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October 29, 1999

Mr. Dale Hardy Roberts
Executive Secretary
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³

OCT 29 1999

Missouri Public
Service Commission

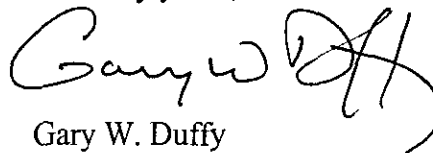
RE: Case No. AX-2000-110

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of the initial comments of Brydon, Swearngen & England, P.C.

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

Sincerely yours,


Gary W. Duffy

Enclosures
cc w/encl: Office of Public Counsel

FILED
OCT 29 1999
Missouri Public
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of Proposed Rule)
4 CSR 240-2.040 Practice Before)
the Commission.)

Case No. AX-2000-110

COMMENTS OF BRYDON, SWEARENGEN & ENGLAND, P.C.

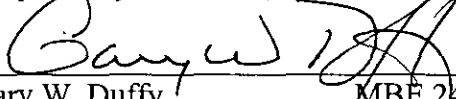
Comes now the law firm of Brydon, Swearengen & England P.C. and for its comments in this matter respectfully states as follows:

1. These comments are in response to the numerous notices of proposed rulemaking published in the *Missouri Register* on October 1, 1999 (24 Mo.Reg. 2318 through 2340). The law firm of Brydon, Swearengen & England P.C. ("BSE") routinely represents numerous utilities who are regulated by the Commission. Therefore, the firm is required to utilize and abide by the rules of practice and procedure of the Commission, and thus members of the firm and their clients will be affected by changes in those rules. Several members of the firm have experience with the existing rules of practice and procedure of the Commission since their inception in 1975.

2. Section (6) of 4 CSR 240-2.040 purports to require an attorney to withdraw from a case at the Commission only with the leave of the Commission. This is not an existing rule of the Commission. Attorneys in this state are governed as to their conduct by rules adopted by the Missouri Supreme Court. The Public Service Commission is not a court, and has no inherent authority over the ethical conduct of attorneys. While Rule 4-1.16 of the Supreme Court rules indicates that a "tribunal" can order an attorney to continue representing a client notwithstanding good cause for terminating the representation, there does not appear to be any provision similar to proposed section (6). Further, the comments to Rule 4-1.16 indicate that there are situations

where a client has a right to terminate a lawyer, and there are situations where a lawyer must withdraw from representation (mandatory withdrawal). There appear to be conflicts between Supreme Court Rule 4-1.16, e.g., a client's right to dismiss a lawyer at any time and the Commission's unauthorized attempt to inject itself into that relationship. There appears to be little, if any, authority for the Commission to promulgate rules regarding attorney conduct in this situation. Additionally, it has provided no explanation in the PURPOSE section as to why this new provision is necessary. For the foregoing reasons, the Commission should not adopt this provision.

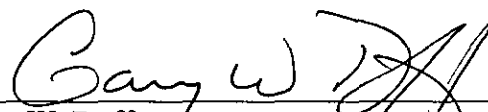
Respectfully submitted,



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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served by hand delivery on the Office of the Public Counsel and the Office of the General Counsel of the Commission this 29th day of October, 1999.



Gary W. Duffy