. 2, p. 79. : “Mr. Reeves, why did Ozarks [OMC] elect to become a transportation customer? THE WITNESS: Primarily because of costs. That’s the driving factor of it. The rates provided by the market are typically less than we would pay if we were a direct customer of Summit [SNGMO].”

¹⁰ *Joint Stipulation of Facts*, p. 4, ¶ 15.

cashout imbalances is not an occurrence Staff recommends should warrant the use of an AAO.¹¹

Response (2): A mutually acceptable payment arrangement is the ideal solution but the Commission cannot order SNGMO to accept a payment plan in this circumstance.

OMC states in its initial brief that its alternative request is that the Commission direct (or order) SNGMO to enter into a payment arrangement to address the assessed cashout debt per SNGMO's tariff.¹² OMC relies on the language in SNGMO's Tariff Sheet No. 37 and the Commission's promulgation of a Cold Weather Rule that allows for a payment plan for residential customers in its argument that the Commission can order SNGMO to accept a payment plan.¹³ However, OMC is mistaken in its reliance on both.

SNGMO's Tariff Sheet No. 37, quoted in part below, states:

Company reserves the right to, and at its sole discretion, enter into a separate Imbalance Agreements with Shipper(s) that take into consideration special circumstances.¹⁴

The plain language of this language does not support OMC's position that the Commission can order SNGMO to accept a payment plan on terms SNGMO does not agree with, so OMC takes its argument a step further and says the Commission can decide what constitutes "special circumstances". Admittedly, "special circumstances" does not appear to be defined anywhere in SNGMO's tariff, but SNGMO's witness testified that SNGMO has considered "special circumstances" to only constitute instances

¹¹ See Ex. 301 P and C.

¹² *Ozarks Medical Center D/B/A Ozarks Healthcare's Initial Post-Hearing Brief*, p. 17.

¹³ See *Id* at pp. 17-21.

¹⁴ Ex. 100, Schedule JR-2.

where there have been meter failures or the inability to measure proper gas flow because of the failure of a regulator or telemetry device.¹⁵ The tariff language allows SNGMO the sole discretion to enter into payment arrangements for imbalances and SNGMO's practice of only exercising this discretion in instances of equipment failures or other inability to measure gas does not appear to be an abuse of its discretion. As such, the Commission cannot use the language in Tariff Sheet No. 37 to order SNGMO to accept a payment plan.

OMC is also incorrect in its reliance on the Commission having promulgated a Cold Weather Rule that allows for a payment plan for certain residential customers under certain circumstances as grounds that the Commission also has the power in this instance to order SNGMO to accept a payment plan from OMC. Importantly, the Cold Weather Rule is a rule that was promulgated pursuant to the Commission's rulemaking authority and promulgation of rules requires compliance with the rulemaking procedures specified in Section 536.021. RSMo. OMC, therefore, conflates the Commission rulemaking powers as an "implicit power" when it argues that the existence of a payment plan as part of the Commission's promulgated Cold Weather Rule means the Commission can order SNGMO to accept a payment plan.

Staff agrees with the Public Counsel's statements in its initial brief that all parties appear to agree that a five-year payment plan term is acceptable but that there does appear that disagreement likely exists regarding an appropriate interest rate, if any, to apply to such a payment plan.¹⁶ As the Commission likely lacks the ability to order

¹⁵ Tr. Vol. 2, pp. 158-159.

¹⁶ *Initial Brief of the Office of the Public Counsel*, pp. 9-10.

SNGMO to accept a payment plan, it would be beneficial to all parties to continue to explore a mutually agreeable payment arrangement.

WHEREFORE, for the reasons set forth herein and in the *Initial Brief of Staff*, Staff requests that the Commission will issue an order finding in Staff's favor on each issue in this case.

Respectfully Submitted,

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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 27th day of June, 2022.

/s/ Jamie S. Myers