IN THE DISTRICT COURT OF OSAGE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA *ex rel.* GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff,	)	
v.	)	Case No. CJ-2025-06 (Lead Case) Consolidated with Case Nos. CJ-2024-77 and CJ-2024-78
SYMMETRY ENERGY SOLUTIONS, LLC, *et al.*, Defendants.	)	

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY AGAINST DEFENDANT NEXTERA ENERGY MARKETING, LLC

This matter comes before the Court on the Motion for Partial Summary Judgment on Liability filed by Plaintiff, the State of Oklahoma *ex rel.* Attorney General Gentner Drummond (the State), against Defendant NextEra Energy Marketing, LLC (NextEra). The Court has considered the State's Motion, NextEra's Opposition, the State's Reply, the evidentiary materials submitted, and the applicable law. The Court finds oral argument is not necessary to decide the matter and the pleadings filed provide sufficient information for the Court. A Motion for Partial Summary Judgment is an adjudication of less than the entire cause and thus constitutes only a pretrial designation of issues which are to be treated as resolved. See *Reems V. Tulsa Cable Television, Inc.*, 1979 OK 171 and *Myers v. Missouri Pacific* R. *Co.*, 2002 OK 60. In considering summary process, the standard follows that of Summary Judgment. Summary judgment is proper where there is no substantial dispute as to any material fact, and it appears that one party is entitled to summary judgment as a matter of law. For the reasons set forth below, the Motion is GRANTED.

The State brings this enforcement action alleging that NextEra sold natural gas in Oklahoma during Winter Storm Uri at prices that violated the Oklahoma Emergency Price Stabilization Act (EPSA), 15 O.S. § 777.1 *et seq.*, and, consequently, the Oklahoma Consumer Protection Act (OCPA), 15 O.S. § 751 *et seq.* On February 12, 2021, the Governor of Oklahoma issued Executive Order 2021-06, declaring a disaster emergency caused by severe winter weather in all seventy-seven Oklahoma counties. NextEra does not dispute that the Governor declared an emergency. The declaration expired thirty days later, on March 14, 2021. The State's Motion is directed solely at NextEra's sales of natural gas to Oklahoma Natural Gas Company (ONG), an Oklahoma regulated distribution utility, as reflected in NextEra's Invoice No. 621458 for February 2021 deliveries. The State reserves proof of NextEra's remaining Oklahoma sales, and all questions of damages, for trial.

The Motion is brought under 12 O.S. § 2056. Summary judgment is appropriate where the pleadings, discovery materials, and affidavits show no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. A factual dispute defeats summary judgment only if it is material, that is, only if it might affect the outcome under the governing law. NextEra opposes on both procedural and substantive grounds, contending that genuine disputes of material fact and several independent legal barriers preclude judgment, and requesting a continuance under 12 O.S. § 2056(F) to permit additional discovery.

This Court has subject matter jurisdiction over the State's EPSA and OCPA claims. Both statutes are Oklahoma consumer protection enactments, and the Legislature has vested their enforcement in the Attorney General. 15 O.S. §

756.1(A). The conduct challenged is the sale of natural gas for delivery in Oklahoma, to an Oklahoma utility, at an Oklahoma delivery point and is a transaction within the State's regulatory authority. NextEra's principal jurisdictional challenge is one of federal preemption. NextEra contends that the Natural Gas Act (NGA) vests the Federal Energy Regulatory Commission (FERC) with exclusive jurisdiction over its sales to ONG, at least as to gas that traveled in interstate commerce, and that additional discovery through "gas tracing" is required before jurisdiction can be determined. The Court rejects this contention on the present record.

Field preemption does not bar this action. The NGA was drawn with meticulous regard for the continued exercise of state power, and, where a state law reaches nonjurisdictional as well as jurisdictional sales, field preemption may be found only upon a detailed examination demonstrating that the matter falls within the preempted field. The controlling inquiry is the target at which the state law aims; state law aimed at practices affecting retail prices lies firmly on the States' side of the dividing line. The EPSA is aimed at emergency-period pricing and consumer harm within Oklahoma; it does not set a FERC tariff, revise a filed rate, or regulate interstate transportation. The EPSA is therefore not within the field preempted by the NGA.

NextEra has not established FERC jurisdiction over the transactions at issue. The jurisdictional character of a sale turns on the transaction itself, not on speculation about the upstream movement of commingled gas. NextEra's own Invoice No. 621458 reflects a sale to an Oklahoma local distribution utility, at the OGT pool on an intrastate pipeline system located in Oklahoma, for distribution to Oklahoma consumers. A sale of gas to a local distribution company is a first sale removed from federal rate jurisdiction. NextEra has identified no transportation contract, receipt or delivery points, nominations, or scheduling records connecting the invoiced deliveries to any federally jurisdictional transportation service.

A continuance under 12 O.S. § 2056(F) is not warranted. Section 2056(F) requires the party opposing summary judgment to identify specified facts, essential to its opposition, that it cannot presently present. NextEra's own transactional, scheduling, counterparty, and accounting records have been in its possession since February 2021, and no later-served upstream subpoena can alter the character of the transaction as reflected on its own invoice. The requested tracing discovery is a search for a jurisdictional theory absent from NextEra's own records, not a basis to defer judgment.

