

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

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| St. Louis Natural Gas Pipeline LLC |) | |
| |) | |
| Complainant, |) | |
| v. |) | Case No. GC-2011-0294 |
| |) | |
| Laclede Gas Company, |) | |
| Respondent. |) | |

**REPLY OF LACLEDE GAS COMPANY
TO RESPONSES OF SLNGP, STAFF AND OPC**

COMES NOW Respondent, Laclede Gas Company (“Laclede” or Company) and submits this Reply to the Responses filed by St. Louis Natural Gas Pipeline (“SLNGP”), the Staff of the Commission (“Staff”), and the Office of the Public Counsel (“OPC”) to Laclede’s Motion to Dismiss. In support thereof, Laclede states as follows:

INTRODUCTION

1. On May 12, 2011, SLNGP filed its Response in Opposition to Laclede’s Motion to Dismiss the Complaint which SLNGP had filed in an effort to force Laclede into a long-term business arrangement with the Complainant that the Company had concluded would not be in the best interests of the Company or its customers. On May 13, 2011, the Staff filed its Response in which it concurred with Laclede that the Commission does “not have authority to take over the management of a utility” – the core legal principle that Laclede believes should lead to a prompt dismissal of this complaint. The Staff did not, however, make a definitive recommendation on what course of action the Commission should take, but instead gave several options, including one that would involve disclaiming jurisdiction over the matter. On May 17, 2011, OPC filed its Response in which it also took no position on whether the relief requested by the Complainant should be granted, but instead recommended that the Commission open an

investigation. Finally, on May 19, 2011, SLNGP filed an additional pleading in which it claimed that one of the options proposed by Staff was legally defective.

2. In the wake of these responsive pleadings, the primary reason supporting dismissal of this case stands untouched. The Complainant is asking the Commission to usurp Laclede management's discretion regarding how it does business with pipeline transportation suppliers in clear violation of the law permitting public utility management the right to conduct the utility's business. The Commission does not have the authority to take over the management of a public utility, like Laclede, nor does the Commission's authority to regulate include a right to dictate the manner in which a company shall conduct its business. Although SLNGP has cloaked its pleading in the form of a complaint, the Commission should be clear that Complainant's ultimate requested relief is for the Commission to order Laclede to enter into an interconnection agreement with the Complainant. This is effectively asking the Commission to appropriate the utility's business decisions regarding pipeline transportation.

3. The Commission should also understand that, through its "complaint," SLNGP is leading the Commission down a road in which the Commission may be required to make a host of business decisions. This includes choosing among competing pipeline plans, and negotiating and/or arbitrating the terms of a pipeline interconnection agreement,¹ which will require the Commission to decide what risks and obligations Laclede will assume. And should the Commission accomplish the business decisions necessary to create an interconnection, the Commission should not be misled into thinking that the matter will end there. For if Laclede fails to subscribe to the amount of

¹ For the Commission's convenience, SLNGP has included an 11 page Facilities Interconnect Agreement for the Commission to review.

capacity desired by SLNGP, there is a good chance SLNGP will be filing another “complaint,” seeking the Commission to again override Laclede’s business decisions.

4. Finally, it is clear from the pleadings that in its effort to manufacture some indirect source of statutory authority for its requested relief, SLNGP has concocted a set of highly scurrilous allegations that are not only wholly unsupported but that cannot even survive the basic test of logic. Laclede wishes to emphasize that the Company should have no obligation to address the unsubstantiated allegations that the Complainant has raised because SLNGP’s request for relief is not designed to ferret out violations of the law, no matter how fanciful those violations may be, but is intended to have this Commission make a business decision that under Missouri law properly belongs to Laclede’s management, subject to an after the fact prudence review by the Commission. That said, even a cursory review of the Complainant’s pleadings show how baseless and even illogical its assertions are.

