

**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

**OZARKS MEDICAL CENTER D/B/A OZARKS HEALTHCARE'S
INITIAL POST-HEARING BRIEF**

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I. Introduction

Ozarks Medical Center d/b/a Ozarks Healthcare (“Ozarks” or the “Hospital”) filed a complaint against Summit Natural Gas of Missouri, Inc. (“SNGMO”) for conditioning the Hospital’s continued natural gas service on paying the full amount of an unreasonable bill. SNGMO has assessed roughly half of a million dollars for one month’s use of natural gas service from February 2021. This demanded amount is extraordinary, far beyond expected costs, and not directly connected to the cost to serve Ozarks. Asking Ozarks to pay this amount in an immediate or near-immediate manner risks the Hospital’s financial security, continued medical services in south-central Missouri, and the Hospital’s access to natural gas. The Missouri Public Service Commission (“Commission”) can avoid these risks, and provide relief for both Ozarks and SNGMO by ordering an accounting authority order (“AAO”) or special circumstances payment arrangement to resolve Ozarks and SNGMO’s dispute.

II. Legal Standard

A movant for a proposition or whomever is attempting to demonstrate the truth of a claim bears the burden of proof.¹ Ozarks alleges that SNGMO threatened to disconnect Ozarks’ natural gas service despite the Hospital contesting its bill and that SNGMO rejected Ozarks’ request for a special circumstances payment plan.² The Hospital in turn requests relief in the form of an AAO under subdivisions (4) and (8) of Section 393.140, RSMo,³ or a special payment arrangement per SNGMO’s tariff and the Commission’s general ratemaking powers.⁴

¹ *Clapper v. Lakin*, 123 S.W.2d 27, 33 (Mo. banc 1938).

² Complaint, GC-2022-0158 ¶¶ 32-36 & 51 (Dec. 10, 2021); *Contra* 20 CSR 4240-13.050.

³ All statutory citations are to the 2021 versions provided by the Revisor of Statutes unless otherwise noted.

⁴ Mo. Rev. Stat. § 386.040.

Section 393.140 enables a party to petition the Commission to “prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.” This Commission may accordingly order SNGMO to account for certain items upon a finding that the requested accounting is justified. The Commission has adopted the Uniform System of Accounts (“USOA”) to guide its determination of when an AAO is appropriate.⁵ The General Instructions for the USOA explains that a public utility’s income should reflect profits and losses during the test period of the most recent general rate case, and that those:

[I]tems 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 considered 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 would not reasonably be expected to recur in the foreseeable future.⁶

Whether any particular event is extraordinary and deserving of an AAO is judged on a “case-by-case basis,” analyzing the specific circumstances of the event in question.⁷ Recording extraordinary items under an AAO per the USOA is not retroactive ratemaking and may therefore be authorized outside of a general rate case proceeding.⁸

Section 386.040, RSMo provides that the Commission may act pursuant to explicit statutory authority and those implicit powers that are “necessary or proper” to carry out the

⁵ 20 CSR 4240-40.040.

⁶ 18 CFR Part 201.

⁷ *Id.*

⁸ *Off. of the Pub. Counsel v. Evergy Missouri West, Inc.*, 609 S.W.3d 857, 870 (Mo. App. W.D. 2020); *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm’n*, 210 S.W.3d 330, 335-36 (Mo. App. W.D. 2006).

Commission’s dues and purpose. “The Commission’s primary function is the regulation of public utilities, and the Commission identifies its principal purpose as serving and protecting ratepayers.”⁹

III. Statement of Facts

A. Background

Ozarks is a keystone institution for Howell County, Missouri and the surrounding community. It provides both vital medical services and employment opportunities for the rural, relatively isolated south-central Missouri region as a non-profit healthcare provider.¹⁰ The vast majority, ** [REDACTED] **, of its patients receive care through government assistance programs such as Medicare and Medicaid.¹¹ It started as “West Plains Memorial Hospital” in 1959 after nearly a decade of community organizing and planning.¹² Recognizing the lack of a modern healthcare facility in their community, the people of Howell County and the surrounding area built Ozarks through bakes sales, pie suppers, and pooled donations.¹³ It originally employed 60 individuals with 42 beds to serve 40,000 people.¹⁴

The Hospital is now a full-service general healthcare facility with over one hundred acute care beds, intensive care services, in-patient operations, and other medical services.¹⁵ Over 1,300 Ozarks employees provide these services to six counties in south-central Missouri (Howell, Oregon, Shannon, Texas, Douglas, and Ozark) and two in north-central Arkansas (Fulton and Baxter).¹⁶ It cares for approximately 5,400 admissions and 364,000 total patients annually, and has

⁹ *Pub. Serv. Comm’n v. Oneok, Inc.*, 318 S.W.3d 134, 137 (Mo. App. 2010).

¹⁰ Joint Stipulation of Facts, GC-2022-0158 ¶ 4 (Mar. 16, 2022).

¹¹ Transcript of Proceedings Vol. II, GC-2022-0158, p. 88:6-8 (May 24, 2022).

