

**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
RESPONSE IN OPPOSITION TO
LACLEDE GAS COMPANY'S MOTION TO DISMISS**

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COMES NOW Complainant St. Louis Natural Gas Pipeline LLC (“SLNGP”) and makes this Response in Opposition to the Motion to Dismiss of Laclede Gas Company (“Laclede”).

I. INTRODUCTION

SLNGP’s eleven (11) mile interstate pipeline will bring Missourians a new supply of lower-cost natural gas as early as the Spring of 2013. This \$32 million infrastructure improvement project will greatly increase the safety and reliability of natural gas supply into the St. Louis area. It will lower prices by bringing competition to the natural gas transport market in Laclede’s service area, which now consists of only one major transporter (MRT-Centerpoint) and one lesser player in terms of volume (MoGas). The pipeline’s increased access to gas from the Rockies Express Pipeline (“REX”) will promote price stabilization and consumer choice.

Laclede seeks to kill this project by unreasonably refusing interconnection to SLNGP’s pipeline. Its opposition serves only to protect its monopoly, its affiliate Laclede Energy Resources (“LER”) and the infamous LER-MRT-Laclede gas transport and supply arrangements.

Laclede’s anticompetitive denial of interconnection violates numerous provisions of Missouri law. SLNGP’s Complaint describes Laclede’s conduct, the regulations and statutes violated and sufficiently stated a claim under the minimal pleading requirements applicable to Commission complaints. The Commission’s jurisdiction, duty and authority extend without question to investigation, hearing and determination of these claims. They further extend to all relief requested, including an order directing Laclede to permit interconnection in good faith.

Laclede raised only inconclusive policy arguments in its Motion to Dismiss. It asserted no defense negating SLNGP’s Complaint as a matter of law or precluding the Commission from investigating and determining these claims. Accordingly, the Commission should deny Laclede’s Motion to Dismiss.

II. RESPONSE TO LACLEDE'S UNVERIFIED FACT ALLEGATIONS AND OPINIONS

As a preface to its Motion to Dismiss, Laclede includes an "Introduction" setting forth an array of unsworn and unsupported factual contentions and opinions, including that SLNGP's pipeline project has "no potential customers," "brings nothing of real value," has unexplained but "serious flaws" and is nothing more than a "loosely conceived idea."¹ (Motion to Dismiss, p. 2, 5, 6, 7) (hereinafter "MTD"). Laclede also opines and accuses that SLNGP has "no experience operating an interstate pipeline" and that its project is "a highly speculative venture that is little more than a gleam in a promoter's eye." (MTD, p. 2, 6). In addition to being false, these purported facts and opinions bear no legal relevance to Laclede's Motion to Dismiss and cannot be considered in deciding the motion².

While extraneous facts are not directly pertinent to the Motion to Dismiss, Laclede's "Introduction" obliges SLNGP to respond for the Commission's better understanding of the current situation. This discussion will highlight also a number of factual issues that may be developed during investigation, discovery and hearing on SLNGP's Complaint.

A. SLNGP has significantly advanced its interstate pipeline project.

Laclede inaccurately described SLNGP's project as "little more than a gleam in a promoter's eye." For the Commission's information, development of SLNGP's interstate pipeline project includes the following, to date, without limitation:

¹ Laclede indicated contradictorily in its motion that it might be interested later in interconnection if SNLGP can obtain regulatory approval (MTD, p. 17, n. 5), though knowing full well that its refusal of interconnection will impede FERC approval.

² As discussed below, in reviewing a Motion to Dismiss, the Commission accepts the fact allegations of the Complaint as true, liberally construes all inferences in favor of the Complainant and does not consider extraneous, contrary fact allegations raised by Laclede, whether verified or unverified.

- Completion of all preliminary design work for the pipeline, compressor station and interconnection.
- Completion of a detailed cost estimate for the entire project (\$32 M approx.).
- Completion in August 2010 of a *Permitting Feasibility Report Proposed Natural Gas Pipeline* by CDG Engineers identifying the requisite permits from federal, state and local/municipal authorities, railroads, levee districts, transit authorities and private and public utility companies.
- Public “Open House” meeting on January 27, 2011, concerning easement requirements as per requirements/recommendations of the Federal Energy Regulatory Commission (“FERC”).
- Completion of all survey and title work (45 land owners and 103 parcels), which is one of the most significant parts of the development project, particularly for the FERC application.
- Contact with all critical early acquisition property owners by SLNGP’s real estate developer, with negotiations pending for SLNGP’s acquisition of purchase option agreements.
- Open Season meetings as per FERC requirements/recommendations starting Feb 16, 2011, which are ongoing.
- Receipt and development of firm construction bids.
- Negotiation with Natural Gas Pipeline Company (“NGPL”) for interconnection³ cost assessments.
- Extensive meetings with United States Army Corps of Engineers to present the development project and to discuss all Corps requirements, permits, easements and related issues, with no Corps objection to SLNGP moving forward with the development.
- Approval in principle, after meetings, from the U.S. Department of the Interior Fish and Wildlife Service representatives.
- Approval from the Illinois Department of Natural Resources.
- Meetings with the Illinois Historic Preservation Agency and Missouri Department of Natural Resources with arrangements for archaeological surveys in Missouri and Illinois.

³ Interconnection with NGPL is a non-issue, as they are required by federal law to permit interconnection. NGPL has been briefed on the project parameters and favors the development.

- Meetings with FERC representatives in preparation for the certificate pre-filing process.
- Meetings with prospective industry transport purchasers, including discussion with all major REX shippers.

Documentation of the above-described progress can be provided to the Commission and Laclede in the due course of this Complaint proceeding or at any time upon request.

B. SLNGP has the requisite pipeline experience.

SLNGP assembled an impressive team with broad industry experience for development of its pipeline. Key team members include Phil Loduca, Jr. (SLNGP President), Chris Allen (Project Manager)⁴, CDG Engineering⁵ (Permits and Environmental), Pyburn & Odom (Pipeline Engineering and Construction), Juneau Associates (Survey and Title Work), CH2M HILL (Environmental Operations), Volkert & Associates (Right-of-Way), CCRG (Cultural Resources), GKRSE Firm (FERC counsel in Washington, D.C.) and Armstrong Teasdale LLP (Legal/Regulatory).

In its Motion, Laclede was more specifically critical of SLNGP's lack of pipeline *operation* experience. (MTD, p. 2). This is a non-issue. The natural gas industry has no shortage of competent pipeline operators. SLNGP's project anticipates engagement of a highly qualified operator. Specifically, over the past several months SLNGP met with potential candidates that

⁴ Chris Allen formerly served as Director of Gas Marketing for Burlington Resources in Houston, the nation's third largest independent natural gas exploration, production and natural gas marketing company. He also served as Vice President of Business Development for Reliant Energy Wholesale Group developing multiple energy projects ranging in cost from \$500 million to \$1 billion.