**THE COMMISSION MAY NOT APPROPRIATE
THE DISCRETION OF UTILITY MANAGEMENT**

5. In the pleadings submitted by Laclede, SLNGP, Staff and OPC, none of the parties disagree with the well established legal principle in Missouri that the Commission does not have the authority to take over the management of a public utility, like Laclede. *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181 (Mo.App., W.D. 1960). *State ex rel. Laclede Gas Company v. P.S.C.*, 600 S.W.2d 222, 228 (1980). Likewise, the Commission’s authority to regulate does not include a right to dictate the manner in which a company shall conduct its business. *State ex rel. Kansas City Transit, Inc. v. Public Serv. Comm’n*, 406 S.W.2d 5 (Mo. 1966)

6. In fact, the Staff indicates its concurrence with this principle at page 2 of its Response, while SLNGP acknowledges the principle's general validity in both its May 12 Response to Laclede as well as its May 19 Reply to the Staff. (See page 1).² Accordingly, the only issue in this proceeding is whether there is some other grant of statutory authority that would allow the Commission to disregard this long-standing legal principle and decide that Laclede must nevertheless enter into a long-term business relationship that Laclede's management has determined to be contrary to the interests of the Company and its customers. The Complainant itself, however, acknowledges at page 20 of its May 12 Response that "***Missouri lacks a specific statute governing natural gas interconnection requests and related dispute.***" In short, there is no specific statute that purports to grant the Commission the kind of explicit authority that would be required for the Commission to substitute its judgment for the Company's on this business matter.³ In effect, SLNGP seeks to have the Commission arbitrate the terms of an interconnection agreement, just like it does for telecommunications companies, but without the requisite statutory authority.

²In addition, no party has taken issue with Laclede's citation to ***In the matter of developments in the transportation of natural gas and their relevance to the regulation of natural gas corporations in Missouri***, 29 Mo.P.S.C (N.S.) 137, 143 (1987), in which the Commission decided as a matter of both law and policy that it should not intervene in management decisions by an LDC over the best mix of pipeline and other gas suppliers that should serve the LDC – the precise thing that the Complainant is seeking to have the Commission do here.

³The Complainant's citation, at page 20 of its May 12 Response, to statutory sections in other jurisdictions which purportedly give explicit authority for those states to order interconnections with LDCs only underscores the absence of such authority in Missouri. Clearly, if the legislature intended the Commission to get involved in such decisions, the language cited by the Complainant illustrates how statutory language could be crafted to do so. That is a matter, however, that the Complainant should take up with the Missouri General Assembly, not the Commission.

**SLNGP’S REQUEST WILL LEAD THE COMMISSION DOWN A ROAD
OF MAKING BUSINESS DECISIONS THAT IT HAS NEITHER THE
RESOURCES, EXPERTISE OR AUTHORITY TO MAKE**

7. SLNGP’s request leads down a road that will embroil the Commission in an inevitable morass of business decisions. The Complainant seeks to downplay this concern by suggesting there is something novel or unique about its business arrangement because it involves obtaining access to Laclede’s “monopoly” distribution system. There is nothing at all novel or unique, however, about the kind of business decision that the Complainant wants the Commission to become involved in through a consideration of its complaint. To serve its customers, Laclede needs a wide variety of materials, services, and other goods provided by third parties. It spends millions of dollars each year on such goods and services and, on occasion, can expend tens of millions of dollars on a single project.

8. Some of these projects can have lasting and even more significant consequences for the Company’s customers than anything at stake with the Complainant’s proposal. A classic example is the Company’s switch several years ago to a remote meter reading system. Laclede entertained a number of proposals for its remote meter reading business. Just like the Complainant, various competitors for that business could have tried to leverage the Commission into becoming involved in the process by which this system-wide change came about. Specifically, they could have argued this was an incredibly large financial and operational commitment on the part of the Company that would affect Laclede’s customers for years to come; that Laclede would be purchasing one and only one system, and that by virtue of its monopoly status, Laclede

should not be permitted to make this decision on its own, but should submit it to an evaluation process supervised and ultimately determined by the Commission.

9. Or one could argue that the kind of pipe that Laclede purchases for its distribution system has all of these same attributes, and likewise should be subject to Commission supervision. How about the generating units that an electric utility purchases to provide service? What engineering or construction firm should be chosen to do that work? There is simply nothing magical or unique about what the Complainant seeks that would distinguish its request from others, or justify the Commission exceeding its authority by overriding Laclede's business decisions.

10. But one doesn't even have to go that far afield to see the emerging morass. Already, in its own pleadings, both the Complainant and OPC have noted that there is another potential pipeline arrangement that Laclede has been evaluating. In fact, there is more than one, which means that any Commission determination to entertain the relief requested by the Complainant will necessarily require the Commission to do what Laclede is doing: namely evaluate not only what the Complainant is offering, but how it compares to other alternatives that may be under consideration by the Company.

