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December 13, 1999

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FILED³

DEC 13 1999

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: Case No. EM-2000-292 - 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 Transactions

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF REPLY TO DECEMBER 3, 1999 RESPONSE OF UTILICORP AND SJLP.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim
Chief Deputy General Counsel
(573) 751-7489
(573) 751-9285 (Fax)

Enclosure
cc: Counsel of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

DEC 13 1999

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 transactions.

Case No. EM-2000-292

STAFF'S REPLY TO DECEMBER 3, 1999 RESPONSE OF UTILICORP AND SJLP

Comes now the Staff of the Missouri Public Service Commission (Staff) in reply to the December 3, 1999 Response Of UtiliCorp And SJLP. Counsel for the Department of Natural Resources (DNR) and the Office of the Public Counsel (Public Counsel) have authorized the undersigned counsel to state that DNR and Public Counsel concur in the Staff's recommendations to the Commission which follow below. The Staff will address herein the matter of the inadequacy of SJLP's - UtiliCorp's direct testimony and supplemental direct testimony, but also will touch upon the matter of what is an appropriate procedural schedule. Even though the parties have been given until Tuesday, December 14, 1999 at 3:00 p.m. to file a proposed procedural schedule or proposed procedural schedules, the Staff will address that matter in this filing and in a filing to be made on Tuesday, December 14, 1999.

- 1. The Commission should reject the Joint Applicants contention that a retail market power study is not required in the instant state proceeding.**

The Joint Applicants (SJLP and UtiliCorp) in their December 3, 1999 Response rejected the Staff's proposal for resolving the retail market power issue in the instant proceeding as it was resolved in the Western Resources - KCPL merger case. Contrary to the Joint Applicants' continued effort to characterize its proposal to not address retail market power in this proceeding

as comparable to the resolution of the retail market power issue in the Western Resources, Inc. – Kansas City Power & Light Company (KCPL) merger case (Case No. EM-97-515), comparability does not exist. Furthermore, in its December 3, 1999 Response, the Joint Applicants have even attempted to characterize their proposal as comparable to how the retail market power issue was resolved in the Union Electric Company (UE) – CIPSCO Inc. (CIPSCO) merger case. The Joint Applicants fail to acknowledge that UE, in addition to filing additional testimony respecting market power in its merger case at the Commission’s direction, filed a retail market power study on March 2, 1998 in Case No. EO-98-261 in compliance with its acceptance of the conditions respecting the Commission’s approval of the UE – CIPSCO merger.

The Joint Applicants allege at page 2 of their December 3, 1999 Response that retail market power is an issue that only should be addressed when retail competition becomes a reality in Missouri. There is a need for a retail market power study regardless of whether there currently is retail competition in Missouri. In order to address the “not detrimental to the public interest” standard, the Commission must look at potential changes in the electric industry that are very likely to occur in the near future. Even though the specifics of retail competition cannot be predicted with any certainty, the strong possibility of it occurring cannot be denied. The concept of taking into account changes that are likely to occur is the basis for the Commission’s electric resource planning rules (4 CSR 240 – Chapter 22). In essence, these rules reflected the Commission’s concern that in order for electric utilities to perform prudent resource planning the utilities’ planning processes should reflect the uncertainty of future events. In prudent planning, there is a need to forecast changes of such a fundamental nature, make an evaluation of their likelihood and take these changes into account in making resource decisions, including contingency plans if such changes occur. It is also prudent for the Commission to take into

account the potential for retail competition and to include as requirements for merger approval conditions that should be met in the event that retail competition occurs in Missouri. The proposed merger causes a retail market power study and/or conditions relating to the advent of retail competition to be necessary for prudent conduct at this time.

In addition, the electric utilities regulated by the Commission have been granted waivers/variances from these electric resource planning rules (4 CSR 240 – Chapter 22) on the basis that fundamental changes are occurring in the electric industry because of the move to retail competition. UtiliCorp and SJLP (and the Empire District Electric Company (EDE)) should not be permitted to avoid the Commission's resource planning rules based on the high likelihood of retail competition and at the same time, not be required to either perform a retail market power study or agree to conditions that should be met in the event that retail competition occurs in Missouri. In essence, to remove retail market power issues from the merger case would prevent the Commission from considering actions that may need to be taken in the future to protect the public interest and which an unconditional approval of the proposed merger may eliminate as a viable option unless agreed to before such approval is granted.