⁵ CDG, a preeminent St. Louis firm, was chosen, in part, due to its strong relationship and regular dealings with the Corps of Engineers, whose involvement in boring under the Mississippi river will be critical.

are all world-class operators of interstate natural gas pipelines. Each has considerably more experience operating interstate pipelines than Laclede.

While SLNGP does not wish to disclose the identities of the operators with which it is in discussions, they include by description: (1) a major Midwest gas and electric utility with natural gas pipeline operations in Illinois and Missouri; (2) one of the nation's largest operators of interstate natural gas pipelines with operations in Illinois and Missouri; (3) a "Top Five" international oil and gas company; and (4) one of the nation's largest gas and electric utilities that operates natural gas pipelines in Illinois and Missouri. SLNGP's discussions with these entities confirmed that engagement of a competent pipeline operator will be no obstacle to the proper and efficient functioning of its pipeline nor any issue of significance in these proceedings.

Laclede's accusations of inexperience are as false as they are irrelevant to its Motion to Dismiss. In any event, the question of whether SLNGP has the requisite experience to operate an interstate pipeline ultimately is a FERC determination.

C. SLNGP's interstate pipeline will benefit Missouri ratepayers.

Increasing customer access to gas from the REX pipeline into Laclede's service area presents a number of advantages. Simply having access to gas from other major producing locations creates competition, helping to equalize natural gas prices. The alternate source of supply and delivery also will benefit Missouri ratepayers as a hedge against supply disruption from the Gulf region, from where Laclede and those on its distribution network obtain a significant amount of their current supply. It also promotes consumer supply choice and retail unbundling, which is an evolving concept in many jurisdictions. Also, with the development of additional gas supplies in the East to be channeled westward on the REX pipeline, increased and better access to REX gas can only be a positive development for Missouri consumers.

Laclede takes very little REX gas. Its sole access is via MRT-Centerpoint's aging and deficient east line connected to REX via the NGPL lateral in Illinois. Installation of new infrastructure by SLNGP for an alternate route from NGPL will significantly lessen the danger and constraints of transport on MRT-Centerpoint's insufficient east line.

The SLNGP line will have capacity of 200,000 MMBtu per day. This capacity could be increased to 550,000 MMBtu per day by adding compression at NGPL's main line. More and better access to REX gas will have a major, positive effect for Missouri ratepayers, as it is expected to become the lowest cost natural gas supply in the Midwest. SLNGP's transport capacity also could reduce the amount of storage necessary for Laclede to purchase.

SLNGP will be providing not only REX supply diversity but more importantly a direct connection between Laclede's gas distribution infrastructure and major interstate pipelines. Today, MRT-Centerpoint has a virtual monopoly as the only major interstate pipeline directly connected to Laclede Gas. MRT-Centerpoint has a contract with Laclede Gas for 670,000 MMBtu per day of transport capacity that expires 4/1/2013. If Laclede Gas were to contract with SLNGP for 200,000 MMBtu per day of transport, it would not negatively impact Laclede⁶. On the contrary, the lower price for a portion of its supply would benefit Laclede and its customers. Additional routes of direct access to major interstate pipelines for Laclede would be a positive,

⁶ MRT could be impacted by this competition, but that would not be a legitimate motivation for Laclede to deny interconnection. LER could be impacted also. As stated in The Laclede Group's 2010 Annual Report in boldface type on page 16, "**Risks of increased competition, regional fluctuations in natural gas commodity prices, and pipeline infrastructure projects may adversely impact LER's future profitability.**" The risk to LER's profitability is not a legitimate basis for Laclede to oppose SLNGP's pipeline. The ability to cross-subsidize via the Laclede-MRT-LER relationship also would be at risk though, again, this would not be a legitimate basis for opposition. Unfortunately, these seem to be tacit motivations for Laclede to deny interconnection given the objective benefits of SLNGP's project.

increasing competition, lowering prices and improving reliability and safety, rather than a negative, as Laclede suggests⁷.

In short, the addition of a new, safer, lower-cost natural gas supply into the Laclede service area via SLNGP's pipeline will only benefit Missouri ratepayers.

D. Laclede's opposition to SLNGP's pipeline is not legitimate.

Laclede receives transport service for its natural gas supply essentially from only one company, MRT-Centerpoint (670,000 MMBtu/day). Only a *de minimis* volume of this supply comes from the REX pipeline. Laclede also transports only a small volume with MoGas Pipeline LLC ("MoGas") (40,000 MMBtu/day).

The dubious relationship between Laclede Gas, MRT-Centerpoint and Laclede's marketing affiliate, LER, is well-documented. The Commission sued to obtain documentation of dealings between these companies to determine if affiliate transaction violations have occurred. This vertical monopoly is suspected of being used for improper cross-subsidization. The lack of any real competition or alternatives in the market of natural gas transport directly interconnected to Laclede's network creates an environment detrimental to Missouri ratepayers and public policy. It permits artificially high gas prices and creates risks of cross-subsidization, preferential treatment and other impermissible affiliate transactions. Laclede's opposition to a risk-free interconnection with SLNGP seems intended to preserve this monopolistic control and influence over its transport arrangements and to hamper any effective competition.

⁷ Laclede's opposition conflicts with its acknowledged operational risks. As stated clearly in the 2010 Annual Report of The Laclede Group in boldface type on page 13, "**Laclede Gas' ability to meet its customers' natural gas requirements may be impaired if contracted gas supplies, interstate pipeline and/or storage services are not available or delivered in a timely manner.**"

Laclede suggests also that SLNGP's pipeline would be redundant given its access to REX gas off the NGPL pipeline via the MRT-Centerpoint infrastructure. Yet, Laclede takes little transport of gas via MRT-Centerpoint's east line, likely due to infrastructure deficiencies and limitations⁸. SLNGP's new pipeline would not suffer from these deficiencies and limitations.

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.

Industry sources have indicated that Laclede is considering construction of a seventy-five (75) mile pipeline to run from a REX interconnection⁹ in Mexico, Missouri to North St. Louis at a cost of \$200 million. This would not be a cost-effective alternative. The estimated capital cost would translate to an added \$0.55 per MMBtu, compared with SLNGP's \$0.07 to \$0.085 per MMBtu for a \$32 million capital expenditure.

Laclede claims that SLNGP's project has no merit or plausibility. However, the FERC application process will make that determination. If SLNGP cannot obtain FERC approval, Laclede's agreement to interconnect would not be implemented. If SLNGP obtains FERC

⁸ During SLNGP's "Open House" meeting with landowners on January 27, 2011, numerous participants recounted that MRT-Centerpoint's east line had leakage problems. On several occasions, multiple landowners were required to vacate their homes for 24 hours as a result of leakage events.

