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December 28, 2000

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

**Re: Case No. EM-2000-292**

**FILED<sup>2</sup>**  
DEC 28 2000  
Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the referenced case on behalf of UtiliCorp United Inc., please find an original and eight (8) copies of a Motion for Expedited Treatment and Response of UtiliCorp United Inc. to Application for Rehearing, Motion for Reconsideration and Request for Stay of City of Springfield and to Application for Rehearing of AG Processing, Inc.

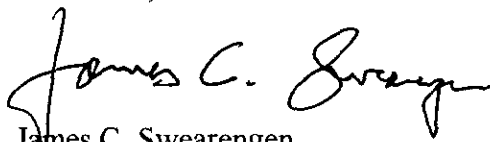
Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

  
James C. Swearengen

JCS/lar

Enclosure

cc: All Parties of Record

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

**FILED<sup>2</sup>**  
DEC 28 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

**MOTION FOR EXPEDITED TREATMENT AND  
RESPONSE OF UTILICORP UNITED INC.  
TO APPLICATION FOR REHEARING, MOTION FOR  
RECONSIDERATION AND REQUEST FOR STAY OF CITY OF SPRINGFIELD  
AND TO APPLICATION FOR REHEARING OF AG PROCESSING, INC.**

COMES NOW UtiliCorp United Inc. ("UtiliCorp"), by counsel, and for its Motion for Expedited Treatment and Response to the Application for Rehearing, Motion for Reconsideration and Request for Stay of City of Springfield ("City Utilities") and to the Application for Rehearing of Ag Processing, Inc. ("AGP") respectfully states as follows to the Missouri Public Service Commission ("Commission"):

1. By its Report and Order issued in the captioned-matter on December 14, 2000, which Report and Order became effective December 27, 2000, the Commission, among other things, approved and authorized the proposed merger of St. Joseph Light & Power Company ("SJLP") with and into UtiliCorp, with UtiliCorp being the surviving corporation.

2. In a pleading filed December 22, 2000, UtiliCorp advised the Commission and the parties to this case that the closing date of the merger is scheduled for December 29, 2000. If the closing occurs on that date, UtiliCorp will assume the SJLP gas, electric and steam operations as of December 30, 2000. Subsequent to UtiliCorp's pleading, City Utilities and AGP filed the pleadings

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which are the subject of this Motion and Response. In essence, UtiliCorp desires that the Application for Rehearing, Motion for Reconsideration and Request for Stay filed by City Utilities and the Application for Rehearing filed by AGP be processed on an expedited basis and denied immediately.

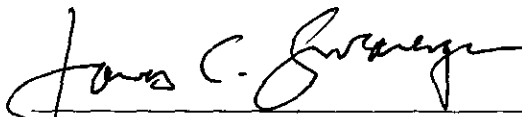
3. City Utilities' request for relief is without merit. No rehearing or reconsideration of the Commission's December 14, 2000 Report and Order should be granted nor should the Report and Order be stayed. The matters raised by City Utilities have essentially been dealt with by the Federal Energy Regulatory Commission ("FERC") by its Order Denying Rehearing and Denying Motion for Stay issued December 21, 2000 in FERC Docket Nos. EC00-27-000 and EC00-27-002. A copy of said FERC Order is attached hereto as Appendix 1 and made a part hereof for all purposes. In addition, any matters raised by City Utilities which properly concern the jurisdiction of the Commission were appropriately considered and dealt with by the Commission in its December 14, 2000 Report and Order.

4. Likewise, the Application for Rehearing of AGP is without merit as all matters raised in said pleading have been considered and disposed of by the Commission in its December 14, 2000 Report and Order.

5. As indicated previously, the UtiliCorp/SJLP merger is scheduled to be closed on December 29, 2000. In the event the Commission fails to act upon the involved pleadings of City Utilities and AGP prior to December 29, 2000, UtiliCorp intends to close the subject merger on that date thereby rendering said pleadings moot.