¹² Exhibit 100P, Direct Testimony of Josh Reeves, GC-2022-0158 p. 3-4 (March 16, 2022).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

also expanded services in Missouri through specialty and area clinics in Winona; West Plains; Thayer; and Gainesville; as well as in Salem, Arkansas.¹⁷ Without Ozarks, patients would need to travel at least one hundred miles to seek in-patient procedures.¹⁸

Ozarks relies on natural gas service from SNGMO's transportation network to maintain its medical operations. Like most transportation customers, it primarily relies on natural gas for heating but, unlike other transportation customers, it also uses natural gas to sterilize medical equipment.¹⁹ This unique use of natural gas means that Ozarks cannot continue providing medical care at its current volume without continued natural gas service. The Hospital was especially reliant on SNGMO's natural gas transportation during Winter Storm Uri in February 2021.

B. Winter Storm Uri

Winter Storm Uri began as a Siberian arctic blast. Once it reached the United States' Pacific coast, it moved ashore and spread southeast. The polar vortex moving southward contributed to the Storm's intensity and prolonged cold as Uri traveled southeast. Winter Storm Uri covered the central-continental United States from Texas to the Dakotas from February 3 to 17, 2021.²⁰

The impact on the Ozarks region was profound. According to the National Weather Service Forecast Office which covers Ozarks and SNGMO's territories, Springfield, Missouri experienced prolonged temperatures from -15 to 19 degrees Fahrenheit.²¹ Local snow depth on February 17, 2021, was seven inches.²² The Southwest Power Pool ("SPP") electric transmission network

¹⁷ *Id.* at Schedule JR-1.

¹⁸ Joint Stipulation of Facts, GC-2022-0158 ¶ 4 (Mar. 16, 2022).

¹⁹ Exhibit 100P at 4-5.

²⁰ Joint Stipulation of Facts ¶ 11.

²¹ *Id.* at ¶ 12.

²² *Id.*

serving Missouri entered Energy Emergency Alert status 2 and 3 for the first time in system history.²³

The interaction of supply and demand cascaded into increased natural gas prices for interstate pipelines. Local distribution companies serving Missouri experienced natural gas price increases from seventeen to 247-fold over first-of-the-month prices during the Winter Storm Uri period.²⁴ The Staff of the Public Service Commission (“Staff”) described this price escalation as “without precedent for interstate pipelines serving Missouri.”²⁵ Natural gas price increases also impacted SNGMO and its customers. SNGMO reported to the Commission that its natural gas costs for February 2021, amounted to over \$34.3 million.²⁶ By comparison, SNGMO’s natural gas costs for all of 2020 were \$6.9 million.²⁷

SNGMO asked its transportation customers and marketers to curtail natural gas use throughout Winter Storm Uri in response to ever rising natural gas costs with shrinking availability. Ozarks answered the call and began using its backup propane supplies, but, despite its best efforts, the Hospital’s propane system failed under the stress of Uri’s extreme cold.²⁸ This technical failure and Winter Storm Uri also coincided with a statewide surge in COVID-19 cases that filled the Hospital to capacity for both in and out-patient procedures.²⁹ Given these factors, Ozarks faced a Faustian choice: continue to curtail natural gas use or prioritize its duty to treat

²³ *Id.*

²⁴ *Id.* at ¶ 13.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Exhibit 100P at 5.

²⁹ *Id.* at 6.

patients. Ozarks chose the latter and resumed using natural gas from SNGMO during Winter Storm Uri to maintain medical operations and other critical services.³⁰

C. SNGMO's Tariff

SNGMO's current tariff became effective December 14, 2014.³¹ SNGMO's tariff sheets 25 through 49 authorize transportation natural gas service, whereby customers pay SNGMO to use its natural gas delivery infrastructure to receive natural gas compiled by marketers. Ozarks is one such transportation customer.³² When a transportation customer's actual and expected monthly natural gas use differ, SNGMO's tariff treats this as an "imbalance."³³ If a customer uses more natural gas than nominated, the cashout provision determines an amount to be added based on the amount of imbalanced volume and cashout price determinant.³⁴ Conversely, if a customer uses less natural gas than expected, SNGMO owes the customer a cashout adjustment for a positive imbalance. SNGMO's tariff also provides that it may enter into separate imbalance agreements with transportation customers that consider "special circumstances" notwithstanding other language.³⁵

D. Ozarks' Billing Dispute After Winter Storm Uri

Ozarks expected a higher natural gas bill after Winter Storm Uri, but it did not expect a statement leagues beyond any prior assessment.³⁶ SNGMO assessed a \$463,366.84 natural gas bill against Ozarks.³⁷ This is over twenty times the Hospital's usual monthly natural gas bills even

³⁰ *Id.*

³¹ Joint Stipulation of Facts ¶ 7.

³² *Id.* at ¶ 9.

³³ *Id.* at ¶ 10.

³⁴ Exhibit 100P, Schedule JR-2, Tariff Sheet 35.

³⁵ Exhibit 100P, Schedule JR-2, Tariff Sheet 37.