11. And if the Commission assumes the authority to require Laclede to enter into a pipeline interconnection agreement with SLNGP, and the parties fail to agree on all material terms, will the Commission also assume the authority to negotiate and/or arbitrate such terms, including deciding what risks and obligations Laclede will assume under the interconnection? And if an interconnection agreement is completed, will the Commission entertain a "complaint" by SLNGP if Laclede doesn't subscribe to the level of capacity that SLNGP desires?

12. Laclede respectfully submits that the Commission does not have the resources, the authority, or, based on past Commission decisions, the inclination to involve itself in these decisions. If it chooses to do so, however, it is unmistakably clear that the Commission will have departed from long-standing legal and policy principles that have served Missouri consumers well over many years, based on a request for relief that is premised on verifiably inaccurate and grossly exaggerated claims.

**SLNGP'S SCURRILOUS ALLEGATIONS ARE WHOLLY
UNSUPPORTED, BASELESS AND ILLOGICAL**

13. As previously noted, in the absence of any direct statutory authority for the Commission to even entertain, let alone grant, its requested relief, SLNGP has manufactured a set of highly scurrilous allegations that are not only wholly unsupported but that cannot even survive the basic test of logic. The most notable example can be found at page 8 of its May 12 Response, where the Complainant argues that its proposed pipeline will benefit Laclede's customers because it would allow Laclede access to NGPL (and the gas sourced off of that pipeline) at a rate of 7 to 8.5 cents per MMBtu, while Laclede's existing rate for access to NGPL through the Centerpoint-MRT East Line is approximately 20 cents per MMBtu. As SLNGP states:

“Laclede's suggestion that it can obtain REX gas cheaper via the MRT-Centerpoint east line may be a question to be determined in this proceeding. SLNGP believes this claim to be false given MRT-Centerpoint's transport tariff of \$0.20 per MMBtu for its east line off NGPL versus SLNGP's proposed tariff of \$0.07 to \$0.085 per MMBtu for its route from the NGPL lateral. Laclede and other downstream recipients would have the same cost and transport charge up to the point of that NGPL interconnection.”

14. If this easily verifiable fact were true, Laclede could understand why the Complainant might believe that its proposed pipeline project had the potential to benefit

Laclede's customers. Laclede can also understand why, if this were true, OPC and the Staff might believe that an additional look into this matter is warranted, since it would suggest that SLNGP is offering Laclede transportation access at a rate that is only about 1/3 of what the Company is paying today for similar access.⁴ Unfortunately, such a claim is verifiably false as evidenced by approved tariffs that are readily available to the Commission, the Complainant and any other interested party with internet access.

15. As shown by Attachment 1 to this Reply, the CenterPoint-MRT tariff has a \$2.0151 reservation charge for market zone only (i.e., MRT's East Line); an amount that translates into a 100% load factor rate of **less than 7 cents**. This rate can be ascertained in several ways. First, one can simply look at the authorized overrun charge of \$.0696 for the Market Zone, which is equivalent to a 100% load factor rate. Or one can easily get to the rate by dividing the \$2.0151 reservation charge for the Market Zone on the tariff by the average number of days in a month (30.4), which will produce a rate \$.0663 per MMBtu. Add to that the stated usage charge of \$.0033, which is also reflected on the tariff, and you once again get a rate of \$.0696, an amount that is slightly less than 7 cents per MMBtu).

16. Laclede has absolutely no idea how the Complainant could have come up with a rate for the East Line that is almost **three times** the actual rate. But contrary to the Complainant's suggestion at page 8 of its Complaint, there is no need for an

⁴Even if this representation were true, the Commission and Laclede would still have to deal with all of the other inaccuracies that apparently underlie SLNGP's proposal, such as the Complainant's complete failure to recognize that Laclede has another pipeline supplier that serves its system at delivery rate of 30,300 MMBtu per day (Southern Star Central), its misstatement of the amount of the delivery capability over the MoGas pipeline that serves Laclede (62,800 MMBtu per day, not 40,000 MMBtu per day); as well as the other inaccuracies described elsewhere in this Reply or others too numerous to mention.

investigation to determine what that rate is.⁵ All one has to do is visit CenterPoint's web site at <http://pipelines.centerpointenergy.com/MRT.html> or the FERC's website at <http://www.ferc.gov/industries/gas/gen-info/fastr/index.asp> to obtain this information. Or better yet, one can place a phone call to the FERC Staff to verify that the attached tariff is, in fact, the effective one for the CenterPoint-MRT Market Zone and that it does indeed authorize a 100% load factor rate of just under 7 cents, not the 20 cents claimed by the Complainant.

