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January 25, 2002

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

FILED³
JAN 25 2002

**Re: UtiliCorp United Inc., d/b/a Missouri Public Service
Case No. ER-2001-672 and Case No. EC-2002-265**

**Missouri Public
Service Commission**

Dear Mr. Roberts:

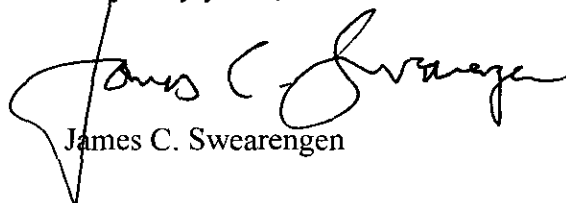
On behalf of UtiliCorp United Inc. d/b/a Missouri Public Service ("MPS"), I deliver herewith for filing with the Missouri Public Service Commission an original and eight (8) copies of MPS's Answer.

Copies of this pleading will be provided to all parties of record.

Would you please bring this filing to the attention of the appropriate Commission personnel.

Thank you very much for your assistance.

Very truly yours,


James C. Swearngen

JCS/lar
Enclosures
cc: Parties of Record

FILED³

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

JAN 25 2002

Missouri Public
Service Commission

In the Matter of the Tariff Filing of the Missouri
Public Service (MPS), a Division of UtiliCorp
United Inc. to Implement a General Rate Increase
for Retail Electric Service Provided to Customers
in the Missouri Service Area of MPS

Case No. ER-2001-672

Staff of the Missouri Public Service Commission

Complainant,

v.

Case No. EC-2002-265

UtiliCorp United Inc. d/b/a Missouri Public
Service

Respondent.

ANSWER

COMES NOW UtiliCorp United Inc. ("UtiliCorp"), d/b/a Missouri Public Service ("MPS"), by counsel, and pursuant to the Notice of Complaint issued by the Missouri Public Service Commission ("Commission") on December 26, 2001, in Case No. EC-2002-265 respectfully submits this Answer:

1. UtiliCorp admits that it is a Delaware corporation authorized to conduct business in Missouri with its principal office and place of business at 20 W. 9th Street, Kansas City, MO 64105.

2. UtiliCorp admits that it is an "electrical corporation" and a "public utility" as defined in Section 386, RSMo 2000 and provides electrical service to its customers in its certificated service areas in Missouri, subject to the jurisdiction of the Missouri Public Service Commission as provided by law.

3. UtiliCorp admits that Case No. ER-2001-672 is a pending proceeding before the Commission and involves its tariff filing to implement a general rate increase for retail electrical service in the Missouri service area of its MPS operating division.

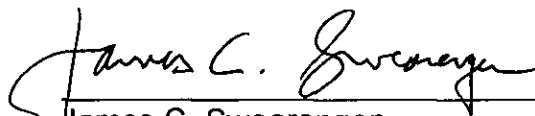
4. UtiliCorp denies each and every other allegation contained in paragraphs 1-20 of the subject Complaint as well as the prayer of said Complaint.

5. For further answer and defense, UtiliCorp states that "the Staff" has no standing to bring a complaint as it is not one of the enumerated parties listed in Section 386.390.1, RSMo 2000, which is authorized to file a complaint, nor is it one of the enumerated parties listed in Section 386.240, RSMo 2000, which can be authorized by the Commission to undertake certain acts. The Commission has conceded that §386.390.1, RSMo 2000 does not allow its general counsel to initiate a complaint. While the Commission's rule concerning the initiation of complaints, 4 CSR 240-2.070, purports to authorize "the Staff" to file a complaint, this can be done under the rule only *through the general counsel*. Since the general counsel does not have the authority under statute to initiate a complaint, and in effect has been prohibited from doing so by the legislature, the method specified by the Commission in 4 CSR 240-2.070 is unlawful as it is in conflict with statute. Consequently, the Commission may not authorize "the Staff" or its general counsel on behalf of the Commission to file a formal complaint under 4 CSR 240-2.070 because "the Staff" may act under the rule only through its general counsel and the legislature has prohibited the general counsel from filing a complaint. Alternatively, assuming the Commission may bring a complaint "upon its own motion" and does so through its general counsel, then its general counsel, "the Staff" and the Commission members themselves may not act in said case. "...members of the Public Service Commission may not act in

cases pending before that body in which they are interested or prejudiced or occupy the status of a party." *Union Electric Company v. Public Service Commission*, 591 S.W.2d 134 (Mo. App. WD 1979).

WHEREFORE, having fully answered, UtiliCorp respectfully requests that the Commission dismiss the subject Complaint.

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 25TH day of January, 2002, to all parties of record.