³⁶ *Id.* at 6.

³⁷ *Id.*

with cashout debt.³⁸ The bill attributes \$434,204.91 to an “imbalance cashout” but did not explain how this figure was calculated or how it was otherwise connected to the actual cost to serve the Hospital.³⁹ SNGMO is also demanding an additional ** [REDACTED] ** [REDACTED] **⁴⁰ Ozarks and SNGMO were unable to resolve the bill dispute, and, on September 1, 2021, SNGMO notified Ozarks that it would disconnect the Hospital if the bill remained unpaid.⁴¹ At that point Ozarks considered its options. It could pay an outrageous bill to the jeopardy of medical services, not pay and face a service disconnection, or seek relief from the Commission. This complaint followed.

IV. Argument

A. The Public Service Commission should address Ozarks’ 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.

Ozarks’ assessed cashout imbalance and the surrounding circumstances that precipitated it are extraordinary. Ozarks’ billing dispute with SNGMO is the culmination of an extreme weather event, volatile natural gas prices, Ozarks’ backup propane supplies failing, and the need to continue treating patients, including those with COVID-19, during Winter Storm Uri. Ozarks asks the Commission to provide relief for both SNGMO and Ozarks by instructing SNGMO to track and defer the cashout imbalance as a regulatory asset through an AAO for future ratemaking treatment. An AAO is warranted in this instance to provide a means for SNGMO to seek recovery, while permitting Ozarks to maintain operations without fear of a service disconnection or curtailment.

³⁸ *Id.*

³⁹ Exhibit 100P, Schedule JR-3.

⁴⁰ Transcript of Proceedings Vol. II at 137:11-16.

⁴¹ Joint Stipulation of Facts ¶ 17.

Ozarks disputes that its natural gas bill following Winter Storm Uri in March 2021 accurately reflects the cost to serve the Hospital and maintains that it is unreasonable for SNGMO to expect a rural healthcare provider to pay approximately \$500,000 or fear losing service. SNGMO witness Walt McCarter even acknowledged that SNGMO did not need to purchase cover gas to serve Ozarks or other specific customers during Winter Storm Uri.⁴² The disputed cashout debt is therefore not tied to any actual cover gas price or cost incurred to keep Ozarks operational during Winter Storm Uri. SNGMO also revealed at the evidentiary hearing that Ozarks’ imbalance was only ** [REDACTED] ** based on the weighted average gas price for the month of February last year.⁴³ After the hearing, SNGMO submitted its calculation of what SNGMO spent to serve Ozarks. This new calculation was ** [REDACTED] [REDACTED] [REDACTED] **⁴⁴ Given the discrepancy between these figures and Ozarks’ bill, the Commission should provide relief to both parties by issuing an AAO.

Ozarks’ Request for Deferral Accounting Complies with the Commission’s AAO Standard

Missouri statute authorizes the Commission to set utility accounting principles and “to prescribe by order the accounts in which outlays and receipts shall be entered, charged or credited.”⁴⁵ The Commission has codified this statutory authority in its adoption of the USOA.⁴⁶ The USOA’s General Instructions permit tracking and deferral of expenses when they relate to extraordinary events.⁴⁷ The General Instructions frame extraordinariness as “abnormal and

⁴² Exhibit 201, Rebuttal Testimony of Walt McCarter, GC-2022-0158 p. 8 (Mar. 30, 2022).

⁴³ Transcript of Proceedings Vol. II at 145:12-16.

⁴⁴ Exhibit Filing, GC-20220-0158, Appendix A-C (Jun. 6, 2022).

⁴⁵ Mo. Rev. Stat. § 393.140(4) & (8).

⁴⁶ 20 CSR 4240-40.040.

⁴⁷ 18 C.F.R. Part 201.

significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.”⁴⁸

The Commission also employs a “Sibley test” alongside the USOA as a guide when judging requests for AAOs.⁴⁹ The Sibley test asks whether an amount is extraordinary and material. Like the USOA, extraordinariness is determined by whether the event or amount in question is unique, unusual, and not likely to recur.⁵⁰ An extraordinary event is unusual and not recurring. The Commission determines materiality by looking at the requested AAO amount relative to the utility’s income.⁵¹ However, materiality is not dispositive and the Commission may approve AAOs regardless of the amount in controversy.⁵² The Commission’s use of the Sibley test is a recognized exception to the general rule against retroactive ratemaking, and the Commission may therefore issue an AAO outside of a general rate proceeding.⁵³ The Commission has also issued, and Missouri courts have approved, AAOs at the request of utility consumers.⁵⁴

⁴⁸ *Id.*

⁴⁹ *Evergy Missouri West*, 609 S.W.3d at 868; Report and Order on Remand, *In the Matter of the Joint App. of Missouri-American Water Co., St. Louis Cty. Water Co., d/b/a Missouri-American Water Co., and Jefferson City Water Works Co., d/b/a Missouri-American Water Co., for an Accounting Authority Order Relating to Security Costs*, WO-2002-273, 27-28 (Nov. 10, 2004).