⁹ There is no existing interconnection access in Mexico, unlike the existing NGPL interconnection access for SLNGP's project.

approval, the legitimacy of SLNGP's pipeline will have been conclusively established, and Laclede would have no valid reason to deny physical interconnection. FERC serves as the safety net. Laclede risks nothing legitimate by agreeing (or being ordered) to interconnect. Notably, FERC representatives support SLNGP's project and see the need for it.

Laclede *should* be seeking to provide natural gas to its customers at the lowest cost with the most reliable and safest infrastructure. It *should* welcome SLNGP's transport option, providing an alternate supply source with a better price. Laclede's denial of an interconnection agreement (which would necessarily be contingent upon FERC approval of the pipeline) makes no sense and suggests ulterior motives inconsistent with Missouri law and public policy.

The real motivation behind Laclede's opposition to SLNGP's pipeline seems obvious. Laclede wishes to protect its vertical gas supply monopoly using entities it effectively controls. A new market entrant would hamper the flexibility of those arrangements. Unfortunately, these anticompetitive motivations work to the detriment of Missouri natural gas consumers. They also conflict with Missouri law and public policy. For these very reasons, Missouri law charges the Commission with regulation of Laclede's gas distribution monopoly. This Complaint proceeding is part of that regulatory process.

E. SLNGP seeks a good faith interconnection agreement.

SLNGP has asked Laclede only for an interconnection agreement to move its project forward. An interconnection agreement would implicate no financial exposure to Laclede.

SLNGP has been working closely with staff of the FERC to obtain its interstate pipeline approval. The last meeting took place on April 14, 2011 in Washington, D.C. SLNGP is following the FERC procedures just like any other major interstate pipeline (e.g., Kinder Morgan, Centerpoint Energy, MRT, El Paso Natural Gas, etc.). It is perfectly on schedule with

the FERC process and is following a course comparable, if not faster, than that which any other major pipeline developer would follow. The project is now in the “open season” process, and SLNGP is in discussions with many major energy companies, interstate pipeline companies, Laclede industrial customers and potential equity investors.

Like any other interstate pipeline, SLNGP has reached the point in its project development where it is soliciting Memoranda of Understanding (MOUs) to support an application to the FERC for interstate pipeline authority. It is a FERC requirement that SLNGP have MOUs for most of the capacity on the pipeline before moving to the next step, which is the “prefiling” process. MOUs are non-binding and subject to FERC approval of the pipeline. Companies do not build interstate pipelines without commitments to take the capacity, and Laclede knows this.

SLNGP requires an interconnect agreement with Laclede Gas in order for companies wishing to provide SLNGP with non-binding MOUs to be assured that SLNGP can deliver natural gas to Laclede Gas’ city gate upon FERC approval. SLNGP is in discussions with many companies¹⁰ that are interested in SLNGP’s capacity. Laclede’s preemptive denial of interconnection precludes the MOUs.

III. ARGUMENT

Laclede’s refusal of an interconnection agreement under the above-described circumstances violates Missouri law. The Commission’s jurisdiction and authority extend to review and remedy of these violations. SLNGP will demonstrate below that Laclede’s Motion to Dismiss SLNGP’s Complaint for failure to state a claim lacks merit and should be denied.

¹⁰ SLNGP offered capacity to Laclede Gas but has not made it a requirement to build the pipeline.

A. Standard of decision.

Laclede moved for dismissal of SLNGP's Complaint pursuant to 4 CSR 240-2.070, therefore necessarily under subsection (6) for "failure to state a claim on which relief may be granted."¹¹ Laclede did not include in its motion any statement or discussion of the applicable standard under which the Commission decides a motion to dismiss for failure to state a claim nor any discussion of the minimal pleading requirements applicable to Commission complaints.

A motion to dismiss for failure to state a claim "is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive." Order Denying Motions to Dismiss at *1-2, *Staff v. Aspen Woods Apartment Associates, L.L.C.*, Case No. WC-2010-0227, 2010 Mo. PSC LEXIS 373 (Apr. 14, 2010) (quoting *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 463-464 (Mo. 2001)). Under this standard, Laclede's unsupported fact allegations and opinions regarding SLNGP's project have no bearing upon or relevance to a motion to dismiss¹². Review of a motion to dismiss is limited to the allegations in the Complaint, which are deemed true.

Complaints to the Commission are not subject to "fact pleading" requirements applicable to pleading civil causes of action in Missouri state circuit courts. *See State ex rel. Chicago, B. & Q. R. Co. v. Public Service Commission*, 334 S.W.2d 54, 58 (Mo. 1960) (holding that Complaints

¹¹ 4 CSR 240-2.070 contains no other basis for dismissal upon motion.

¹² SLNGP objects to the Commission's consideration of Laclede's unverified facts as support for its Motion to Dismiss. SLNGP's partial response to those allegations in Section II is not intended to be a waiver of that objection or relinquishment of SLNGP's right to have its Complaint determined on the basis of sworn facts properly admitted into evidence. Laclede's motion does not otherwise comply with 4 CSR 240-2.117(1) for summary determination.

before the Public Service Commission are not tested by rules applicable to pleadings in general)¹³. A complaint is sufficient if it fairly presents for determination issues or matters that fall within the jurisdiction of Commission. *Id.* See also, *Friendship Village of South County v. Public Service Com'n of Missouri*, 907 S.W.2d 339, 345 (Mo. App. W.D. 1995) (same).

Under section 386.390, RSMo 2000¹⁴, a Complaint to the Commission is only required to set forth:

any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission.

In other words, a Complaint must simply describe acts or omissions of a public utility that violate Missouri law, with identification of the law violated. The requirements of section 386.390, RSMo, are similar to “notice pleading” and are definitely not “fact pleading.”

In *State ex rel. Missouri Pipeline Co. v. Missouri Public Service Com’n*, 307 S.W.3d 162, 175 (Mo. App. W.D. 2009), the Missouri Court of Appeals held in a Commission case that the Staff sufficiently stated a claim because respondents “were given notice of the nature of the Staff’s claims and thus had the knowledge necessary to defend against the charges.” Again, this is more like notice pleading, not the heightened fact pleading required in Missouri civil courts.

¹³ Commission Orders, such as from *Aspen Woods* cited above, occasionally include quoted language, like that from the *Bosch* case, that “the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.” This heightened requirement applies only to civil cases subject to “fact pleading” requirements and conflicts with the lesser pleading standard set forth in the complaint statute, section 386.390, RSMo. This statute and interpretative appellate decisions confirm that Commission Complaints do not require the pleading of ultimate facts establishing each element of the claim asserted (fact pleading).

¹⁴ All citations herein to “RSMo” refer to the 2000 main volume unless otherwise stated.

