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FILED<sup>3</sup>

SEP 05 2000

Missouri Public  
Service Commission

Missouri Public Service Commission  
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Jefferson City, Mo. 65102-0360

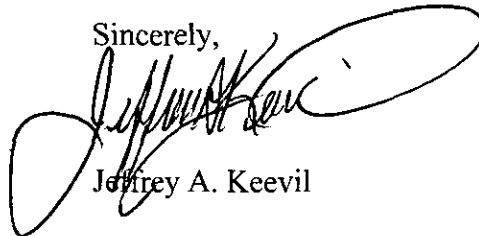
RE: Case No. EM-2000-292  
UtiliCorp United Inc./St. Joseph Light & Power Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and the appropriate number of copies of the INITIAL BRIEF OF THE CITY OF SPRINGFIELD, MISSOURI, THROUGH THE BOARD OF PUBLIC UTILITIES.

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,



Jeffrey A. Keevil

JAK/er  
Enclosures  
cc: counsel of record

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

**FILED<sup>3</sup>**

SEP 05 2000

Missouri Public  
Service Commission

In the Matter of the Joint Application of )  
UtiliCorp United Inc. and St. Joseph )  
Light & Power Company for Authority to )  
Merge St. Joseph Light & Power Company )  
with and into UtiliCorp United Inc., and, )  
in Connection Therewith, Certain Other )  
Related Transactions. )

Case No. EM-2000-292

**INITIAL BRIEF OF THE CITY OF SPRINGFIELD, MISSOURI,  
THROUGH THE BOARD OF PUBLIC UTILITIES**

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September 2000

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OF THE STATE OF MISSOURI**

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Case No. EM-2000-292

**INITIAL BRIEF OF THE CITY OF SPRINGFIELD,  
MISSOURI, THROUGH THE BOARD OF PUBLIC UTILITIES**

COMES NOW the City of Springfield, Missouri, through the Board of Public Utilities ("Springfield"), and pursuant to the Order Granting Motion for Extension of Time to File Initial and Reply Briefs issued on August 23, 2000, submits its Initial Brief.

**INTRODUCTION**

The standard applicable to this case is, as stated in the List of Issues, whether "the proposed merger and related transactions and proposals satisfy *the not detrimental to the public interest standard* required for the approval of mergers by the Commission." (List of Issues, Roman Numeral I)(emphasis added). As with all contested case orders of the Commission, the Commission's order must be based on competent and substantial evidence on the record as a whole as a matter of state law. *Deaconess Manor Association v. Public Service Commission*, 994 S.W.2d 602 (Mo. App. 1999); *Friendship Village v. Public Service Commission*, 907 S.W.2d 339, 348 (Mo. App. 1995). In other words, in order to approve the proposed merger, the Commission must find, based on competent

and substantial evidence on the whole record, that the proposed merger is not detrimental to the public interest.

This, in turn, raises the question of what is meant by “the public interest.” The Commission has in the past, in a change of electric supplier case, defined “the public interest” “to include the applicants, the other members of the cooperative, and **the public at large.**” *In the Matter of the Application of Carol June Tyndall*, 3 Mo. P.S.C. 3d 28 at 48 (1994)(emphasis added). Some parties to the instant case may argue for a more narrow definition of “the public interest;” however, in a case of this magnitude, with its public policy implications and impact upon the electric grid in the state of Missouri, the definition of “the public interest” set forth above should be used by the Commission.

Furthermore, in order for the Commission’s order to be supported by “competent and substantial evidence,” the Commission’s findings must be supported by **credible testimony**. See, *Deaconess Manor Association v. Public Service Commission*, 994 S.W.2d 602 at 611 (Mo. App. 1999). The credibility of certain testimony in this case on the issues of most direct concern to Springfield is a much greater issue in this case than in many cases before the Commission, as will be discussed in greater detail later in this brief. However, it may be helpful to the Commission at this point to note a few definitions from *Black’s Law Dictionary, Seventh Edition* (1999):

**Credibility** – The quality that makes something (as a witness or some evidence) worthy of belief. *Black’s Law Dictionary, Seventh Edition* (1999) p. 374.

**Credible evidence** – Evidence that is worthy of belief; trustworthy evidence. *Black’s Law Dictionary, Seventh Edition* (1999) p. 577.