⁵⁰ *Id.*; see also *State ex rel. Mo. Off. of Pub. Counsel v. Pub. Serv. Comm’n*, 858 S.W.2d 806, 808-09 (Mo. App. W.D. 1993) (discussing the Commission’s prior approval for an AAO to track and defer construction related costs).

⁵¹ Report and Order on Remand, WO-2002-273 at 27-28.

⁵² *E.g.*, Report and Order, *In re Applic. of Evergy Mo. Metro and Evergy Mo. West for an AAO Related to COVID-19 Expenses*, EU-2020-0350 at 21-22 (Jan. 13, 2021).

⁵³ *E.g.*, *Mo. Gas Energy*, 210 S.W.3d at 335-36.

⁵⁴ *E.g.*, *Evergy Missouri West, Inc.*, 609 S.W.3d at 867-70.

There is no dispute as to materiality in this case. SNGMO and its witnesses have not opposed Ozarks' requested AAO on the basis of immateriality,⁵⁵ and Staff Witness Kimberly Bolin confirmed that the disputed cashout debt exceeds five percent of SNGMO's income.⁵⁶

As for extraordinariness, there can be no dispute that Winter Storm Uri and its impacts qualify. Cold weather is recurring in Missouri but a winter storm of Uri's magnitude is not. For over a week, Arctic winds pummeled the central United States. Missouri utilities and their customers experienced prolonged sub-freezing temperatures not seen since 1989.⁵⁷ Average temperatures were more than twenty degrees below normal.⁵⁸ Snow is typical in Missouri. Ice is recurring in Missouri. Ice and snow that persist such that natural gas prices increase seventeen to 247-fold above first-of-the-month levels is neither.⁵⁹

Staff has also repeatedly concluded that Winter Storm Uri's unique nature qualifies it for AAO treatment.⁶⁰ When evaluating public utility requests for AAOs to track Winter Storm Uri's related costs, Staff stated that it "agrees with Liberty that Winter Storm Uri was an extraordinary event of a material nature for purposes of Liberty's request to identify, track, document, accumulate, and defer associated costs and revenues."⁶¹ This agreement is not surprising because

⁵⁵ See generally Exhibit 201; see also Exhibit 203, Rebuttal Testimony of Phil Marcum, GC-2022-0158 (Mar. 30, 2022).

⁵⁶ Exhibit 301P, Rebuttal Testimony of Kimberly K. Bolin, GC-2022-0158 p. 5 (Mar. 30, 2022).

⁵⁷ Exhibit 100P, Schedule JR-5.

⁵⁸ *Id.*

⁵⁹ See Joint Stipulation of Facts ¶ 13.

⁶⁰ *E.g.*, Exhibit 100P, Schedule JR-4, Staff Recommendation Memorandum, *In the Matter of Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty's Fuel Costs Related to the Extraordinary Weather Event of February 2021*, GU-2021-0276 at 2 (Nov. 16, 2021).

⁶¹ *Id.*; see also Exhibit 100P, Schedule JR-4, Staff Recommendation Memorandum, *In the Matter of The Empire District Electric Company's d/b/a Liberty (Empire) Fuel Costs Related to the Extraordinary Weather Event of February 2021*, EU-2021-0274 at 2 (Oct. 8, 2021) (stating same); Exhibit 100P, Schedule JR-4, Staff Recommendation, *In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for an*

“[t]he classic example of an extraordinary event is the occurrence of a natural disaster, such as a wind *or ice storm* or major flood that affects a utility’s service territory.”⁶² Ozarks asks the Commission to likewise conclude that Winter Storm Uri’s impact on Ozarks deserves AAO treatment.

Consider also what SNGMO reported to the Commission after Winter Storm Uri: its gas costs for February 2021 were over \$34.3 million, nearly five times its total costs for all of 2020.⁶³ These increased costs are extreme, as is the fallout to SNGMO’s customers. A nearly half of one million dollar assessment for one month’s natural gas use is similarly extraordinary.⁶⁴ Ozarks does not regularly experience cashout imbalances, or entire natural gas bills, at even one tenth of its February 2021 statement.⁶⁵ Ozarks cashout imbalance was only ** [REDACTED] ** the month prior.⁶⁶

Further compounding matters is that Ozarks was unable to fully curtail its natural gas use during Winter Storm Uri.⁶⁷ Whereas most transportation customers can completely shut down their natural gas use, or leave their operations at near-freezing temperatures, Ozarks has a duty to continue treating patients. This duty was especially pronounced during Winter Storm Uri. Not only did Ozarks need to maintain facilities as normal, it had to address a surge of COVID-19 cases that filled the Hospital to capacity.⁶⁸ Ozarks attempted to curtail use by relying on their propane reserves but that system failed due to the sheer cold.⁶⁹ This was the first time in recent memory

Accounting Authority Order Allowing the Companies to Record and Preserve Costs Related to the February 2021 Cold Weather Event, EU-2021-0283 at 2 (Sept. 23, 2021) (stating same).

⁶² Staff Recommendation, EU-2021-0283 at 2 (emphasis added).