Commission Orders also have expressed this lighter standard.

To plead a proper complaint before the Commission, at minimum, there must be an allegation of a violation of a law, rule, order or decision of the Commission. It is also well settled law that if a petitioner's allegations invoke substantive principles of law which may entitle them to relief, the petition should not be dismissed even though the cause is imperfectly stated.

Order Dismissing Complaint at *11, *Murphy v. Union Electric Co.*, File No. EC-2010-0364, 2010 Mo. PSC LEXIS 869 (Sept. 8, 2010) (citing *State ex rel. Ozark Border Elec. Co-op v. Public Service Comm'n of Missouri*, 924 S.W.2d 597, 600 (Mo. App. 1996); *DeMatanville v. Fee Fee Trunk Sewer*, 573 S.W.2d 674, 676 (Mo. App. 1978)).

Without no citation to authority reflecting the applicable pleading requirements, Laclede insisted that the Complaint must be pleaded far more specifically. (MTD, p. 18, ¶ 18). The pleading requirements Laclede suggested exceed even the “fact pleading” requirements of civil cases in Missouri circuit court. As demonstrated above, a far less onerous standard applies to Complaints before the Public Service Commission. Laclede's unsupported argument for exceedingly specific fact pleading in the Complaint should be rejected. Interestingly, the Complaint was sufficiently specific for Laclede to prepare and file its Answer. Dismissal based on non-existent pleading technicalities, as Laclede requests, should be denied.

B. SLNGP's Complaint meets the applicable standard to state a claim.

SLNGP's Complaint satisfied and exceeded the minimal pleading standards described above. Its allegations, which the Commission accepts as true in deciding Laclede's motion, sufficiently stated a claim or claims upon which the Commission may grant relief.

SLNGP asserted that it proposed to interconnect its pipeline with Laclede's distribution infrastructure and that Laclede refused the interconnection. (Complaint, ¶¶ 6, 9, 10, 12, 15, 16).

The Commission must accept, as pleaded, that SLNGP's pipeline project will bring numerous advantages to Missouri ratepayers, including access to REX gas, transport service competition, lower gas prices, protection against supply interruption and safer, more reliable infrastructure. (MTD, ¶¶ 8, 10, 17, 19(a), (c) & (d)). The Commission also must accept, by obvious implication, that refusal of interconnection will deprive Missouri ratepayers of the above-stated benefits and, as pleaded, cause artificially higher gas prices, decreased safety and greater risk of service interruptions. (MTD, ¶¶ 20-21).

The Commission also must accept, for the purpose of Laclede's motion, that this refusal of interconnection (by reasonable inference killing SLNGP's pipeline development project) provides a financial advantage to LER, a Laclede affiliate¹⁵. (Complaint, ¶ 22(a)). SLNGP asserted that Laclede's interconnection refusal thus violated 4 CSR 240-40.015 and/or 240-40.016. *Id.* Both regulations state broadly that "[a] regulated gas corporation shall not provide a financial advantage to an affiliated entity." Impeding the development of competing pipeline transport not contracted with and therefore threatening LER profits provides LER a financial advantage. SLNGP sufficiently stated a claim for violation of 4 CSR 240-40.015 and/or 4 CSR 240-40.016.

The Commission also must accept as true SLNGP's pleading that refusal of interconnection represents a failure on the part of Laclede to structure its portfolio of transportation contracts to mitigate upward natural gas price spikes and provide a level of stability of delivered natural gas prices. (Complaint, ¶ 22(b)). SLNGP asserted that these failures

¹⁵ Laclede does not deny in its Motion that stopping SLNGP's pipeline project will benefit LER. The 2010 Annual Report of The Laclede Group, warns that "pipeline infrastructure projects may adversely impact LER's future profitability." *See* fn.6 *supra*.

put Laclede in violation of 4 CSR 240-40.018, which requires prudent planning to promote price mitigation and stability. *Id.* SLNGP asserted that its pipeline would mitigate price spikes and improve stability. (Complaint, ¶¶ 19-21). Laclede's prevention of SLNGP's project, while knowing that the new REX gas supply would stabilize gas prices, violates 4 CSR 240-40.018. SLNGP sufficiently stated a claim for this violation.

Section 393.130.1, RSMo 2002, requires Laclede to provide service instrumentalities that are "safe and adequate and in all respects just and reasonable" and also make only charges that are "just and reasonable." SLNGP asserted in its Complaint that refusing interconnection (and, by reasonable inference, killing SLNGP's pipeline project) results in lack of supply diversity, higher prices, greater risk of service interruption, less safe instrumentalities and less reliability. (MTD, ¶¶ 8, 10, 17, 19-21). By reasonable inference, Laclede's rejection of a no-cost and no-risk infrastructure improvement to lower and stabilize prices will render its charges unjust and unreasonable. SLNGP sufficiently stated a claim for violation of section 393.130.1, RSMo 2002.

The Commission must accept as true SLNGP's allegation that refusal of interconnection gives an undue and unreasonable preference and advantage to Laclede's existing transporters and subjects gas consumers to undue and unreasonable prejudice and disadvantage. (Complaint, ¶ 22(d)). As referenced in Section II, there is no effective competition for gas transport in Laclede's service area, with MRT-Centerpoint being Laclede's primary, directly-connected transporter. The relationship between Laclede, MRT and LER permitting cross-subsidization is under intense scrutiny. Laclede's actions to exclude SLNGP from the transport market and stifling competition in favor of its monopoly power constitutes an undue and unreasonable preference and subjects consumers to prejudice and disadvantage in violation of section 393.130.3, RSMo 2002. SLNGP sufficiently stated a claim for violation of this statute.

Section 393.140(5), RSMo, prohibits unjust, unreasonable, unjustly discriminatory, unduly preferential and otherwise unlawful charges and acts of Laclede, such as those as described in the preceding paragraphs. (Complaint, ¶ 22(e)). Laclede’s conduct, as pleaded, denies effective competition, favors a Laclede affiliate, unlawfully discriminates against SLNGP and confers an unfair competitive advantage to Laclede’s existing transporters (MRT and MoGas), all in violation of this statute. Section 393.140(5) expressly empowers the Commission to remedy these violations, as requested by SLNGP.

SLNGP pleaded that Laclede failed to extend a contract to SLNGP for interconnection similar to that enjoyed by other directly-connected transporters (Complaint, ¶ 22(e)). Section 393.140(11), RSMo, expressly prohibits Laclede from extending to any company, like its directly-connected transporters, “any form of contract or agreement . . . or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances.” Laclede should permit other transporters, like SLNGP, to directly connect to its facilities under contractual terms similar to those enjoyed by MRT-Centerpoint and MoGas. As discussed below, the statutes of many other states *require* such access to local distribution facilities and specify public service commission jurisdiction to resolve related interconnection disputes.