With respect to the question of whether a retail market power study is warranted in a state in which retail competition is not yet lawful, the Federal Energy Regulatory Commission (FERC) Merger Policy Statement (1996) recognizes a need for retail market power studies. The FERC in its Merger Policy Statement said as follows:

In cases where a state Commission asks us to address the merger's effect on retail markets because it lacks adequate authority under state law, we will do so.

Inquiry Concerning The Commission's Merger Policy Under The Federal Power Act, Policy Statement, FERC Statutes And Regulations, Regulations Preambles Para. 31,044, p. 30,128 (1996), reconsideration denied, 79 FERC Para. 61,321 (1997). On November 10, 1998, the

FERC issued an Order, in the dockets involving the American Electric Power Company – Central and South West Corporation merger, wherein the FERC stated as follows:

. . . In this case, the Missouri Commission states that it has no jurisdiction over the merger and requests us to analyze the impact of the merger on retail competition in Missouri.

The Missouri Commission's request meets the requirements of the Merger Policy Statement. Accordingly, we will set this issue for hearing.

The Ohio Commission, on the other hand, does not claim that it lacks adequate authority under state law to analyze the merger's effect on retail markets in Ohio. On the contrary, the Ohio Commission states that it does not concede its jurisdiction and has, in fact, "opened its own docket on this merger (Case No. 98-113-EL-MER) on February 5, 1998." The Ohio Commission claims, however, that it does "not have the technical resources to timely and unilaterally investigate the retail market power issues associated with the merger." Thus, the Ohio Commission's request does not reflect the circumstances under which we stated in the Merger Policy Statement that we would analyze the effect of a merger on retail markets.

Accordingly, we will deny the Ohio Commission's request that we analyze the impact of the proposed merger on retail competition in Ohio.

Order Accepting For Filing And Suspending Proposed Tariffs And Agreements, Consolidating Dockets, And Establishing Hearing Procedures, Docket Nos. EC98-40-000, ER98-2770-000, and ER98-2786-000, 85 FERC Para. 61,201, pp. 61,819-20 (1998).

It is important to note that the FERC did not address as a condition for the impact of retail competition in Missouri that legislation already be enacted that allows retail competition in Missouri. While the Commission need not follow FERC's lead in this matter, it should be clear that the FERC considered the impact on retail markets in Missouri to be relevant to its consideration. Again, the purpose of such consideration is to take into account conditions for the merger that may have an impact in the future when retail competition becomes a reality. Such analysis or the guarantees which Western Resources – KCPL have given, but which the Joint

Applicants decline to give in the instant case are necessary in order to fully protect the public interest in Missouri.

Should the Commission accept the Joint Applicants' position on page 2 of its December 3, 1999 Response that the Joint Applicants should not file a retail market power study, but the Commission should present its views on wholesale market power at the FERC during the FERC's review of the SJLP – UtiliCorp merger, the Staff would request direction from the Commission on a number of points:

- (1) Does the Commission want the Staff to file a retail market power study in the instant state proceeding?
- (2) If retail market power is not an issue in the instant proceeding, does the Commission want to address wholesale market power in the instant state proceeding?

The Staff also has a number of concerns relating to the recommendations of SJLP – UtiliCorp. If the Commission accepts the Joint Applicants' suggestion that the Commission not address market power in the instant proceeding, but instead address wholesale market power before the FERC, will the Joint Applicants or some other party contend that there is an issue of prejudgment arising from the Commission taking a position on market power before the FERC prior to rendering a decision in the instant proceeding? If not, would there be an assertion of conflict for the Commission to utilize before the FERC, Staff personnel who are participating on behalf of the Staff in the instant proceeding on major issues other than market power?

As the above matters indicate, the exclusion of retail market power from the instant proceeding raises significant questions with regard to: (1) the appropriateness of the Commission taking positions with respect to this merger at the federal level when the merger is before it for approval; and (2) the availability of certain Staff resources for the Commission's use at the federal level while the merger is before the Commission for determination.

Finally, in deciding whether retail market power is an issue that must be addressed in the instant proceeding the Commission should consider that SJLP – UtiliCorp and EDE – UtiliCorp are not the last mergers that it will likely have to decide. The media is filled with reports that the Western Resources – KCPL merger may not be consummated because of the price of Western Resources' shares of common equity. If after merging with SJLP and EDE, UtiliCorp and KCPL file a merger agreement for approval by the Commission, will the Commission permit KCPL and UtiliCorp to not file a retail market power study?

