

Receipt

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

MAR 21 1997

MISSOURI
PUBLIC SERVICE COMMISSION

In the matter of the application of UtiliCorp)
United Inc. for an order authorizing the)
transfer of certain electric generating assets)
used to provide service to customers of its)
Missouri Public Service division and related)
transactions.)

Case No. EM-97-395

FILED⁴

APR 29 2004

APPLICATION

Missouri Public
Service Commission

Comes now UtiliCorp United Inc. ("UtiliCorp"), d/b/a Missouri Public Service ("MPS"), pursuant to §393.190.1, RSMo 1994 and 4 CSR 240-2.060(5) and §32 of the Public Utility Holding Company Act of 1935 ("PUHCA") and in support of its application to the Missouri Public Service Commission ("Commission") for an Order authorizing the transfer of certain electric generating assets and certain other related transactions, states that:

1. UtiliCorp is a Delaware corporation, in good standing in all respects, with its principal office and place of business at 20 West Ninth, Kansas City, Missouri 64105. UtiliCorp is authorized to conduct business in Missouri through its MPS operating division and as such is engaged in providing electrical and natural gas utility service in its service areas subject to the jurisdiction of this Commission as provided by law. UtiliCorp's Certificate of Incorporation and Amended Certificate of Authority of a Foreign Corporation have been filed in Commission Case No. EM-87-6 and said documents are incorporated herein by reference collectively as Appendix 1, and made a part hereof for all purposes.

2. All communications, notices, orders and decisions respecting this Application and proceedings should be addressed to:

Aquila's Exhibit No. 178

Case No(s). ER-2004-0330

Date 3-4-04 Rptr JED

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MAR 21 1997

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3. UtiliCorp owns and operates the following electric generating assets which are necessary and useful in providing service to the customers of MPS:

- A coal-fired steam generating plant on the Missouri River approximately ten (10) miles east of Independence in Jackson County, Missouri, known as the Sibley Generating Station ("Sibley"). Sibley has three (3) units. Together, Sibley Units 1, 2 and 3 have a maximum generator nameplate rating of 523.5 MW.
- A gas turbine generating plant near Pleasant Hill, Missouri in Cass County, Missouri, known as the Ralph Green Plant. This unit has a maximum generator nameplate rating of 94.75 MW.
- A gas turbine generating plant near Kansas City, Missouri in Platte County, Missouri, known as KCI. This unit has a maximum generator nameplate rating of 40.3 MW.

4. UtiliCorp also owns an 8% undivided interest in the Jeffrey Energy Center ("Jeffrey"), a coal- and oil-fired steam generating plant comprised of three (3) units located near St. Marys in Pottawatomie County, Kansas. Jeffrey is operated by Western Resources, Inc. and has a

maximum generator nameplate rating of 174 MW.

5. UtiliCorp also leases from several entities and operates an oil- and gas-fired gas turbine generating plant which is comprised of four (4) units located near Greenwood, Missouri in Jackson County, Missouri, known as Greenwood, pursuant to Agreements of Lease dated, variously, April 15, 1975, May 1, 1977, and September 1, 1978. Greenwood has a maximum generator nameplate rating of 287.566 MW.

6. UtiliCorp also leases from Wilmington Trust Company and operates an oil- and gas-fired gas turbine generating plant near Nevada, Missouri in Vernon County, Missouri, known as Nevada, pursuant to an Agreement of Lease dated September 1, 1973. Nevada has a maximum generator nameplate rating of 22.222 MW.

7. UtiliCorp also has separate contracts pursuant to which it purchases electric power at wholesale from Union Electric Company ("UE") and Associated Electric Cooperative ("AEC") dated, respectively, November 17, 1987 and November 4, 1987, as amended on January 7, 1994. In addition, UtiliCorp has a Contract for Seasonal Capacity with Kansas City Power & Light Company ("KCPL") which will go into effect on April 1, 1997 and which terminates on September 30, 1999.

