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April 3, 2000

FILED³

APR 03 2000

Missouri Public
Service Commission

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

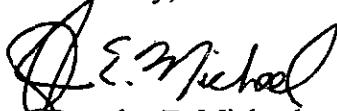
**RE: UtiliCorp United, Inc. d/b/a Missouri Public Service, The Empire District Electric Company, and St. Joseph Light & Power Company,
Case No. EE-2000-592**

Dear Mr. Roberts:

Enclosed for filing in the above referenced case, please find the original and 14 copies of **Public Counsel's Suggestions in Opposition to Application for Waivers**. Please "file stamp" the extra enclosed copies and return them to this office. I have on this date mailed, faxed, or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Sincerely,


Douglas E. Micheel
Senior Public Counsel

DEM:kh

cc: Counsel of record

Enclosure

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

FILED³

APR 03 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 4 CSR 240-80.015.)

Case No. EE-2000-592

**PUBLIC COUNSEL'S SUGGESTIONS IN OPPOSITION TO
APPLICATION FOR WAIVERS**

COMES NOW, the Office of the Public Counsel ("Public Counsel") and for its Suggestions in Opposition to Joint Application for Waivers states as follows:

1. On or about March 22, 2000 UtiliCorp United, Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS"), The Empire District Electric Company ("Empire") and St. Joseph Light & Power Company ("SJLP") hereinafter "Joint Applicants" filed their application for waiver of 4 CSR 240-20.015 (Electric Utilities Affiliate Transactions); 4 CSR 240-40.015 (Gas Utilities Affiliate Transactions); 4 CSR 240-40.016 (Gas Utilities Marketing Affiliate Transactions) and; 4 CSR 240-80.015 (Steam Heating Utilities Affiliate Transactions) hereinafter "Commission Affiliate Rules."

2. Joint Applicants allege that "good cause" exists for waiving Commission Affiliate Rules based upon the alleged uneven playing field between utilities; the uncertainty created by the Order Granting Stay issued by the Cole County Circuit Court Case Nos. 00CV323156 and 00CV323164 and; the immediate costs to Joint Applicants to comply with the Commission

Affiliate Rules. (Application for Waiver ¶12). None of these “reasons” provides good cause to waive compliance with the Commission Affiliate Rules.

3. Joint Applicants’ assertion that “uneven application of the rules” undermines the goal of fostering the competitive market is misplaced. When the Public Service Commission (“Commission”) published notice of the proposed Commission Affiliate Rules in the Missouri Register on June 1, 1999, the Commission in EX-99-442 (Electric Utilities Affiliate Transactions); GX-99-444 (Gas Utilities Affiliate Transactions) and; HX-99-443 (Steam Heating Utilities Affiliate Transactions) stated in the purpose section of each rule that the rule was “intended to prevent regulated utilities from subsidizing their nonregulated operations.” 24 Mo.Reg. 1340, 1346 and 1359. The fact that certain utilities via the Stay obtained in circuit court were able to frustrate the purpose of the Commission’s Affiliate Rules of preventing regulated utilities from subsidizing their nonregulated operation is not “good cause” to allow Joint Applicants a waiver from the Affiliate Rules. Public Counsel believes such a waiver would be contrary to the public interest. By granting the requested waiver the Commission would be condoning conduct by the Joint Applicants that the Affiliate Rules were designed to prevent.

4. Joint Applicants’ “uneven playing field” argument is without merit and should be rejected. The fact that certain utilities do not have to comply with the Affiliate Rules does not justify allowing Joint Applicants a “good cause” waiver. If Joint Applicants were concerned about the uneven application of the Affiliate Rules they should have supported the Commission and Public Counsel in opposing the Stay at circuit court.¹

¹ MPS and Empire filed for rehearing in EX-99-442. MPS also filed for rehearing in GX-99-443 and GX-99-444. However, both MPS and Empire chose not to exercise their rights of appeal review.

5. Joint Applicants have not identified specifically how exempting some utilities from compliance with the Affiliate Rules because of the Stay Order has created an “uneven playing field.” Are Joint Applicants concerned that the stay will permit some utilities to have a competitive advantage by being able to use practices prohibited by the Affiliate Rules that will allow the “stayed utilities” to use their regulated operations to subsidize their non-regulated operations? If so, Joint Applicants’ proposed remedy, waiving compliance with the Affiliate Rules, would only exacerbate the harm to ratepayers by forcing them to fund additional subsidies as part of paying for regulated utility services.

6. Nor does the alleged “uncertainty” created by the Order Granting Stay issued by the Cole County Circuit Court in Case Nos. 00CV323156 and 00CV323164 justify granting Joint Applicants a “good cause” waiver. The Commission in its Order of Rulemaking published in the Missouri Register on January 3, 2000 specifically rejected claims that the Commission acted improperly in promulgating the Affiliate Transaction Rules. The Commission stated the following in its summary of comments:

COMMENT: Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgating these rules. The Commission’s Staff anticipated these arguments in their comments and presented arguments supporting the Commission’s jurisdiction.

RESPONSE: The Commission’s rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

COMMENT: Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.

RESPONSE: The Commission has followed proper rulemaking procedures to adopt these rules.

