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October 15, 2002

Secretary  
Missouri Public Service Commission  
200 Madison Street  
Jefferson City, MO 65101

**FILED<sup>3</sup>**  
OCT 16 2002

**RE: AX-2001-654**

Missouri Public  
Service Commission

Dear Secretary:

Enclosed please find an original and eight copies of the Comments of Brydon, Swearengen & England P.C. regarding the above-reference case. Please file stamp the extra copy and return to me for my records.

If you have any questions concerning this matter, then please do not hesitate to contact me. Thank you very much for your cooperation.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

  
Janet E. Wheeler

JEW/tli  
Enclosures

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of a Proposed Rulemaking to  
consolidate Filing Requirements Into a New  
Chapter 3

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)

Case No. AX-2001-654

FILED<sup>3</sup>

OCT 16 2002

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

Missouri Public  
Service Commission

Brydon, Swearngen & England, P.C. is a Jefferson City law firm which for many years has represented the interests of all of the various types of utility companies (gas, electric, water, sewer, heating, and telephone) before the Public Service Commission. As a result, it has dealt with the rules of the Commission almost on a daily basis for decades, and has an interest in the rules as someone called upon to utilize and interpret them for purposes of advising its clients.

We have reviewed the 76 pages of proposed changes in the September 16, 2002 issue of the *Missouri Register*, and pursuant to the Notice of Proposed Rulemaking, present the following comments.

1. We note that in the vast majority of situations in the Notice of Proposed Rulemaking, the Commission has merely moved the text of a rule to another location, or split one rule that applied to many different types of utilities into many different rules. Having worked with the Commission's rules for decades, we do not see the need to devote this much effort to essentially re-arranging the furniture in the living room. It is not evident to us that the result is worth the effort of the various regulated utilities and attorneys having to search in new places for the text of rules. Therefore, we conclude

that the effort does not appear to produce any tangible benefit to anyone, and recommend that all of the proposals be withdrawn. If they are not withdrawn, we note that there are several situations where mistakes appear to have been made in the reorganization, and set out below are those that we have identified.

2.     **4 CSR 240-3.100   Definitions Pertaining Specifically to Electric Utility Rules.** We believe the inclusion of definitions such as affiliate, affiliated entity, affiliated transaction, avoided costs and control, correspond specifically to affiliate transactions, which are not included in chapter 3. Therefore, it is illogical to include these definitions where no relevant application of those definitions can occur. We suggest that these definitions be excluded from this section since they are not applicable in chapter 3.

3.     **4 CSR 240-3.105   Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity.**

It is apparent that the Commission simply proposes to split 4 CSR 240-2.060(4), which applies to gas, electric, water, sewer and heating companies, into five separate rules. There is no showing that this is necessary or that the present system has failed. Additionally, it appears to us that the Commission made a mistake in the proposed subsection (1)(B). The proposed rule is for an "Electric Utility" but (1)(B) says "If the application is for electrical transmission lines, gas transmission lines or electrical production facilities--". Our belief is that "gas transmission lines" should be omitted from an electric-specific rule because an application for a certificate concerning gas transmission lines has already been covered in the corresponding gas CCN rule, which is 4 CSR 240-3.205. We suggest that the phrase ", gas transmission lines" be omitted if

this proposal is adopted.

**4. 4 CSR 240-3.115 Filing Requirements for Electric Utility**

**Applications for Authority to Merge or Consolidate.** We believe it is inappropriate for the Commission to use the term “purchaser” in section (2) of this proposed rule. In a merger or consolidation, there is no “purchaser.”

**5. 4 CSR 240-3.145 Filing Requirements for Electric Utility**

**Applications for Authority to Merge or Consolidate.** We believe some typographical errors have occurred in this proposed rule. The proposed rule in section (7), subsection (9)(D) and (9)(E) omits what was an underline in the current rule, 4 CSR 240-20.010(7), to indicate the placement of a number on a tariff sheet, as in “PSC Mo. \_\_\_\_”. There is a similar omission in section (17) after “sheet.”

