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January 22, 2002

Mr. Dale Hardy Roberts, Secretary  
Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, MO 65102-0360

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

JAN 22 2002

Missouri Public  
Service Commission

**Re: UtiliCorp United Inc.  
Case No. EM-2002-297**

Dear Mr. Roberts:

On behalf of UtiliCorp United Inc., enclosed for filing in the above-referenced case please find an original and eight (8) copies of a Motion for Reconsideration by the Commission. A copy has also been hand-delivered to the Office of the Public Counsel this date. Please note that I have also enclosed a receipt copy, which I ask that you file stamp and return with the messenger delivering same.

Thank you for your assistance with this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

  
Paul A. Boudreau

PAB/aw

Enclosures

cc: David A. Meyer, PSC General Counsel's Office  
M. Ruth O'Neill, Office of the Public Counsel

JAN 22 2002

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURIMissouri Public  
Service Commission

In the Matter of the Application of UtiliCorp                     )  
United Inc., a Delaware Corporation, for                     ) Case No. EM-2002-297  
Authority to Merge to Effect a Name Change.                     )

**MOTION FOR RECONSIDERATION BY THE COMMISSION**

COMES NOW UtiliCorp United Inc. ("UtiliCorp"), by counsel, and for its motion that the Missouri Public Service Commission ("Commission") reconsider the January 16, 2002, Order Setting Prehearing Conference and Order Requiring Filing of Procedural Schedule issued in the captioned matter, states as follows:

**Preliminary Comments**

1. On or about Friday, January 11, 2002, the Office of the Public Counsel ("Public Counsel") filed its Response to Application for Authority to Merge and Request for Hearing (hereinafter the "Response") to UtiliCorp's Application in this case. For various reasons stated therein, Public Counsel has requested that the Commission deny UtiliCorp's request for a ruling on the Application by January 31, 2002, and that the matter be set for an evidentiary hearing. Counsel for UtiliCorp did not receive a copy of Public Counsel's Response until Monday, January 14, 2002.

2. Two days later, on Wednesday, January 16, 2002, the Senior Law Judge to whom this case has been assigned issued an Order Setting Prehearing Conference and Order Requiring Filing of Procedural Schedule (hereinafter the "Procedural Order"). Among other things, the Procedural Order makes reference to Public Counsel's request for an evidentiary hearing and concludes that, as a consequence, "this matter is now contested and a prehearing conference and procedural schedule is appropriate to ensure its prompt resolution." With that observation, the Procedural Order has scheduled a prehearing conference to be held on February 14, 2002.

3. UtiliCorp appreciates the stated objective of a prompt resolution of this case. Nevertheless, the Procedural Order was issued well before UtiliCorp had an opportunity to prepare and file a reply to Public Counsel's Response and to the request for an evidentiary hearing. Consequently, no reasonable opportunity was provided for the consideration of reasons why an evidentiary hearing, and the several months of delay such a hearing would necessarily entail, in fact, is *not* appropriate in this case.

4. The Procedural Order is one that should be reconsidered by the Commission. As will be demonstrated herein, Public Counsel's request for a hearing does not, as a matter of law, transform this proceeding into a contested case under the Missouri Administrative Procedure Act (the "MAPA") (Chapter 536 RSMo.). Consequently, an evidentiary hearing is a procedure that is discretionary and, accordingly, should only be invoked by the Commission if it determines that good cause has been shown for convening trial-type procedures. In that regard, UtiliCorp will also demonstrate that Public Counsel has not presented good cause for holding an evidentiary hearing with respect to the renaming merger, which is the subject of its Application in this case.

**The Application for Approval of the Renaming Merger  
Is Not a Contested Case**

5. The Procedural Order is in error in that it concludes that this proceeding is a contested case merely because Public Counsel has requested a hearing. The applicable law contradicts this conclusion. The term "contested case" with respect to Missouri administrative law procedure is defined as, "a proceeding before an agency in which legal rights, duties or privileges of specific parties *are required by law to be determined after hearing.*" §536.010(2) RSMo. 2000. (emphasis added)

6. The Application in this case was filed with the Commission under §393.190 RSMo. 2000. That statutory provision does *not* require that an application for approval of a merger be ruled on or after an evidentiary hearing. Consequently, an application filed with the Commission under §393.190 RSMo. is, by definition, a non-contested case, regardless of the procedure employed in its resolution. *See, State ex rel. Office of the Public Counsel v. Public Service Commission*, 858 S.W.2d 806, 809 (Mo. App. 1993). No provision of the MAPA, or of the Public Service Commission Act, provides that the mere request for a hearing by a party opposing such an application converts an uncontested matter into a contested case.

