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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

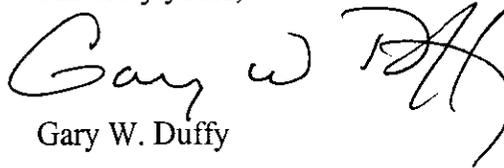
RE: Case No. AX-2000-117

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

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

In the matter of Proposed Rule)
4 CSR 240-2.085 Protective Orders)

Case No. AX-2000-117

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

Comes now the law firm of Brydon, Swearngen & 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, Swearngen & 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 (2) of this proposal contains a conflict and a trap.

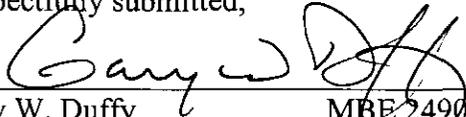
A. The trap is that the first sentence says that testimony (and briefs and pleadings) shall not contain highly confidential or proprietary information *unless a protective order has been issued* by the Commission. The trap is that section (1) of 4 CSR 240-2.065 as proposed would institute a new requirement that a public utility filing a general rate case file its direct testimony with the proposed tariff. There would not be a protective order in place because there would not be a case until the tariff is filed. Therefore, the Commission needs to provide some time between when the direct testimony is due and the tariff filing so a motion for a

protective order can be filed with the tariff, and issued before the testimony is due, in order to avoid the trap set by the first sentence of section (2). This would be in conformity with proposed section (15) in 4 CSR 240-2.130 Evidence which says "Parties shall obtain a protective order prior to filing of documentary evidence."

B. The conflict is in the last sentence. It says that "A highly confidential or proprietary copy of the pleading shall be served on the parties, including general counsel and the public counsel." The phrase "on the parties" conflicts with the protective order which provides that highly confidential material is to be served only on the attorneys, not the parties. The Commission should correct this phrasing by changing it to "... shall be served on the attorneys of record"

3. The Commission should adopt the text of its standard protective order in this rule. 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. In that fashion, 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 set out 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.

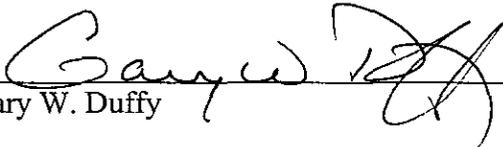
Respectfully submitted,



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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