**6. 4 CSR 240-3.155 Filing Requirements for Electric Utility**

**Cogeneration Tariff Filings.** We believe a mistake has been made in this proposal with regard to an internal reference. In 3.155(5)(A)1., which applies to “Small Electric Utilities,” there is a requirement to “provide comparable data to that required under section (2) to enable qualifying facilities to estimate the electric utility’s avoided costs for periods described in section (2).” We think the internal reference to “section (2)” is an error. In the existing rule, 4 CSR 240-20.060, it makes a reference to existing subsection (3)(B). The text from existing (3)(B) is found in section (4) of the proposed rule. Therefore, we think the reference in the proposed rule should be to section (4) rather than section (2). Otherwise, the reference makes no sense.

**7. 4 CSR 240-3.160 Filing Requirements for Electric Utility General**

**Rate Case Increase Requests.** We believe a better title could be found for this rule,

since it really talks about depreciation studies and related data. A better solution might be to combine it with 3.030. Although the “Purpose” clause does make a cross reference to 3.030 which lists “minimum” filing requirements for many types of utilities, we do not believe it is either logical or helpful to place this material in a separate rule with the proposed title. If someone is looking for the “minimum” filing requirements, it would make more sense for this material to appear in 3.030, so all of the “minimum” filing requirements are in one place.

We also believe an error has occurred with language being duplicated. The “However” provisions which exempt the filing of a depreciation study if one has been filed within three years appear twice within the proposed rules applicable to electric utilities: once in 3.160(1)(A) and again in 3.175(1)(B)1.B.(I). We can conceive of no reason for that language to appear twice.

8. **4 CSR 240-3.175 Submission Requirements for Electric Utility Depreciation Studies.** See the comment above about duplication of language.

9. **4 CSR 240-3.190 Electric Utility Reporting Requirements.** In one of the rare substantive changes we found, we commend the Commission for adding another means of communication in section (3); the “electronic communication” which we understand to encompass both facsimile and e-mail.

10. **4 CSR 240-3.200 Definitions Pertaining Specifically to Gas Utility Rules.** We believe the inclusion of definitions such as affiliate, affiliated entity, affiliated transaction, and control, correspond specifically to affiliate transactions, which are not included in chapter 3. Therefore, it is illogical to include these definitions where no relevant application of those definitions can occur. We suggest that these definitions be

excluded from this section since they are not applicable in chapter 3.

11. **4 CSR 240-3.215 Filing Requirements for Gas Utility Applications for Authority to Merge or Consolidate.** We believe it is inappropriate for the Commission to use the term “purchaser” in section (2) of this proposed rule. In a merger or consolidation, there is no “purchaser.”

12. **4 CSR 240-3.235 Filing Requirements for Gas Utility General Rate Case Increase Requests.** We believe a better title could be found for this rule, since it really talks about depreciation studies and related data. A better solution might be to combine it with 3.030. Although the “Purpose” clause does make a cross reference to 3.030 which lists “minimum” filing requirements for many types of utilities, we do not believe it is either logical or helpful to place this material in a separate rule with the proposed title. If someone is looking for the “minimum” filing requirements, it would make more sense for this material to appear in 3.030, so all of the “minimum” filing requirements are in one place.

We also believe an error has occurred with language being duplicated. The “However” provisions which exempt the filing of a depreciation study if one has been filed within three years appear twice within the proposed rules applicable to gas utilities: once in 3.235(1)(A) and again in 3.275(1)(B)1.B. We can conceive of no reason for that language to appear twice.

13. **4 CSR 240-3.260 Filing Requirements for Gas Utility Rate Schedules.** We believe a typographical error has occurred in this proposed rule. The proposed rule in section (3) omits what was an underline in the current rule, 4 CSR

240-40.010(3), to indicate the placement of a number on a tariff sheet, as in "PSC Mo. \_\_\_\_\_."

