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May 31, 2002

Executive Secretary
Public **Service Commission**
Governor Office Building
Jefferson City, MO

HAND DELIVERY

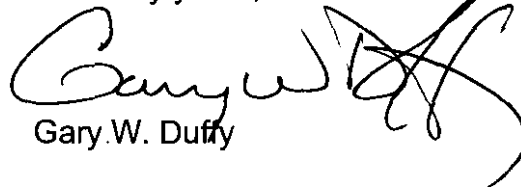
RE: Case No. AX-2002-159

Good afternoon:

Enclosed for filing in the above-referenced proceeding please find an original and six copies of the Comments of Missouri Gas Energy, The Empire District Electric Company, and Laclede Gas Company.

If you have any questions, please give me a call.

Sincerely yours,


Gary W. Duffy

Enclosures
cc w/encl:

Office of Public Counsel
Office of the General Counsel
Mike Pendergast
Dave Gibson
Rob Hack

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of proposed rulemaking)
4 CSR 240-2.115 Summary Disposition) Case No. AX-2002-159
of Contested Cases)

COMMENTS OF MISSOURI GAS ENERGY,
THE EMPIRE DISTRICT ELECTRIC COMPANY, AND
LACLEDE GAS COMPANY

COME NOW Missouri Gas Energy, a division of Southern Union Company; The Empire District Electric Company; and Laclede Gas Company (hereinafter, "the Companies") and present the following comments on the Commission's proposed rule 4 CSR 240-2.117 Summary Disposition of Contested Cases which appeared in the May 1, 2002, edition of the Missouri Register. The Companies are all subject to the rules of the Commission and thus are directly affected by this proceeding.

1. The Companies generally support the Commission's proposed rule with respect to summary determinations. The Companies favor the concept that the Commission should be able to resolve cases by a summary determination in those circumstances where there are no genuine issues of material fact and there is entitlement to relief as a matter of law. Consequently, the Companies generally support the Commission's effort to put in place a process for the filing of motions for summary determination or motions on the pleadings where circumstances warrant.

2. Use of Term "Contested Case." The Commission uses the phrase "contested case" in the title of this proposed rule and in the text of the rule. This phrasing is confusing and could lead to controversy. "Contested case" is a term which

is defined in Chapter 536 RSMo and has a definition which applies to that chapter. See 536.010 RSMo 2000. That definition involves a proceeding where there is a legal requirement for a hearing. It does not automatically apply to Chapters 386, 392 or 393 RSMo because those chapters have a special review procedure. Some Commission proceedings are required by law to involve a hearing. There are also procedures at the Commission for which the law does not require a "hearing." There does not appear to be anything in the proposed rule which specifically relates to whether a hearing is required by law with regard to whether summary determination is appropriate. Therefore, it is unnecessary and potentially confusing to utilize a term of law designed for application in another chapter of the statutes, under different conditions, in this situation. The Companies suggest that this potential confusion and controversy can be avoided simply by substituting a more general term such as "proceeding" or "case."

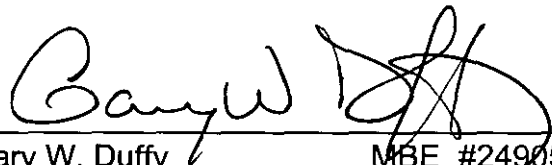
3. **Unreasonable Time Limit.** The Companies are also concerned about the potential for abuse of this proposed rule in rate cases. Under this proposal, a party could file a motion for summary disposition in a rate case near the end of the proceeding when parties are focusing on the drafting of rebuttal or surrebuttal testimony. The proposed rule requires a response be made within 10 days after the motion is served. Such a short time frame for a detailed response -- when other important matters are time sensitive due to the statutory constraints on the processing of a rate case -- certainly presents the potential for abuse by moving parties. This time limit is also **three times quicker** than under the civil rules in the same situation. See Civil Rule 74.04. The Companies suggest that the Commission consider adding a provision which says that it is not available in general rate cases where there is an

"operation of law date," or at least expanding the time in which an answer is required.

4. As indicated above, the Companies are concerned that subsection (1)(C) of the proposed rule only gives a responding party ten (10) days to respond to such a motion. As mentioned before, a response here is due in one-third the time as under the civil rules in the same situation. The Companies suggest that a modestly longer period of time in which to respond (somewhere within a 15-30 day time period) would provide the non-moving party a more reasonable opportunity to locate or generate the necessary evidentiary support to respond to a dispositive motion. The Commission, of course, could always reserve the right to establish a shorter time for a response, if appropriate under the circumstances, but should be mindful of the potential for abuse.

WHEREFORE, the Companies submit the foregoing comments with respect to the Commission's proposed rulemaking in the captioned case.

Respectfully submitted,

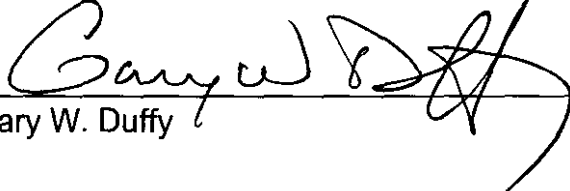


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Laclede Gas Company

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was hand delivered this 31 "day of May, 2002, to the Office of the Public Counsel and the Office of the General Counsel.



Gary W. Duffy

AX-2002-159comments/gdmydocs/wp8