Conflict preemption does not preclude judgment. *Oneok* decided only field preemption and expressly left conflict-preemption questions for the lower courts to resolve in the first instance. NextEra raises the possibility that applying the EPSA price ceiling to intrastate sales could affect wholesale interstate rates or the Platts index. That contention is speculative and unsupported on this record. NextEra identifies no FERC-filed rate governing Invoice No. 621458, and a benchmark index used in a private contract is not a tariff filed with FERC. Because NextEra has not shown that compliance with both the EPSA and federal law is impossible, or that the EPSA stands as an obstacle to the federal scheme, conflict preemption does not defeat the State's Motion.

Personal jurisdiction over NextEra is not genuinely contested. NextEra transacted business in Oklahoma by selling and delivering natural gas to an Oklahoma utility at Oklahoma delivery points, and the claims arise directly from that conduct. The Court finds it has personal jurisdiction over NextEra for purposes of this action.

NextEra contends that the State's claim is time-barred by the one-year limitations period in 15 O.S. § 777.3, which provides that "[a]n action to enforce the provisions of this act may be filed at any time within one (1) year following the expiration or termination of a declaration of emergency…." NextEra argues that this period expired on March 14, 2022, one year after the emergency declaration terminated, and that the State did not file until January 2025. The Court is not persuaded. The State brings this action through the Attorney General in the State's sovereign enforcement capacity, not as a private consumer under 15 O.S. § 761.1. Under the doctrine of *nullum tempus occurrit regi*, statutes of limitations do not run against the State acting in its sovereign capacity to vindicate a public right unless the Legislature has clearly and specifically subjected the State to the limitation. Section 777.3 supplies no such clear expression as to the Attorney General's separate enforcement authority under the OCPA. By its terms, § 777.3 governs a freestanding action to enforce the EPSA; it does not amend the OCPA or extinguish the Attorney General's independent authority under 15 O.S. § 756.1 to seek actual damages and other relief on behalf of aggrieved consumers. Reading § 777.3 to bar the State's OCPA enforcement action would work an implied repeal of independent OCPA remedies that the Legislature did not enact. This action seeks to redress alleged emergency-period price gouging affecting the natural-gas market, public utilities, and Oklahoma consumers statewide, including the securitized costs now borne by ratepayers. That is a public right, not a private debt-collection matter. The Court accordingly finds that the State's claim is not time-barred, consistent with the Court's prior ruling rejecting this defense.

The EPSA establishes an objective price ceiling. For the duration of a declared emergency and for thirty days thereafter, no person may sell goods for delivery in the emergency area at a rate or price which is more than ten percent

(10%) above the rate or price charged by the person for the same or similar goods… immediately prior to the declaration of emergency, subject to enumerated exceptions. See 15 O.S. § 777.4. A violation of the EPSA is, by operation of statute, a violation of the OCPA: Any violation of the provisions of this act is a violation of the Oklahoma Consumer Protection Act. 15 O.S. § 777.5. The linkage is a legislative directive. Where an EPSA violation is established, OCPA liability follows as a matter of law, and the fact-intensive inquiries ordinarily attending an OCPA claim are not independent prerequisites to that liability. The undisputed evidence establishes that NextEra's emergency-period prices exceeded the ten-percent ceiling by wide margins. NextEra's Invoice No. 621458 reflects both the pre-declaration baseline and the emergency-period prices charged to ONG. Measured against either baseline the State advances, NextEra's highest pre-emergency fixed-price sale or the published index price on the declaration date, the emergency-period prices exceed the statutory ceiling. NextEra identifies no comparator under which any emergency-period sale to ONG was lawful.

NextEra argues that it made no volitional pricing decision during the emergency because the governing contract predated the declaration and the index prices for the relevant flow dates were set before the Governor's order. The statute forecloses that reading. The EPSA asks whether a seller sold goods for delivery in the emergency area above the ceiling; it does not turn on when the contract was signed, when an option was exercised, or when an index was published. A price-setting method fixed by a preexisting contract or a third-party index is not a statutory safe harbor; otherwise, every emergency-period delivery under a preexisting agreement or index would fall outside the Act. NextEra's dispute over the correct pre-emergency comparator likewise does not preclude judgment. Because the emergency-period prices exceed the ceiling under either baseline the State advances, the precise reference price is immaterial to liability and does not create a genuine issue of material fact. The identification of the precise baseline bears on the calculation of overcharges and is reserved for the damages phase.

