

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

ST. LOUIS NATURAL GAS PIPELINE LLC,))	
)	
Complainant,)	
)	
vs.)	File No: GC-2011-0294
)	
LACLEDE GAS COMPANY,)	
)	
Respondent.)	

ST. LOUIS NATURAL GAS PIPELINE LLC’S REPLY TO STAFF RESPONSE

COMES NOW Complainant St. Louis Natural Gas Pipeline LLC (“SLNGP”) and makes this Reply to *Staff Response to Commission Order Establishing Time to Respond to Motion to Dismiss* filed May 13, 2011 (“Staff’s Response”).

SLNGP generally agrees¹ with Staff’s Response, with the following exceptions.

Paragraph 6 of Staff’s Response states, in part: “the Commission does not have authority to take over the management of a utility company.” SLNGP generally agrees but does not view its Complaint as asking the Commission to take over management of Laclede Gas Company (“Laclede”). SLNGP detailed the scope and extent of the Commission’s authority in *St. Louis Natural Gas Pipeline LLC’s Response in Opposition to Laclede Gas Company’s Motion to Dismiss* (“SLNGP’s Response in Opposition”), which includes intervention, review and correction of Laclede’s conduct and all other relief sought in the Complaint.

Paragraph 8 of Staff’s Response states: “If the Commission were to decline jurisdiction at this time, the parties could take the matter to circuit court, where a record will be made that the

¹ SLNGP agrees with Staff’s Response to the extent consistent with SLNGP’s Complaint and SLNGP’s Response in Opposition to Laclede Gas Company’s Motion to Dismiss.

Staff may be able to use in a later proceeding.” This seems to suggest that although the Commission has valid subject matter jurisdiction² it may, at its discretion, decline to exercise that jurisdiction, requiring SLNGP to seek relief in a different forum.

Staff’s suggestion that the Commission may decline jurisdiction is not supported by legal authority. SLNGP respectfully submits that Missouri law indicates the contrary.

The near totality³ of the violations asserted in the Complaint concern Missouri statutes and regulations expressly referencing enforcement and determination by the Commission. Specifically, SLNGP seeks relief for violations of 4 CSR 240-40.015, .016 & .018, § 393.130.1 & .3 and § 393.140(5) & (11), RSMo. All of these provisions expressly empower the Commission (and not the circuit court) to investigate the claims, determine violations and fashion the appropriate remedy.

For example, under the affiliate transaction rules, 4 CSR 240-40.015(6) & (8) and 4 CSR 240-40-.016(7) & (9), the Commission has the authority to audit transactions, investigate operations, enforce the standards and prescribe remedies. Similarly, the Commission reviews and determines the price stabilization requirements in 4 CSR 240-40.018.

Section 393.140, RSMo, expressly grants the Commission the power and authority to supervise and investigate regulated natural gas companies. It also states that the Commission shall examine regulated gas companies and determine, among other things, the safety,

² Staff does not dispute that the Commission has valid subject matter jurisdiction over the matters set forth in SLNGP’s Complaint. SLNGP’s Response in Opposition (p. 17-19) listed and discussed the applicable statutes vesting jurisdiction of the Complaint in the Commission.

³ SLNGP would admit that antitrust claims are not necessarily within the Commission’s primary or exclusive jurisdiction, though certain remedial relief for antitrust violations and for the other violations asserted may be exclusive to the Commission.

sufficiency and adequacy of the company's service. MO. REV. STAT. § 393.140(5). It also gives the Commission power and authority to order reasonable improvements "as will best promote the public interest." MO. REV. STAT. § 393.140(2).

Section 386.390, RSMo, provides the complaint procedure used in this proceeding. Subsection (5) of this statute suggests that the Commission is required to hold a hearing on the complaint.

None of the above provisions make reference to investigation or determination of violations by the circuit court or to circuit court remedies. By contrast, the Commission's jurisdiction and authority are specifically referenced. The circuit court's involvement in section 386.390 complaints is limited exclusively to judicial review of Commission decisions. In any event, a circuit court would be ill-suited to determine the specialized, highly technical matters of fact and industry regulation implicated by SLNGP's Complaint.

Furthermore, the Commission is not statutorily authorized to decline jurisdiction. Section 386.250, RSMo 2000, entitled "Jurisdiction of Commission," describes the Commission's jurisdiction in mandatory terms -- "[t]he jurisdiction, supervision, powers and duties of the public service commission . . . shall extend . . . [t]o all public utility corporations . . . subject to the provisions of this chapter as herein defined." The only statutory exception to jurisdiction concerns out-of-state electric companies. The Commission may "decline jurisdiction and supervision over the sale and distribution of electricity" by companies in an adjoining state having less than twenty residential customers in Missouri. MO. REV. STAT. § 386.250(5). Under the principle of statutory interpretation, *expressio unis est exclusio alterius* (the express mention of one thing implies the exclusion of another), see *Mitchell v. Residential Funding Corp.*, 334 S.W.3d 477, 498 (Mo. App. W.D. 2010), the Legislature's specification of one circumstance

under which the Commission may decline jurisdiction would exclude other bases to decline. Therefore, if the Commission has jurisdiction of the pending Complaint, it must exercise its jurisdiction⁴.

Declining jurisdiction also would contradict the *primary jurisdiction doctrine*. Under this doctrine, courts will not decide controversies involving questions within the jurisdiction of an administrative tribunal where administrative knowledge and expertise are demanded to determine technical, intricate fact questions and where uniformity is important to the regulatory scheme. *See Raster v. Ameristar Casinos, Inc.*, 280 S.W.3d 120, 133 (Mo. App. E.D. 2009); *Oanh Thile Huynh v. King*, 269 S.W.3d 540, 543-544 (Mo. App. W.D. 2008).

SLNGP respectfully disagrees that the Commission may selectively decline to exercise valid subject matter jurisdiction and, in particular, not for the purpose of having SLNGP engage a circuit court proceeding to create a factual record for Staff to use in a later proceeding. (Staff's Response, ¶ 8). The concept of declining jurisdiction also does not seem relevant to the question of whether SLNGP's Complaint states a claim for which relief may be granted.

WHEREFORE, Complainant St. Louis Natural Gas Pipeline LLC prays the Commission for its Order denying Laclede Gas Company's Motion to Dismiss, directing investigation of the allegations set forth in the Complaint and for such other and further relief as the Commission deems just and proper.

⁴ Generally courts also are not permitted to decline jurisdiction. *Carlson v. Central Trust Bank*, 838 S.W.2d 483, 485 (Mo. App. S.D. 1992). Exceptions arise only where proceedings are pending in two forums of concurrent jurisdiction. In such case, one forum may elect, as a matter of *comity*, to decline jurisdiction in order that the other forum may proceed unimpaired.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent via first-class mail, postage prepaid, on this 20th day of May, 2011, to the following:

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