

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

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

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-3847
E-MAIL: JKRBSE@AOL.COM

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. CIOTTONE

March 22, 2000

FILED²

MAR 22 2000

Missouri Public
Service Commission

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

**RE: UtiliCorp United Inc. d/b/a Missouri Public Service, The Empire District
Electric Company and St. Joseph Light & Power Company
Case No. EE-2000-592**

Dear Mr. Roberts:

Enclosed for filing on behalf of UtiliCorp United Inc. d/b/a Missouri Public Service, The Empire District Electric Company and St. Joseph Light & Power Company please find an original and fourteen copies of a Joint Application for Waivers. Please stamp the enclosed extra copy "filed" and return same to me.

Thank you very much for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean L. Cooper

DLC/rhg

Enclosures

cc: Office of the Public Counsel

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAR 22 2000

Missouri Public
Service Commission

In the Matter of the Joint Application)
of UtiliCorp United Inc. d/b/a)
Missouri Public Service, The Empire)
District Electric Company and)
St. Joseph Light & Power Company)
for Waivers of Commission Rules)
4 CSR 240-20.015, 4 CSR 240-40.015,)
4 CSR 240-40.016 and CSR 240-80.015.)

Case No. EE-2000-592

JOINT APPLICATION FOR WAIVERS

Come now UtiliCorp United Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS"), The Empire District Electric Company ("Empire") and St. Joseph Light & Power Company ("SJLP") by and through their counsel, and, in accordance with 4 CSR 240-20.015(10), 4 CSR 240-40.015(10), 4 CSR 240-40.016(11), 4 CSR 240-80.015(10) and 4 CSR 240-2.060(11), state to the Missouri Public Service Commission ("Commission") as follows:

GENERAL BACKGROUND

1. UtiliCorp is a Delaware corporation, in good standing in all respects, with its principal office and place of business at 911 Main Street, Suite 3000, 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 the Commission. A certified copy of MPS's Certificate of Corporate Good Standing-Foreign Corporation and fictitious name registration as issued by the Secretary of State of the State of Missouri was previously filed with the Commission in Case No. EM-2000-292 and is hereby incorporated by reference in accordance with 4 CSR 240-2.060(2)(E).

2. Empire is a Kansas corporation with its principal office and place of business at 602

Joplin Street, Joplin, Missouri 64801. Empire is engaged in the business of providing electrical and water utility services in Missouri to customers in its service areas and has a certificate of service authority to provide certain telecommunications services. Empire is an “electrical corporation”, “water corporation”, “telecommunications company” and a “public utility” as those terms are defined in Section 386.020, RSMo. Supp. 1998, and is subject to the jurisdiction and supervision of the Commission as provided by law. A certified copy of Empire's Certificate of Corporate Good Standing-Foreign Corporation was previously filed with the Commission in Case No. EM-2000-369 and is hereby incorporated by reference in accordance with 4 CSR 240-2.060(2)(E).

3. SJLP is a Missouri corporation with its principal office and place of business at 520 Francis Street, St. Joseph, Missouri 64501. SJLP is engaged in the business of providing electrical, natural gas and industrial steam utility services in Missouri to customers in its service areas. SJLP is an “electrical corporation”, “gas corporation”, “heating company” and a “public utility” as those terms are defined in Section 386.020, RSMo. Supp. 1998, and is subject to the jurisdiction and supervision of the Commission as provided by law. SJLP's documents of incorporation have been filed with the Commission in its Case No. EA-89-90 and said documents are incorporated herein by reference, collectively, and made a part hereof for all purposes in accordance with 4 CSR 240-2.060(2)(E). A Certificate of Corporate Good Standing issued by the Missouri Secretary of State was previously filed with the Commission in Case No. EM-2000-292 and is hereby incorporated by reference in accordance with 4 CSR 240-2.060(2)(E).

