

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

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

SUMMIT NATURAL GAS OF MISSOURI, INC.’S REPLY BRIEF

COMES NOW the Respondent Summit Natural Gas of Missouri, Inc. (“SNGMO” or “Company”) by and through the undersigned counsel, and as its *Reply Brief*, states as follows to the Missouri Public Service Commission (“Commission”):

This *Reply Brief* will address issues raised in Complainant’s *Ozarks Medical Center D/B/A Ozarks Healthcare’s Initial Post-Hearing Brief*. SNGMO will not respond to the Initial Briefs of Staff of the Commission and the Office of the Public Counsel, as they are substantially similar to SNGMO’s in that while they ultimately conclude that the Commission has general authority to issue an accounting authority order (“AAO”), they agree that it would be improper under the circumstances of this case, and that no authority exists for the Commission to compel Ozark Medical Center (“OMC”) and SNGMO to enter into a payment plan.

NO TARIFF VIOLATION

OMC suggests that the Company has “conditioned natural gas service on paying the full amount of an unreasonable bill¹” that “does not accurately reflect the cost of service to OMC

¹ OMC’s *Initial Post-Hearing Brief* p. 1.

during Winter Storm Uri²” and “does not explain how the imbalance cashout was calculated.³” However, nowhere in its *Initial Post-Hearing* Brief, does OMC explain, or even allege, a violation of any statute, rule, tariff, or order or decision by the Company.

Cashouts are a common and reasonable practice for resolving imbalances for both gas corporations and interstate pipelines, and the application of multipliers is a common practice used by gas corporations and interstate pipelines to encourage shippers to balance gas delivered and gas received. These practices and their attendant formulas are contained not in OMC’s monthly transportation service bills from SNGMO, but in the Company’s Commission-approved tariff sheets controlling transportation service⁴. Such tariff sheets are presumptively reasonable pursuant to § 386.270, RSMo, which reads, in its entirety:

All rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter.

(emphasis added).

Therefore, SNGMO’s cashout provisions are prima facie lawful and reasonable. Further, OMC lacks standing to challenge the reasonableness of SNGMO’s tariff provision pursuant to § 386.390, RSMo, which states, in pertinent part:

[N]o 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 alderman 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.

(emphasis added).

² *Id.* at p.8

³ *Id.* at P.7

⁴ P.S.C. MO No. 3 Original Sheet Nos. 25-43C.

SNGMO has followed its tariff provisions in the instant case. OMC points to no violation by SNGMO of these Commission-approved tariffs. Rather, OMC's complaint is, with the most generous reading, perhaps a challenge to the reasonableness of those same tariff provisions, which is an improper basis to bring a complaint before the Commission pursuant to § 386.390, RSMo.

As stated in SNGMO's *Answer* and *Initial Brief*, the Complaint fails to state a claim upon which relief may be granted. A complaint must allege a violation of a "tariff, statute, rule, order, or decision within the Commission's jurisdiction. . . ." 20 CSR 4240-2.070(1); *See also* Section 386.390, RSMo. OMC fails to show a violation of any tariff, statute, rule, order, or decision.

Moreover, "[a] complaint fails to state a claim when, assuming that everything alleged in the complaint is true, the Commission has no authority to grant the relief sought." *Order Dismissing Complaint*, Case No. WC-2017-0251, quoting *Zeller v. Scafe*, 498 S.W.3d 846, 849 (Mo. App., W.D. 2016). The remedies requested in this case are not available in the circumstances described.

ACCOUNTING AUTHORITY ORDER ("AAO")

No party has questioned the Commission's general authority to issue an AAO, nor has any party disputed the fact that Winter Storm Uri was an extraordinary event. SNGMO's opposition to the issuance of an AAO is not based upon those assertions, but rather the fact that an AAO in this situation would necessarily place in jeopardy SNGMO's right to revenues owed under its tariff and that such an arrangement is intrinsically unjust in that the unpaid cashout imbalance of OMC would likely be absorbed by the entirety of SNGMO's ratepaying customer base (or possibly transport customer class) based on the false premises presented by OMC. That is, that those same customers are a part of OMC's area of service and that during Winter Storm Uri, and OMC was

faced with choosing between jeopardizing their patient care or continuing to purchase natural gas subject to the cashout provisions and multipliers provided for in SNGMO's tariffs⁵.

The first premise is addressed in SNGMO's *Initial Brief* where the lack of overlap between OMC's claimed service area and the customers served by SNGMO is discussed.

The second premise ignores the planning and execution that should have been performed by OMC's natural gas marketer. Why this account balancing did not occur is not explained by OMC. However, it need not be because that is an issue between OMC and their natural gas marketer and does not concern SNGMO or the Commission⁶. Similarly, the relief OMC seeks is appropriately found between OMC and its marketer, not between OMC and the Company.

