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June 5, 1996

Mr. David Rauch
Executive Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

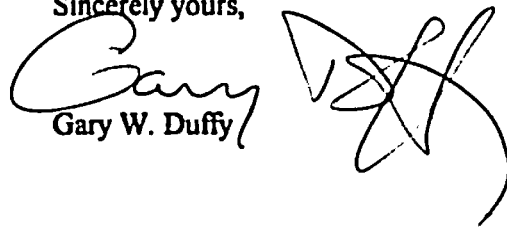
RE: Case No. AX-96-301

Dear Mr. Rauch:

Enclosed for filing with your office please find an original and fourteen copies of the initial comments of Associated Natural Gas, The Empire District Electric Company, Missouri Gas Energy, Missouri Public Service, St. Joseph Light & Power Company, United Cities Gas Company, and West Elm Place Corporation in this matter.

If you have any questions about this, please let me know.

Sincerely yours,


Gary W. Duffy

Enclosures

cc: Office of Public Counsel
Jeff Dangeau
Bob Fancher
Dennis Gillmore
Maurice Arnall
Tim Rush
Mark Thessin
Lois Smith
Tom Byrne

FILED
JUN 5 - 1996
MISSOURI
PUBLIC SERVICE COMMISSION

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

In the matter of the proposed amendments)
Commission rules 4 CSR 240-20.030,)
4 CSR 240-30.040, 4 CSR 240-40.040,)
4 CSR 240-50.030, 4 CSR 240-61.020,)
and proposed rule 4 CSR 240-10.080.)

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COMMENTS

Come now Associated Natural Gas, The Empire District Electric Company, Missouri Gas Energy, Missouri Public Service, St. Joseph Light & Power Company, United Cities Gas Company, and West Elm Place Corporation, and for their comments on the Proposed Rule and Proposed Amendments published in the *Missouri Register* at 21 MoReg 1115 et seq. on May 1, 1996, and respectfully state as follows:

1. Each of the commenting utilities are public utilities that are regulated by the Missouri Public Service Commission ("the Commission") and thus would be affected by the rulemaking action proposed by the Commission in this docket.
2. The commenting utilities do not oppose the general concept presented by this rulemaking which would place the requirements involving annual reports in one rule. Indeed, this would appear to be a more efficient organization than presently employed.
3. There is a problem, however, with the phrase which requires each of the utilities to "file their annual reports on a form provided by the Commission." This phrase appears in sections (2), (3), (4), (5) and (6) of the proposed rule and affects electric, gas, telecommunications, water and sewer utilities.
4. If the Commission is going to require a *particular form* to be used by a utility, that

form itself meets the definition of rule as a "statement of general applicability that ... implements policy." Section 536.010(4) RSMo 1995. That means that the *form itself* is required to be published as a rule. The Commission has not done that.

5. To promulgate the forms themselves as rules, the Commission needs to start the rulemaking process again and publish the exact form which it will require each utility to follow. This is necessary so that any interested party has the opportunity to comment on whether the form it will be required to follow is reasonable. That is the essence of notice and comment rulemaking. There has to be notice of what is to be expected and there has to be the opportunity for comment on those requirements in order to comply with Chapter 536 RSMo. As the proposal stands right now, the Commission could unilaterally decide at the last minute that it wanted to change the format of the annual report because it controls the content and presumably "provides" the form to each utility. Enactment of the form of the annual report itself as a rule gives protection to those affected by the rule that there will be no changes to the form without prior notice and the opportunity to comment on those changes.

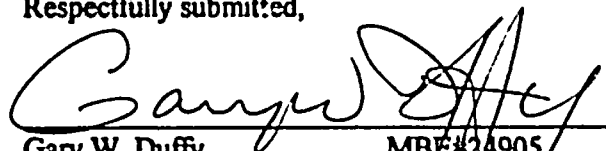
6. Other agencies of state government, when prescribing a form that is required by the agency to be completed by those regulated by the agency, have complied with the statute and published the form itself as a rule in the *Missouri Register*. As recent examples of this, please see 21 MoReg 1010-1026, 1071-1072, 1076-1079, 1150-1152, 1247-1248, 1251-1257. Forms required by agencies can be seen in almost any volume of the *Code of State Regulations*. The Commission itself has promulgated forms as rules. See 4 CSR 240-122.030. The only forms that are not included in the *Code of State Regulations* are income tax and sales tax forms because they are statutorily exempted. Section 536.010(4)(m) RSMo 1995.

7. The Commission is not required to publish the form of the annual report if it does

not require parties to follow the particular form. In other situations, the Commission has simply listed the information requirements and allowed those submitting the information to organize and print the information in whatever manner was reasonable or appropriate. In the age of computers, it may be more appropriate for the Commission to list information requirements and allow the reporting utilities to use computer programs to generate the information or allow revisions to the information from year to year, as opposed to requiring utilities to type numbers on a pre-printed form. The proposed rule does not appear to allow for such a modern technique.

8. Because of these deficiencies, if the Commission wishes to enact a valid rule on this subject, it should withdraw the present proposals and promulgate something along the lines discussed in these comments. As with many other situations, it would be useful to all involved if the Commission held informal meetings on matters that affect utilities before publishing proposed rulemaking actions which are flawed.

Respectfully submitted,



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