⁶³ Joint Stipulation of Facts ¶ 13.

⁶⁴ Exhibit 100P at 6.

⁶⁵ *Id.*

⁶⁶ Exhibit 100P, Schedule JR-3.

⁶⁷ Exhibit 100P, at 4-5.

⁶⁸ *Id.* at 6.

⁶⁹ *Id.* at 5-6.

that the propane system had failed according to Ozarks' facilities director, Josh Reeves.⁷⁰ Ozarks then became wholly reliant on SNGMO's transportation network. Ozarks' continued reliance on SNGMO's service, even as natural gas prices exploded, was yet another extraordinary circumstance. Deferral accounting is therefore additionally warranted in this case.

An AAO is Further Justified Because of Ozarks' Unique Status as a Non-Profit Medical Provider

Another consideration that the Commission should factor into its evaluations of extraordinariness is Ozark's particular circumstances as a customer. Ozarks is not like most transportation customers. ** [REDACTED]

[REDACTED] **71

This level of restriction is not something Ozarks can manage.⁷² As a non-profit, rural hospital, it has an ever present duty to maintain patient care.⁷³ Although it uses natural gas for heating like other customers, it additionally needs natural gas to sanitize medical equipment for in-patient procedures.⁷⁴ This specific use for natural gas distinguishes Ozarks from a traditional high-energy using widget factory that can restrain use relatively easily.

Ozarks is the only in-patient care provider for eight counties: Howell, Oregon, Shannon, Texas, Douglas, and Ozark County, Missouri; and Fulton and Baxter County, Arkansas.⁷⁵ If Ozarks' services are not available, people in these areas would need to travel at least one hundred miles to seek in-patient procedures.⁷⁶ It is also a keystone institution for Howell County,

⁷⁰ *Id.*

⁷¹ Joint Stipulation of Facts ¶ 14.

⁷² *See* Exhibit 100C, Direct Testimony of Josh Reeves, GC-2022-0158 p. 5-6 (Mar. 16, 2022) (noting the length of time that SNGMO's other transportation customers curtailed use during Winter Storm Uri).

⁷³ Exhibit 101P, Surrebuttal Testimony of Josh Reeves, GC-2022-0158 p. 9 (Apr. 8, 2022).

⁷⁴ Exhibit 100P at 4.

⁷⁵ Exhibit 100P at 4.

⁷⁶ Joint Stipulation of Facts ¶ 4.

employing 1,300 individuals to treat approximately 364,000 patients annually.⁷⁷ To be clear, Ozarks will not limit patient care and does not see the need to limit operations because of the amount SNGMO is billing. However, as Mr. Reeves explains, “Every dollar Ozarks makes goes back into the community, not shareholders.”⁷⁸ The Hospital’s financial stability is therefore tied directly to the public health and economic development of the local community. Anything that threatens Ozarks’ finances in turn diverts funds away from communal and patient needs. SNGMO’s demand for a cashout imbalance represents such a threat. Every dollar that Ozarks must spend for inflated natural gas prices is a dollar not going towards employee salaries, medical equipment, and future facility needs.⁷⁹

This case exemplifies the limited circumstances where AAOs are appropriate: several unforeseeable and extreme events collided resulting in a disputed bill, and the disputed bill being nowhere near what the utility calculates was actually spent to serve the customer.⁸⁰ SNGMO witness Phil Marcum also admitted that Winter Storm Uri is not something that one could have planned for, even under prudent management.⁸¹ Granting an AAO would not be appropriate for every winter storm or every cashout, but this was a freak event with extenuating circumstances for both SNGMO and Ozarks.

⁷⁷ Exhibit 100P at 4.

⁷⁸ *Id.* at 7

⁷⁹ Transcript of Proceedings Vol. II at 81:14-20 (“If we have to pay a half a million dollars, that’s a half a million dollars that we don’t have for ultrasound machines. It’s a half a million dollars that we wouldn’t have for nurse bonuses, physician bonuses. We operate on very small margins at our organization. Usually less than five percent. In the last couple years, less than one percent margin”).

⁸⁰ Exhibit Filing, Appendix A-C.

⁸¹ Transcript of Proceedings Vol. II at 160:4-6 (“I would agree that it is similar, but I would also note that it is not something that you can plan for”).

Granting Ozarks' Request and Issuing an AAO is not Unduly Discriminatory or Harmful

An AAO with the prospect of future recovery is also not unduly discriminatory or harmful to other customers. Admittedly, coming to the Commission and seeking relief in the form of having other customers pay for disputed costs can appear audacious, especially when one invokes the very public Ozarks serves. Commission Chair Ryan Silvey implicitly noted this when questioning Mr. Reeves.⁸² However, this is a common situation for the Commission. Prohibitions on service disconnections to protect low income customers perpetuate arrearages that may fall on other customers.⁸³ Every utility seeking a rate increase does so on the basis that the public needs to pay more to continue safe and adequate operations, and class representatives in rate proceedings frequently argue over that they are subsidizing the other. For example, Missouri-American Water previously sought and received an AAO to track the costs associated with lead-line replacements.⁸⁴ Although only a fraction of sales customers would have their service line replaced, the Commission nonetheless accepted that it may be appropriate for other customers to pay for that public need.