**Credible witness** – A witness whose testimony is believable. *Black's Law Dictionary, Seventh Edition* (1999) p. 1596.

**Expert witness** – A witness qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion about the evidence or a fact issue. *Black's Law Dictionary, Seventh Edition* (1999) p. 1597.

As will be discussed below, the testimony of UtiliCorp United Inc.'s ("UCU") witness<sup>1</sup> on the issue of Transmission Access and Reliability (and associated conditions) does not meet these definitions, is therefore not credible, and therefore cannot constitute competent and substantial evidence upon which the Commission can base an order.

The issues of most direct concern to Springfield, as delineated in the List of Issues, together with remedial conditions to address those issues, will now be discussed.

***I. Does the proposed merger and related transactions and proposals satisfy the not detrimental to the public interest standard required for approval of mergers by the Commission?***

No. Not as proposed by UCU and SJLP. In fact, **the proposed merger is detrimental** to the public interest (which detriment is aggravated when viewed in conjunction with the proposed related merger of UCU and The Empire District Electric Company, Case No. EM-2000-369), and can have adverse effects on both retail rates and reliability. (Ex. 300, p. 2). Furthermore, UCU and SJLP have not fully evaluated the impacts of their post-merger flows on the state's electric grid, which leaves the

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<sup>1</sup> St. Joseph Light & Power Company ("SJLP") did not have a witness on this issue or associated conditions; therefore, the only witness in direct opposition to Springfield's witness on this issue lacked credibility.

Commission without necessary information on issues crucial to evaluating the proposed merger. (Id.)

## **MARKET POWER**

*(3) Will the merger allow the Companies to take valuable, limited transmission capacity necessary for other Missouri utilities to maintain deliveries under their purchased power contracts?*

Yes. Other parties to the case, most notably Staff and the Office of the Public Counsel, will likely address the issue of market power from a more traditional economic perspective related to matters of horizontal and vertical market power, and possibly the Herfindahl-Hirschman Index ("HHI"). Springfield's witness, however, approached the issue of market power from an engineering perspective. From such a perspective, rather than simply focusing on the relative size of the Joint Applicants' (UCU and SJLP) systems, the Commission should determine whether the merger would give the Joint Applicants the opportunity, ability and incentive to utilize scarce transmission resources for their own use, leaving other utilities (which serve the Missouri public) no economic alternatives for delivery of needed power supplies. The Commission should further determine whether to impose a condition on its approval of the merger (if the Commission decides to approve the merger) that the Joint Applicants (or UCU as the surviving company) upgrade the transmission infrastructure at their/its expense, so as to preserve existing benefits. (Ex. 300, pp. 48, 50).

If transmission serving the state becomes constrained as a result of the post-merger behavior of the merger partners, it will not be possible to dispatch the most cost-effective combination of generating resources; re-dispatch will be required; energy costs



will rise (constrained interfaces can lead to severe price spikes). (Ex. 300, p. 48). Impacts such as these may not directly translate into increased economic benefit to the Joint Applicants, but will improve their competitive position and present obstacles to other market participants (Ex. 300, p. 50) and certainly constitute a detriment to the public at large, including customers of other utilities in the state. Furthermore, the Joint Applicants appear to be aware of the likelihood of such impacts. (Id.).

Rather than address this issue head-on, the Joint Applicants' only witness on the issue, UCU witness McKinney, in his prefiled testimony, took the position that it was premature to address market power at this time, *i.e.*, that addressing the issue could only be accomplished after retail electric competition is allowed in Missouri. (Ex. 4, pp. 29-31; Ex. 5, p. 8). The closest he comes to addressing the issue is when he states that "as the third largest retail electric company in Missouri before and after the merger, [UCU] does not believe that the merged company will exercise any significant measure of retail market power." (Id. at 31). While Mr. McKinney's statements may or may not be true in regard to traditional market power analysis (*i.e.*, HHI), they certainly do not begin to address the detrimental impacts discussed above from an engineering perspective. Indeed, under Mr. McKinney's approach, once the issue could be addressed it would be too late; the merger would be consummated and the public at large would already be suffering the negative consequences of the merger.

