

IN THE CIRCUIT COURT FOR THE COUNTY OF COLE
STATE OF MISSOURI

FILED²

OCT 12 2001

Missouri Public
Service Commission

State of Missouri ex rel. Riverside)
Pipeline Company, L.P. and Mid-Kansas)
Partnership,)

Relators,)

v.)

The Missouri Public Service Commission,)

Respondent.)

Case No. CV198-1505cc
Division No. I

Exhibit No. 20
Date 9/17/01 Case No. GR-96-450
Reporter Kern

JUDGMENT AND ORDER

Riverside Pipeline Company, L.P. and Mid-Kansas Partnership (hereafter "Petitioners") filed a petition for writ of prohibition on November 9, 1998, seeking to stop the Missouri Public Service Commission (hereafter "Respondent" or "Commission") from proceeding further in a natural gas rate case then pending before the Commission, Case No. GR-96-450. This court issued its preliminary writ in prohibition on the same date. Respondent filed its motion to quash preliminary writ and to dismiss petition on November 13, 1998. The court heard argument on that motion on November 23, 1998.

The Court having heard argument on Respondent's Motion to Quash and to Dismiss, and being fully informed in the premises, makes the following findings, judgment and order:

The essential function of prohibition is to confine inferior courts and agencies within their proper jurisdiction and to prevent them from acting without or in excess of their jurisdiction. *State ex rel. Allen v. Yeaman*, 440 S.W. 2d 138 (Mo. App. 1969). While prohibition will lie to preclude an inferior tribunal from further proceedings after denial of a motion to dismiss, a court is reluctant to do so. Prohibition is appropriate in such cases only where

petitioner has a clear, unequivocal right to have the underlying proceeding dismissed. *State ex rel. O'Blennis v. Adolf*, 691 S.W. 2d 498 (Mo. App. 1985).

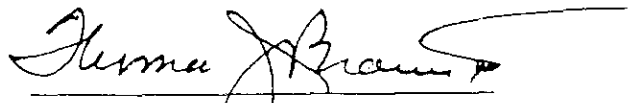
In the present case, Petitioners asserted to the Commission that language in a settlement involving a number of previous natural gas rate cases also extended as a bar to the adjustments proposed in the underlying case here, Case No. GR-96-450. The Commission denied Petitioners' motion to dismiss, permitting the case to go forward. This court granted petitioners a preliminary writ in prohibition, and later heard argument on Respondent's motion to quash.

This Court finds that the first two sentences of paragraph 5 of the settlement agreement relied upon by Petitioners are inconsistent, resulting in ambiguity. Petitioners are not clearly entitled to dismissal of the underlying action, and therefore prohibition is not appropriate in this cause. The Court is particularly cautious in granting a writ where, as here, the writ acts to stop the Commission's exercise of the police power in the vindication of the public interest. The Commission should, in the first instance, determine if it has jurisdiction of the cause after hearing the evidence and arguments of the parties before it.

Having heard the arguments of the parties, and being fully informed in the premises, the Court finds that the preliminary writ previously entered in this cause was improvidently granted. It is therefor the judgment of this Court that the preliminary writ be quashed, and the petition be dismissed.

Ordered accordingly.

12/2/98
Dated


Thomas J. Brown, III
Circuit Judge