SLNGP also asserted in its Complaint that Laclede’s discriminatory and anticompetitive conduct violated federal and state antitrust and unfair competition laws. (Complaint, ¶ 23). These would include the Sherman Act, 15 U.S.C. §§ 1 & 2 (prohibiting agreements restraining trade and market monopolization), the Clayton Act, 15 U.S.C. §§ 12-27 (prohibiting anticompetitive conduct) and parallel Missouri Antitrust Law, sections 416.011-.161, RSMo. Laclede’s refusal of interconnection restrains trade, promotes its monopoly and harms

competition in the market of gas transportation to the disadvantage of Missouri ratepayers and SLNGP. The Complaint states a claim for violations of these antitrust laws under the minimal pleading requirements applicable to Commission Complaints.

On its face, SLNGP's Complaint sufficiently states claims for relief when its good faith allegations are accepted as true for the purposes of determining Laclede's motion. Laclede's unsworn and unsupported assertion of extraneous contrary facts cannot be considered on a Motion to Dismiss. The validity of SLNGP's claims will be proven and determined after investigation, discovery and hearing in due course. For now, SLNGP's Complaint satisfies the applicable pleading requirements and should not be dismissed for failure to state a claim.

C. The Commission's jurisdiction extends to SLNGP's claims and to the relief sought in the Complaint.

Missouri statutes confirm unequivocally the Commission's jurisdiction over the claims in SLNGP's Complaint and its power to order the relief requested. It is a natural part of the Commission's power and authority to regulate the conduct of certificated natural gas companies in Missouri denying interconnection to pipeline transport companies. The Commission not only has the jurisdiction, but also the duty, to determine the negative effect and unlawfulness of Laclede's anticompetitive and prejudicial denial of interconnection.

1. Missouri statutes confirm the Commission's power and jurisdiction.

The Commission's jurisdiction squarely extends to investigation, hearing and determination of a Complaint under section 386.390, RSMo, that Laclede violated affiliate transaction regulations, failed to mitigate price spikes and stabilize prices, provided insufficient service instrumentalities, extended unlawful preferences and took action designed to deny competition and confer unfair competitive advantages. (Complaint, ¶¶ 22-23 (citing 4 CSR 240-

40.015, .016 & .018, § 393.130.1 & .3 and § 393.140(5) & (11), RSMo)). As indicated in the previous section, SLNGP's Complaint provides the factual predicate and sufficiently stated a claim for these violations. Laclede suggests that the Commission lacks jurisdiction to determine these violations though they arise under the Commission's own regulations and Missouri statutes regarding regulation of public gas utilities.

The Commission's jurisdiction extends to regulation of Laclede, § 386.250(1), RSMo, and to resolution of complaints against Laclede for violations of Missouri law after investigation and hearing. MO. REV. STAT. § 386.390.1 (2000). Consistent with these statutes, the Commission provides in its own rules for the filing, investigation and hearing on a complaint, like that of SLNGP. *See* 4 CSR 240-2.070.

The Commission's power also extends to "general supervision" of Laclede. MO. REV. STAT. § 393.140(1) (2000). It includes the power to investigate Laclede's gas supply and distribution methods and the express power to:

order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas . . . system, . . . and . . . to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations

MO. REV. STAT. § 393.140(2) (2000). Ordering interconnection with an interstate pipeline falls easily within these provisions.

The Commission's powers also extend expressly to examination of Laclede as to its "methods, practices, regulations and property employed by them in the transaction of their business," and to determine after hearing that Laclede's instrumentalities of service are "unsafe, insufficient or inadequate" and to thereafter prescribe instrumentalities to be used "for the security and accommodation of the public and in compliance with the provisions of law"

MO. REV. STAT. § 393.140(5) (2000).

These statutes confirm the Commission's jurisdiction over SLNGP's claims and its power to order the relief sought (investigation, hearing and ordering interconnection) as the outcome of SLNGP's Complaint.

2. Missouri case law confirms the Commission's power and jurisdiction.

Interpretative Missouri case law further supports these conclusions. Beyond its primary function of public utility regulation, the Commission's "principal purpose" is to serve and protect ratepayers. *Missouri Public Service Commission v. Oneok, Inc.*, 318 S.W.3d 134, 137 (Mo. App. W.D. 2009). Laclede's refusal of interconnection harms Missouri ratepayers.

"The Commission has the ability to inquire into the reasonableness of a transaction between a utility and another when the transaction impacts the utility's operating costs included in the company's rate base." *State ex rel. Capital City Water Co. v. Missouri Public Service Com'n*, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993). This includes the right to determine a "reasonable standard of judgment" in review of corporate contract decisions. *Id.* at 911-12. Reviewing the reasonableness of Laclede's denial of interconnection that would lower Laclede's operating costs is therefore within the Commission's power and authority.

The Commission's purpose also is to protect consumers from the natural monopoly power that the public utility might otherwise enjoy as the provider of a public necessity. *Hurricane Deck Holding Co. v. Public Service Com'n*, 289 S.W.3d 260, 268 (Mo. App. W.D. 2009). The Commission's investigation and hearing of SLNGP's Complaint asserting abuse of monopoly power by Laclede meets this express purpose and duty. Dismissal of the Complaint for failure to state a claim would contradict this well-established purpose of the Commission.

3. Statutes from other states, many with retail gas unbundling programs, confirm that review of gas interconnection issues are naturally within the jurisdiction of a public utilities commission.

While the above-described Missouri statutes and regulations extend to and permit SLNGP's claims, Missouri lacks a specific statute or regulation governing natural gas interconnection requests and related disputes. Commission oversight and resolution of interconnection issues is nonetheless a natural part of its power and authority¹⁶. Accordingly, other states have statutes under the jurisdiction of their respective public utility commissions requiring transmission access or interconnection. *See* ILL. REV. STAT., ch. 200, § 5/8-501 (specifying Commission jurisdiction to determine and order after hearing if public convenience and necessity requires interconnection to gas distribution facilities); ALASKA STAT. § 42.06.340(A) (permitting application to Commission for order requiring interconnection upon failure of parties to agree); FLA. STA. ANN. § 368.105(6) (requiring gas companies to provide non-discriminatory transmission access and specifying Commission jurisdiction to resolve controversies between the gas company and party desiring transmission access).