Since the Joint Applicants chose to ignore the issue rather than address it head-on, there is no competent and substantial testimony on the issue on which the Commission could find that the merger would be not detrimental to the public interest. Accordingly, as testified by Mr. Russell, "if the Applicants are not willing to commit themselves to

identify and resolve problems prior to merging and to participate fully in an established regional solution, the only alternatives are (1) to deny the merger or (2) to impose strict conditions upon the merging parties.” (Ex. 300, p. 52). The conditions which should be imposed will be addressed in detail under the Transmission Access and Reliability section of this brief.

## **TRANSMISSION ACCESS AND RELIABILITY**

Before addressing each of the sub-points/sub-issues set forth in the List of Issues under the general issue of Transmission Access and Reliability (and the conditions the Commission should impose upon the Applicants to remedy the detriments associated with each sub-point if it decides to approve the proposed merger), the issue of credibility needs to be addressed. As discussed above, the issue of credibility is a much greater issue in this case than in many cases before the Commission. This is due to the simple fact that at the hearing in this case the testimony of the only witness<sup>2</sup> to testify in direct opposition to the testimony of Springfield’s witness on the issue of Transmission Access and Reliability, *i.e.*, UCU’s witness Mr. Kreul’s testimony in response to Mr. Russell, was clearly not credible.

Mr. Kreul, whose prefiled testimony appears in Exhibits 12 and 13, is either the UtiliCorp Vice President of Transmission Services (Ex. 12, p. 1) or Vice President of Energy Delivery (Tr. p. 1242), both according to Mr. Kreul. In any event, Mr. Kreul’s surrebuttal testimony was filed specifically to respond to Springfield’s witness, Mr. Russell, regarding Transmission Access and Reliability. (Ex. 13, p. 1). Despite this, at the hearing Mr. Kreul displayed an amazing lack of knowledge concerning electric

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<sup>2</sup> Only three witnesses filed substantial testimony addressing the issue of Transmission Access and Reliability – Springfield’s witness Mr. Russell, UCU’s witness Mr. Kreul, and Staff’s witness Dr. Proctor.

transmission in general as well as UCU's operations in regard to electric transmission.

For example, during cross-examination at the hearing Mr. Kreul testified that:

- He did not know if the Southwest Power Pool has criteria for setting emergency ratings for transmission facilities (Tr. p. 1237).

- He was not familiar with (Tr. pp. 1238-1239), nor could he explain (Tr. p. 1241), the type of report as reflected in the load flow report provided by UCU to Springfield in response to data requests (Ex. 304), which was provided by personnel which he supervises, despite the fact that he purported to testify concerning UCU's load flow analysis (Ex. 13, p. 2).

- He did not know what load flow model UCU used in conducting its load flow analysis, *i.e.*, he did not know what model the people he supervises use. (Tr. p. 1240).

- He did not know how UCU defines a loading violation for a transmission line. (Tr. p. 1242).

- He was unfamiliar with the details of load flow modeling (Tr. p. 1246), despite sponsoring testimony about load flow analysis.

- He directed other employees to prepare his prefiled testimony (Tr. pp. 1246, 1262-1263) and "assumed" that it was correct. (Tr. p. 1263).

- Although he testified that UCU could cure the loading violation on the Sibley to Duncan line by an operating procedure which calls for reducing generation at Sibley and/or increasing generation at Greenwood, he stated he did not know if Greenwood is ever fully loaded – while recognizing that that would impact the operating procedure set forth. (Tr. p. 1249).

- Although he testified in his surrebuttal (Ex. 13, p. 7) that available transmission capacity ("ATC") in the region will be increased after UCU upgrades the LR-Nashua line and constructs a Nevada-Asbury line after the merger, he did not know how much ATC will increase; he did not know how much ATC will be gained on a north to south transfer of electricity; nor did he know how much ATC will be gained on a south to north transfer. (Tr. p. 1252). He conceded all of this despite asserting in his surrebuttal testimony that regional ATC would increase approximately 700 MW. (Ex. 13, p. 6).

- Furthermore, to arrive at the alleged 700 MW increase in ATC, he testified that a study was run by an engineer who works for him, but he could not name the engineer who performed the study. (Tr. p. 1257). He also did not know whether the Southwest Power Pool had confirmed this unnamed engineer's findings regarding regional ATC. (Tr. p. 1258).