4. All correspondence, communications, notices, order and decisions of the Commission with respect to this matter should be sent to:

Jon Empson
Senior Vice President of
Regulatory, Legislative and Environmental Affairs
UtiliCorp United Inc.
1815 Capitol Avenue
Omaha, Nebraska 68102
(402) 221-2375

Tim Rush
Manager, Customer Operations
St. Joseph Light & Power Company
520 Francis Street
P.O. Box 998
St. Joseph, Missouri 64502
(816) 387-6253

Bill Gipson
Vice President, Commercial Operations
The Empire District Electric Company
602 Joplin Street
Joplin, Missouri 64801
(417) 625-5106

Dean L. Cooper
BRYDON, SWEARENGEN & ENGLAND P.C.
P. O. Box 456
312 East Capitol Avenue
Jefferson City, Missouri 65102
(573) 635-7166

WAIVER

5. Orders of Rulemaking ("the Orders") were issued by the Commission on November 16, 1999, and filed with the Office of the Secretary of State of the State of Missouri on November 22, 1999, as a result of proceedings before the Commission styled:

Case No. EX-99-442 - In the Matter of 4 CSR 240-20.015 Proposed Rule - Electric Utilities Affiliate Transactions;

Case No. GX-99-444 - In the Matter of 4 CSR 240-40.015 Proposed Rule - Gas Utilities Affiliate Transactions;

Case No. GX-99-445 - In the Matter of 4 CSR 240-40.016 Proposed Rule - Gas Utilities

Marketing Affiliate Transactions; and,

Case No. HX-99-443 - In the Matter of 4 CSR 240-80.015 Proposed Rule - Steam Heating Utilities Affiliate Transactions.

The subject rules became effective on February 29, 2000, as to some utilities.

6. Prior to the effective date, certain public utilities¹ ("the Relators") filed petitions for writs of review concerning these rules in the Circuit Court of Cole County, Missouri.²

7. Concurrently with the filing of petitions for writs of review, the Relators filed motions for stay asking the Cole County Circuit Court to stay the effectiveness of the Orders and the resulting rules.

8. On February 25, 2000, after hearing, the Circuit Court issued its Order Granting Stay thereby staying the effectiveness of the Orders and the resulting rules, as to the Relators. Marked Appendix 1, attached hereto and made a part hereof for all purposes is a copy of the Order Granting Stay.

9. The Order Granting Stay, because it stays the rules only as to Relators, has resulted in a possible uneven application of the rules and uncertainty as to the future of these rules.

10. The uneven application of the rules is of concern because one of the purposes of the rules is to address transactions with corporate affiliates and unregulated business operations in such a way as to have a positive impact on the competitive markets. The rules cannot accomplish this goal, however, if they apply to only some public utilities. While the partial stay issued by the Cole County Circuit Court is still in place, the partial application of the affiliate transactions rules creates

¹ Atmos Energy Corporation; Arkansas Western Gas Company d/b/a Associated Natural Gas; Missouri Gas Energy (a division of Southern Union Company); Laclede Gas Company; Trigen-Kansas City Energy Corporation; and, Ameren Corporation.

² Cole County Circuit Court Case Nos. 00CV323156 and 00CV323164.

an uneven playing field.

11. The uncertainty also creates a financial predicament for UtiliCorp, Empire and SJLP. Compliance with Commission Rules 4 CSR 240-20.1015, 4 CSR 240-40.015, 4 CSR 240-40.016 and 4 CSR 240-80.015 requires a significant investment on the part of UtiliCorp, Empire and SJLP. The Commission itself estimates in the Fiscal Notes prepared for the rules that compliance with the rules will cost \$100,000 per utility in the first year of effectiveness and \$75,000 in each succeeding year. The Commission explains that the first year costs are greater because of costs "to set up book keeping and programming requirements and personnel training." In light of the partial stay that has been issued by the Circuit Court, UtiliCorp, Empire and SJLP must determine whether to move forward with the expenditure of funds.

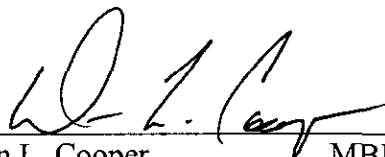
12. Accordingly, based upon the uneven playing field and the uncertainty created by the Order Granting Stay issued by the Cole County Circuit Court, and the immediate cost that UtiliCorp, Empire and SJLP would otherwise incur, UtiliCorp, Empire and SJLP request that the Commission grant them waivers for good cause from Commission Rules 4 CSR 240-20.015, 4 CSR 240-40.015, 4 CSR 240-40.016 and 4 CSR 240-80.015 until such time as the effectiveness of the Orders and resulting rules is no longer stayed by the Missouri courts.