7. The Commission should be very familiar with this principle. As recently as December of 2001, the Commission declined to hold a hearing with respect to an application filed by Southwestern Bell Telephone Company ("SWBT") on October 12, 2001, seeking authority to undertake a corporate restructuring in Case No. TO-2002-185 involving its conversion from a Missouri corporation to a Texas limited partnership.<sup>1</sup> In that case, a number of parties were allowed to intervene in the case and one or more of those parties requested that the Commission hold a hearing concerning SWBT's corporate restructuring. Ultimately, the Commission determined that no underlying facts were in dispute and that an evidentiary hearing was not necessary to establish a record and to resolve the matter. Thereafter, the Commission issued an Order Approving Reorganization on December 20, 2001. In doing so, the Commission specifically denied the requests for hearing.<sup>2</sup>

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<sup>1</sup> *In the Matter of the Application of Southwestern Bell Telephone Company to Transfer Property and Ownership of Stock Pursuant to Section 392.300 RSMo.*

<sup>2</sup> *See also, Re Missouri Public Service*, 1 Mo.P.S.C.3d 200, 204 (1991). "Interested parties may request a hearing [on whether a cost incurred is extraordinary] and, depending on the cost in question, the Commission *may* order a hearing be held." (Emphasis added).

8. Like SWBT's Application in Case No. TO-2002-185, no facts are in dispute with respect to UtiliCorp's Application for approval to undertake a merger to effect a name change in this case. For the very same reason, a hearing is not warranted in this case.

**Reply of UtiliCorp United Inc. to the Office of the Public Counsel's  
Response to the Application for Authority to Merge and Request for Hearing**

9. In paragraph 1 of the Response, Public Counsel claims that UtiliCorp has "presented insufficient information from which the Commission" could conclude that the renaming merger is not detrimental to the public interest. UtiliCorp disagrees and suggests to the Commission that the Application is complete in all material respects. Specifically, UtiliCorp's Application complies with all applicable provisions of the Commission's filing requirements for merger applications set forth in 4 CSR 240-2.060(1) and (8). As a matter of law, the Application is sufficient to invoke the relief sought. Without in any way limiting the foregoing, paragraph 15 of the Application contains a statement of why the renaming merger will not be detrimental to the public interest.

10. In paragraph 2 of the Response, Public Counsel asserts that UtiliCorp has failed to "explain the ramifications of UtiliCorp's plan to rename itself." It is unclear what Public Counsel means by this assertion. Nevertheless, the only "ramification" of which UtiliCorp is aware is that the name of the corporation will no longer be "UtiliCorp United Inc.", but, rather, a new name having the word "Aquila" in it. Further, UtiliCorp has no plans to cease using its Missouri divisional operating names Missouri Public Service ("MPS") and St. Joseph Light & Power ("SJLP").

11. In paragraph 3 of its Response, Public Counsel takes issue with UtiliCorp's request for authority to "execute and perform in accordance with the terms of all documents and to take all actions necessary and incident to the merger." Public Counsel contends that this language is unacceptably vague and overly broad. To the contrary, language of this nature has specifically been sanctioned for use by the Commission. In its October 12, 1994, Report and Order in Case No. GM-94-252<sup>3</sup>, Laclede Gas Company ("Laclede") challenged similar language in an application filed by UtiliCorp for authority to acquire the operating assets of two intrastate Missouri natural gas pipeline companies. The Commission rejected Laclede's criticism stating, among other things, that language of that nature is "standard language, the purpose of which is to authorize those matters necessary to the completion of complex transactions, and to make it clear to all involved that the parties have full Commission authority to proceed with and complete the transaction without seeking Commission approval for every detail." The "catch all" language contained in UtiliCorp's Application in this case is intended to accomplish the same objective. The language Public Counsel refers to is not intended to refer to any particular document or action. Rather, its purpose is to make it clear that the Company has full authority to take all reasonably necessary action to conclude the renaming merger.

12. In paragraph 4 of the Response, Public Counsel claims a "contradiction" in the representations made in the Application in this case and an issue that apparently has arisen in MPS's pending rate case (Case No. ER-2001-672). There is no such contradiction. The Application in this case does not seek a change in any rate or term or condition of service currently on file with and approved by the Commission for MPS or

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<sup>3</sup> *Re Missouri Gas Company et al.*, 3 Mo.P.S.C.3d 216, 224-225 (1994).