Such powers to order interconnection are found in some states' statutes designed to deregulate and unbundle retail natural gas service by requiring *natural gas supplier choice*. Promoting competition and lower prices, *natural gas supplier choice* programs permit consumers to choose their gas supplier, with the distribution company only imposing a distribution charge. *See* D.C. CODE ANN. §§ 34-1671.02-.14 (requiring natural gas supplier choice, prohibiting barriers to market entry, conferring *right* of suppliers to interconnect to distribution system on a

¹⁶ The Commission already has rules requiring electric company interconnections and resolution of related disputes (4 CSR 240-20.060), approves telephone company interconnection agreements and provides mediation for telecommunications interconnection disputes (4 CSR 240-36.030(1)).

non-discriminatory basis and authorizing commission to remedy anticompetitive conduct of gas distributors). *See also* COL. REV. STAT. § 40-2-122 (instituting *natural gas supplier choice* and requiring nondiscriminatory delivery service to permit consumers “ready access to natural gas supply from among competing sources”).

Consumer choice programs currently operate in the District of Columbia, New Jersey, New York, Pennsylvania, California, Massachusetts, New Mexico, West Virginia, Georgia, Illinois, Maryland, Michigan, Ohio, Virginia, Colorado, Florida, Indiana, Kentucky, Montana, Nebraska, South Dakota and Wyoming. Denial of access to the delivery infrastructure of local gas distribution companies in Missouri prevents any regulatory evolution in the direction of retail gas unbundling.

Again, the Commission’s review of interconnection denials by local gas distribution monopolies under its supervision is a natural part of the Commission’s jurisdiction and authority.

D. The Commission’s intervention will not unlawfully usurp Laclede’s management control and does not exceed Commission jurisdiction.

Laclede attacks the Commission’s jurisdiction under the argument that the Commission’s investigation and hearing of this Complaint equates to assuming general management of Laclede’s operations and usurping its business discretion. (MTD, p. 8) (“utility management, not the Commission, has the legal right and discretion to make the fundamental business decisions” and “the Commission’s authority . . . does not include the right to dictate the manner in which the company conducts its business.”). In the context of SLNGP’s Complaint, Laclede suggests that its unreviewable business discretion extends to unlawful affiliate transactions, unchecked gas supply and transport contracting, the safety, adequacy, justness and reasonableness of its service and charges, its preferential treatment of existing transporters and affiliates, unchecked discrimination, denial of uniform contracts and general anticompetitive conduct. Under

Laclede's view, all of these matters raised in the Complaint are matters of business discretion and "general management," beyond the Commission's jurisdiction and power to address, despite the express provisions of 4 CSR 240-40 and Chapter 393, RSMo, indicating otherwise.

Laclede cited a number of Missouri cases in support of its "general management" argument. None of these are on-point factually or legally. None support Laclede's contention that the Commission should dismiss SLNGP's Complaint for lack of jurisdiction to intervene in this dispute. On the contrary, the cases cited by Laclede confirm the Commission's jurisdiction.

Laclede first cited to *State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8, 14 (Mo. 1930) for the proposition that "the Commission's authority to regulate certain aspects of a public utility's operations and practices does not include the right to dictate the manner in which the company conducts its business." (MTD, p. 8). Interestingly, this statement was made in the factual context of St. Joseph Water Company paying three percent (3%) of its gross receipts as a "tribute" to its parent holding company and wanting to include the cost of that tribute in its rate base. The Court stated: "The company has a lawful right to manage its own affairs and conduct its business in any way it may choose, **provided that in so doing it does not injuriously affect the public.**" *Id.* The Court in *City of St. Joseph* affirmed the utility's payment of the 3% tribute and included the cost in the rate base.

SLNGP's Complaint asserted injury to ratepayers as a result of Laclede's conduct. Under these circumstances, the Court in *City of St. Joseph* would not preclude review by the Commission. In fact, this case expressed the principle that the Commission can substitute its judgment for that of the corporate directors if there is "an abuse of discretion." *Id.* at 225. Abuse of management discretion can be reasonably inferred from SLNGP's pleading. The *City of St. Joseph* case does not preclude SLNGP's Complaint as a matter of law.

Laclede cited to *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181 (Mo. App. W.D. 1960) for the proposition that “the Commission’s powers are ‘purely regulatory in nature’” and as support for its argument that the Commission cannot intervene in Laclede’s management decisions. (MTD, p. 9). However, as stated *Harline*, “[t]he utility retains the lawful right to manage its own affairs and conduct its business as it may choose, **as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare**. “ *Id.* at 182 (emphasis added). This exception applies precisely here. SLNGP asserted that Laclede violated its legal duties and regulations and harms the public welfare by denying interconnection. The *Harline* case supports SLNGP’s claims and the Commission’s jurisdiction to intervene. It does not indicate a failure to state a claim.

Laclede then cited *State ex rel. Laclede Gas Company v. P.S.C.*, 600 S.W.2d 222, 228 (1980) for the proposition that the Commission does not have the “authority to take over the general management of any utility.” (MTD, p. 9). Laclede offers no context for this judicial statement, and this case is not on-point. The dispute in *State ex rel. Laclede Gas Company* concerned the Commission’s disallowance of \$250,000 in “goodwill” advertising costs from being included in Laclede’s \$13.5 million rate base increase. The Court offered the above statement as a preface to its holding in favor of the Commission disallowing the \$250,000 and stating that this disallowance did not constitute the Commission’s undertaking of general management of Laclede. *Id.* at 228. The Court did not find that the Commission’s acts constituted “general management” of Laclede. The facts of *State ex rel. Laclede Gas Company* bear no similarity to the facts of SLNGP’s Complaint.

Laclede next cited to *State ex rel. Public Service Commission v. Bonacker*, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995) as precluding the Commission from exercising the dual role of

manager and regulator. (MTD, p. 10). *Bonacker* concerned the Commission’s lack of jurisdiction to act as receiver for a sewer system that was failing to provide safe and adequate services to customers. “General management” in *Bonacker* involved the Commission entirely taking over the sewer utility as receiver. It was not a scenario where the utility violated affiliate preference prohibitions and denied interconnection to preclude competition. The Court in *Bonacker* cited principles that would confirm the Commission’s jurisdiction over SLNGP’s Complaint, stating that “[t]he powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance.” *Id.* at 900. SLNGP’s Complaint concerns corporate malfeasance, not usurpation of Laclede’s general management.

None of the authority cited by Laclede indicates a lack of Commission jurisdiction or a valid legal basis to dismiss SLNGP’s Complaint for failure to state a claim. Consideration of SLNGP’s Complaint entails no more intervention in Laclede’s business operations than is already exercised by the Commission via tariff and rate approval, its prudence reviews and its mechanism for Complaint investigation and resolution. Laclede admits as much in its motion.¹⁷ Management discretion enjoyed by Laclede does not include violation of the statutes and regulations asserted in SLNGP’s Complaint.