- 2. The Joint Applicants' direct testimony is deficient and the five pages of supplemental direct testimony filed by SJLP – UtiliCorp on December 3, 1999 as "an accommodation" to the Staff and OPC, adds nothing which would remedy the inadequacy of the Joint Applicants' direct testimony.**

Why UCU/SJLP's Filing Is Deficient

The Joint Applicants, at page 3 of their December 3, 1999 Response, assert that:

. . . the direct testimony filed in support of the Joint Application demonstrates that UtiliCorp is fully qualified, in all respects, to provide electric, natural gas, and industrial steam service in the service territory of the combined entity and that the merger will have no detrimental impact on the Missouri operations and customers of UtiliCorp or SJLP, thus meeting the standard for approval of this transaction. . .

Further at pages 3 – 4 of their December 3, 1999 Response, the Joint Applicants, “[a]s an accommodation to the Commission and all parties,” deign to identify “the references to the previously filed direct testimony which discusses the merger and the operations of UtiliCorp and SJLP” and “[a]s a further accommodation,” deign to file “the Supplemental Direct Testimony of John W. McKinney which addresses operations.”

The Joint Applicants do not deny that they have the burden of proof respecting meeting the merger standard. The Staff would note that where the facts relating to an issue are peculiarly within the control or knowledge of one party, the burden of production falls on that party.

Dwyer v. Busch Properties, Inc., 624 S.W.2d 848, 851 (Mo. banc 1982); Kenton v. Massman Construction Co., 164 S.W.2d 349, 352 (Mo. 1942). This is a particularly appropriate rule in utility cases, since generally all of the facts and documents relevant to the issues are peculiarly within the utility's control. See City of Eldorado v. Public Serv. Commn., 362 S.W.2d 680, 683-84 (Ark. 1962). If the Commission does not require SJLP – UtiliCorp to make a good faith effort at filing specific and detailed direct (supplemental direct) testimony, other entities will follow suit in their filings with the Commission.

The SJLP – UtiliCorp direct testimony contains estimates of total merger savings and merger costs (costs which include an acquisition adjustment, as well as estimates of net UtiliCorp corporate costs to be allocated to SJLP following the merger and merger-related capital investments). (Siemek Direct Testimony, Schedule VJS-1). None of the savings or cost estimates is denoted in the direct or supplemental direct, or in the supporting documentation provided to the Staff, as attributable or assignable specifically to UtiliCorp electric or gas operations, or to SJLP electric, gas or steam operations in the future. The Joint Applicants propose a ratemaking “regulatory plan” for merger savings and costs that they purport will pass benefits of the merger, including a lower cost of service, to UtiliCorp's and SJLP's Missouri customers. Except for one component, all of the pieces of the regulatory plan are identified in Mr. McKinney's direct testimony at pages 6-7 as applying only to SJLP electric, gas and steam operations. However, because the Joint Applicants have failed to disaggregate merger savings and cost amounts among electric, gas, and steam operations, it is impossible to determine from their filing whether the proposed regulatory plan will actually result in the merger not being detrimental to SJLP electric customers, gas customers and steam customers, respectively.

For example, it is possible under the Joint Applicants' regulatory plan for SJLP electric customers to benefit from the merger at the expense of SJLP gas customers, or for SJLP electric customers to benefit from the merger at the expense of SJLP gas and steam customers, or for SJLP gas customers to benefit at the expense of SJLP steam customers, and so forth for other possible permutations of UtiliCorp and SJLP customers. As to whether any UtiliCorp or SJLP customers will experience detriment as a result of the merger, one would have to know the amount of merger savings and merger costs, including the acquisition premium, associated with or allocable to electric, gas and steam operations, separately. Therefore, the Joint Applicants should be required to submit additional testimony and support disaggregating its merger savings and cost estimates among the electric, gas and steam operations, and also explaining the basis used for allocating merger savings and cost among these three operational areas when the costs and savings are common to two or all three of the operational areas. Absent this information, UCU and SJLP cannot demonstrate that the proposed merger transaction will not be detrimental to the public interest.

The Staff would note that the UE – CIPSCO merger direct testimony filing, Case No. EM-96-149, contained information concerning disaggregated merger savings for the electric and gas operations of the merging utilities, respectively. Both UE and CIPSCO were, and still are, combination electric and gas utilities.