•Although UCU requested the Southwest Power Pool to conduct an analysis of providing transmission service necessary to run the post-merger UCU as a single control area (Tr. p. 1243; Exs. 301 and 303), he could not explain the voltage report table contained in the SPP's study (Ex. 303) nor did he know how the SPP indicated bus voltages in the report. (Tr. pp. 1258-1261, 1277).

•At first, he did not know whether generators provide reactive power to support voltage (Tr. p. 1279); he did not know whether it is possible to dispatch a 100 MW generator being run at 1 MW (*Id.*); and he was not aware that some generators were modeled at one megawatt in the load flow cases which UCU provided to Springfield in response to data requests. (Tr. p. 1281).

Finally, and perhaps most interestingly, Mr. Kreul did not even know, without being coached during a recess in the hearing, to what Southwest Power Pool study his surrebuttal testimony referred. As reflected in the transcript, the following exchange occurred at the hearing after the morning recess:

(A RECESS WAS TAKEN)

JUDGE WOODRUFF: We're on the record.

MR. DUFFY: Your Honor, during the break the witness [Mr. Kreul] informed me that he realized that he had made some incorrect responses in his previous testimony just prior to the break and he would like to correct those erroneous statements at this time.

MR. KEEVIL: Judge, I'd like to explore the basis of his discovery on that.

JUDGE WOODRUFF: You certainly may.

BY MR. KEEVIL: Q. Mr. Kreul, did you discover you made erroneous statements in your previous testimony –

MR. DUFFY: Well, Your Honor, can we make the corrections first and then allow Mr. Keevil to ask whatever questions that he wants to do about that.

MR. KEEVIL: No, because then they'll be in there. You know, they'll be on the record.

JUDGE WOODRUFF: Go ahead and ask your questions first, Mr. Keevil.

BY MR. KEEVIL: Q. Mr. Kreul, did you discover you had made erroneous answers in response to the previous questions after consultation with anyone from UtiliCorp?

A. Yes.

Q. Who was it that you consulted with that informed you that you had given incorrect answers?

A. One of the engineers, engineers in my group.

Q. Okay. So it was the engineer in your group that realized you had made incorrect answers to *[sic]* *[in]* your previous testimony?

A. Yeah. Upon discussing with him we both dis—discovered that there were errors in my testimony.

Q. You both discovered. After –

A. After – after consulting with him, I discovered there were errors in my testimony.

Q. Based on what he told you?

A. Yes.

Q. Okay.

MR. KEEVIL: This is still not his testimony. He's testifying – somebody else apparently has knowledge on this matter. They put him up there on the stand to testify.

MR. DUFFY: Your Honor, that's just argumentative.

JUDGE WOODRUFF: He's making an objection, so it needs to be argumentative.

MR. KEEVIL: I object to them now coming back after he's had the chance to be coached by this other engineer and change his answers that he's previously [given] – you know, we spent an hour and a half going through a minute ago.

JUDGE WOODRUFF: All right. Your objection is noted. It will be overruled. **It certainly goes to the credibility of the witness** rather than his admissibility as previously argued. (Tr. pp. 1265-1267)(emphasis added)

As shown from all of the foregoing, Mr. Kreul's testimony on Transmission Access and Reliability (and associated conditions) lacked credibility and did not constitute credible expert witness testimony or evidence as defined earlier in this brief and the Commission should, indeed must, so find in its order. Due to its lack of credibility, his testimony cannot constitute competent and substantial evidence on the record as a whole, so the Commission cannot base its order on his testimony; and since he was the Joint Applicants' only witness to address the substance of the issue of Transmission Access and Reliability (and associated conditions) – indeed, the only witness in direct opposition to the testimony of Springfield's witness, Mr. Russell, on the

substance of the issue of Transmission Access and Reliability (and associated conditions) – there is no competent and substantial evidence on the record on which the Commission could find the proposed merger is not detrimental to the public interest with regard to Transmission Access and Reliability without imposing the conditions associated therewith as recommended by Mr. Russell. These will be discussed further below.