This Commission's experience with other AAOs demonstrates an acceptance that some subsidies may be appropriate because of a public interest. The Commission has approved deferral accounting for COVID-19 related impacts,⁸⁵ ice storms that reduce utility sales,⁸⁶ electric vehicle

⁸² *Id.* at 106:21-24.

⁸³ See Mo. Rev. Stat. 393.108 (prohibiting utility disconnections in the summer months in extreme heat).

⁸⁴ Report and Order, *In the Matter of the App. of Missouri-American Water Co. for an Accounting Auth. Order*, WU-2017-0296 p. 10 (Nov. 30, 2017).

⁸⁵ *E.g.*, Report and Order, *In the Matter of the App. of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West*, EU-2020-0350 (Jan. 13, 2021).

⁸⁶ *E.g.*, Report and Order, *In the Matter of the App. of Union Elec. Co. d/b/a Ameren Missouri*, EU-2012-0027 (Nov. 26, 2013).

infrastructure programs,⁸⁷ power plant additions,⁸⁸ tax payments,⁸⁹ and security upgrades, among other items.⁹⁰ These AAOs permitted utilities to seek future recovery from customers that may not have necessarily contributed to the costs at issue. Not all utility customers drive electric vehicles but they all may be subsidizing charging stations in a service territory. Similarly, an AAO for security or power plant upgrades may relate to one particular plant that does not serve all customers. It is nonetheless not unreasonable to expect all customers to potentially pay for those costs because of an overriding public interest to support utility infrastructure. In the instance of EU-2012-0027, Union Electric Company d/b/a Ameren Missouri sought an AAO to recover over \$35 million in revenues from other customers that would have normally been provided by one high-energy user.⁹¹ Providing an AAO in this instance enabled Ameren Missouri to be potentially held harmless from the impact from lost electric sales by spreading the deficit amongst other customers. The very nature of utility ratemaking is an inexact science where cross-subsidization cannot be fully avoided. AAOs are not unduly discriminatory. They merely reflect the realities of utility regulation.

In addition, consider SNGMO's customers already pay rates to support over \$20 million in operating revenues.⁹² These rates already exceed the cost to serve SNGMO's customers as evidenced by SNGMO continuing to defer the benefits of lower federal income tax liabilities from

⁸⁷ *E.g.*, Report and Order, *In the Matter of the App. of Union Elec. Co. d/b/a Ameren Missouri*, ET-2018-0132 (Feb. 6, 2019).

⁸⁸ *E.g.*, Report and Order, *In the Matter of the App. of Mo. Pub. Serv.*, EO-91-358 (Dec. 20, 1991).

⁸⁹ *E.g.*, Report and Order, *In the Matter of Mo. Gas E. and its Tariff Filing*, GR-2009-0355 (Feb. 10, 2010) (approving a partial stipulation and agreement granting Missouri Gas Energy an accounting authority order for property taxes paid to Kansas)

⁹⁰ *E.g.*, Report and Order on Remand, WO-2002-273.

⁹¹ Report and Order, EU-2012-0027 p. 2.

⁹² Joint Stipulation of Facts ¶ 7.

the Tax Cuts and Jobs Act of 2017 (“TCJA”).⁹³ A \$500,000 regulatory asset is far less than the TCJA benefits and constitutes a small fraction of SNGMO’s total rate revenues. Any negative aspect of an AAO is therefore outweighed by the benefits of safeguarding Ozarks’ services. The Commission may also further mollify any negative impacts to future customer rates by, and, which Ozarks supports, allocating the impact of a regulatory asset to SNGMO’s transportation customers class.⁹⁴

Ozarks’ AAO Request Permits SNGMO to Fully Recover its Winter Storm Uri-Related Costs that it is Already Collecting through its Purchased Gas Adjustment Clause

The primary benefit of an AAO is that it permits SNGMO to recover the disputed cashout debt as part of SNGMO’s next general rate case. Once issued, SNGMO would track and defer the full demanded amount as a regulatory asset for consideration in SNGMO’s next rate case.⁹⁵ The AAO therefore both provides relief for SNGMO and resolves the disputed charge for Ozarks. A secondary benefit of a deferral is that it enables SNGMO to continue its existing means of collecting its Winter Storm Uri-related costs through the Purchased Gas Adjustment (“PGA”) surcharge in a manner that minimizes price shock to customers.

SNGMO adjusted its PGA to account for its Winter 2021 natural gas costs, including the costs allegedly connected to Ozarks, during the pendency of this case.⁹⁶ This means that SNGMO is already collecting the disputed cashout debt from sales customers.⁹⁷ The PGA is also minimizing the impact of the Winter Storm Uri-related costs by spreading it out over five years. A Commission order authorizing an AAO does no harm in this situation because SNGMO can continue using its

⁹³ *Id.* ¶ 8.