SJLP. The change in capital structure referred to by Public Counsel is associated with the recently completed exchange offer through which UtiliCorp acquired all of the outstanding shares of Aquila, Inc. It has nothing to do with the Application in this case. This circumstance is no different than any other capital structure adjustment that would be reflected during the course of a rate case by the intervening issuance of debt or equity securities in the normal course of business. To the extent this is an issue resulting from an already completed transaction, it is one that can be adequately addressed in MPS's pending rate case, a fact tacitly acknowledged by Public Counsel by its specific reference thereto. This circumstance certainly provides no basis for denying or delaying the relief requested in this case.

13. In paragraph 6 of the Response, Public Counsel makes reference to a "paucity of information contained in the Application." As noted above in paragraph 9, the Application conforms in all respects to the Commission's applicable pleadings rule. Therefore, it is sufficient as a matter of law. In any event, UtiliCorp has attempted to provide some additional background in its January 14, 2002, Response to Staff's Notice. UtiliCorp notes that Public Counsel's Response was filed earlier in time and, as such, it did not have the benefit of the additional information contained in UtiliCorp's recent pleading during the preparation of the Response. Hopefully, this more recent company filing cures any perceived deficiency with respect to the nature of the Application to the Commission in this case. Also, UtiliCorp believes it has complied fully with the requirements of Missouri law by filing an Application for approval of the renaming merger under §393.190 RSMo. 2000 and Commission Rule 4 CSR 240-2.060.

14. Public Counsel's request for a hearing should be denied. To the knowledge of UtiliCorp, no underlying facts are in dispute. Public Counsel certainly

does not allege what facts suggest that there would be a present and direct detriment to the public interest if UtiliCorp were to rename itself.<sup>4</sup> As noted in the Application:

- The renaming merger will have no impact whatsoever on the financial statements or condition of UtiliCorp. URC has no business or assets and it has been created by UtiliCorp for the solitary purpose of effecting a change of corporate name through a short form merger under Delaware law.
- The Application does not seek any change in the rates currently on file with or approved by the Commission with respect to UtiliCorp's Missouri operating divisions MPS or SJLP.
- The Application contains no request for a change in the terms or conditions of service pursuant to which service is being rendered to UtiliCorp's MPS or SJLP's customers.
- In transactional dockets such as this case, ratemaking issues are not properly before the Commission. See, Re Gateway Pipeline Company et al., Case No. GM-2001-585 [proposed ratemaking conditions rejected in context of application for approval to acquire capital stock] Report and Order dated October 9, 2001.

Absent some credible claim that the renaming merger could presently and adversely effect rates or quality of customer service, the delay a hearing would entail is not justified. Moreover, it is not a good use of scarce resources of the Commission or of UtiliCorp to debate in an evidentiary hearing whether UtiliCorp should change its corporate name. Absent a compelling showing that a mere corporate name change would

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<sup>4</sup> *Re Missouri-American Water Company et al.*, Case No. WM-2000-222 ["The Commission reads *State ex rel. City of St. Louis v. Public Service Commission*, *supra*, 335 Mo. at 359, 73 S.W.2d at 400, to require a direct and present public detriment."] Report and Order dated March 16, 2000.



cause a present and direct detrimental impact to the public interest, such an undertaking is one that is reserved exclusively to the informed management prerogatives of UtiliCorp's Board of Directors. Public Counsel has not articulated, to even the smallest degree, why a change of UtiliCorp's corporate name would have any adverse impact whatsoever on the customers of MPS or SJLP.

WHEREFORE, having fully replied to Public Counsel's Response, UtiliCorp requests that the Commission reconsider the Procedural Order; deny Public Counsel's request for an evidentiary hearing; and renews its request that the Commission issue an order approving the Application by no later than January 31, 2002.

Respectfully submitted,



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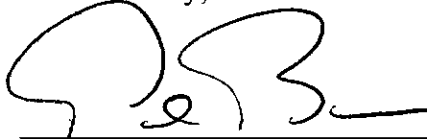
Attorneys for UtiliCorp United Inc.

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 22<sup>nd</sup> day of January, 2002, to:

Mr. David A. Meyer, Esq.  
Missouri Public Service Commission  
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200 Madison Street  
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Jefferson City, MO 65102

M. Ruth O'Neill  
Office of the Public Counsel  
Governor Office Building  
200 Madison Street, Suite 650  
P.O. Box 7800  
Jefferson City, MO 65102

A handwritten signature in black ink, appearing to read 'P. A. Boudreau', written over a horizontal line.

Paul A. Boudreau