WHEREFORE, having responded, UtiliCorp respectfully moves the Commission to process the involved Applications for Rehearing, Motion for Reconsideration and Request for Stay on an expedited basis and deny same immediately and in any event no later than Thursday, December 28, 2000, good cause having been shown.

Respectfully submitted,



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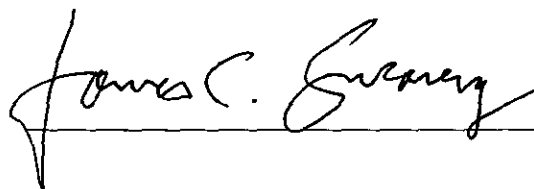
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Attorneys for UtiliCorp United Inc.

**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 28<sup>TH</sup> day of December, 2000, to all parties of record.



93 FERC ¶ 61,308

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
William L. Massey, Linda Breathitt,  
and Curt Hébert, Jr.

UtiliCorp United Inc. and  
St. Joseph Light & Power Co.

Docket Nos. EC00-27-000  
and EC00-27-002

UtiliCorp United Inc. and  
Empire District Electric Co.

Docket No. EC00-28-000  
and EC00-28-002

ORDER DENYING REHEARING  
AND DENYING MOTION FOR STAY

(Issued December 21, 2000)

On August 25, 2000, City Utilities of Springfield, Missouri (Springfield) filed a request for rehearing of the Commission's order issued on July 26, 2000, in this proceeding.<sup>1</sup> In this order, we deny Springfield's request for rehearing.

Also, on November 28, 2000, Kansas Electric Power Cooperative, Inc. (KEPCo) filed a motion for stay of the July 26 Order. As discussed below, we deny KEPCo's motion for stay.

I. Background

On November 23, 1999, UtiliCorp United Inc. (UtiliCorp), St. Joseph Light & Power Company (St. Joseph), and Empire District Electric Company (Empire) (collectively, Applicants) submitted an application under section 203 of the Federal Power Act<sup>2</sup> (FPA) seeking authorization for the disposition of the jurisdictional facilities of St. Joseph and Empire to UtiliCorp through proposed mergers.

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<sup>1</sup>UtiliCorp United Inc., et al., 92 FERC ¶ 61,067 (2000) (July 26 Order).

<sup>2</sup>16 U.S.C. § 824b (1994).

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The July 26 Order expressed concern that it was unclear whether Applicants had fully captured the effect the merger could have on competition if Applicants adopt integrated system operation. Specifically, Applicants did not account for the effects of integrated, jointly dispatched system operation on transmission availability.<sup>3</sup>

The July 26 Order expressed concerns, among others, related to: (1) screen failures resulting from Applicants' analysis of integration options; and (2) the effect of system integration on the analysis of whether combining Applicants' generation and transmission creates or enhances the merged company's ability and/or incentive to adversely affect electricity prices or output. However, in light of the lack of screen failures absent system integration and Applicants' stated intent not to integrate their systems until mid- to late 2002, the Commission found "no reason to require at this time mitigation in this particular case."<sup>4</sup> Rather, the order conditionally authorized the merger, subject to Applicants submitting a revised competitive analysis (as described more fully in the order) six months prior to any commencement of integrated operations.

## II. Discussion

### A. Springfield's Rehearing

Springfield argues that the Commission should have imposed mitigation measures prior to the integration of Applicants' systems. Springfield argues that the Commission's rationale in the July 26 order appears to rest on competitive screen analysis that was included with Applicants' original filing that showed no screen violations.<sup>5</sup> Further, Springfield argues that the Appendix A analysis required by the Merger Policy Statement<sup>6</sup> "is simply not designed to reflect the adverse competitive impacts on which the Commission and Springfield appropriately focus in this case -- the absorption of

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<sup>3</sup>92 FERC at 61,232 ("Specifically, as noted by Springfield, joint dispatch by applicants might subject the region to unanticipated swings in power flows which may reduce [available transmission capacity (ATC)] for competing power suppliers.") .

<sup>4</sup>92 FERC at 61,232-33 (emphasis in original) (footnotes omitted).

