

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Superior Bowen Asphalt Company, LLC,)	
)	
Complainant,)	
)	
vs.)	File No. GC-2011-0101
)	
Southern Union Company, d/b/a)	
Missouri Gas Energy,)	
)	
Respondent.)	

ORDER SETTING CONFERENCE

Issue Date: April 3, 2012

Effective Date: April 3, 2012

The Missouri Public Service Commission is setting a conference to clarify the procedure related to the *Non-Unanimous Stipulation and Agreement*.¹ That document bears the signatures of counsel for complainant, respondent, and Staff (“signatories”). The signatories represent that the Office of the Public Counsel does not oppose the settlement.

The statutes and Commission regulations expressly provide for waiver of any “procedural requirements which would otherwise be necessary *before* final decision [.]”² and “stipulations or agreements among the parties [.]”³ which the Commission may treat as unanimous⁴ and may substitute for separately stated findings of fact.⁵ But the signatories seek more than a waiver of pre-decision

¹ Filed on April 2, 2012.

² Section 536.060(3), RSMo 2000 (emphasis added).

³ Section 536.060(4), RSMo 2000.

⁴ 4 CSR 240-2.115(2).

⁵ Section 536.090, RSMo 2000.

requirements. They seek a Commission order “approving all of the specific terms and conditions of” the *Non-Unanimous Stipulation and Agreement*.

The signatories cite no law requiring the Commission to approve their settlement before they carry it out and act to dismiss the complaint.⁶ The Commission may issue a consent order.⁷ Analogizing to a consent judgment, such order memorializes the signatories’ settlement, without determining the merits of the complaint.⁸

By contrast, the Commission’s order is subject to certain statutory requirements that are not subject to waiver,⁹ including written conclusions of law.¹⁰ The law at issue is the law cited in the complaint, and the *Non-Unanimous Stipulation and Agreement* includes no stipulated facts supporting any application of that law. The parties have stipulated to an outcome but not to any facts supporting that outcome.

Therefore, the Commission will convene a conference to discuss procedure on the *Non-Unanimous Stipulation and Agreement*.

THE COMMISSION ORDERS THAT:

1. The Commission will convene a conference as set forth in the body of this order. All signatories to the *Non-Unanimous Stipulation and Agreement* shall attend the conference, except the Office of the Public Counsel. The Office of the Public Counsel may attend the conference.

⁶ 4 CSR 240-2.116(1).

⁷ Section 536.060, RSMo 2000.

⁸ *Nations v. Hoff*, 78 S.W.3d 222, 223 (Mo. App., E.D. 2002).

⁹ *Conlon Group, Inc. v. City of St. Louis*, 944 S.W.2d 954, 958 (Mo. App., W.D. 1997).

¹⁰ Section 386.420.2, RSMo 2000.

2. The conference will convene on April 10, 2012, at 10:00 A.M. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. That building that meets accessibility standards required by the Americans with Disabilities Act. Any person who needs additional accommodations to participate in the conference or evidentiary hearing shall contact the Commission, not later than the day before the event. Such contact shall be through the Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711. Any party may participate in the conference by telephone by dialing (573) 522-5993 at the conference's start time.

3. This order is effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(SEAL)

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri
on this 3rd day of April, 2012.