E. The Complaint does not involve review or pre-approval of “routine business decisions.”

Laclede’s attempted in its Motion to conflate the unique situation of an interstate pipeline seeking interconnection with any other day-to-day business decision. Laclede suggested that if

¹⁷ Laclede agrees that its business decisions relating to gas supply are “subject to a prudence audit.” (MTD, p. 6).

the Commission hears SLNGP's Complaint, the floodgates will be open for any disappointed vendor to complain and seek hearing on Laclede's refusal to purchase supplies or contract with it. (MTD, p. 13). This would extend to sellers of leak detection equipment, companies selling utility trucks and manufacturers selling construction equipment. (MTD, p. 13). Laclede's scare tactics are unpersuasive. A decision by Laclede to purchase one type of truck over another does not implicate the exercise of monopoly power or exclusion of market competition. SLNGP's request for interconnection is not a routine business decision. It is rare and unique.

Laclede does not claim to be inundated with numerous interstate pipeline companies requesting an interconnection agreement. Refused interconnection requests from interstate natural gas pipelines to local distribution monopolies in Missouri are and will continue to be exceedingly rare events¹⁸. Few interstate pipelines directly supply Laclede¹⁹.

Laclede also attempted to characterize the Complaint as asking the Commission to make gas procurement decisions for the company. It cites to *In the Matter of Developments in the Transportation of Natural Gas*, 29 Mo. P.S.C. (N.S.) 137, 143 (1987) for the proposition that a "company's choice of the appropriate mix of gas to procure is a management decision and is properly left to the company." (MTD, p. 9).

SLNGP seeks to access Laclede's distribution infrastructure. This does not *necessarily* entail the purchase of transport service by Laclede or the purchase of REX gas by Laclede.

¹⁸ Laclede makes only vague reference to its alleged recent rejection of a "a similar proposal by another party that had significantly greater experience operating pipelines than SLNGP." (MTD, p. 2). Laclede offers no detail and does not specify if this developer requested interconnection. No interconnection requests from other pipeline companies are referenced.

¹⁹ Only two pipelines directly supply transport to Laclede via direct interconnection: MRT-Centerpoint and MoGas.

SLNGP can sell transport service to end users on Laclede's network. To that effect, Laclede has an applicable transport tariff. Of course, if Laclede has a lower-cost option of transport via SLNGP, lower-cost REX gas via SLNGP's pipeline and it ignores those in favor of higher-cost services and supplies, such decisions could be reviewed and remedied in the Commission's prudence audits and in subsequent rate cases. Regardless, SLNGP's Complaint does not seek to have the Commission direct Laclede with respect to "the appropriate mix of gas to procure."

Laclede argued also that the Commission "has repeatedly expressed a clear preference for reviewing the propriety, prudence and reasonableness of specific utility procurement decisions and activities after the fact and an equally clear disinclination to pre-approve them in advance." (MTD, p. 12). Laclede cites to *In Re Kansas City Power and Light Company*, Case No. EO-92-250 (Mo. Pub. Serv. Comm'n, Aug. 22, 1992) in which the Commission rejected a request to pre-approve the utility's decisions relating to disposition of emission allowances created by the Clean Air Act Amendments of 1990 (CAAA). (MTD, p. 12). In that case, KCPLC sought Commission pre-approval of actions it wished to make in response to the CAAA. KCPLC sought pre-approval of its compliance plan through an immediate prudence review as means to avoid potential under-recovery of costs later on. The Commission declined to undertake pre-approval for lack of having developed more comprehensive policy guidelines and without more detailed knowledge of the facts at issue.

SLNGP's Complaint bears no similarity to *In Re Kansas City Power and Light Company*. SLNGP is not regulated by the Commission. Under-recovery of its costs is not at issue. Neither Laclede nor SLNGP is seeking pre-approval of the decisions of Laclede or SLNGP. Rather, SLNGP seeks review of Laclede's foregone decision to withhold an interconnection agreement.

None of the argument or authority presented by Laclede on these issues indicates that the

Complaint should be dismissed for failure to state a claim.

F. Ordering interconnection presents no risk to ratepayers.

Laclede argues that ordering interconnection “would shift from the Company to ratepayers any risks associated with potential deficiencies in the terms of the interconnection agreement and lock Laclede into a long-term business relationship with an entity that the Company does not believe is offering anything of value to Laclede’s customers, and without regard to what the Company’s own procurement plans might be.” (MTD, p. 12-13). Again, Laclede is not obligated to use SLNGP’s pipeline. Laclede’s customers will not necessarily be affected by the interconnection (other than positively, by lowering prices and improving supply reliability). Also, Laclede is not “locked into a long-term business relationship.” Rather, it is providing open access to its distribution infrastructure. Any problems with the relationship can be resolved in due course, similar to its arrangements with other directly-interconnected companies. Allowing reasonable access to its distribution infrastructure is simply part of enjoying a public utility monopoly.

Laclede argued that its customers will bear the cost of interconnection by recovery of that cost by rate increases. However, SLNGP will bear the cost of interconnection. Any subsequent Laclede oversight of the physical connection can occur with negligible, if any, effect on the rate base. Laclede offers no specific figures with respect to the cost involved. Another option would be to have SLNGP operate the interconnection.

Laclede also asserted that SLNGP’s proposal required “a substantial financial commitment by Laclede, either in the form of subscribing to transportation service on the proposed pipeline or taking an investment stake in the project.” (MTD, p. 1). This is untrue. SLNGP seeks in this proceeding an order permitting interconnection subject to FERC approval.

It does not seek to have the Commission order Laclede to subscribe for transport service or take an investment stake.

G. Commission resolution of interconnection disputes would not be unreasonable.

Unless and until a statute or regulation is promulgated fixing terms and parameters for interconnection of interstate gas pipelines with local distribution companies, the Commission's resolution of interconnection disputes may be required. Given the rarity of such requests, occasional calls to intervene would not impose any undue burden.

Laclede asserted that the Commission will become "the final arbiter of what constitutes a reasonable interconnection agreement." (MTD, 13). This not exactly true. Commission decisions are subject to judicial review. Also, the agreement proposed to Laclede followed a standard industry form for interstate pipelines that met or exceeded any regulatory requirements.

H. SLNGP is not required to qualify as a local distribution company to make a complaint.

Laclede claimed that SLNGP should be required to satisfy the Commission of its qualification to be a local distribution company under 4 CSR 240-3.205(1)(A)(5) in order to state a claim. (MTD, p. 15). According to Laclede, for SLNGP to state a claim it must provide "certified copies of the federal, state and local governmental approvals required for its project, . . . the kind of detailed feasibility study that an LDC would have to provide, . . . its financing plans for the project, [] any customers who would be served by the proposed pipeline, [] an estimate of the revenues that could be generated by such customers, [and] . . . data point[s] on the expenses associated with operating the pipeline." (MTD, p. 15-16). Laclede's argument that SLNGP must meet the requirements for operation of a local distribution company under 4 CSR 240-3.205 before bringing a complaint has absolutely no basis in law.

