



John B. Coffman  
Acting Public Counsel

State of Missouri

Bob Holden  
Governor

Office of the Public Counsel  
Governor Office Bldg. Suite 650  
P. O. Box 7800  
Jefferson City, Missouri 65102

Telephone: 573-751-4857  
Facsimile: 573-751-5562  
Relay Missouri  
1-800-735-2966 TDD  
1-800-735-2466 Voice

May 31, 2002

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Re: Case No. AX-2002-157

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the Office of the Public Counsel's Comments. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to parties of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael F. Dandino".

Michael F. Dandino  
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of proposed rulemaking                    )  
4 CSR 240-2.075, Intervention                            )       Case No. AX-2002-157

**OFFICE OF THE PUBLIC COUNSEL'S COMMENTS**

COMES NOW the Office of the Public Counsel and respectfully submits the following as its comments on the proposed rule regarding Intervention.

1. By way of introduction, Public Counsel is concerned that this proposed rule complicates the intervention process with little substantive improvement in the process. It rather tends to move toward greater formality and create greater pleading burdens with little benefit. In the end, the proposed rule adds to the time, expense, and paperwork for all concerned, including the PSC's record department, without significant practical benefits. Administrative agencies such as the PSC are designed to be less formal and in the proceedings the technical rules of evidence are not applied. Section 536.070, RSMo. 2000. The proposed rule is a step backwards. It is another attempt to try to make the PSC process more like a circuit court process. Commission proceedings are not like most circuit court proceedings.
2. Public Counsel is especially concerned in that this proposed rule casts more unneeded procedural obstacles to open participation in the regulatory process by interested parties. This runs counter to the goal of promoting decisions which are based on evidence derived from proceedings where all interested parties have a full and fair opportunity to present their views and evidence. This participation

should not require proper parties to run an expensive procedural gauntlet that serves little practical purpose.

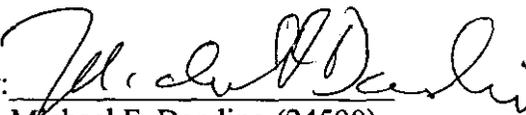
3. Subsection (7) requires the intervenor file a "responsive pleading." Public Counsel states that such a requirement is not needed and should be deleted. The intervenor has already stated its position or inability to state its position on the relief sought in its application as required by subsection (z): "An application to intervene shall state the proposed intervenor's interest in the case and reasons for seeking intervention, and shall state whether the proposed intervenor supports or opposes the relief sought or that the proposed intervenor is unsure of the position it will take or other authority under which relief is requested." The logical extension of the application of the rule is to have another pleading filed that parrots the first statement or generally denies each allegation for lack of sufficient information to be able to admit or deny each allegation.
4. The requirement to file a responsive pleading is not suitable for most proceedings. For example, a tariff does not require any party to admit or deny each portion of the tariff. The proposed rule places an unnecessary administrative burden on the intervening party with little value added to the Commission's record and the files of all parties. Once the party is granted intervention there is no need to further qualify the intervenor. This proposed rule may serve only to deter intervention and to limit intervention. The proposed rule would not promote the public interest nor improve the regulatory process. The PSC should encourage the development of a full and fair record and encourage interested parties that have the required interest to come forward and to participate rather than face administrative hurdles

that adds to **the cost with little return. The public interest would be better** served by deleting proposed subsection (7) and relying upon the current subsection (2) to serve that purpose.

WHEREFORE, Public Counsel asks the Commission to consider its suggestions and comments on this proposed rule.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

Michael F. Dandino (24590)

Senior Public Counsel

P.O. Box 7800

Jefferson City, MO 65102

(573) 751-4857

(573) 751-5559

Fax (573) 751-5562

email: [mdandino@ded.state.mo.us](mailto:mdandino@ded.state.mo.us)

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed via U. S. Mail postage prepaid or hand delivered on this 31 st day of May, 2002 to the counsel of record on the attached service list.



General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City MO 65102

Andereck, Evans, Milne, Peace & Johnson  
301 E. McCarty  
P. O. Box 1438  
Jefferson City, MO 65102

Kevin K. Zarling  
AT&T Communications  
919 Congress, Suite 900  
Austin, TX 78701

Mary Ann Young  
William D. Steinmeier, P.C  
2031 Tower Drive  
P. O. Box 104595  
Jefferson City MO 65110-4595

Lisa Creighton Hendricks  
Sprint Communications Company, L.P.  
6450 Sprint Parkway, Bldg. 14  
MAILSTOP: KSOPHN0212-2A253  
Overland Park, KS 66251

Brydon, Swearngen & England  
P. O. Box 456  
Jefferson City, MO 65102

Diana Vuylsteke  
Bryan Cave LLP  
211 N. Broadway, Suite 3600  
St. Louis, MO 63102-2750

Newman, Comley & Ruth  
601 Monroe Street  
Jefferson City, MO 65 101

Michael C. Pendergast  
Laclede Gas Company  
720 Olive Street, Room 1520  
St. Louis, MO 63 101

Thomas R. Parker  
Verizon  
601 Monroe Street, Suite 304  
Jefferson City MO 65 101

Paul G. Lane  
Southwestern Bell Telephone Company  
One Bell Center, Room 3520  
St. Louis, MO 63101-1976

Leland Curtis/Carl J. Lumley  
Curtis, Oetting, Heinz, Garrett & Soule  
130 S. Bemiston, Suite 200  
Clayton, MO 63105

Stephen F. Morris  
MCI WorldCom Communications, Inc.  
701 Brazos, Suite 600  
Cedar Rapids, IA 52406-3177

Paul H. Gardner  
Goller, Gardner & Feather  
131 East High Street  
Jefferson City MO 65101

Fischer and Dority  
101 Madison, Ste. 400  
Jefferson City, MO 65 101

Stuart W. Conrad  
Finnegan, Conrad & Peterson  
1209 Penntower Office Center  
3 100 Broadway  
Kansas City, MO 64111

Robert C. Johnson  
720 Olive Street, Suite 2400  
St. Louis, MO 63 101

Robert J. Hack  
Missouri Gas Energy  
3420 Broadway  
Kansas City, MO 64111

James J. Cook  
Union Electric Company  
One Ameren Plaza  
1901 Chouteau Avenue, Box 66149  
St. Louis, MO 63166-6149

Ron Molteni  
Attorney General Office  
P. O. Box 889  
Jefferson City, MO 65102

Stewart & Keevil, LLC  
1001 Cherry Street, Suite 302  
Columbia, MO 65201-7931