⁹⁴ *See* Transcript of Proceedings Vol. II at 128:7-13 (Ms. Bolin testifying that the Commission could allocate the proceeds of regulatory asset to transportation customers as a class).

⁹⁵ Rebuttal testimony of Kimberly K. Bolin, GC-2022-0158 p. 3 (Marc. 30, 2022).

⁹⁶ Exhibit 102, Responses to Data Requests, GC-2022-0158 (May 24, 2022); Exhibit 201 at 10.

⁹⁷ Surrebuttal Testimony of Josh Reeves at 5-6.

PGA as it is now. SNGMO would charge its currently effective PGA, and any amount remaining of the disputed cashout debt during the next rate case could be addressed therein. Ozarks' requested deferral of approximately \$500,000 is also a minor fraction of what SNGMO is including in its PGA.⁹⁸ Therefore, addressing the amount in controversy through an AAO has a relatively minor impact on sales customers within the PGA, while achieving the greater benefits for Ozarks and the community relying upon its medical services.

B. The Public Service Commission should order SNGMO to address Ozarks' cashout imbalance through a separate payment arrangement.

Ozarks alternatively requests that the Commission direct SNGMO to enter into a payment arrangement to address the assessed cashout debt per SNGMO's tariff. While Ozarks continues to dispute that the assessed cashout imbalance is reasonable or accurately reflects SNGMO's service costs, the amount in controversy could be resolved through a "special circumstances" cashout imbalance agreement.

The Commission May Order Payment Arrangements in Special Circumstances Under SNGMO's Tariff

A Commission-approved tariff has the force and effect of law.⁹⁹ Tariff language is then read like a statute by understanding language with its plain and ordinary meaning.¹⁰⁰ Ambiguous tariff language is construed using statutory canons of construction, with the Commission's reading of the tariff's intended meaning owed judicial deference.¹⁰¹ Ultimately though, as the approving authority, the Commission has the inherent power to "interpret and apply provisions in a tariff."¹⁰²

⁹⁸ *Id.*

⁹⁹ *Mo. Gas Energy*, 388 S.W.3d at 227.

¹⁰⁰ *A.C. Jacobs & Co. v. Union Elec. Co.*, 17 S.W.3d 579, 584 (Mo. App. W.D. 2000).

¹⁰¹ *State ex re. Union Elec. Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 477-78 (Mo. App. W.D. 2013).

¹⁰² *Id.*; see also *State ex rel. Mo. Pipeline Co. v. Pub. Serv. Comm'n*, 307 S.W.3d 162, 177 (Mo. App. W.D. 2010) ("The Transporters' tariffs provide that the lowest transportation rate charged to

SNGMO's tariff provides that it "reserves the right to, and at its sole discretion, enter into separate Imbalance Agreements with [transportation customers] that take into consideration special circumstances."¹⁰³ SNGMO's tariff does not define "special circumstances" or determine the scope of SNGMO's "discretion." The breadth of both terms is therefore ambiguous, leaving its interpretation up to the Commission's understanding of its intended meaning. SNGMO may claim that it has the "sole discretion" to reject a special circumstances payment plan, but that discretion is itself subject to the Commission's reading.¹⁰⁴

Because the Commission has the authority to interpret and apply provisions in a tariff, it should recognize Ozarks' disputed cashout debt as a special circumstance that can best be resolved through a separate Commission-ordered payment arrangement.¹⁰⁵ For the same reasons that Winter Storm Uri and the resulting disputed cashout are extraordinary, Ozarks' disputed natural gas billing is a special circumstance. Ozarks was not able to mitigate cost exposure by curtailing natural gas use, is a crucial non-profit medical provider, and must maintain natural gas service to properly sanitize medical equipment and continue providing healthcare services.¹⁰⁶ Continued healthcare service in south-central Missouri is thus dependent on Ozarks' continued gas service and can be secured through an ordered payment arrangement.

an affiliate shall be the maximum rate charged to non-affiliates. The Commission had the authority to interpret and apply this provision.") (cleaned up).

¹⁰³ Exhibit 100P, Schedule JR-2, Tariff Sheet 37 ("Company reserves the right to, and at its sole discretion, enter into separate Imbalance Agreements with Shipper(s) that take into consideration special circumstances").

¹⁰⁴ *Union Elec. Co.*, 399 S.W.3d at 477; *Mo. Pipeline Co.*, 307 S.W.3d at 177.

¹⁰⁵ *See Union Elec. Co.*, 399 S.W.3d at 477.

¹⁰⁶ Exhibit 100P at 4-6.