<sup>5</sup>Springfield's Rehearing at 5.

<sup>6</sup>Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act, Policy Statement, Order No. 592, Appendix A, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

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[ATC] that other generation suppliers need access to in order to compete." <sup>7</sup> It asserts that the July 26 Order incorrectly assumes that the mergers cannot lead to a loss of ATC until the merged company's subsidiaries integrate their operations into one control area, i.e., engage in joint dispatch. Instead, Springfield argues that "[I]t is almost certain that in the period after the merger and before operations can be fully integrated, the operating subsidiaries of the merged company will exchange power in different ways and to a greater degree than they would have done absent the merger." <sup>8</sup> According to Springfield, such exchanges would be scheduled, rather than happen automatically under joint dispatch, but would still result in the merged company's increased use of the very limited ATC in the region, to the possible exclusion of competitors.

Springfield further argues that, even if the Commission could correctly conclude that the mergers will not have anticompetitive effects prior to Applicants engaging in joint dispatch, the Commission still should require Applicants to commit now to appropriate mitigation measures that will protect against future anticompetitive effects. It contends that failure to do so is inconsistent with the Commission's Merger Policy Statement, citing the Merger Policy Statement at 30,136 ("Full and effective mitigation must be in place at the time the merger is consummated.") Springfield also cites the lack of specificity of Applicants' plans and the absence of certain empirical studies. It expresses concern that leaving remedies to be imposed in post-merger proceedings could allow Applicants to delay taking mitigation measures by simply refusing to provide, or commit to, the details the Commission needs to know in order to fashion a remedy for the anticompetitive effects. Springfield argues that the lack of specific information currently available in this case necessitates adoption of very broad mitigation commitments now. If Applicants subsequently proved in light of an actual analysis that the originally imposed mitigation measures were too broad, then the measures could be narrowed in a subsequent order.

Additionally, Springfield argues that the Commission should: require Applicants to place their transmission facilities under the control of the Southwest Power Pool (SPP) by the time they consummate the merger; impose conditions to prevent Applicants from expanding their use of existing native load priorities; and impose conditions that protect other transmission users from potential loss of ATC resulting from Applicants' internal dispatch of their integrated operations. Finally, Springfield argues that the Commission should require, rather than just encourage, Applicants to engage in the open planning

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<sup>7</sup>Springfield's Rehearing at 5.

<sup>8</sup>Id.

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process for transmission additions that the July 26 Order discusses.<sup>9</sup> The Commission could achieve this by requiring that the merged company join SPP, according to Springfield.

B. Commission Determination

As a preliminary matter, we note that Springfield raises a fundamentally different argument on rehearing than in its earlier protest. Springfield initially argued, and the Commission agreed, that Applicants failed to adequately model the effects on transmission availability of jointly dispatched integrated system operation. On rehearing, Springfield now argues for the first time that, even assuming no system integration, the Commission erred by not considering that "the operating subsidiaries of the merged company will exchange power in different ways and to a greater degree than they would have done absent the merger." Rule 713(c)(3) of the Commission's Rules of Practice and Procedure<sup>10</sup> prohibits raising for the first time on rehearing arguments which could have been made prior to the issuance of the order on which rehearing is sought.<sup>11</sup>

In any event, we are not persuaded that the post-merger system operation, prior to integration, would produce energy exchanges that are materially different than under pre-merger conditions. In this regard, we note that the merging companies are in close geographic proximity to each other. As such, it is very likely that, pre-merger, Applicants would already be engaging in power exchanges when it is possible and profitable to do so. Under these circumstances, it is unlikely that without system integration, joint profit maximization would produce power flows (and a corresponding effect on transmission availability) that are significantly different than what would prevail under pre-merger conditions. Springfield fails to provide any analytical support for its contention to the contrary.

We disagree with Springfield's allegation that the July 26 Order appears to be based on Applicants' original competitive analysis and is inconsistent with the Merger

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<sup>9</sup>Sec 92 FERC at 61,233.