*(1) Have the Companies conducted and provided adequate studies of the impact of the proposed merger upon transmission facilities within, and interconnecting with, the State of Missouri, and upon all providers of electric service in the State, to prove that the proposed merger is not detrimental to the public interest?*

No. Applicants (the Companies) have not analyzed the impact of their combined uses of the region's transmission system upon transmissions customers such as, but not limited to, Springfield (with the resulting impact upon such transmission customers' retail customers). (Ex. 300, p. 23). Staff apparently agrees with Springfield on this point, as reflected in Dr. Proctor's cross-surrebuttal testimony, where he states that he "cannot recommend that the Commission support the UCU proposal for connecting MPS, SJLP and EDE until it is clear that this plan does not have detrimental impacts on the regional grid. In order to determine the impact on the regional grid, the Commission should require UCU to have a region-wide load-flow study performed that models the load-flow impacts of UCU's proposal to connect MPS, SJLP and EDE." (Ex. 715, pp. 7-8; *see also*, Ex. 715, pp. 3-4).

Mr. Russell presented the results of a limited<sup>3</sup> load flow study of the pre- and post-merger system conditions conducted by his firm which revealed numerous criteria

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<sup>3</sup> The study was "limited" due to UCU's failure to provide sufficient information necessary to perform a wider study. (Ex. 300, p. 27; *see also*, Ex. 715, pp. 3-4).

violations can be expected on the UCU transmission system – “this means in layman’s terms that the MoPub [UCU] transmission system is weak and unreliable as measured by prevailing engineering standards and might experience even more criteria violations after UtiliCorp integrates” operations as a result of the merger. (Ex. 300, pp. 26-29). The study showed numerous lines being overloaded, with several lines being loaded beyond even their emergency ratings. (Ex. 300, pp. 30-32). Furthermore, outages of lines in UCU’s control area cause overloads on Kansas City Power & Light Company’s lines, of which UCU is fully aware. (Ex. 300, p. 33). This is an example of the type of impact upon the regional transmission system which UCU has ignored, but which must be studied before the merger is consummated.

UCU claims that a benefit of the proposed merger is that it will be in position to make more efficient use of lower cost power. (*See* Ex. 300, p. 35). However, UCU’s planned post-merger shift in dispatch will result in increased power transfers between parts of the merged company; transfers of power within the merged company which serve native load will not be posted on OASIS; therefore, these new post-merger transfers within the company will no longer be subject to curtailment, and when congestion occurs the burden of curtailments will be imposed on other parties using the transmission system and therefore on the Missouri ratepayers of other utility companies. (*Id.*). As Mr. Russell testified, “ Applicants are claiming efficiencies that can only be obtained by increased use of transmission, but have not done the studies to show the impact of such uses on other systems.” (*Id.*).

Mr. Russell also identified other constraints on the transmission system in Missouri. (*See*, Ex. 300, pp. 35-38; 42-43). One of these constraints is of particular



concern to Springfield, namely, constrained facilities which are associated with a line extending from the Montrose generation plant of Kansas City Power & Light to Brookline substation-City Utilities of Springfield; this line is important to delivering Springfield's entitlement to the Montrose plant. (Ex. 300, pp. 37-38, 42-43). The Stockton-Morgan section of this line experiences heavy loadings during north to south transfers and the line can limit transfers during the outages of the 345 kV lines from LaCygne to Neosho and from Morgan to Brookline. (Ex. 300, pp. 37-38, 42-43). UCU is aware of this, and in its study of the interconnection between UCU and The Empire District Electric Company ("EDE") recommended addition of a 161 kV line between Nevada (UCU) and Asbury generating station (EDE). (Ex. 300, Sch. 5). UCU has now committed to build the Nevada to Asbury line (Tr. 1282), and the Commission should so order.

Mr. Russell's study was corroborated by a system impact study conducted by the Southwest Power Pool ("SPP") at the request of UCU to examine the impact of combining UCU, SJLP and EDE into one control area. (Ex. 301 and 303). The SPP study found "that facility upgrades and system improvements are required to accommodate the requested transmission service." (Ex. 301, Executive Summary). The study also found numerous overloads and voltage violations. (Ex. 303).

