

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of proposed rulemaking)
4 CSR 240-2.115, Stipulations and)
Agreements.) Case No. AX-2002-158

COMMENTS OF THE MISSOURI ENERGY GROUP

COMES NOW Barnes-Jewish Hospital, Continental Cement Company, Emerson Electric Company, Lone Star Industries Inc., River Cement Company, and SSM (hereinafter known as the “Missouri Energy Group” or “MEG” and respectfully submits the following as its comments on the proposed rule regarding Stipulations and Agreements.

1. The MEG opposes this proposed rule and urges the Public Service Commission (“Commission”) to continue the existing Rule 2.115, and each of its sections without modification.
2. This proposed rule appears to remove a party’s right to be heard if it objects to the proposed Stipulation. *State ex rel Fischer v. PSC*, 645 S.W.2d 39 (Mo.App. 1982) sets out the rights of parties to a case when a nonunanimous stipulation is filed, including the right to a full and fair hearing on the issues.
3. While subsection 2 (B) of this proposed rule allows a party to object to a proposed Stipulation, the portion of the statute requiring a requested hearing is removed. The proposed rule is silent relating to the granting of a hearing to a party objecting to a proposed Stipulation and does not explain the meaning or effect of an objection.
4. Removing a party’s right to a hearing would also deny a party’s right to cross examination guaranteed under Section 536.070, RSMo. 2000:

(2) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues

5. Subsection 2 (E) requires a party to have stated a position and filed testimony on a particular issue in order to object to that issue in a nonunanimous Stipulation. This deprives a party of the right to develop evidence on cross examination. Section 384.420.1 RSMo. 2000 allows parties to introduce evidence without the requirement of prefiled testimony as a condition of participation. In addition, if a Stipulation is entered into before testimony is filed, this would disallow any party not agreeing to the Stipulation the right to object.

6. Under 536.080.1, all parties have the right to present oral argument or file a brief and this rule would contradict that right by not allowing a party to object to a Stipulation on an issue in which it had not previously filed a position or testimony.

7. Subsection 2 (D) of this proposed rule appears to convert a non-unanimous Stipulation into a binding agreement if a non signatory objects to the Stipulation. In many cases, a signatory's acquiescence to a Stipulation is predicated on the understanding that all of the provisions of the Stipulation will be accepted as a whole. A party to a Stipulation may be willing to agree to certain provisions of a Stipulation that would otherwise be unacceptable in order to have the whole agreement . If the Stipulation is not accepted as a whole, the parties' positions may differ greatly from that which was filed in the Stipulation. Parties should have the right to negotiate and agree as to what effect an objection or hearing has on their continued agreement with the Stipulation. A party should continue to have the right to change its position on the separate issues if a hearing is held.

CERTIFICATE OF SERVICE

Pursuant to 4CSR 240-2.080 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused a copy of the foregoing to be served on all persons on the official service list in Case No.'s AX-2002-157, AX-2002-158, AX-2002-159

Dated at St. Louis, Missouri this 7th day of June, 2002

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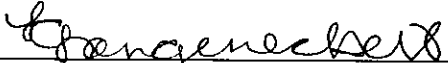
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