<sup>10</sup>18 C.F.R. § 385.713(c)(3) (2000).

<sup>11</sup>See, e.g., Northeast Utilities Service Co. (Re: Public Service Co. of New Hampshire), 83 FERC ¶ 61,124 at 61,567 (1998); CP National Corp., 49 FERC ¶ 61,309 at 62,166 & n.9 (1989), *aff'd*, CP National Corp. v. Bonneville Power Admin., 928 F.2d 905 (9th Cir. 1991); Arkansas Power & Light Co., 52 FERC ¶ 61,029 at 61,156 & n.14 (1990).



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Policy Statement because it fails to impose mitigation measures at the time of merger consummation. Contrary to Springfield's assertion, we rendered our determination based on Applicants' revised analysis. This analysis showed numerous screen failures only under Applicants' system integration scenarios.<sup>12</sup> Under such circumstances, and given that system integration is planned to occur almost two years from now, the July 26 Order concluded that the proposed merger did not pose competitive problems prior to system integration. Thus, our determination was consistent with the Merger Policy Statement's requirement that in cases where specific competitive problems have been identified, mitigation be in place at the time of consummation of the merger.<sup>13</sup>

We note that the Applicants' revised analysis<sup>14</sup> may or may not indicate competitive problems due to the mergers. The effect of Applicants' integrated operations on competition will depend on Applicants' specific integration and the results of a detailed revised analysis demonstrating, for example, the effect on power flows and ATC in relevant markets. Moreover, if Applicants decide not to integrate their systems, no mitigation would be necessary since, as the July 26 Order explains, no competitive problems were identified. Therefore, we find that Springfield's concern about the lack of specific information regarding how Applicants intend to integrate supports our conclusion in the July 26 Order that mitigation is not necessary at this time.

Therefore, we will deny Springfield's request for rehearing.

C. Additional Matters

On November 20, 2000, Springfield intervened and filed comments in the Order No. 2000<sup>15</sup> compliance dockets of UtiliCorp, Empire and St. Joseph.<sup>16</sup> Springfield's

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<sup>12</sup>As noted above, however, the July 26 Order pointed out that Applicants' analysis did not account for the effects of joint dispatch. Springfield's concerns regarding the effect of Applicants' integrated operations on competition are addressed infra.

<sup>13</sup>Merger Policy Statement at 30, 136.

<sup>14</sup>As noted above, the July 26 Order directed Applicants to submit a revised competitive analysis six months prior to the commencement of integrated system operations.

<sup>15</sup>See Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), petition for review pending  
(continued...)

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pleading also lists the merger dockets.<sup>17</sup> Springfield believes that the July 26 Order contemplated one joint filing on behalf of all three Applicants that would reflect Applicants' unified decision as to RTO participation and would propose to transfer operational control of their transmission facilities to a given RTO. Springfield argues that UtiliCorp's commitment to the Midwest ISO is conditioned upon too many variables in the future and, thus, does not reflect a sufficiently firm RTO commitment.<sup>18</sup> It argues that the Commission should reject UtiliCorp's RTO commitment as insufficient, "at least in the context of the Commission's merger review under Section 203 if not more generally."<sup>19</sup> According to Springfield, the proposed SPP RTO is the only proposed RTO that currently offers the ability to mitigate any adverse effects of the mergers. It requests that Applicants be required to join the SPP RTO no later than consummation of the first of the two mergers.

On November 28, 2000, KEPCo filed a motion in Docket Nos. EC00-27-000 and EC00-28-000 for a supplemental order conditionally staying the July 26 Order's authorization of the mergers. KEPCo notes that the July 26 Order: (1) accepted and relied on Applicants' commitment to make a filing to propose to transfer operational control of their transmission facilities to a Commission-approved RTO, as required by Order No. 2000; and (2) noted that UtiliCorp and Empire would have to make an appropriate filing if they sought to withdraw their facilities from the SPP regional tariff, and stated that any potential adverse effects would be addressed in that docket. KEPCo

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<sup>15</sup>(...continued)

sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, No. 00-1174, et al.