**Conditions (List of Issues, Transmission Access and Reliability Conditions (1)(a)-(d))**

A reasoned decision on the merits of the merger must include a full assessment of post-merger operating conditions and appropriate mitigation measures. As a result of the Joint Applicants' failure to provide adequate studies as discussed above, prior to approving the merger the Commission should order the Applicants to conduct production

cost, load flow and stability studies of the effects of combining their systems and control areas upon other utilities. (Ex. 300, p. 24). The Joint Applicants should be ordered to provide these studies in hard copy and electronic form to the other parties, and the Commission should keep this case open until such time as the studies have been completed and all parties have been allowed sufficient time (*i.e.*, 30 days) to review/analyze and file comments in this case on such studies. (*Id.* at 25). If, after the comments are filed, the Commission determines that additional hearings are warranted, hearings could be continued at that time similar to what was done in the Union Electric/CIPSCO merger case.

Such studies should include, but not necessarily be limited to, the following: (1) Production cost simulations that indicate the hourly amount of power flows that can be expected to occur between each of the separate pockets of load and generation in connection with the merged company's internal dispatch. This should include hourly determinations of net exports and imports for each of those pockets. The output of this analysis should also include hourly indications of (i) the amount of generating capacity probabilistically determined to be available from each generating resource owned and purchased by the merged company, (ii) the amount of that capacity dedicated to native load, (iii) the amount dedicated to firm off-system sales, and (iv) the amount available for additional off-system sales. (2) Load flow and stability analyses of necessary additions of equipment (and employment of must-run generation) to support transmission voltages within a +/- 5% range of nominal voltage under base case conditions, heavy transfer conditions and under all single contingency outage conditions. The starting conditions should reflect alterations of internal dispatch that Applicants expect to occur in the post-

merger scenarios. (3) Analyses of transmission facility additions necessary to integrate operations of Applicants' control areas without impairing Springfield's ability to carry out a planned purchase of a firm unit entitlement from KCPL's Montrose unit. The reliability criteria should include a requirement that Applicants comply with regional reliability standards. (*Id.* at 25-26).

UCU had originally committed to make the upgrades shown to be necessary by the SPP study reflected in Exhibits 301 and 303. (*See*, UCU response to data request, Ex. 300, pp. 39-41). However, after the SPP study was concluded, UCU has backed away from this commitment due to the cost of the numerous upgrades shown to be necessary by the SPP study. (Ex. 302). However, the Commission should not allow UCU to so easily evade the consequences of its merger, and Applicants (or UCU as the surviving company) should be ordered to construct, at their expense, any transmission lines which the studies ordered by the Commission identify as being necessary, as well as the 161 kV line between Nevada and Asbury which UCU has finally committed to construct (Ex. 300, p. 43; Tr. 1282), if the Commission allows the merger to proceed.

(2) *Will the proposed merger provide the Companies the ability to gain unduly preferential priority of access to limited transmission facilities and/or exercise their post-merger transmission access anti-competitively, to the detriment of other customers in the State and therefore to the detriment of the public?*

#### Native Load Priorities

Native load priorities can be invoked by transmission owners such as the Applicants to favor deliveries of their own purchases and sales of generation and to obtain favored access for their native loads through transmission bottlenecks. (Ex. 300,

p. 13). If the Commission allows them to proceed, by virtue of the merger of UCU with SJLP ( and EDE), Applicants will be able to expand the coverage of their native load priorities to cover deliveries between Applicants' native loads in what are now separate control areas. They will be able to import their own firm resources through constrained transmission interfaces, while potentially curtailing Springfield's firm purchase of power from KCPL's Montrose generating resource, and may be able to assert a higher priority for their imports of non-firm energy over Springfield's use of non-firm point-to-point transmission service. (Ex. 300, p. 14).

Expansion of native load priorities beyond their present scope by virtue of the merger could allow Applicants to "game the system." For example, the Applicants might move power from one operating company (SJLP) into another operating company (MPS or EDE) by asserting a native load priority and "reducing" the generation in the receiving company; however, simultaneously, they could initiate an off-system sale from generation located in the area of the receiving operating company, thus allowing them – under the guise of meeting a native load requirement – to exploit their expanded post-merger native load priority and move generation through a bottleneck for a non-native load purpose: making off-system sales. (Ex. 300, pp. 14-15). The Applicants (or UCU as the survivor) should not be allowed to expand the use of existing native load priorities beyond their present geographic scope to the detriment of others who also need to use the transmission network.

