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December 21, 2000

FILED³

DEC 22 2000

FEDERAL EXPRESS

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

Missouri Public
Service Commission

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

Dear Mr. Roberts:

Enclosed are the original and eight (8) conformed copies of a pleading, which please file in the above matter and call to the attention of the Commission.

An additional copy of the material to be filed is enclosed, which kindly mark as received and return to me in the enclosed envelope as proof of filing.

Thank you for your attention to this important matter. If you have any questions, please call.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By:


Stuart W. Conrad

SWC:s
Enclosures
cc: All Parties

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
DEC 22 2000

Missouri Public
Service Commission

In re 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 con-)
nection therewith, certain other)
related transactions.)

Case No. EM-2000-292

INTERVENOR AG PROCESSING INC
APPLICATION FOR REHEARING

COMES NOW Intervenor Ag Processing Inc. a Cooperative (AGP) and pursuant to Section 386.500 RSMo 1994 seeks rehearing of the December 14, 2000 Report and Order herein on the grounds that such Report and Order is unconstitutional, unlawful, unjust, unreasonable, arbitrary and capricious for the reasons set forth herein:

1. In its Report and Order in this proceeding, and in earlier interlocutory procedural orders issued herein, the Commission failed and refused to require Joint Applicants to submit a retail market power study or, indeed, any market power study, and thereby reversed the burden of proof in this proceeding in violation of applicable Missouri law and contrary to prior Commission precedent.

2. By failing and refusing to require Joint Applicants to submit a proper retail market power study, the Commission refused to consider critical and relevant factors bearing

upon this matter, including without limitation the business consolidation of the Missouri Public Service Company and St. Joseph Light & Power Company into one business entity would thereby establish an entity with excessive market power in the State of Missouri against which ratepayers have no protection. As a result, the Commission failed and refused to consider all relevant factors in its decision and established a structure for the case wherein it refused to consider evidence of detrimental effects of the merger upon the public interest, again in violation of relevant Missouri law requiring that all relevant factors be considered.

3. As a result of this failure, the Report and Order fails to contain adequate findings of fact upon which review of the Commission decision could be based, again in violation of Missouri law. Moreover, the Report and Order generally fails to contain adequate findings of fact upon which review of the Commission decision could be based, in violation of Missouri law.

4. The Commission's Report and Order fails to set forth adequate findings of fact and conclusions of law as required by Missouri law and, accordingly, AGP is unable to discern the actual basis of the Commission's Report and Order in a manner sufficient to more specifically frame issues for judicial review. Accordingly, the Commission's Report and Order is unlawful and unreasonable as a matter of law as contrary to Sections 386.420, 536.090 and State ex rel. Fischer v. PSC, 645 S.W.2d 39 (Mo. App. 1982). The Commission's decisions must be based on competent and

substantial evidence on the whole record, Mo. Const., Art. V, Section 18, and are required to contain findings of fact that relate to and are dispositive of the issues presented. State ex rel., Fischer, supra; State ex rel. Rice v. Public Service Commission, 220 S.W.2d 61 (Mo. 1949).

5. The Commission failed to make adequate findings of fact throughout the Findings of Fact section of the Report and Order, the Commission merely states the positions of the parties on the various issues and then finds that one party's position is more reasonable than the other parties without giving reasons as to why it found such position more reasonable than the others. In order to comply with the requirement that the Commission make findings of fact which support its conclusion, the applicable test for sufficiency of findings of fact is stated as follows in State ex rel. A.P. Green Ref. v. P.S.C., 752 S.W. 2d 835 (Mo.App. 1988) at 838:

The most reasonable and practical standard is to require that findings of fact be sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence.

The Commission's Findings of Fact failed to meet this standard and consequently, the Report and Order is unlawful and unreasonable.

6. The Commission appeared to wrongly equate immediate rate impact with ratepayer detriment and wholly failed to employ its expertise and experience to recognize that the busi-

ness combination presented in this matter would result in the creation of a retail hegemony that would gain substantial market power in the context of a deregulated electric market. In so doing the Commission assumed inconsistent positions that on one hand the changes in the electricity marketplace was support for the merger, but then refused to consider evidence of the market power that was being created by the business combination purportedly approved. In so doing the Commission acted unlawfully and arbitrarily, failed to consider the competent and substantial evidence of record and its Report and Order is not and cannot be supported by competent and substantial evidence as required by Missouri law.

7. The Commission erred in failing to apply the proper standard of proof, holding instead that Joint Applicants had only a minimal burden of persuasion while objecting parties, including the Commission's own Staff, had a separate burden of persuasion as regards their objection. In so doing the Commission has reversed the burden of proof in this proceeding, denied these parties both procedural and substantive due process and has acted unreasonably and in violation of law. Due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. State ex rel. Fischer v. Public Service Commission, 645 S.W.2d 39, 43 (Mo.App. 1982), cert denied, 464 U.S. 819, 104 S.Ct. 81, 78 L.Ed.2d 91 (1983). The ratemaking process, including the process of regulation of public utilities generally, is supposed to involve fair play and a full

hearing. State ex rel. Arkansas Power & Light Company v. Public Service Commission, 736 S.W.2d 457, 460 (Mo. App., W.D. 1987).

8. As an example of the foregoing, Exhibit 303, a document obtained from the Joint Applicants, demonstrated upon its face that detriments would result to steam and natural gas customers of St. Joseph Light & Power Company from the merger. The Commission, however, failed to consider such un rebutted evidence that clearly demonstrated ratepayer detriment from the Joint Applicant's own documents. The Commission attempted to distinguish this Exhibit on the basis that it merely represented an allocation while failing to recognize that all of Joint Applicants claims of no detriment were based on similar allocations. If this item of proof was not sufficient to require that Joint Applicants go forward to affirmatively rebut their own evidence, then none of Joint Applicants' claims of lack of detriment have factual or evidentiary foundation sufficient to form competent and substantial evidence to support the Report and Order as required by law.

9. While acknowledging that the evidence irrefutably demonstrated that the debt rating of the combined entity would be substantially lower than the current debt rating of St. Joseph Light & Power Company, the Commission again simply ignored un rebutted and unrefuted competent and substantial evidence of immediate and direct ratepayer detriment in that ratepayers of St. Joseph Light & Power Company will be served by an entity that is less financially secure and stable than the entity presently

serving them with electricity, steam and natural gas service. As a result, the Commission has unlawfully and unreasonably approved a merger creating that less financially secure entity and has ignored the fact that the proposed merger detrimentally affects the immediate interests of ratepayers.

10. That in all other respects the Report and Order is not supported by competent and substantial evidence upon the whole record and is contrary to the competent and substantial evidence of record. It therefore is unlawful and unreasonable and in violation of Missouri law.

WHEREFORE Intervenor AGP prays that rehearing of the Report and Order be granted and that, upon such reconsideration or rehearing, that the Report and Order be set aside and that rehearing be granted on the issues stated herein.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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ATTORNEYS FOR AG PROCESSING INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid addressed to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", written over a horizontal line.

Stuart W. Conrad

Dated: December 22, 2000