WHEREFORE, UtiliCorp, Empire and SJLP request a Commission order:

- a) granting them waivers for good cause from Commission Rules 4 CSR 240-20.015, 4 CSR 240-40.015, 4 CSR 240-40.016 and 4 CSR 240-80.015 until such time as the effectiveness of the Orders and resulting rules is no longer stayed by the Missouri courts; and,
- b) granting such further relief as may be necessary which is consistent with the relief

requested herein.

Respectfully submitted,



Dean L. Cooper MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-0427 facsimile

ATTORNEYS FOR UTILICORP UNITED INC.
D/B/A MISSOURI PUBLIC SERVICE, THE
EMPIRE DISTRICT ELECTRIC COMPANY
AND ST. JOSEPH LIGHT & POWER COMPANY

AFFIDAVIT

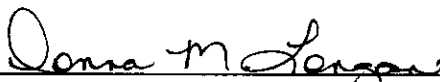
STATE OF MISSOURI)
) ss
COUNTY OF JASPER)

I, William L. Gipson, having been duly sworn upon my oath, state that I am the Vice President – Commercial Operations for The Empire District Electric Company, that I am duly authorized to make this affidavit on behalf of The Empire District Electric Company, and that the matters and things stated in the foregoing application and appendices thereto are true and correct to the best of my information, knowledge and belief.



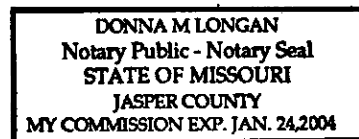
William L. Gipson

Subscribed and sworn to before me this 15th day of March 2000.



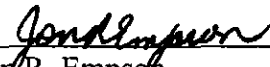
Donna M. Longan, Notary Public

My Commission expires: January 24, 2004




STATE OF MISSOURI)
)
COUNTY OF JACKSON) ss

I, Jon Empson, having been duly sworn upon my oath, state that I am the Senior Vice President of UtiliCorp United Inc. d/b/a Missouri Public Service, that I am duly authorized to make this affidavit on behalf of UtiliCorp United Inc. d/b/a Missouri Public Service, and that the matters and things stated in the foregoing application and appendices thereto are true and correct to the best of my information, knowledge, and belief.



Jon R. Empson

Subscribed and sworn to before me this 15th day of March, 2000.



Notary Public

My Commission Expires: March 3, 2001




(SEAL)

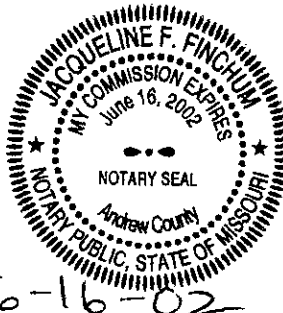
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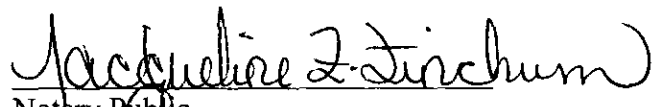
State of Missouri)
) ss
County of Buchanan)

I, Tim Rush, having been duly sworn upon my oath, state that I am the Manager, Customer Operations for St. Joseph Light & Power Company, that I am duly authorized to make this affidavit on behalf of St. Joseph Light & Power Company, and that the matters and things stated in the foregoing application and appendices thereto are true and correct to the best of my information, knowledge and belief.


Tim Rush

Subscribed and sworn before me this 16th day of March, 2000.