8. Each of the electric generating assets described in paragraphs 3, 4, 5 and 6, and the purchased power contracts described in paragraph 7, (hereinafter, collectively, the "Generating Assets"), provide generating capacity which is used by MPS to provide electric utility service to its customers throughout the State of Missouri. As such, each of the units is necessary and useful in the provision of electric utility service to the public in the State of Missouri as that phrase is used in §393.190, RSMo 1994. As a consequence, each of the described generating stations, to the extent

of UtiliCorp's ownership or leasehold interests therein, are rate-based facilities, that is, the cost of electric energy produced by them and used by MPS for service to customers in Missouri is recovered through rates or charges for service rendered. Said rates and charges, except to the extent such rates and charges have been superseded by tariffs or rate schedules subsequently filed with, and approved by, the Commission, were in effect in the State of Missouri at the time of the enactment of §32 of PUHCA.

9. UtiliCorp proposes to create a subsidiary corporation, as yet unnamed but designated presently as UtiliCorp GenCo ("UGC") for purposes of this Application. Upon incorporation of UGC in the State of Delaware, UGC proposes to apply to the Federal Energy Regulatory Commission ("FERC") for a determination that it is an exempt wholesale generator ("EWG"), as that term is defined in §32 of PUHCA, for the purpose of engaging in the business of owning and/or operating eligible electric generation facilities and selling electric energy at wholesale to other parties, including UtiliCorp. Pursuant to an Agreement of Transfer, and such other documents of conveyance as may be required, UtiliCorp will transfer, convey and assign all of its right, title and interest in and to the Generating Assets including associated operating permits and authorities, leasehold interests and purchased power contracts, to UGC and UGC will thereafter own and operate said facilities and assume all rights and obligations under the relevant contracts. A copy of the Agreement of Transfer will be late-filed as Appendix 2 hereto and made a part hereof for all purposes.

10. UtiliCorp will enter into a long-term Electric Service Agreement with UGC to purchase from UGC electric energy at wholesale under terms and conditions that will ensure a steady, affordable, and reliable source of electric power for distribution by MPS to its electric utility

customers. A copy of the Electric Service Agreement, in substantially final form, is marked Appendix 3, attached hereto and made a part hereof for all purposes.

11. UGC will not be an “electrical corporation” as that term is defined at §386.020(15), RSMo Supp. 1996 inasmuch as it will sell electric power exclusively at wholesale as an EWG and, thus, will not be engaged in the sale of electric power at retail to the general public. See, State ex rel. M.O. Danciger v. Public Service Commission, 205 S.W. 36 (Mo. 1918). UGC will be regulated by the FERC with respect to wholesale energy rates.

12. Pursuant to §32 (c) and (k)(2) of PUHCA, a state commission having jurisdiction over the retail electric rates of UtiliCorp, such as the Commission, must make specific fact determinations (a) before the FERC will consider the described facilities to be “eligible facilities” under the Act, and (b) in advance of UtiliCorp entering into the proposed Electric Service Agreement. Specifically, the Commission must find that it has sufficient regulatory authority, resources and access to books and records of UtiliCorp and any relevant affiliate or subsidiary such that it may determine that the proposed transactions (including the transfer of the Generating Assets and the execution of the Electric Service Agreement) (1) will benefit consumers, (2) do not violate any applicable state law, (3) would not provide UGC any unfair competitive advantage by virtue of its affiliation with UtiliCorp, and (4) are in the public interest. In addition, the provisions of §393.190.1, RSMo require that the Commission make a determination that the proposed asset transfer is not detrimental to the public interest. See, State ex rel. City of St. Louis v. Public Service Commission, 73 S.W.2d 393, 400 (Mo. banc 1934); State ex rel. Martigney Creek Sewer Company v. Public Service Commission, 537 S.W.2d 388, 399 (Mo. banc 1970); State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. 1980).

13. The Commission has broad statutory authority over the determination of retail electric rates by electrical corporations under Chapters 386 and 393, RSMo, and its rules and regulations to inquire into the books and records of UtiliCorp and any relevant affiliates, including UGC. In addition, the Commission has a large staff of professional accountants, engineers, economists, attorneys, financial analysts and management specialists to advise it in this regard. Thus, the Commission has both the authority and the resources to make the determinations required by the Act as set forth in paragraph 12.

14. A certified copy of the resolutions of the Board of Directors of UtiliCorp authorizing the proposed transactions will be late-filed as Appendix 4 hereto and made a part hereof for all purposes.

