

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 456

JEFFERSON CITY, MISSOURI 65102-0456

TELEPHONE (573) 635-7166

FACSIMILE (573) 635-3847

E-MAIL: DEANBSE@SOCKET.NET

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

DEAN L. COOPER
MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
RACHEL M. CRAIG
BRIAN T. MCCARTNEY
DALE T. SMITH

OF COUNSEL
RICHARD T. CIOTTON

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

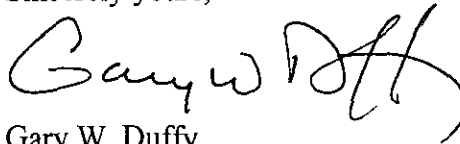
RE: Case No. AX-2000-112

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 240-2.060 Applications)

Case No. AX-2000-112

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. Subsection (1)(A) of 4 CSR 240-2.060 as proposed would require an application to contain "a statement of the nature of each applicant." This requirement is unnecessarily vague. BSE understands the Commission's intent to be that an applicant describe the "nature of" its legal organization, e.g., whether it is a corporation, a limited liability company, a natural person, a partnership, etc. To that end, the proposal should be reworded to require "a brief description of the legal organization of each applicant"

3. Subsection (1)(A) of 4 CSR 240-2.060 as proposed also requires each applicant to provide its "electronic mail address." In the case of a corporate applicant, it may have thousands

of electronic mail addresses, or it may have none. BSE questions the need for this information to be required since there is no current legal requirement that the Commission communicate in this fashion. The Commission has several statutes which specify the manner in which it is to communicate, and none of them specify electronic mail. There is no assurance that electronic mail is a secure means of communication. Legal journals have cautioned attorneys not to utilize electronic mail for certain types of communications. While the Commission may request an applicant to voluntarily provide an electronic mail address, and a party may voluntarily give an electronic mail address, there should be no requirement for an applicant to provide one and the Commission should not utilize that means of communication for official reasons unless a statute authorizes it. We wish to encourage the use of electronic communication in appropriate circumstances to reduce the need for multiple paper copies, but this is not an appropriate application.

4. Subsection (1)(F) of 4 CSR 240-2.060 as proposed would require an application by a political subdivision to include "a specific reference to and a copy of the statutory provision or other authority under which it operates." This is a needless, burdensome and overly broad requirement. As political subdivisions, statutory class cities in this state can have literally dozens of provisions spread over numerous chapters of the statutes which grant them authority to operate in various aspects. Constitutional and special charter cities have charters which can cover hundreds or thousands of pages. For a political subdivision to have to cite all of the statutory provisions "under which it operates" and to provide a copy of those provisions to the Commission simply to file an application to intervene in a case, for example, is bureaucracy in the extreme. The Commission is not a court and therefore it has no power to interpret or adjudicate the adequacy of any such statutory or constitutional authority so cited by a political

subdivision. The Commission should remove this proposed provision in its entirety, or make *every* applicant, including a natural person, cite to the statutory or other authority under which it operates.

5. Subsection (1)(K) of 4 CSR 240-2.060 as proposed would require an application to include a statement “indicating whether the applicant has any pending or final judgments or decisions against it from any state or federal agency or court which involve customer service or rates.” This is another needless, burdensome and overly broad requirement. The phrase “which involve customer service or rates” is extremely vague and could apply to almost any decision which could arguably “involve” rates in some fashion. There is also no time specified, so the requirement presumably applies as far back in time as the first millisecond after the Big Bang. A multi-jurisdictional public utility making an application for a certificate of convenience and necessity for electric service to serve three acres in Missouri would be required under this proposal to list every case it was ever involved with at the Federal Power Commission, the Federal Energy Regulatory Commission, and multiple other state regulatory commissions, even though it has no bearing whatsoever on whether it can adequately serve the three acres in question in some Missouri county. This requirement is utterly ridiculous. If information on an applicant’s “rates” or “customer service” should become a relevant subject in the case, parties can utilize discovery methods to determine the existence of such information.

6. Subsection (1)(L) of 4 CSR 240-2.060 as proposed would require an application to include a “verified statement that no annual report or assessment fees are overdue.” This appears to require a “verified statement” separate from the application which already has to be verified. Is there a particular reason *why* there has to be a “verified statement” contained within a “verified application?” While the Commission may have a legitimate reason for wanting to

know this information, BSE respectfully suggests these are both matters *for which the Commission already has superior knowledge since the filings have to be made with the Commission*. Surely the Commission already knows whether someone has filed an annual report with it, or not, and surely the Commission already knows whether someone has an overdue assessment from the Commission. This proposal is the equivalent of a public library requiring someone to execute an affidavit that they have no outstanding library fines for overdue books before they can borrow another book from the public library. The public library ought to know who hasn't returned their books. The Commission already has an enforcement mechanism available to it if it wishes to pursue utilities who do not file annual reports on time or pay assessments when due. There is no valid reason to clutter up applications with this extraneous information, which the Commission already possesses.

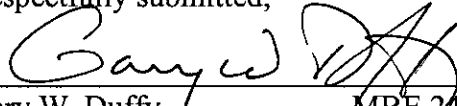
7. Subsection (8)(E) of 4 CSR 240-2.060 requires an application for authority to merge or consolidate to include a "list of all documents generated relative to the analysis of the merger and acquisition in question." This is a needless, burdensome and overly broad requirement to include in an application. It could lead to an application being more than a foot thick. Such a broad requirement of "relative to the analysis" could include almost anything. A party has power under the Commission's discovery rules to seek such information and, if any of it is relevant, it can bring such to the Commission's attention.

8. Subsection (15)(A) of 4 CSR 240-2.060 as proposed would require an application for a change of electric supplier to include "a description of the structure where the change of supplier is sought, and the street address of the structure." A "description of the structure" would include such things as what color it is and how many windows it has. What the Commission presumably wants is a "brief description of the type of structure" so that it knows whether it is a

house or a General Motors assembly plant or an irrigation pump. The requirement for "the street address of the structure" erroneously assumes that all of the structures in this state have street addresses. Many structures are located in rural areas and are not so addressed. The rule should be modified to require "the street address of the structure, if any."

9. Subsection (16) of 4 CSR 240-2.060 as proposed would require an application for approval of a change of name. The Commission lacks any jurisdiction to approve name changes. Name changes for individuals are accomplished through filings with the circuit court. Name changes for corporations are accomplished through filings with the Secretary of State. While the Commission may promulgate a rule describing how persons are to inform the Commission of a name change, the Commission lacks any authority to purport to "approve" a name change. As a result, this proposed section should be removed or at the very least, extensively modified in conformance with these comments.

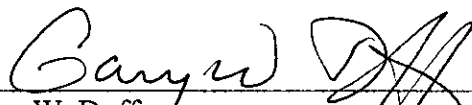
Respectfully submitted,



Gary W. Duffy MBE 24905
Brydon, Swearengen & England, P.C.
P.O. Box 456
Jefferson City, Missouri 65102-0456
Telephone 573 635-7166
Facsimile 573 635-3847

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