Notary Public

My Commission expires: 6-16-02

IN THE CIRCUIT COURT OF COLE COUNTY STATE OF MISSOURI

STATE OF MISSOURI EX REL. ATMOS)	
ENERGY CORPORATION, et al.,)	
Relators)	
v.)	Case No. 00CV323156
PUBLIC SERVICE COMMISSION OF THE)	
STATE OF MISSOURI,)	
Respondent)	

AMEREN CORPORATION AND UNION)	
ELECTRIC COMPANY, d/b/a AMEREN UE,)	
Relators)	
v.)	Case No. 00CV323164
PUBLIC SERVICE COMMISSION OF THE)	
STATE OF MISSOURI,)	
Respondent)	

ORDER GRANTING STAY

On the 24th day of February, 2000, a hearing was held at which evidence was submitted to the Court on the motions for stay made by the Relators in the above-entitled causes which have been consolidated. Appearing for Relator Atmos Energy Corporation was Mr. James M. Fischer. Appearing for Relator Arkansas Western Gas Company d/b/a Associated Natural Gas Company was Mr. Gary W. Duffy. Appearing for Relator Missouri Gas Energy, a division of Southern Union Company, was Mr. Robert J. Hack. Appearing for Relator Trigen-Kansas City Energy Corporation was Mr. Jeffrey A. Keevil. Appearing for Relator Laclede Gas Company was Mr. Michael C. Pendergast. Appearing for Relator Ameren Corporation was Ms. Colly Durley. Appearing for Intervenor Office of the Public Counsel was Mr. Douglas Micheel. Appearing for Respondent Missouri Public Service Commission was Ms. Lera Shemwell. The record reflects that Respondent had at least three day's notice of the hearing as required by Section 386.520 RSMo 1994.

The Relators called Ms. Pat Krieger who was cross-examined by counsel for the

Intervenor Office of the Public Counsel and Respondent and also answered questions directed by the Court. This witness provided testimony regarding the impact that certain administrative rules of the Respondent will have on the operations of Laclede Gas Company and the other Relators. Although the other Relators were each prepared to present a witness to quantify the impact on their particular company, the Respondent represented to the Court that such would not be necessary. The Respondent called Mr. Robert Schallenberg as a witness who was cross-examined by counsel for Relators and also answered questions directed by the Court. Having received evidence offered regarding the Motions for Stay and also having heard the statements of counsel and being fully advised in the premises, the Court finds as follows:

1. That this action is properly before the Court pursuant to Section 386.510 RSMo 1994, pursuant to applications for writs of review properly and timely filed by Relators under §386.510 RSMo 1994, and that Relators are all public utilities subject to the jurisdiction of the Respondent, Missouri Public Service Commission ("Commission" or "Respondent").

2. That pursuant to the provisions of Section 386.520.1 RSMo 1994, this Court in its discretion may "stay or suspend, in whole or in part, the operation of" an order or decision of the Commission upon a finding of great or irreparable damage.

3. That the Relators have moved this Court to issue a stay of the effectiveness of certain Orders of Rulemaking ("the Orders") and the resulting administrative rules of Respondent. The Orders were issued by Respondent on November 16, 1999, and filed by Respondent with the Missouri Secretary of State on November 22, 1999. The Orders were issued in the following cases before the Respondent:

- Case No. EX-99-442 - In the Matter of 4 CSR 240-20.015 Proposed Rule - Electric Utilities Affiliate Transactions
- Case No. HX-99-443 - In the Matter of 4 CSR 240-80.015 Proposed Rule- Steam Heating Utilities Affiliate Transactions
- Case No. GX-99-444 - In the Matter of 4 CSR 240-40.015 Proposed Rule- Gas Utilities Affiliate Transactions
- Case No. GX-99-445 - In the Matter of 4 CSR 240-40.016 Proposed Rule- Gas Utilities Marketing Affiliate Transactions

The rules resulting from these Orders have been printed in the *Code of State Regulations* and

will take effect on February 29, 2000, pursuant to law, unless stayed by this Court. See, 4 CSR 20-20.015, 4 CSR 240-80.015, 4 CSR 240-40.015, 4 CSR 240-40.016, all of which this Court takes judicial notice of pursuant to §536.031.5 RSMo 1994.

4. That the evidence shows that the provisions of the Orders and the resulting rules would impose significant new financial and operational requirements upon each of the Relators. The fiscal notes for the proposed rules which the Respondent was required by statute to publish as a part of the rulemaking process indicate that the Respondent itself estimates that compliance with each of the rules will cost \$100,000 per utility in the first year of the rule's effectiveness and \$75,000 in each succeeding year. The Respondent's estimates were printed in the *Missouri Register*. 24 Mo.Reg. 1346-1364 (June 1, 1999).