15. The proposed transactions are not detrimental to the public interest because the proposed Electric Service Agreement between UtiliCorp and UGC will ensure a steady, affordable and reliable source of electric power for distribution by MPS to its customers. As its existing purchase power obligations expire, MPS will request bids for replacement of that power using the protocol established in the Commission's integrated resource planning ("IRP") process as it would have in the absence of the EWG. UGC may act as an agent for MPS in procuring incremental power supply, but it will not bid to supply it itself. Thus, the transfer of the Generating Assets to UGC will be essentially transparent to end users. In fact, the proposed transactions are in the public interest and will benefit consumers for the following reasons:

- Customers of MPS will experience an immediate benefit in the form of a reduction in the electric rate increase request contained in revised tariffs being filed with the Commission simultaneously herewith, upon approval of this application. This rate reduction will total

\$15,000,000 over the life of the Electric Service Agreement or \$1,000,000 per year. MPS has suggested that this benefit be distributed among low-income residential customers of MPS.

- As the market for electricity becomes more competitive, MPS's customers will have the opportunity to participate in retail wheeling and to obtain electric energy at the lowest possible cost to them.
- If retail wheeling should be authorized in the State of Missouri during the life of the Electric Service Agreement, MPS has the right to buy-out of the contract in proportion to the amount of the load which becomes contestable. The amount of the buy-out will be equal to the stranded cost recovery that would otherwise have been available to MPS in the absence of UGC and the Electric Service Agreement. Thus, customers of MPS will not be harmed by retail wheeling at such time as it is authorized in the State of Missouri.

16. The proposed transactions do not violate any applicable state law.

17. The proposed transactions will not provide UGC with any unfair competitive advantage by virtue of its affiliation with UtiliCorp. As MPS's existing purchase power obligations expire, MPS will request bids for replacement of that power using the protocol established in the Commission's IRP process. UGC will not submit a bid on its own behalf. Rather, it will act as an agent for UtiliCorp in procuring incremental supply. Also, MPS will retain the right to buy-out the proposed Electric Service Agreement in proportion to the amount of load that becomes contestable upon the occurrence of retail wheeling in the State of Missouri. Thus, UGC will have no advantage over competing energy suppliers when retail competition becomes a reality.

18. UtiliCorp cannot at this time state with certainty what, if any, impact the proposed

transactions will have on the tax revenues of the political subdivisions in the State of Missouri in which the Generating Assets are located. Nevertheless, the proposed transactions will not result in the relocation or retirement of any structures, facilities or equipment which are proposed to be transferred and which are subject of ad valorem taxation and, therefore, should not have any adverse impact on the tax revenues of those counties in which the Generating Assets are located.

WHEREFORE, UtiliCorp respectfully requests that the Commission issue an Order Authorizing UtiliCorp to:

A. Enter into, execute and perform in accordance with the terms and conditions of the Agreement of Transfer by and between UtiliCorp and UGC;

B. Assign and transfer to UGC all of UtiliCorp's right, title and interest in and to Sibley, the Ralph Green Plant, KCI and Jeffrey;

C. Assign and transfer to UGC all of UtiliCorp's right, title and interest in and to Agreements of Lease to Greenwood and Nevada dated, respectively, April 15, 1975, May 1, 1977, September 1, 1978 and September 1, 1973;

D. Assign and transfer to UGC all of UtiliCorp's right, title and interest in and to the purchased power contracts with UE, AEC and KCPL;

E. Enter into, execute and perform in accordance with the terms and conditions of the proposed Electric Service Agreement by and between UtiliCorp and UGC.

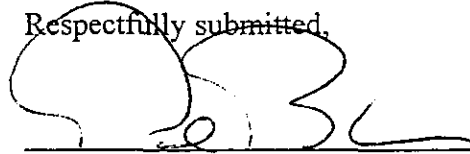
F. Enter into, execute and perform in accordance with the terms of all documents reasonably necessary and incidental to the performance of the transactions which are the subject of this Application;

G. Specifically determining that the Commission has sufficient regulatory authority,

resources and access to books and records of UtiliCorp and UGC to ensure that the proposed transactions described in paragraphs A through F (1) benefit consumers, (2) do not violate any state law, (3) do not provide UGC with any unfair competitive advantage by virtue of its affiliation with UtiliCorp and (4) are in the public interest; and

H. For such other authority as may be just and proper under the circumstances.

Respectfully submitted,



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