<sup>16</sup>Docket Nos. RT01-4-000, RT01-29-000, RT01-45-000. On October 16, 2000, in Docket No. RT01-45-000, UtiliCorp filed a proposal to transfer control over its Missouri and Kansas transmission facilities to the Midwest Independent System Operator (Midwest ISO) upon Commission approval of the Midwest ISO as an RTO. St. Joseph's and Empire's filings in Docket Nos. RT01-4-000 and RT01-29-000, respectively, indicate that, upon consummation of the mergers, they will join the same RTO as UtiliCorp.

<sup>17</sup>The Order No. 2000 compliance dockets and the merger dockets are not consolidated.

<sup>18</sup>Springfield notes UtiliCorp's statement that its RTO decision is based on the assumption that the Midwest ISO or its successor will have the same or larger relative geographic scope as it has today, including the proposed inclusion of MAPP membership.

<sup>19</sup>Springfield's Comments (Nov. 20, 2000) at 8.

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argues, as it does in its protest in Applicants' RTO dockets, that UtiliCorp and Empire have not met these conditions, and it requests they be required to file applications to transfer operational control of their transmission facilities to the SPP RTO or another RTO that is addressing "seams" issues between itself and the SPP RTO. Even if Applicants are deemed to have already made such a proposal in their merger filings, KEPCo contends that they should be required to address the rate impact on KEPCo if Empire moves out of the SPP tariff and SPP RTO and into the Midwest ISO.

On December 1, 2000, UtiliCorp filed an answer. According to UtiliCorp, the matters raised by Springfield and KEPCo in the RTO dockets are basic RTO seams issues that can be addressed in due course in the RTO proceedings. UtiliCorp further asserts that, once the merger has been completed, Empire will make a filing to withdraw from SPP, and KEPCo's rate impact concerns will be addressed at that time.<sup>20</sup> It requests that the Commission deny both the rehearing request and the motion to stay in order to permit the merging parties to close by the end of the year.<sup>21</sup>

With respect to the rate impact on KEPCo if Empire withdraws from SPP, we also note that the July 26 Order required Applicants to file a revised competitive analysis within six months prior to commencement of integrated operations in order to, among other things, reflect which transmission tariff and RTO membership is selected by the merged company. This requirement, the July 26 Order noted, addressed KEPCo's concern about rate pancaking being exacerbated by the merged company's decisions regarding regional transmission tariffs and RTO membership.<sup>22</sup> Since KEPCo did not seek rehearing of this determination, to challenge it now constitutes an impermissible collateral attack on the July 26 Order.

We agree with UtiliCorp that this merger proceeding is not the appropriate forum for addressing the RTO issues raised by Springfield and KEPCo. These issues may be addressed in the section 205 proceeding in which Empire makes a filing to withdraw from SPP or Applicants' RTO proceedings, whichever is appropriate.

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<sup>20</sup> UtiliCorp further asserts that it is currently not possible to assess the rate impacts on KEPCo, because other transmission owners have not committed to join SPP or any other RTO

<sup>21</sup> UtiliCorp states that it is not prepared to close the transaction while the Springfield rehearing is pending

<sup>22</sup> 92 FERC at 61,233 & n.21.

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Accordingly, we will: (1) deny the relief requested by Springfield, without prejudice to the outcome of Applicants' RTO proceedings and Empire's section 205 filing to withdraw from SPP, if it makes such a filing; and (2) deny KEPCo's motion for stay of the July 26 Order.

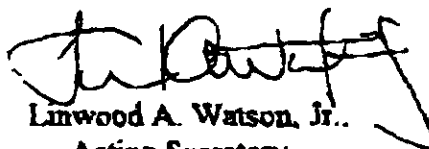
The Commission orders:

(A) Springfield's request for rehearing is hereby denied.

(B) KEPCo's motion for stay of the July 26 Order is hereby denied.

By the Commission.

(SEAL)

  
Linwood A. Watson, Jr..  
Acting Secretary.