NextEra invokes the exemption in the 2021 version of 15 O.S. § 777.4(A)(1) for price increases attributable to petroleum commodity markets, arguing that natural gas is a petroleum commodity. The Court concludes that the exemption, as it existed in February 2021, did not encompass natural gas. Oklahoma law distinguishes petroleum from natural gas. Title 52 defines petroleum to mean crude oil and its manufactured products, not including natural gas, and the statutes repeatedly treat the two as distinct categories. Under the maxim *expressio unius est exclusio alterius*[1], the Legislature's inclusion of petroleum commodity markets, without mention of natural gas, indicates that the 2021 exemption did not reach natural gas markets. The 2023 amendment confirms this reading. The Legislature amended § 777.4(A)(1) to add natural gas, so that the provision now reads petroleum and natural gas commodity markets. The bill's text, its official summary, and its sponsors' statements describe the amendment as adding natural gas to the Act's exemptions. A statute that must add natural gas did not already include it. Consistent with the Court's prior Order of August 19, 2025, the Court rejects NextEra's construction of the 2021 EPSA. NextEra's related contention that the pre-2023 exemption was unconstitutionally vague is without merit. The 2021 statute identified the regulated period, the covered transactions, the prohibited increase, and the limited circumstances justifying a higher price. A defendant's

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[1] The Latin phrase literally translates to express mention of one thing is the exclusion of others. It stands for the premise that anything not included in the statute by the Legislature was intentionally omitted.

advocacy of an expansive reading of an exception does not render a statute void for vagueness.

NextEra asserts that the OCPA exemption for transactions regulated under laws administered by the Corporation Commission or any other regulatory body, 15 O.S. § 754(2), and the EPSA exemption for a rate or price increase approved by the appropriate governmental agency, 15 O.S. § 777.4(C), shield its conduct because the Oklahoma Corporation Commission (OCC) reviewed and approved the prices ONG paid. These exemptions turn on the transaction and conduct challenged, not merely on whether an entity is regulated in some respect. The safe harbor does not apply where a defendant's conduct is governed in some respects by an agency but the specific conduct at issue falls outside that agency's authority. The conduct the State challenges is NextEra's pricing and sale of natural gas to ONG during the emergency. The OCC's own materials confirm that it had no authority to regulate or investigate participants in the natural-gas commodity market. The OCC's determination that ONG's purchases were prudently incurred addressed ONG's conduct as a utility and its downstream cost recovery; it did not approve or regulate the price an upstream marketer charged. Neither exemption reaches NextEra's pricing.

NextEra invokes the exception in 15 O.S. § 777.4(A)(2), which applies where a price increase is attributable only to factors unrelated to the emergency and does not include any increase in profit to the seller. This exception is an affirmative defense on which NextEra bears the burden of proof. NextEra has not carried that burden. Its position that Winter Storm Uri itself drove the index increase defeats the first element, because an increase caused by the emergency is not one attributable only to factors unrelated to it. As to the absence of profit, NextEra offers only a conclusory assertion that its cost of supply roughly equaled its revenue, unsupported by the transaction-level cost and margin records it has held since 2021. Conclusory declarations, unaccompanied by the movant's own available records, do not create a triable issue on an affirmative defense.

NextEra argues that the State cannot recover because ONG is a reseller rather than a consumer, is not "aggrieved," and has released NextEra, and that the action is an impermissible class action rather than an "individual action." 15 O.S. § 756.1(A)(3). The State does not sue on behalf of ONG. It seeks OCPA relief for the Oklahoma citizens, political subdivisions, and state agencies who consumed the natural gas and who now bear the storm costs through securitization. An OCPA consumer is one who consumes or uses economic goods, and an end user of natural gas meets that definition. Those ratepayers are aggrieved because they will shoulder the securitized utility debt for years to come. Privity is not required, because an OCPA claim is not a contract claim. Nor is this an impermissible class action. The Attorney General sues in the name of the State under an express grant of public enforcement authority, 15 O.S. § 756.1(C), which is distinct from the private procedural device of a class action. Consistent with the Court's prior ruling, the phrase in an individual action only limits the immediately preceding authorization for penalties and does not restrict the Attorney General's separate authority to recover actual damages on behalf of aggrieved consumers.

The undisputed material facts establish each element of the State's EPSA claim: a declared emergency existed; NextEra sold natural gas in Oklahoma during the emergency period; and NextEra's prices exceeded the statutory ten-percent ceiling by wide margins under any applicable baseline. The exemptions and defenses NextEra raises either present questions of law resolved above or are affirmative defenses NextEra has failed to support with competent evidence. Because a violation of the EPSA is a violation of the OCPA as a matter of law, 15 O.S. § 777.5, NextEra's liability under both statutes is established.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. NextEra's request for a continuance under 12 O.S. § 2056(F) is DENIED.

2. The State's Motion for Partial Summary Judgment on Liability against NextEra Energy Marketing, LLC is GRANTED. The Court finds as a matter of law that NextEra violated the Emergency Price Stabilization Act, 15 O.S. § 777.4, and, consequently, the Oklahoma Consumer Protection Act, 15 O.S. § 777.5, with respect to its natural gas sales to Oklahoma Natural Gas Company during the emergency declared by Executive Order 2021-06.

3. This ruling resolves the issue of liability only. All issues of damages, including the calculation of overcharges, restitution, and disgorgement, and any remaining fact disputes tied to specific sales are reserved for trial.

IT IS SO ORDERED THIS 28TH DAY OF SEPTEMBER 2026.

Stuart Tate

IN THE DISTRICT COURT OF OSAGE COUNTY

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of Sept., 2026 I mailed by first class mail postage prepaid and/or emailed a copy of the foregoing instrument to:

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