OMC also argues that an AAO would be justified based on its "unique status as a non-profit medical provider⁷." OMC states it is "not like most transportation customers" in that if OMC were made to pay its outstanding cashout imbalance, the diversion of such funds would impact "communal and patient needs⁸" and "jeopardize medical services⁹." However, as Mr. Reeves' testimony reveals, OMC ** [REDACTED]

[REDACTED]

[REDACTED].**¹² As such, it seems unlikely that OMC's ability to provide care for its patients would be imperiled by paying its outstanding balance to SNGMO. Further, OMC chose to be a transportation customer of SNGMO and accepted the risks associated with supplying its own

⁵ OMC's *Initial Post-Hearing Brief*, at 5, 11.

⁶ Ex. 200 (C)

⁷ OMC's *Initial Post-Hearing Brief*, 12-13.

⁸ *Id.*

⁹ *Id.* at 7.

¹⁰ TR (C), p. 90.

¹¹ TR (C), p. 96-97. ** [REDACTED]

[REDACTED]**.

¹² TR (C), p. 103.

natural gas. If OMC finds the provisions of SNGMO's transportation tariffs so onerous, they could have elected to be firm customers instead.

OMC additionally argues that issuing an AAO and distributing its debt among the ratepayers of the public within OMC's service area would not be unduly discriminatory or harmful¹³. OMC predicates this argument on the premise that some modicum of subsidization regularly occurs in ratemaking and advances the argument to the conclusion that rate customers should subsidize OMC for the public welfare of its service area¹⁴. As noted in SNGMO's *Initial Brief*, this argument is severely flawed in that of the six counties in Missouri in which OMC provides medical care, SNGMO provides natural gas service to only three (Douglas, Texas, and Howell Counties)¹⁵.

Additionally, OMC argues that an AAO would "permit SNGMO to recover the disputed cashout debt as part of SNGMO's next general rate case" and that "[t]he AAO therefore both provides relief for SNGMO and resolves the disputed charge for [OMC]¹⁶." While such relief might be agreeable for OMC (if not unfair and unlawful), it would be wholly inadequate for SNGMO, as the Company is only given the *opportunity* to recover these costs with an AAO and would therefore be potentially left with no cash compensation for the amounts it is owed under its tariffs.

Lastly, SNGMO notes that OMC's AAO proposes to shift gas costs from the purchased gas adjustment clause recovery to base rate recovery. This is not consistent with the approach of SNGMO's tariff. SNGMO's Purchased Gas Adjustment Clause tariff sheet states, in pertinent part, "[t]he Purchased Gas Adjustment (PGA) Clause applies to all sales and transportation

¹³ OMC's *Initial Post-Hearing Brief*, pp. 14-16.

¹⁴ *Id.* at 14.

¹⁵ SNGMO's *Initial Brief*, p. 8.

¹⁶ OMC's *Initial Post-Hearing Brief*, p. 16.

services provided under all natural gas rate schedules and contracts¹⁷.” Thus, all natural gas costs must flow through the PGA/ACA. OMC’s AAO proposal would fundamentally change this approach.

COMMISSION ORDERED PAYMENT ARRANGEMENT

In support of its assertion that the Commission has authority to order a payment plan pursuant to SNGMO’s transportation service tariff, OMC claims the same is ambiguous in its terms, and therefore subject to the Commission’s own interpretation.¹⁸ The transportation service tariff provision at issue reads, in pertinent 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.¹⁹”

Black’s Law Dictionary defines “sole discretion” as “an individual’s power to make decisions without anyone else’s advice or consent.²⁰” There is nothing ambiguous about SNGMO’s transportation service tariff and where these decisions lie.

Finally, OMC points to Commission Rule 20 CSR 4240-13.055, the Cold Weather Rule (“CWR”), as evidence that the Commission has authority to order a payment arrangement regardless of SNGMO’s tariff provisions.²¹ The CWR allows for residential firm customers “of limited means to [participate] in a payment agreement.²²” While this may be the case, the current relief sought by OMC can be distinguished from the CWR in that the CWR is a lawfully promulgated Commission Rule, enacted after notice and comment and public hearings, and is applicable to all customers. OMC is not asking for a rulemaking. Rather, OMC is asking the

¹⁷ P.S.C. MO No. 3 Original Sheet No. 50.

¹⁸ OMC’s *Initial Post-Hearing Brief*, p. 18.

¹⁹ P.S.C. MO No. 3 Original Sheet No. 37.

²⁰ 11th Ed. (2019).

²¹ OMC’s *Initial Post-Hearing Brief*, pp. 19-20.

²² *Id.* at 20.

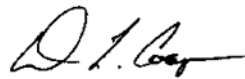
Commission to create from whole cloth, a special one-time, and ultimately discriminatory dispensation that would apply only to OMC and not all transportation customers, much less all of SNGMO's customers. There is no authority to support the assertion that the Commission has latitude to do such.

WHEREFORE, SNGMO respectfully requests that the Commission consider this *Reply Brief* and, thereafter, issue such orders denying OMC's request for either an AAO or mandatory payment arrangement and further finding no basis for OMC's complaint allegations.

Respectfully submitted,

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**ATTORNEYS FOR SUMMIT NATURAL GAS
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 27th day of June 2022, to:

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