25 Mo.Reg. 55, 59, 64, 64 and 69. Section 386.270 RSMo. 1994 provides that “. . . all regulations, practices and services prescribed by the commission shall be in force and shall be

prima facie lawful and reasonable until found otherwise in a suite brought for that purpose pursuant to the provision of this chapter.” The Commission should not lend credence to the claims made by certain utilities that the Commission engaged in an improper and illegal process when it promulgated its Affiliate Rules by granting Joint Applicants a waiver for “good cause.” The Commission has stated on the public record that the Commission promulgated the Affiliate Rules using proper procedure based upon proper legal authority.

7. Finally, Joint Applicants assert that the uncertainty “creates a financial predicament.” Joint Applicants cite to the Fiscal Notes prepared for the rules that indicate compliance will cost \$100,000 per utility in the first year of effectiveness and \$75,000 in each succeeding year.² The Commission in its Order of Rulemaking published in the Missouri Register on January 3, 2000 concluded that the “anticipated fiscal notes for the proposed rule[s] appear modest and not unduly burdensome.” 25 Mo.Reg. 56, 60, 64 and 70. As the below table demonstrates, based upon net income for Joint Applicants in Value Line compliance with the rules would not have a large financial impact on Joint Applicants.

	Consolidated Net Income 1998	Level of Expense	
		\$75,000	\$100,000
Empire	\$28,300,000	0.265%	0.353%
St. Joe	\$10,700,000	0.701%	0.935%
UCU	\$132,200,000	0.057%	0.076%

Joint Applicants’ claims of “financial” harm do not support granting a “good cause” waiver for compliance with the Commission Affiliate Rules.

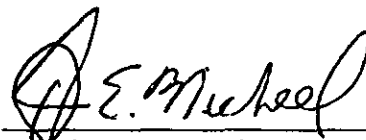
² St. Joseph Light & Power stated in response to a Staff inquiry that compliance would cost SJLP less than \$10,000 in the first year and between \$3,000 to \$5,000 annually to comply (SJLP response is attached as Attachment A.).

WHEREFORE: Public Counsel requests the Commission reject Joint Applicants' waiver request.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:

A handwritten signature in black ink, appearing to read "D. E. Micheel", written over a horizontal line.

Douglas E. Micheel, Esq. (Bar No. 38371)
Senior Public Counsel
P. O. Box 7800, Suite 250
Jefferson City, MO 65102
Telephone : (573) 751-5560

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been faxed, mailed or hand-delivered to the following counsel of record on this 3rd day of April, 2000:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

Dean Cooper
Brydon, Swearingen & England PC
P. O. Box 456
Jefferson City, MO 65102-0456





LIGHT & POWER

St. Joseph
Light & Power
Company

November 4, 1998

RECEIVED

NOV 19 1998

Missouri Public
Service Commission

Tom
Inhoff

Mr. Gordon L. Persinger, P.E.
Acting Executive Director
Missouri Public Service Commission
P. O. Box 360
301 West High Street
Jefferson City, MO 65102-0456

RE: Gas Utilities - Affiliate Transactions and Marketing Affiliate Transactions

Dear Mr. Persinger:

Your letter of October 13, 1998 asks St. Joseph Light & Power Company (SJLP) to estimate the fiscal impact of the draft rules proposed.

The Company has evaluated its position with regard to the proposed rules in 4 CSR 240-40.015 and 4 CSR 240-40.016 in respect to that request. The Company estimates that it will cost SJLP between \$3,000 and \$5,000 annually to comply with the proposed rules. The Company further estimates that it will cost the Company at least \$1,000, but less than \$10,000, in the initial twelve months since we will be monitoring and participating in the rulemaking process.

Sincerely,

Timothy M. Rush, Manager
Customer Operations

520 Francis Street

P.O. Box 998

St. Joseph, MO

64502-0998

816-233-8888

TMR:deb
GORDON1.TMR
cc: T. Steinbecker

Attachment A
Page 1 of 2



St. Joseph
Light & Power
Company

November 9, 1998

Mr. Gordon L. Persinger, P.E.
Acting Executive Director
Missouri Public Service Commission
P. O. Box 360
301 West High Street
Jefferson City, MO 65102-0456

RE: Electric & Steam Utilities - Affiliate Transactions

Dear Mr. Persinger:

Your letter of October 22, 1998 asks St. Joseph Light & Power Company (SJLP) to estimate the fiscal impact of the draft rules proposed.

The Company has evaluated its position with regard to the proposed rules in 4 CSR 240-20.015 and 4 CSR 240-80.015 in respect to that request. The Company estimates that it will cost SJLP between \$3,000 and \$5,000 annually to comply with each of the proposed rules. The Company further estimates that it will cost the Company at least \$1,000, but less than \$10,000, in the initial twelve months since we will be monitoring and participating in each of the rulemaking process.

Sincerely,

Timothy M. Rush, Manager
Customer Operations

520 Francis Street

P.O. Box 998

St. Joseph, MO

64502-0998

816-233-8888

FAX 816-387-6453

TMR:deb
GORDON2.TMR
cc: T. Steinbecker

Attachment A
Page 2 of 2