#### Internal Dispatch

Joint operation of the merged companies (internal dispatch) could subject the region to unanticipated swings in power flows as Applicants re-dispatch their units,

which could result in the imposition of additional curtailments on other utilities, shifts in losses and loss burdens, force other utilities to re-dispatch, and impose congestion costs and other adverse impacts on other utilities in the region. (Ex. 300, p. 16). Transmission constraints currently limit UCU's integration of the UCU, SJLP and EDE control areas and no study has addressed these adverse consequences of the merger. (*Id.*)

Applicants' post-merger internal dispatch would be exempt from the reservation, scheduling and monitoring requirements (OASIS) of their Open Access Transmission Tariff and from similar requirements of any regional transmission provider. Post-merger consolidation of the pre-merger control areas (UCU, SJLP and EDE) would transform what are currently pre-scheduled and curtailable resale transactions reported on the OASIS of each affected transmission owner into "internal dispatch" that is exempt from the usual rules regarding reservation, scheduling, reporting, monitoring, tagging and curtailment of transmission service. (Ex. 300, pp. 17-18). This would be true even if the transactions of the merged company actually flow as circulating loop flow over the transmission systems and control areas of neighboring utilities. (*Id.*). Transmission capacity necessary to carry out these flows would be exempt from disclosure even when they take up what would otherwise be Available Transmission Capacity ("ATC") on the relevant regional interfaces, and such flows would not have to be pre-scheduled. As Mr. Russell testified:

Unless special analyses are conducted beforehand and special monitoring is added, one cannot easily predict the magnitude, direction and duration of internal dispatch flows and cannot determine the magnitudes of internal dispatch flows in real time. As a result, a large buffer or cushion of unloaded transmission capacity must be left unloaded to accommodate these unpredictable and unknown flows. . . . Thus, the ATC in the region might be "soaked up" with a resulting loss in economic efficiency to the region. (Ex. 300, p. 18).

### Capacity Benefit Margins/Transmission Reserve Margins

Furthermore, Applicants could attempt to set aside transmission capacity for capacity benefit margins (“CBM”) or transmission reserve margins (“TRM”), which will soak up ATC for use by others (such as Springfield) on a firm basis. (Ex. 300, p. 45). If constrained transmission interfaces are anticipated, as they should be in the situation posed by the proposed merger, setting aside capacity for CBM or TRM will deny needed capacity to other users of the constrained facilities. (*Id.*).

### SPP ISO/RTO

Integration of transmission facilities under a regional transmission organization will identify and protect against potential abuses likely to arise from Applicants’ plan to integrate their post-merger generation. (Ex. 300, p. 20). ISO/RTO membership is important because control over transmission, generation and distribution facilities has all too often been exercised in anti-competitive ways, such as when an owner of vertically integrated transmission and generation facilities denies competing generators access to its transmission and/or distribution facilities. (*Id.* at 21).

### Conditions (List of Issues, Transmission Access and Reliability Conditions (2))

To remedy all of the detriments set forth above under Transmission Access and Reliability sub-point/sub-issue (2), if the Commission is otherwise inclined to approve the merger it should impose the following conditions for the reasons discussed above.

### Native Load Priorities

The Joint Applicants should be required by the Commission to commit that with respect to any and all generating resources associated with any one of their existing control areas (including purchased generating resources) serving load in any other control

area of the merging companies, the merging companies should waive or not assert: (i) native load priority on scheduling and curtailing non-firm network transmission service; (ii) the native load preference arguably accorded to bundled retail loads over wholesale loads under the decision in Northern States Power Co. v. FERC, 176 F.3d 1090 (8<sup>th</sup> Cir. 1999); and (iii) use of any native load priority that will enable any one of the merging companies to import power through constrained interfaces so as to free up its local generating resources for off-system sales. (Ex. 300, pp. 15-16).

#### Internal Dispatch

The Joint Applicants should not be allowed to combine any or all of their existing control areas without first submitting their plans for such combinations to peer group review and approval by the SPP ISO/RTO and the affected regional reliability councils. (Ex. 300, p.19).

The merged companies should be required to schedule all power flows and/or reserve transmission capacity on the relevant OASIS for purposes of carrying out any internal dispatch between what are now geographically isolated pockets of load and generation in separate control areas of the merging companies; to implement real-time monitoring of intra-company flows associated with internal dispatch; to report continuously the amount of such flows on its OASIS; and to make all reasonable efforts to limit internal dispatch to levels at or below the transmission capacity reserved for purposes of carrying out internal dispatch. This will simply preserve the status quo, and avoid merger-related detriment. (*Id.* at 19-20).