The Commission has the Inherent Authority to Order Payment Arrangements in Special Circumstances

The Commission also has the power to order this payment arrangement notwithstanding the tariff language. The Commission retains “all powers necessary or proper to enable it to enable it to carry out fully and effectually” the purposes of public utility regulation.¹⁰⁷ The purpose of public utility regulation is to balance two dueling policies: 1) protecting consumers from destructive competition; and 2) providing utilities with a revenue opportunity sufficient to maintain facilities with a reasonable return.¹⁰⁸ To those ends, the Missouri Supreme Court most recently prescribed that the Commission’s enabling statutes “are remedial in nature and should be liberally construed in order to effectuate the purpose for which they were enacted.”¹⁰⁹ Therefore, when statutory language does not prohibit a Commission action, the Commission has deference to act consistent with the purpose of public utility regulation.¹¹⁰

A Commission-ordered payment plan that maintains Ozarks’ natural gas service is consistent with the purpose of public utility regulation and within the “necessary or proper” scope of implicit power. The Commission previously exercised its implicit powers to create payment

¹⁰⁷ Mo. Rev. Stat. § 386.040.

¹⁰⁸ *Washington Univ. et al. v. Pub. Serv. Comm’n*, 272 S.W. 971, 973 (Mo. banc 1925) (“The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested”); *State ex rel. Elec. Co. of Mo. v. Atkinson*, 204 S.W. 897, 899 (Mo. banc 1918) (“Let it be conceded that the act establishing the Public Service Commission, defining its powers and prescribing its duties is indicative of a policy designed, in every proper case, to substitute regulated monopoly for destructive competition. The spirit of this policy is the protection of the public”); *State ex rel. v. Pub. Serv. Comm’n*, 111 S.W.2d 222, 229 (Mo. App. Kan. City 1937) (stating same).

¹⁰⁹ *Kan. City Power & Light v. Pub. Serv. Comm’n*, 618 S.W.3d 520, 525 (Mo. banc 2021) (quoting *Util. Consumers Council of Mo., Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 49 (Mo. banc 1979)).

¹¹⁰ *Id.*

plans for residential customers as part of its Cold Weather Rule (“CWR”).¹¹¹ The Commission’s CWR secures continued natural gas service from November 1 through March 31 annually for people of limited means in exchange for participation in a payment agreement.¹¹² The Commission’s cited authority to promulgate the CWR are Sections 386.250, 393.130, and 393.140, RSMo.¹¹³ These statutes dictate the Commission’s jurisdiction, require utility rates to be “just and reasonable,” and enumerate the Commission’s general powers, respectively. None of those statutes explicitly authorize a CWR or similar power to provide payment plans for extenuating circumstances.

Nonetheless, the Commission may promulgate a CWR, and Missouri’s courts have recognized that this power trumps any conflicting tariff language.¹¹⁴ The Commission having this implicit ability makes sense given its mission to protect consumers and ensure utilities can make a reasonable return.¹¹⁵ Disconnecting customers who cannot pay in extraordinary circumstances minimizes future arrearages but does nothing to reduce past debts. Those uncollected bills are instead borne by other customers and utility shareholders. On the other hand, maintaining service under payment plans protects all customers from arrearages, past and future, and supports a utility’s reasonable return by guaranteeing eventual recovery. Just as the Commission had the implicit power to create the CWR, Ozarks asks that the Commission likewise order a payment plan for the Hospital to continue receiving natural gas service.

¹¹¹ See *State ex rel. Off. of the Pub. Counsel v. Pub. Serv. Comm’n*, 293 S.W.3d 63, 77 (Mo. App. S.D. 2009); see also *Mo. Gas Energy*, 210 S.W.3d at 333.

¹¹² 20 CSR 4240-13.055.

¹¹³ *Id.*

¹¹⁴ *Mo. Gas Energy*, 210 S.W.3d at 337.

¹¹⁵ See *State ex rel. Capital City Water Co. v. Pub. Serv. Comm’n*, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993) (“The Commission’s principal interest is to serve and protect ratepayers, and as a result, the Commission cannot commit itself to a position that, because of varying conditions and occurrences over time, may require adjustment to protect the ratepayers”) (citations omitted).

A Ten-Year Payment Plan Permits Ozarks to Pay the Disputed Charge on a Manageable Timetable

A Commission-ordered “special circumstances” payment arrangement would enable Ozarks to maintain natural gas and medical services while still alleviating SNGMO’s demands. Based on a review of its finances and risk tolerance, Ozarks has determined that it can accommodate a “special circumstances” payment plan wherein the Hospital pays ten percent of the demanded charge within thirty days following a Commission order and then pays the remainder in equal monthly installments over a ten-year period.¹¹⁶ Ozarks could also manage, and would not object to a Commission order directing, a five year payment plan under these terms.¹¹⁷ Absent an AAO or special circumstances payment plan, Ozarks will be forced to pay the cashout debt on SNGMO’s terms regardless of feasibility.

V. Conclusion

For the reasons stated above, Ozarks respectfully requests that the Commission grant its requested relief and order and authorize SNGMO to track and defer the approximately \$500,000 in disputed cashout debt as a regulatory asset in an AAO, with carrying costs, for future ratemaking consideration, or order SNGMO to address the disputed imbalance through a separate payment arrangement as described above, and provide such other relief that the Commission deems just and proper.

¹¹⁶ Exhibit 100P at 7.

¹¹⁷ Transcript of Proceedings Vol. II at 87:21-25 – 88:1 & 110:15-19.

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 this 17th day of June, 2022.

/s/ Caleb Hall