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January 10, 2000

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

FILED²
JAN 10 2000
Missouri Public
Service Commission

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

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and fourteen copies of **Motion to Reconsider or Clarify Order Denying Motion to Require Market Power Study and Adopting Procedural Schedule**. Please "file" stamp the extra enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman
Deputy Public Counsel

JBC:mm

cc: Counsel of Record

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

FILED²

JAN 10 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 Transaction.)

Case No. EM-2000-292

**Motion to Reconsider or Clarify Order Denying Motion
to Require Market Power Study and Adopting Procedural Schedule**

Comes Now the Office of the Public Counsel (Public Counsel) and for its Motion to Reconsider or Clarify states as follows:

1. On December 21, 1999, the Public Service Commission (Commission) issued its Order Denying Motion to Require Market Power Study and Adopting Procedural Schedule, stating that, although the Joint Applicants have acknowledged that retail market power is an important issue that should be reviewed, the Commission will not require the Joint Applicants to file a market power study. The Commission also adopted a procedural schedule recommended by the Joint Applicants.

2. The Commission's decision to allow the Joint Applicants to move forward without a market power study is a dramatic shift in regulatory policy (See Public Counsel's Motion to Require Market Power Study, pp. 1 - 3); however, the Commission gave only one sentence in explanation of this shift:

At this time there two many uncertainties surrounding the future of retail competition in Missouri to make any Market Power Study definitive.

December 21, 1999 Order Denying Motion to Require Market Power Study and Adopting Procedural Schedule, p. 4.

It is unclear to Public Counsel why a market power study must be "definitive" in order to be useful in determining whether a proposed merger may have a market power effect that might contribute to a detriment to the public. The Commission relies on projections and estimates in other cases to assist it in arriving at the best decision. For example, by their very nature, class cost of service studies can never definitively determine the precise amount of costs that are attributable to various classes of customers, yet the Commission relies on these studies to help set rates.

It is also unclear to Public Counsel what specific "uncertainties" the Commission perceives as affecting the ability to perform a definitive market power study since none are cited by the Commission. Furthermore, it is unclear to Public Counsel whether the Commission perceives the Joint Applicants' proposed merger as significantly different in character than the Union Electric/CIPS merger and the proposed Western Resources/KCPL merger or whether the Commission perceives a certain change in events that has led to a new regulatory perspective which no longer considers market power issues to be as important or necessary to the job of protecting the consuming public. These are the questions upon which clarification would be greatly appreciated.

3. The Commission would certainly be able to engage in a more thorough analysis of these issues based on the record if the Joint Applicants are required to submit a market power study. This appears to have been the Commission's position only eighteen months ago, when the Commission stated the following in its "Notice of Intervention, Protest and Request for Hearing

of the Missouri Public Service Commission,” filed in Ameren Electric Power Co., Inc./Central and South West Corp., Inc., Docket EC-98-40-000, before the Federal Energy Regulatory Commission:

Within the region that will be impacted by the merger and the associated proposal for transmission through Ameren, the State of Illinois has passed legislation that will implement retail competition by the year 2002, and the proposed merger is likely to affect retail markets in Illinois served by Ameren Transmission. While Missouri does not currently have legislating requiring the implementation of retail electric competition, the retail market analysis should cover the entire area affected by the merger. It would not make sense to confine the retail market power analysis to only those States that have passed retail competition legislation. The impact of this merger on electric competition within the region will be in place for years to come, and the [FERC] should have a thorough analysis of those impacts before it considers approving this merger.

Ibid. Filed on June 30, 1998, pp. 11-12 (emphasis added).

Public Counsel believes that the Commission was correct when it recommended that the FERC “should have a thorough analysis of those [retail market power] impacts before it considers approving the [AEP/CSW] merger.” Id. at 11. In that case, the Commission correctly recognized that the responsibility to review market power issues should not be contingent upon the lack of retail access legislation in Missouri.

4. Despite the Commission’s statements regarding how “definitive” a market power study can be at this time, Public Counsel believes that the level of uncertainty surrounding retail market power issues have actually decreased substantially over the past eighteen months. Within the past few months, AmerenUE has abandoned its efforts to promote a “poolco” wholesale competition model before the Missouri State legislature and is now promoting a more conventional retail competition model similar to the retail competition legislation adopted by many other states. Secondly, it is becoming increasingly apparent that, as time progresses,

Missouri utilities have experienced a reduction of stranded costs down to minimal amounts and some may currently have "negative" stranded costs. If anything, through the substantive debate regarding retail electric competition, particularly that debate occurring before the Joint Interim Committee on Telecommunications and Energy, the structure and nature of proposed legislation has increasingly become more clear. The FERC's recent Order 2000 regarding ISOs adds even more certainty to future retail competition in that the "pancaking" of transmission rates does not now seem as likely.

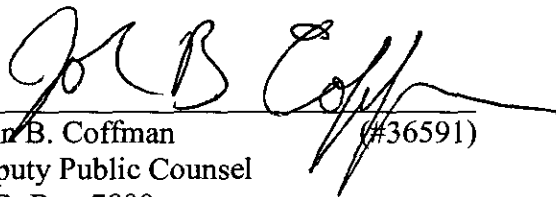
5. If the Commission does not reconsider its decision regarding a market power study, it will be relying in this case solely upon the market power analysis that will be filed in responsive testimonial filings. If the Joint Applicants are permitted to submit a market power study in prepared surrebuttal testimony, other parties will be at a procedural disadvantage, because there will be no opportunity to file any testimonial response to that study and very little time to analyze such a study. Such a scenario would have serious due process implications.

6. The procedural schedule adopted by the Commission in its December 21, 1999 Order is insufficient to allow responsive parties the opportunity to prepare and file a thorough market power study in prepared rebuttal testimony or to allow sufficient time to respond to any market power study filed in prepared surrebuttal testimony. Furthermore, the current procedural schedule will be inadequate for the Commission to use in a consolidated manner with the pending UtiliCorp United/Empire District Electric Company merger application in Case No. EM-2000-369. For these reasons, Public Counsel respectfully requests that the Commission modify and extend the procedural schedule to allow another parties sufficient opportunity to prepare and file market power studies and to sufficiently analyze the joint impacts of the two proposed mergers.

WHEREFORE, Public Counsel respectfully requests that the Commission reconsider and/or clarify its December 21, 1999 Order regarding market power studies and the procedural schedule as described herein.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 5th day of January, 2000:

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A handwritten signature in black ink, appearing to read "J B Coffey", is written over a horizontal line.