

**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 CANCELLING CONFERENCE
AND RESERVING OTHER RULINGS**

Issue Date: April 11, 2012

Effective Date: April 11, 2012

The Missouri Public Service Commission is reserving ruling on the requests that the Commission issue orders:

- Requiring a cash payment and making related rate-making determinations (“substantive orders”), and
- Allowing voluntary dismissal.

The movants may supplement those requests as described below. The Commission is granting the request to cancel the conference.

The Commission set the conference¹ to discuss the *Non-Unanimous Stipulation and Agreement* (“settlement”). The settlement was filed² by the Commission’s staff, Superior Bowen Asphalt Company, LLC, and Southern Union Company (“movants”).³ The movants filed the *Joint Motion for Order*

¹ *Order Setting Conference*, issued on April 3, 2012; *Order Re-Setting Conference*, issued on April 4, 2012.

² Filed on April 2, 2012.

³ The Office of the Public Counsel (“OPC”) is also a party to this action under 4 CSR 240-2.010(11) but OPC has elected not to take a position on the motion.

Approving Stipulation and Agreement, Cancelling Conference and Dismissing Case (“motion”).⁴

In the motion, movants make further suggestions in support of the substantive orders, seek voluntary dismissal with consent,⁵ and request cancellation of the conference.

a. Conference

The conference’s purpose was to solicit the movants’ further suggestions in support of the settlement. The motion fulfilled that purpose and the movants object to the added expense of a conference. Therefore, the Commission will grant the motion as to cancelling the conference.

b. Substantive Orders

The movants set forth the substantive orders in the settlement,⁶ which must be in the form of a pleading.⁷ Any pleading must support the relief sought with law and fact.⁸ Neither the settlement nor the motion meets that requirement for the substantive orders, so the Commission will not grant the substantive orders.

c. Dismissal

The substantive orders’ issuance is the movants’ contingency for dismissal so the Commission will also not grant dismissal.

⁴ On April 10, 2012.

⁵ Consent of parties, or leave of the Commission, is necessary for voluntary dismissal because Superior Bowen has pre-filed testimony. 4 CSR 240-2.116(1).

⁶ 4 CSR 240-2.115(1)(B) and (2).

⁷ 4 CSR 240-2.115(1)(A) (emphasis added).

⁸ 4 CSR 240-2.080(4) (emphasis added).

d. Supplemental Filing

The movants may supplement their requests for either:

- Voluntary dismissal with removal of the contingency, or
- The substantive orders with support in law and fact,

but not both, because the two are mutually exclusive as follows.

As discussed above, the substantive orders must stand on fact and law, and the Commission must make conclusions of law. The law cited in the complaint determines which facts are relevant. Thus, the substantive orders must address the complaint's merits.

The merits of the complaint are no matter for a voluntary dismissal. Voluntary dismissal simply occurs when the Commission grants complainant's request, by right before the pre-filing of testimony, and by permission after. Because voluntary dismissal does not address the merits of the complaint, no fact or law is necessary for a voluntary dismissal.

e. Summary

As with any complaint, if the movants want to settle this case, they can do so, and Superior Bowen can voluntarily dismiss the complaint, with only the Commission's permission for dismissal. But, if the movants want substantive orders from the Commission, they must supply either evidence or stipulated facts sufficient to support those orders. Therefore, the Commission will reserve ruling on the settlement and motion pending further filing.

THE COMMISSION ORDERS THAT:

1. The April 13, 2012, conference is cancelled.

2. Ruling on the remainder of the *Joint Motion for Order Approving Stipulation and Agreement, Cancelling Conference and Dismissing Case* is reserved.

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 11th day of April, 2012.