17. This egregious and easily disproven exaggeration of the most significant element of the Complainant's assertion that its proposed pipeline will benefit Laclede's customers should be enough, in and of itself, for the Commission to conclude that this would be a singularly poor case for the Commission to even consider departing from the long-standing legal principle that such business decisions must be left to utility management, assuming that it even could. After all, if the Complainant is this wrong about something so critical to its claim of purported ratepayer benefits, why should the Commission give any credence to any of the other unsubstantiated accusations that litter its Response?

18. In fact, a review of a representative sample of those accusations demonstrate the same disconnect from reality. For example, the Complainant suggests that Laclede has refused SLNGP's interconnection request because the lack of additional interstate transportation pathways somehow benefits Laclede's affiliate, Laclede Energy Resources, Inc. ("LER"). (SLNGP May 12 Response, pp. 6-7, 9). In the very next

⁵It is clear that the Commission can take official notice of published tariffs. *Central Controls Company, Inc. v. AT & T Information systems, Inc.*, 746 S.W.2d 150 (1988). Accordingly, for purposes of evaluating a Motion to Dismiss, there is no need for the Commission to accept as true something that it can verify is false through the official notice process. *Levy v. Ohl*, 477 F.3d 988 (8th Cir. 2007).

breath, however, the Complainant asserts that Laclede has been considering another potential pipeline entrant into its market that the Complainant asserts would be more expensive than its project. (SLNGP May 12 Response, p. 8) What the Complainant does not do is reconcile how Laclede can be both a utility that is actively resisting new pipeline entrants into its market as a way of protecting its affiliate, as well as a utility that is actively pursuing new pipeline entrants. How can both be true at the same time? In fact, what Laclede is doing is what it has always done – constantly evaluate potential new supply and pipeline transportation pathways. If they make long-term sense for Laclede and its customers, the Company will not hesitate to move forward with them. And if, like the arrangement proposed by SLNGP, they do not make sense, Laclede will not hesitate to decline them.

19. Another logical inconsistency can be found in the Complainant's assertion that Laclede's alleged efforts to favor LER are being assisted by Laclede's main pipeline supplier, CenterPoint-MRT. Again, the Complainant offers no explanation as to why a completely separate company like CenterPoint-MRT would have any interest in taking actions that would provide some undue advantage or benefit to LER. Indeed, the mystery become even more profound given the fact that CenterPoint-MRT has its own marketing affiliate that actively competes with LER for customers. Unless one assumes that CenterPoint-MRT has initiated some kind of bizarre charitable campaign to help its affiliate's competitors, the Complainant's allegation makes no sense.

20. Perhaps the most malicious assertion lobbed by the Complainant relates to its repeated statement that the CenterPoint-MRT East Line is so unsafe and substandard that Laclede makes little use of it; a problem that can be cured, of course, by putting

another 11 miles of new pipe in the ground that would merely duplicate these facilities, as proposed by the Complaint. The Complainant's allegations are nothing more than an unsupported slur on the competence and integrity of CenterPoint-MRT and the Federal Office of Pipeline Safety that is responsible for ensuring the safety and structural soundness of interstate pipeline facilities. Where is the proof to substantiate this charge? The notice of violations, engineering or other reports that one would expect to see if there was an substance to such a charge? Certainly, none have been provided by the Complainant. Instead, the Complainant relies exclusively on a few hearsay statements by landowners to the effect that there have occasionally been leaks around the proximity of the East Line and its own assumption that because Laclede may have recently reduced its takes off of the East Line there must be something wrong with the facility.⁶ In fact, the only reason why there would have been any reduction in Laclede's takes on the East Line would be due to seasonal demand and price considerations, not safety. In terms of price, such a reduction would have been due to the fact that gas sourced off of NGPL – yes, including REX gas – has not recently been the cheapest source of gas available to Laclede. Given this, the Complainants observation that Laclede is not sourcing gas to the full extent it could over the East Line does nothing more than illustrate another reason why Laclede would not want or need a duplicate facility at this time to obtain access to the same source of gas.

