

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

In the Matter of the Missouri Public)
Service Commission's Proposed Rule)
Regarding Affiliate Transactions for)
Electric Utilities) Case No. EX-99-442

In the Matter of the Missouri Public)
Service Commission's Proposed Rule)
Regarding Affiliate Transactions for)
Steam Heating Utilities) Case No. HX-99-443

In the Matter of the Missouri Public)
Service Commission's Proposed Rule)
Regarding Affiliate Transactions for)
Gas Utilities) Case No. GX-99-444

In the Matter of the Missouri Public)
Service Commission's Proposed Rule)
Regarding Marketing Affiliate Transactions)
for Gas Utilities) Case No. GX-99-445

**JOINT APPLICATION FOR REHEARING
AND MOTION FOR RECONSIDERATION**

COME NOW UtiliCorp United Inc., d/b/a Missouri Public Service; The Empire District
Electric Company; St. Joseph Light & Power Company; Associated Natural Gas Company;
Laclede Gas Company; and Missouri Gas Energy (hereinafter "Joint Applicants") pursuant to
Section 386.500 RSMo 1994, by and through their respective counsel, and for their joint
application and motion in the above-captioned cases respectfully state as follows:

1. On August 10, 1999, the Commission issued an Order Denying Contested Case
Procedures in the above-captioned cases (hereinafter "the Commission's Order"), in which it
denied motions that had been filed by the Joint Applicants and several other utilities to request
that the Commission adopt such procedures in this proceeding.

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Missouri Public
Service Commission

2. The Commission's Order is unjust, unlawful, unreasonable, arbitrary and capricious because it denies the Joint Applicants their statutory due process rights to a full hearing and the procedural rights and protections that flow therefrom, in violation of Sections 386.250(6) RSMo Supp 1998; 393.140(5) and (8) RSMo 1994; and Section 536.010 et seq. RSMo Supp. 1998.

3. In declining to provide the procedural rights afforded by a contested case, the Commission acknowledges but never addresses the implications of subsection (6) of Section 386.250 RSMo. Specifically, the Commission does not explain how the opportunity to submit written and oral comments satisfies the *specific* statutory requirement that the Commission hold a hearing and allow parties to present *evidence* before it may adopt rules which "prescribe the conditions of rendering public utility service." The Joint Applicants submit that the procedures the Commission has adopted make that impossible to achieve. Nor does the Commission explain how it will assure a reviewing court that any rules it may adopt in this case are "supported by evidence as to reasonableness" as required by that same subsection (6), when it has rejected the use of those very procedures (including the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses, and to rebut opposing evidence as provided in Section 536.070(2) RSMo 1994) which are specifically designed to provide that assurance and permit a reviewing court to make its own determination on whether such a standard has been met.

4. Similarly, the Commission has also failed to satisfactorily explain how its approach in these cases can be reconciled with the requirements of subsections (5) and (8) of Section 393.140 RSMo 1994, other than to allege at page 3 of its Order that these statutory provisions deal with an examination of "particular persons or corporations." (Emphasis

supplied). This only serves, however, to confirm that this is indeed a proceeding in which the "legal rights, duties or privileges of *specific parties* are required by law to be determined after hearing." Section 536.010(2) RSMo 1994. In view of these considerations, it is clear that the Commission's Order has built a fatal flaw into the procedure to be used in these cases.

WHEREFORE, the Joint Applicants respectfully request that the Commission issue an order granting rehearing or reconsideration for the reasons stated above.

Respectfully submitted,

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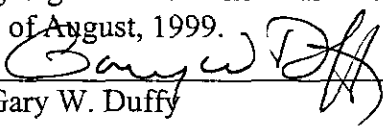
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Certificate of Service

I hereby certify that a copy of the foregoing has been either mailed or hand-delivered to the Office of the Public Counsel this 19th day of August, 1999.



Gary W. Duffy

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