**14. 4 CSR 240-3.270 Filing Requirements Regarding Plans, Procedures and Programs for Transportation of Natural Gas By Pipeline.** We are unsure whether the Commission had an intent to make substantive changes in this proposed rule or not. There is nothing in the PURPOSE section to indicate that new requirements are being imposed. The concern arises from the use of the phrase "must be submitted to Commission personnel," or words to that effect, which appear in several of the sections. This appears to be a new and vague provision. We note that "designated commission personnel" is a new definition 3.200(9), but the new rule doesn't say when the "submission" must occur. The existing rule already requires the gas utility to document these things. As near as we can tell, the new rule was proposed simply as a "signpost" for the extremely long current rule, 4 CSR 240-40.030. As such, we believe the text in the proposed rule should be changed to simply reflect the places where the reader should go to find particular topics, as the Commission has done in other instances in these proposed rules, rather than implying there are new "submission" requirements. Alternatively, the time constraints should be clearly identified.

We also believe there is a typographical error in section (10). We believe the term "yard line" should be "yard lines."

**15. 4 CSR 240-3.275 Submission Requirements for Gas Utility Depreciation Studies.** See the comments above regarding the "However..." language appearing twice for gas companies.

16. **4 CSR 240-3.300 Definitions Pertaining Specifically to Sewer Utility**

**Rules.** The new rule includes three sewer definitions only. There is a cross reference in the PURPOSE clause that indicates the new rule definitions are “in addition to the definitions set forth in rule 4 CSR 240-3.010 of this chapter.” There should, however, also be a cross reference to those sewer definitions located at 4 CSR 240-60.010, and more specifically, 4 CSR 240-60.010(3), as these definitions have not been rescinded or included in 4 CSR 240-3.010.

17. **4 CSR 240-3.315 Filing Requirements for Sewer Utility Applications**

**for Authority to Merge or Consolidate.** We believe it is inappropriate for the Commission to use the term “purchaser” in section (2) of this proposed rule. In a merger or consolidation, there is no “purchaser.”

18. **4 CSR 240-3.400 Filing Requirements for Steam Heating Utility**

**Applications for Certificates of Convenience and Necessity.** We believe a mistake has occurred in this proposed rule. Subsection (1)(B), including paragraphs 1., 2., and 3., in this proposed rule contain the text that applies to electrical transmission lines or electrical production facilities. This apparently is a “cut and paste” mistake because the text about electric lines does not appear to belong in a rule about a steam company seeking a certificate of convenience and necessity. Alternatively, the Commission may want to change the terms “electrical” to “steam or heating” if it is contemplated that a steam heating company would ever seek a “line” certificate. As evidence that we believe this provision was mistakenly included, we note that there is no comparable provision in the sewer company CCN rule, which is 3.305, although there have been “line” certificates for sewer companies issued in the past.



19. **4 CSR 240-3.410 Filing Requirements for Steam Heating Utility**

**Applications for Authority to Merge or Consolidate.** We believe it is inappropriate for the Commission to use the term “purchaser” in section (2) of this proposed rule. In a merger or consolidation, there is no “purchaser.”

20. **4 CSR 240-3.425 Filing Requirements for Steam Heating Utility Rate**

**Schedules.** We believe a typographical error has occurred in this proposed rule.

The proposed rule in section (3) omits what was an underline in the current rule, 4 CSR 240-80.010(3), to indicate the placement of a number on a tariff sheet, as in “PSC Mo. \_\_\_\_\_.”

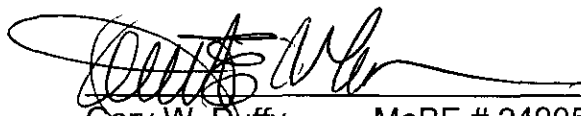
21. **4 CSR 240-3.525 Filing Requirements for Telecommunications**

**Company Applications for Authority to Merge or Consolidate.** We believe it is inappropriate for the Commission to use the term “purchaser” in section (3) of this proposed rule. In a merger or consolidation, there is no “purchaser.”

22. **4 CSR 240-3.610 Filing Requirements for Water Utility Applications**

**for Authority to Merge or Consolidate.** We believe it is inappropriate for the Commission to use the term “purchaser” in section (2) of this proposed rule. In a merger or consolidation, there is no “purchaser.”

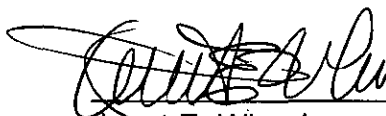
Respectfully submitted,



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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served on the Office of the Public Counsel and the Office of the General Counsel this 16<sup>th</sup> day of October, 2002.



Janet E. Wheeler