⁶It is not clear to Laclede whether the landowners cited by the Complainant are the same ones who voiced their disapproval of the Complainant's pipeline project. Nor is it clear whether they were reacting to releases done during odor testing or releases from another pipeline – Illinois Gas Transmission Company – that was in the same vicinity. In any event, if there are any legitimate concerns about the safety or fitness of interstate pipeline facilities that are located almost exclusively in Illinois, those concerns should be directed to the Federal Office of Pipeline Safety, not the Missouri Public Service Commission.

21. Another inherently contradictory and false assertion by the Complainant is its suggestion at page 22 that Laclede believes its decision to move forward with the Complainant's proposed arrangement, and all of the alleged violations it entails, is an "unreviewable business decision." Again, such an assertion is simply untrue, as the Complainant itself implicitly acknowledges in other portions of its pleading where it discusses the availability of a prudence review to determine whether Laclede has taken actions that are inimical to the interests of its customers or otherwise improper. (See May 12 Response, p. 24). The Commission's authority to review decisions after the fact cannot and should not be subverted into the authority to make such decisions in the first instance, which is the very course of action that Complainant seeks.

WHEREFORE, Respondent Laclede Gas Company respectfully renews its request that the Commission dismiss the Complaint filed by St. Louis Natural Gas Pipeline LLC on March 22, 2011, deny the Request for Investigation filed by St. Louis Natural Gas Pipeline LLC on March 22, 2011 or accept Laclede's answer thereto.

Respectfully submitted,

/s/Michael C. Pendergast

Michael C. Pendergast, Mo. Bar #31763
Vice President and Associate General Counsel
Rick Zucker, Mo. Bar #49211
Assistant General Counsel - Regulatory

Laclede Gas Company
720 Olive Street, Room 1516
St. Louis, MO 63101
Telephone: (314) 342-0533
Fax: (314) 421-1979
Email: mpendergast@lacledegas.com
rzucker@lacledegas.com

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Answer was served on the Staff and on the Office of Public Counsel on this 22nd day of May, 2011 by United States mail, hand-delivery, email, or facsimile.

/s/ Gerry Lynch

CenterPoint Energy - Mississippi River Transmission, LLC
 FERC Gas Tariff
 Fifth Revised Volume No. 1

Original Sheet No. 7

CURRENTLY EFFECTIVE RATES
 FIRM TRANSPORTATION SERVICE
 Rates Per Dth

| | <u>Base Rate</u> | <u>Sec. 21</u> | <u>Maximum Rate</u> | <u>Minimum Rate</u> | <u>Fuel Use</u> | <u>LUFG</u> |
|-----------------------------|----------------------|--------------------|-------------------------|-------------------------|-----------------|-------------|
| <u>RATE SCHEDULE FTS</u> | | | | | | |
| For Transportation Between: | | | | | | |
| Field Zone and Market Zone | | | | | | |
| - Reservation Charge | \$4.2096 | - | \$4.2096 | - | - | - |
| - Usage Charge | \$.0048 | \$.0019 | \$.0067 | \$.0067 | 1.03% | 0.58% |
| - Authorized Overrun | \$.1432 | \$.0019 | \$.1451 | \$.0067 | 1.03% | 0.58% |
| Field Zone Only | | | | | | |
| - Reservation Charge | \$2.1945 | - | \$2.1945 | - | - | - |
| - Usage Charge | \$.0015 | \$.0019 | \$.0034 | \$.0034 | 0.43% | 0.58% |
| - Authorized Overrun | \$.0736 | \$.0019 | \$.0755 | \$.0034 | 0.43% | 0.58% |
| Market Zone Only | | | | | | |
| - Reservation Charge | \$2.0151 | - | \$2.0151 | - | - | - |
| - Usage Charge | \$.0033 | \$.0019 | \$.0052 | \$.0052 | 0.60% | 0.58% |
| - Authorized Overrun | \$.0696 | \$.0019 | \$.0715 | \$.0052 | 0.60% | 0.58% |

Notes are shown on Sheet No. 19.