

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 9th day of March, 2022.

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

File No. GC-2022-0158

ORDER DENYING MOTION TO DISMISS

Issue Date: March 9, 2022

Effective Date: March 9, 2022

On December 10, 2021, Ozarks Medical Center d/b/a Ozarks Healthcare (OMC) filed a complaint with the Missouri Public Service Commission (Commission) against Summit Natural Gas of Missouri, Inc. (SNGMO). On January 12, 2022, SNGMO filed its answer and a motion to dismiss. On February 1, 2022, OMC filed its response to the motion to dismiss. No other party responded to the motion to dismiss.

OMC's complaint involves the April 2021 monthly gas bill it received due to Winter Storm Uri for \$463,366.84. OMC argues that SNGMO's tariff allows it to enter into imbalance payment agreements to address cashout requirements that take special circumstances into consideration.¹ OMC disputes that the monthly charge incurred in April 2021 accurately represents SNGMO's cost to serve OMC during Winter Storm Uri.

¹ *Complaint*, filed December 10, 2021, para. 22.

As its first requested remedy, OMC requests the Commission order SNGMO to defer the demanded amount to a regulatory asset as an accounting authority order (AAO).² The second requested remedy is that the Commission order SNGMO to grant leniency as SNGMO's tariff allows for leniency for paying cashout imbalances in special circumstances.³ OMC argues that SNGMO is impermissibly denying the special circumstances payment plan, authorized by SNGMO's Tariff Sheet 37.

SNGMO's motion to dismiss is twofold. First, the motion argues that OMC has failed to specify a violation of any tariff, statute, rule, order, or decision.⁴ Second, the motion argues that OMC failed to state a claim upon which the Commission has authority to grant the relief sought.⁵ SNGMO states that the remedies requested by OMC are not available in the circumstances described.

OMC argues the Commission should deny the motion to dismiss because OMC's complaint adequately raises two bases for relief – the first being the Commission authority to order AAOs, and the second being the Commission's authority to enforce a tariff.

In ruling on a motion to dismiss, the Commission merely considers the adequacy of the complaint.⁶ The Commission assumes that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.⁷ Further, “[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a

² *Complaint*, filed December 10, 2021, para. 38.

³ *Complaint*, filed December 10, 2021, paras. 49 and 52, and Prayer, b.

⁴ *Answer and Motion to Dismiss*, filed January 12, 2022, para 45.

⁵ *Answer and Motion to Dismiss*, filed January 12, 2022, para 46.

⁶ *State ex rel. Laclede Gas Company v., Public Service Com'n of Missouri*, 392 S.W. 3d 24, 38 (Mo. App W.D. 2012).

⁷ *Foremost Ins. Co. v. Public Service Com'n of Missouri*, 985 S.W. 2d 793, 796 (Mo. App. W.D. 1998).

complaint or petition ‘fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.’”⁸ Section 386.390(1), RSMo (Supp. 2021),

gives the Commission jurisdiction to hear complaints about:

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 has alleged a violation of a tariff. In reviewing a motion to dismiss the Commission may not look into the facts, and must determine if the complaint presents some matter for decision which falls within the Commission’s jurisdiction. Enforcement of tariff provisions clearly falls within the jurisdiction of the Commission, and OMC has alleged a violation of a tariff. For that reason, the Commission will deny the motion to dismiss, and allow the complaint to proceed.

THE COMMISSION ORDERS THAT:

1. SNGMO’s motion to dismiss is denied.
2. This order shall be effective in when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads 'Morris L. Woodruff'.

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Hatcher, Regulatory Law Judge

⁸ *State ex rel. Chicago B. & Q. R. Co. v. Public Service Commission*, 334 S.W.2d 54, 58 (Mo. 1960), quoting, *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission*, 308 Mo. 359, 372, 272 S.W. 957, 960 (Mo. 1925).


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 9th day of March, 2022.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 9, 2022

File/Case No. GC-2022-0158

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.