

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

Ozarks Medical Center d/b/a Ozarks Healthcare,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2022-0158
)	
Summit Natural Gas of Missouri, Inc.,)	
)	
Respondent.)	

**OZARKS MEDICAL CENTER D/B/A OZARKS HEALTHCARE’S RESPONSE TO
MOTION TO DISMISS OF SUMMIT NATURAL GAS OF MISSOURI, INC.**

Ozarks Medical Center d/b/a Ozarks Health Care (“OMC”) responds to Summit Natural Gas of Missouri, Inc.’s (“SNGMO”) Motion to Dismiss as follows:

1. SNGMO pleads that OMC has failed to state a claim upon which relief may be granted. The party petitioning for a motion to dismiss on such a basis “bears the burden of establishing that the elements pled by the plaintiff fail to state a cause of action.” *Weicht v. Suburban Newspapers*, 32 S.W.3d 592 (Mo. App. E.D. 2000). SNGMO’s Motion to Dismiss encompasses two paragraphs arguing that OMC has not specified a violation of law or sought legally-possible remedies.

2. OMC’s Complaint primarily seeks an Accounting Authority Order to track and defer an extraordinary expense: a remedy recognized by Missouri courts. *E.g., Off. of the Pub. Counsel v. Evergy Missouri West, Inc.*, 609 S.W.3d 857, 867-70 (Mo. App. W.D. 2020); *Office of Public Counsel v. Public Service Commission*, 858 S.W.2d 806 (Mo. App. W.D. 1993). OMC’s secondary claim for relief alleges that SNGMO is impermissibly denying OMC a “special circumstances” payment plan that it can sustain as provided by SNGMO’s Tariff, specifically referencing Tariff Sheet 37. Complaint, GC-2022-0158 ¶¶ 49-51.

3. A Motion to Dismiss for failing to state a claim “is solely a test of the adequacy of the plaintiff’s petition.” *Gettings v. Farr*, 41 S.W.3d 539 (Mo. App. E.D. 2001) (citing *Murphy v. AA Mathews, A Division of CRS Group Engineers, Inc.*, 841 S.W.2d 671, 672 (Mo. banc 1992)). The Commission should deny SNGMO’s Motion to dismiss because OMC’s Complaint adequately raises two bases for relief.

Wherefore, OMC prays that the Commission deny SNGMO’s Motion to Dismiss.

Respectively submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically on all counsel of record on this 1st day of February, 2022.

/s/ Caleb Hall