5. That the evidence presented by the Relators shows that the monetary and operational impacts of the new requirements estimated by the Respondent may in fact be conservative and that the amounts actually expended may be greater. The evidence also indicates that Relators will be required to institute new accounting procedures which have not been a part of the utilities' previous normal operations. The institution of such procedures will require the utilities to spend time training personnel in new procedures and will likely require the utilities to hire additional personnel to implement these new procedures required by the Orders and the associated rules.

6. That the evidence presented by the Relators indicates that there is no mechanism in place by which they can unilaterally and timely increase their rates or charges for public utility service to recover the one-time and on-going costs of compliance with these new procedures.

7. That the evidence presented shows that if the effectiveness of the Orders and associated rules are not stayed with regard to the Relators, the Relators will each be required to expend significant funds in the magnitude of hundreds of thousands of dollars and efforts to comply with the rules while judicial review of the Orders is pending.

8. That the pleadings show the Relators have presented several challenges to the lawfulness of the Orders and the associated rules. This Court is not ruling on the merits of those challenges in this order.

9. That the Relators wish to maintain the status quo through this Court issuing a stay order to prevent the new requirements going into effect as to them prior to a final resolution of

the judicial review of the Commission's decision.

10. This Court finds that each of the Relators would suffer great or irreparable damage unless the Commission's Orders of November 16, 1999, and the resulting administrative rules are stayed as requested by Relators. The Commission, unless stayed, will likely require Relators to comply with these new administrative rules. If Relators expend the time and funds necessary to comply with these administrative rules, but are successful on appeal, there is at present no assurance that Relators would be able to recoup the expenditures made in compliance with the rules, that such expenditures are great, and that these factors present great or irreparable damage to Relators as contemplated by Section 386.520 RSMo 1994. The Court finds that the motions for stay in essence ask the Court to invoke its equity jurisdiction to maintain the status quo pending the final outcome of the judicial review of the lawfulness of the administrative rules and the procedure by which they were promulgated. The Court finds that it can do so by ordering that the effectiveness of the new administrative rules, namely: 4 CSR 240-20.015, 4 CSR 240-80.015, 4 CSR 240-40.015, and 4 CSR 240-40.016, to be stayed as to these Relators pending the final outcome of judicial review.

11. That the Relators, in compliance with subsection 3 of section 386.520 RSMo, shall submit a joint suspending bond in the amount of \$1,000.00, payable to the State of Missouri to secure the prompt payment of all damages caused by the delay in enforcement of the Orders of the Commission. The form of signature bond by an officer of one of the Relators proposed by Relators is hereby approved for such purpose.

12. The Parties were directed to submit a briefing schedule to the Court for expeditious handling of this matter, and have indicated that the following schedule has been agreed to:

March 8, 2000 - Respondent submits its return to the writs of review

March 28, 2000 - Relators shall file a joint initial brief

April 17, 2000 - Respondent and Intervenor OPC shall submit respondents briefs

April 27, 2000 - Relators may file a joint reply brief

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED BY THE COURT
THAT:

1. The motions for stay of the Relators are hereby granted.

2. The effectiveness of 4 CSR 240-20.015, 4 CSR 240-80.015, 4 CSR 240-40.015, and 4 CSR 240-40.016 as to each of the Relators in this cause is hereby stayed, and the Commission is also hereby stayed from requiring any Relator herein to comply with any of the provisions of those rules, either directly or indirectly, such stay to remain in full force and effect until further order of this Court.

3. This stay order is issued to preserve the status quo existing prior to the effectiveness of 4 CSR 240-20.015, 4 CSR 240-80.015, 4 CSR 240-40.015, and 4 CSR 240-40.016, so as to prevent great or irreparable damage to Relators pending a ruling on the merits of the petitions for writ of review filed by Relators. This stay order is not intended to be a determination of the substantive rights of any party arising from the Orders.

4. That the form of suspending bond presented by Relators in the amount of \$1,000.00 is hereby approved.

5. That the briefing schedule agreed to by the parties is hereby approved and ordered.

SO ORDERED:


Thomas J. Brown III, Circuit Judge, Division I

Dated: February 25th, 2000