The Joint Applicants' regulatory plan includes a five-year rate moratorium for SJLP electric, gas, and steam customers, and a "guaranteed" \$1.6 million annual benefit to SJLP customers, arising from the merger, in years 6-10 following the merger. However, no similar "regulatory plan" is proposed for UtiliCorp's Missouri customers (i.e., the Missouri Public Service division). Apparently, the Joint Applicants are implicitly proposing that UtiliCorp's

Missouri customers largely receive “status quo” regulation following the merger. Also, based on a review of the Joint Applicants’ filing, it appears that the merger savings (except for a minimal portion of joint dispatch generation savings) and merger costs are intended to be assigned solely to SJLP, not UtiliCorp.

The rationale for not allocating merger savings and costs to UtiliCorp is not addressed in any detail in the Joint Applicants’ direct testimony or even the “supporting documentation” that has been provided to the Staff. Failure to allocate a significant portion of merger savings and costs to UtiliCorp is counter-intuitive to the Staff, in that many of the alleged merger savings are in the nature of “economies of scale” or operational efficiencies (Direct Testimony of Terry F. Steinbecker, p. 9, lines 6-8 and Direct Testimony of Robert K. Green, p. 21, line 21 to p. 22, line 1) that in theory should provide savings to both merger partners. In both the UE – CIPSCO and Western Resources – KCPL merger transactions, the merging companies proposed to allocate merger savings and costs between the two merging entities. The Joint Applicants in the instant proceeding propose to allocate almost all merger savings to SJLP alone. This is highly unusual, and raises the question of the degree of potential exposure to merger detriment of UtiliCorp’s Missouri customers. Therefore, UtiliCorp and SJLP should file supplemental direct testimony explaining how their proposal is not detrimental to UtiliCorp’s Missouri customers, when UtiliCorp’s Missouri customers will not receive a proportional amount of merger savings, but have possibilities of receiving some amount of merger costs that result from this transaction.

The Joint Applicants’ direct testimony of Vicki M. Heider references the existence of “transition teams,” groups of UtiliCorp and SJLP employees whose responsibility it is to create detailed post-merger integration plans. The Joint Applicants’ direct testimony of Jerry D. Myers also indicates that the transition teams will develop a procedure for tracking or measuring actual

non-joint dispatch merger savings occurring after the transaction is implemented. Measurement of actual merger savings is intended to be used in determining the amount of merger benefits to be passed on to SJLP customers in years 6-10 following the merger. The Staff is not aware of any utility in Missouri or of any utility in any other jurisdiction that has demonstrated an ability to track or measure actual merger savings. The discussion of the Joint Applicants' proposed method for tracking merger savings is limited in the Joint Applicants' filing to the direct testimony of Mr. Myers at page 7, lines 6-13. Given the importance of merger savings tracking to the Joint Applicants' regulatory plan, as well as the uniqueness of the Joint Applicants' proposal, the limited discussion of this item in the Joint Applicants' direct testimony is clearly inadequate. The Joint Applicants should be required to file supplemental direct testimony explaining both in concept and in detail their proposal for tracking and measuring merger savings after the merger is consummated.

Why the SJLP – UtiliCorp and EDE – UtiliCorp Merger Hearings Should Be Consolidated

If the EDE – UtiliCorp merger was only being discussed by the two companies rather than having been announced and approved by shareholders, or if the EDE – UtiliCorp merger application and direct testimony filing were months away rather than occurring today or tomorrow, those would be major considerations in determining whether to wait for the EDE – UtiliCorp merger filing before setting a procedural schedule. The reality is that the EDE – UtiliCorp merger filing is imminent.

The amount of total merger savings potentially created and allocable to SJLP and EDE each from a merger with UCU is dependent, in part, on whether both the SJLP – UtiliCorp and EDE – UtiliCorp mergers are approved, or just one of the two mergers is approved. The Joint Applicants in the instant merger docket concede this point as it relates to estimated generation

joint dispatch savings (See Holzwarth Direct Testimony, pp. 20-21), as was discussed in the Staff's November 24, 1999 pleading. The Staff believes that this same situation applies to the other categories of estimated merger savings. For example, it is reasonable to assume that total labor savings resulting from a merger depends to some degree on whether the employee pools of just two or all three merging companies are available to staff the operations of the post-merger entity.

