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October 29, 1999

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

RE: Case No. AX-2000-108

FILED³
OCT 29 1999

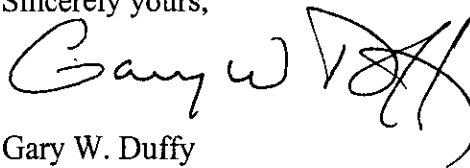
Missouri Public
Service Commission

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 240-2.010 Definitions)

Case No. AX-2000-108

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 (13) of 4 CSR 240-2.010 purports to define a "pleading" by giving several examples of what would constitute a pleading, and three examples (a brief, correspondence, a tariff) of what would not constitute a pleading. For several years, the Staff of the Commission has filed documents which it captions as a "Recommendation." There have been inconsistent and conflicting rulings from hearing officers as to whether a "Recommendation" filed by the Staff is a pleading which requires a response within ten days under the current rules. The Commission should provide in this rule whether a Staff "Recommendation" is a pleading or not, or direct the Staff to cease filing "Recommendations" which are not in the commonly-recognized

form of a pleading. The most problematic Recommendations are those which are issued by the Staff in Actual Cost Adjustment proceedings. Sometimes these Recommendations are complex and require more than ten days in which to formulate a response. They are also not in the form of a pleading with numbered paragraphs to which a response either admitting or denying the allegation can be made. BSE recommends that if Staff Recommendations are to continue in the current form, that they not be considered pleadings for purposes of this rule because the response time would be too short in most instances, and that the Commission issue orders specifying the response time in each instance.

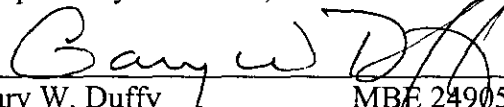
3. The terms "highly confidential information" and "proprietary information" are defined in sections (9) and (17) respectively. These are terms which have been included in the Commission's "standard" protective order for many years. BSE considers that it is a waste of natural resources for the Commission to issue a separate, multi-page protective order in each instance when the text of the protective order has not changed in many years. Therefore, the Commission should adopt a rule containing the text of the protective order. Then, when the Commission decides to issue an order making the protective order apply in a particular case, all it will have to do is issue a one-page order saying the protective order, as provided in the rule, is in effect. The Commission can save potentially thousands of pieces of paper through this simple action. If the Commission wishes to issue a non-standard protective order, it can at least incorporate by reference the provisions in the rule that would still apply.

4. Section (18) purports to define "public utility." The term "public utility" is already defined in § 386.020(42) RSMo 1994. The proposed rule of the Commission deviates from the statutory definition. The Commission does not have the statutory authority to expand on a statutorily defined term and there are numerous court cases which say that any rule which

expands on or conflicts with a statute is void. See, e.g., *Missourians for Honest Elections v. Missouri Elections Commission*, 536 S.W.2d 766, 772 (Mo.App.E.D. 1976). The rule should simply reference the statutory section to prevent any confusion and to avoid illegal actions by the Commission in changing a statutory definition.

5. Section (12) purports to define "person." The same comments apply here as with the discussion of "public utility."

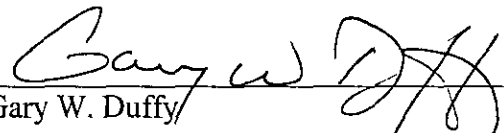
Respectfully submitted,



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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