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November 19, 1999

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

NOV 19 1999

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

Missouri Public  
Service Commission

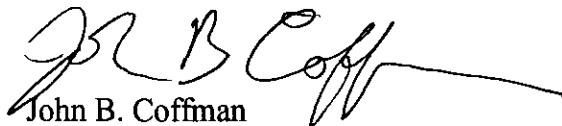
**RE: UtiliCorp United, Inc. and St. Joseph Light & Power Company,  
Case No. EM-2000-292**

Dear Mr. Roberts:

Enclosed for filing in the above referenced case, please find the original and 14 copies of **Motion to Require Market Power Study**. Please "file stamp" the extra enclosed copy and return it 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,

  
John B. Coffman  
Deputy Public Counsel

JBC:kh

cc: Counsel of record

Enclosure

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

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

NOV 19 1999

In the Matter of the Joint Application     )  
of UtiliCorp United, Inc. and St. Joseph     )  
Light and Power Company for authority     )  
to merge St. Joseph Light & Power     )  
Company with and into UtiliCorp United,     )  
Inc. and, in connection therewith, certain     )  
other transactions.     )

Missouri Public  
Service Commission

Case No. EM-2000-292

**MOTION TO REQUIRE MARKET POWER STUDY**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Motion states as follows:

1. On October 19, 1999, Applicants UtiliCorp United, Inc. (UtiliCorp) and St. Joseph Light and Power Company filed prepared direct testimony in this case regarding their merger application. On page 30 of his prepared direct testimony John W. McKinney states that the Applicants' direct testimony contains no market power study or analysis. Mr. McKinney states that although market power is a "critical issue" and invites the Commission to "take steps to bring appropriate wholesale issues to the attention of the FERC," the Applicants have not provided a market power study in this proceeding. Id. at 31. Mr. McKinney also states that while retail market power is also an important issue, he believes it should only be reviewed when retail competition becomes a reality in Missouri. Id. at 31.

2. In the application of Union Electric Company to merge with Central Illinois Public Service Company, Case No. EM-96-149, the Commission ordered testimony to be filed regarding market power and described the importance of this issue as follows:

The term "market power" is commonly used in the electric industry to refer to the ability of a competitor to exercise some degree of control over the price which it receives for the sale of electricity. An individual competitor

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exercising such control may raise its prices and lower the quantity of electricity sold, thereby increasing its profits. The public interest may be harmed by the exercise of such market power. Despite the advent of open access in the wholesale electricity market, the ability of a competitor to control prices and restrict output could have a detrimental effect on ratepayers in general. Moreover, while any increased profits for Ameren Corporation could mean reduced rates for Missouri's UE ratepayers in the immediate future, the exercise of such power in the long run could be harmful to consumers.

Proposed federal legislation mandating direct access to the electricity market for retail customers raises additional questions whether Ameren's profits from electricity sales would necessarily benefit consumers in UE's certificated territory if those consumers were given direct access to alternative suppliers of electricity or to wholesale power marketers. It is also true that utilities serving other customers within the State of Missouri are now engaged in wholesale transactions with UE, and can be expected to engage in such transactions with Ameren if the merger is approved. To the extent that Ameren can increase prices and decrease sales, the retail customers of other Missouri utilities might be adversely affected.

Therefore, the ability of Ameren Corporation to exercise such control over price and its effect upon the public interest should be addressed by the parties in their additional testimony.

Order Requesting Additional Information, Case No. EM-96-149, pages 1-2 issued on September 25, 1996.

In that case, the Commission went on to require each party to define what it considered to be the relevant market for Union Electric Company and for the post-merger entity. Id. at 2-3. The Commission also required the parties to set forth how the exercise of market power could be measured or tested, and if a potential increase in market power would be detrimental to the public interest, what measures could mitigate or circumscribe such market power. Id. at 3.

In the EM-96-149 Report and Order, issued on February 21, 1997, the Commission found that concerns expressed by parties regarding horizontal market power (for both generation and aggregation) and regarding vertical market power were valid and modified a proposed Stipulation and Agreement to include conditions to mitigate market power. Ibid., pp. 16-18.

3. In Case No. EM-97-515, the Commission approved a Stipulation and Agreement allowing the merger of Western Resources, Inc. and Kansas City Power and Light Company, conditioned upon several significant agreements by those merger applicants to perform specific conduct regarding future market power conditions related to horizontal market power, vertical market power, retail market power, and market power legislation. Ibid. at 9.

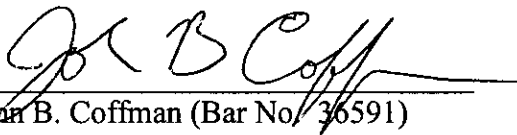
4. Public Counsel believes that the Commission in this case should be consistent in its review of the last two electric utility merger applications it decided and require the Applicants to file a market power study. As in the most recent merger cases, the Application in the current case should be analyzed to determine the extent to which customers may be harmed by the increased market power possessed by the Applicants as a result of the proposed merger and whether such market power could be mitigated.

WHEREFORE Public Counsel respectfully requests the Commission require the Applicants to file additional direct testimony including a market power study that defines the relevant market for the proposed merged entity, provides quantitative analysis of the horizontal and vertical market power that the Applicants would have in wholesale markets and price deregulated markets, and proposes measures that would mitigate any such market power.

Respectfully submitted,

**OFFICE OF THE PUBLIC COUNSEL**

**BY:**

A handwritten signature in dark ink, appearing to read "J B Coffman", written over a horizontal line.

John B. Coffman (Bar No. 36591)

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document has been either faxed, mailed, or hand-delivered to the following counsel of record on this 19th day of November, 1999:

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A handwritten signature in cursive script, appearing to read "J B Coffey", written over a horizontal line.