The Commission should order that, if the burdens on Springfield attributable to internal dispatch of the Joint Applicants turn out to be substantial (*i.e.*, curtailments of

Springfield's firm schedules from Montrose), UCU is required to reimburse Springfield for the incremental costs to Springfield of re-dispatching Springfield's generating resources that are attributable to the post-merger integrated operations of what are now the Joint Applicants' separate systems. (*Id.* at 20).

#### Capacity Benefit Margins/Transmission Reserve Margins

As a condition for approval of the merger, UCU should be required to (i) not set aside transmission capacity for Capacity Benefit Margins (CBM) and Transmission Reserve Margins (TRM) and (ii) to waive any future claims for CBM and TRM. (*Id.* at 46).

#### SPP ISO/RTO

The merged company should be required to put all of its transmission facilities under the control of the SPP ISO/RTO in a single zone under the SPP transmission tariff and to join - and maintain membership in - the SPP ISO/RTO and also be required to file an integrated open access transmission tariff ("OATT") and an integrated transmission rate for what are now separate control areas. (*Id.* at 22).

(3) *Could a post-merger UCU refunctionalize its transmission facilities in anti-competitive ways to the detriment of the public?*

Simply put, yes. FERC Order No. 888 permits utilities to refunctionalize their transmission facilities to transmission or distribution pursuant to the "seven-factors test" in Order 888; however, FERC gave states the right to establish the dividing line between transmission and distribution pursuant to this "seven-factors test." (Ex. 300, pp. 11, 46). Many utilities have done this in a manner which creates anti-competitive impacts such as unwarranted cost shifts which impose inappropriate costs upon customers and shield



certain customers from competition through alternative supply sources. (*Id.* at 46). It may also be used to grant more favorable treatment to the utility's own generation, to discourage on-site generation or distributed generation, and deny appropriate jurisdictional protection. (*Id.* at 47). Through expansion of its facilities and service area by virtue of the merger, UCU would have even greater incentive and ability to refunctionalize its facilities in such an anti-competitive manner.

**Conditions (List of Issues, Transmission Access and Reliability Conditions (3))**

Due to the foregoing, if the Commission approves the merger, UCU should be required to not seek refunctionalization of any currently categorized transmission lines of the merging companies that operate at or above 69 kV.

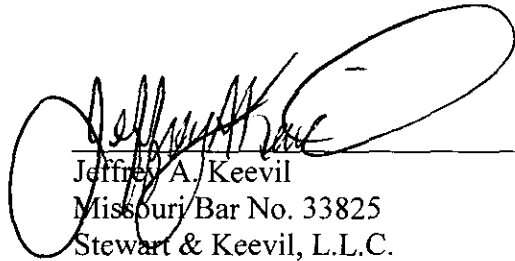
(4) *Do the companies being merged adhere to a single, consistent set of standards for designing and operating their transmission facilities and, if not, would not adhering to a single, consistent set of standards for designing and operating their transmission facilities be detrimental if the merger is approved?*

Upon examination it appears that SJLP adheres to a higher voltage standard than UCU. (Tr. 1330). If UCU is allowed to acquire SJLP it would seem only logical that UCU's lesser standard would be applied to SJLP, an obvious detriment of the merger, unless otherwise ordered by the Commission. As testified by Mr. Russell, "a decline in voltage standards is not a trivial thing," (Tr. 1317) and has serious reliability implications; in fact, in certain situations, low voltages can, and have, led to voltage collapse with resultant blackouts. (Tr. pp. 1307-1308). Southwest Power Pool criteria recognize these problems:

. . . minimum voltage limits can establish the maximum amount of electric power that can be transferred without causing damage to the electric

competent and substantial evidence on the record refutes this. The Commission must therefore either (i) deny the proposed merger or (ii) authorize the merger only upon the imposition of the conditions set forth under each issue herein.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was delivered by first-class mail, or hand-delivery, to counsel for parties of record; the Office of the Public Counsel; and the General Counsel's Office of the Missouri Public Service Commission on this 5th day of September, 2000.