SLNGP's right to bring a claim arises under section 386.390.1, RSMo. This statute does not impose the requirements suggested by Laclede for SLNGP to have standing to make a complaint. Standing to file a complaint does not even require direct damage to the complainant. MO. REV. STAT. § 386.390.3 (2000). 4 CSR 240-2.070(1) states that a complaint may be filed by "any person . . . who feels aggrieved by a violation of any statute, rule, order, or decision within the commission's jurisdiction" SLNGP certainly *feels aggrieved* by Laclede's violations.

These provisions do not require the complainant to demonstrate that it would qualify as a local distribution company in Missouri. Similarly, the elements of the statutory and rule violations asserted by SLNGP do not require proof that SLNGP would qualify as a local distribution company in Missouri.

Laclede's argument is not properly addressed to a motion seeking dismissal of SLNGP's Complaint. Laclede is suggesting that SLNGP must present information for the Commission to approve the validity of its pipeline development. This is a determination within FERC jurisdiction. It is not a determination that can be made by the Commission nor is it a determination required for SLNGP to state a claim in its Complaint.

I. SLNGP's Complaint is not premature.

Laclede asserted that before the Commission could order interconnection, SLNGP would have to first obtain its FERC authorization and build its interstate pipeline up to the point "where a pipeline operator is ready to turn a valve and deliver gas to an LDC as soon as an interconnection is made." (MTD, p. 14). Otherwise, "it would be grossly premature and inappropriate" for the Commission to address SLNGP's Complaint "at this stage." (MTD, p. 5). Laclede knows enough about the FERC process to understand that this is an impossibility.

Even the FERC requires only non-binding MOUs for approval of an interstate pipeline. Similarly, the Commission can order an interconnection agreement contingent upon FERC approval. If companies, like Laclede, are permitted to preemptively deny interconnection to any competitive transporter (and favor only those, like MRT, that it can control and influence), effective competition is prevented and destroyed for all comers. Laclede's refusal to allow interconnection effectively precludes a successful FERC application.

Laclede admitted that that while "it is the FERC that would ultimately determine whether SLNGP has met the operational and financial requirements for a pipeline to be built under Section 7(c) of the Natural Gas Act," it still will be within Laclede's business discretion to refuse a business relationship with SLNGP. (MTD, p. 15). This indicates that Laclede wishes to reserve its discretion to deny interconnection even if SLNGP builds a pipeline up to Laclede's city gate with FERC approval. This exercise of monopoly power must be reviewed by the Commission. From a practical standpoint, any prospective interstate pipeline requires assurance of its ability to interconnect with a local distribution company as part of obtaining FERC approval and before construction of its pipeline. Under this logic, Laclede would replace the FERC for deciding interstate pipeline authorization (as an unreviewable matter of business discretion) for any interstate pipeline that would interconnect with Laclede.

As a matter of public policy and benefit to ratepayers, Missouri statute and/or Commission regulation should specify that any FERC-approved interstate pipeline will have a right to interconnect with any Missouri local gas distribution company consistent with appropriate design and gas delivery parameters. In the absence of such statute or regulation, SLNGP has engaged the complaint process. Laclede cannot be permitted unreviewable discretion to deny interconnection.

Laclede did not contend that SLNGP's pipeline would compromise its infrastructure or operations in any way. Laclede's suggestion that SLNGP must first build its pipeline up to its city gate before seeking Commission review of its arbitrary and anti-competitive denial of interconnection makes little practical sense. It also is unsupported by law. These arguments do not indicate that SLNGP failed to state a claim for relief in its Complaint.

J. The annual prudence review does not preclude a complaint proceeding.

Laclede suggested that SLNGP's Complaint should be dismissed and no investigation conducted because Laclede is already subject to an annual "Actual Cost Adjustment ('ACA') audit process, in which [the Commission] reviews a broad range of utility decisions for prudence." (MTD, p. 6). Rather than cite authority that this somehow precludes consideration of these issues in a Complaint proceeding and that SLNGP has failed to state a claim for that reason, Laclede merely argues that "the prudence and propriety of Laclede's procurement decisions should be evaluated in the Commission's ACA process." (MTD, p. 7). This last suggestion constitutes an admission by Laclede that the Commission, in fact, has power and authority to review Laclede's denial of interconnection.

SLNGP described herein the applicable statutes and regulations governing its standing and ability to bring a complaint and for the Commission to hear the matter and order the relief requested. None of that authority states that a complaint is precluded because issues raised could also be addressed in annual prudence review.

SLNGP does not seek a general prudence review of Laclede's operations. It seeks a determination, as permitted by the complaint process, that Laclede has violated Missouri law in denying interconnection. SLNGP seeks the Commission's review of this specific decision, not a comprehensive review of Laclede's business practices. SLNGP cites no authority suggesting

that this or any other complaint must be determined only in an annual prudence review.

Laclede repeated its “floodgates” argument in this context, asserting that the Commission should not “entertain the prudence of Laclede’s gas supply decisions on a case-by-case basis through the complaint process.” (MTD, p. 20). Laclede claimed “it would open the door to complaints by any party that failed to win Laclede’s business, or even by parties that failed to win or maintain a desired level of such business.” (MTD, p. 20). Again, Laclede equates the rare instance of an interconnection request to virtually any business solicitation, suggesting that if the Commission reviews one interconnection refusal, all business decisions will be opened up for review by complaint. This seems highly unlikely. Regardless, the question before the Commission is whether the Complaint states a claim for relief, not whether proceeding with the Complaint will cause others to file complaints.

K. Other REX access does not preclude the Complaint.

Laclede claimed it rejected SLNGP’s proposal because “existing pipeline transporters that currently deliver gas to Laclede today already provide the Company with access to the same gas supplies on the Rocky Mountains Express pipeline (“REX”) that would be sourced through the Complainant’s proposed pipeline, but without the proposed pipeline’s incremental cost.” (MTD, p. 2). This is an unsupported factual allegation and not a valid basis to dismiss the Complaint for failure to state a claim upon which relief can be granted. It also makes little sense because all transporters will have some incremental cost.

As discussed in more detail in Section II, Laclede’s access to REX gas is limited and underdeveloped. Moreover, SLNGP can offer REX gas transport on safer and more reliable infrastructure, with greater volume and at a lower price than MRT.

IV. CONCLUSION

Laclede did not establish as a matter of law that SLNGP failed in its Complaint to state a claim for which relief may be granted. If the Commission determines the Complaint suffers from any technical pleading deficiencies, SLNGP requests the opportunity to file an amended Complaint. However, as demonstrated above, SLNGP stated in its Complaint claims for which the Commission may grant relief.

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. In the alternative, if the Commission deems the Complaint to be insufficiently pleaded, SLNGP prays the Commission for leave to file an Amended Complaint.

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 12th day of May, 2011, to the following:

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