Furthermore, the amount of merger costs assigned to SJLP and EDE will be determined, in part, by whether one or both mergers is approved. For example, Schedule VJS-1 of Joint Applicants' witness Vern Siemek shows that a significant portion of UtiliCorp corporate costs (the line item "Support Functions") will be allocated to SJLP following the merger. The portion of allocated costs to be charged SJLP is determined through use of pre-existing UtiliCorp cost allocation formulas. These costs will represent a significant expense increase to SJLP, an increase that would not be incurred by SJLP absent the merger. As such, these allocations represent a potential merger detriment to SJLP customers. Yet the amount of these costs to be borne by SJLP under the UtiliCorp allocation formulas will change if both SJLP and EDE merge with UtiliCorp and both SJLP and EDE are allocated corporate costs under the UtiliCorp formulas. Since the amount of allocated corporate costs to SJLP and/or EDE is dependent upon both mergers, any measures that the Staff may propose in either merger docket to eliminate detriment in this area is dependent upon whether one or both mergers is considered or occur.

If the SJLP – UtiliCorp and EDE – UtiliCorp merger cases are not consolidated by the Commission, the Staff and other parties will be forced to examine the potential detriments from each transaction and propose conditions to eliminate potential detriment for each transaction in isolation of the other merger. This would be inappropriate in that the nature and the significance

of the potential detriment may be the result of both transactions occurring rather there being two stand alone mergers, oblivious to the reality of the affect of the two mergers on the surviving entities.

- 3. The Commission should reject the schedule proposed by the Joint Applicants because it does not reflect UtiliCorp supplementing its direct testimony or the filing of the UtiliCorp merger with Empire District Electric Company.**

The Joint Applicants have asked in their December 3, 1999 Response that issues common to both mergers should be litigated only one time and only in the context of the SJLP – UtiliCorp filing and procedural schedule. Thus, the Joint Applicants are asserting that the SJLP – UtiliCorp procedural schedule, based on the Joint Applicants' deficient direct and supplemental direct testimony, should be the driver for the EDE – UtiliCorp merger, while the Staff and other parties have not even seen the EDE – UtiliCorp filing as yet.

The date that UtiliCorp has projected for the EDE – UtiliCorp merger filing has been moved back a number of times. Until the early prehearing conference on Monday December 6, 1999, this filing was projected by UtiliCorp to occur before December 13, 1999. After the RLJ announced at the early prehearing conference that the Staff, OPC and Intervenors have until Monday, December 13, 1999 at 3:00 p.m. to file responses to the Joint Applicants' December 3 Response and until Tuesday, December 14, 1999 at 3:00 p.m. to file their proposed procedural schedules, UtiliCorp indicated that the EDE – UtiliCorp merger filing may not occur until after December 14, 1999. The latest information that the Staff has places the EDE – UtiliCorp merger filing on Monday, December 13, 1999 or Tuesday, December 14, 1999.

The Staff needs ten days to two weeks to review the EDE – UtiliCorp merger filing before it can propose a procedural schedule to the Commission for both merger cases. (Unless otherwise directed by the Commission, the Staff will file a proposed procedural schedule ten

days to two weeks after EDE – UtiliCorp make their merger filing.) At an absolute minimum, the Staff will recommend a procedural schedule to the Commission based, in essence, upon the number of days between events in the UE – CIPSCO merger case revised procedural schedule, which the Staff identified for the Commission in the Staff's filing on November 24, 1999 and which is replicated below, plus an additional number days for the period between SJLP's – UtiliCorp's supplemental direct testimony filing, which the Staff is requesting that the Commission order, and the rebuttal testimony filing of the Staff and the other parties, assuming the EDE – UtiliCorp direct testimony is not deficient. These additional days for the filing of the Staff's and other parties' rebuttal testimony are necessitated by the complexity of SJLP's – UtiliCorp's regulatory plan and the merger of EDE – UtiliCorp.

The minimum number of days between events that the Staff is proposing, except between SJLP's – UtiliCorp's supplemental direct and the Staff's and others parties' rebuttal testimony, is shown in the furthest right-hand column below. The events which would initiate the absolute minimum schedule, i.e., the UE – CIPSCO merger revised procedural schedule, plus additional days between SJLP's – UtiliCorp's supplemental direct testimony filing and the rebuttal testimony filing of the Staff and the other parties, is the filing of supplemental direct testimony respecting the SJLP – UtiliCorp merger, after the imminent filing of the EDE – UtiliCorp merger case, and the determination of the adequacy of the EDE – UtiliCorp direct testimony.

As noted above, there is the possibility, if not the likelihood, that the EDE – UtiliCorp merger direct testimony will be just as deficient as the SJLP – UtiliCorp direct testimony. Thus, no one, least of all EDE – UtiliCorp, should be surprised if the Staff after reviewing the EDE – UtiliCorp filing requests that the Commission order EDE – UtiliCorp to supplement its direct

testimony. The Staff advised UtiliCorp even in advance of the Staff's initial responsive pleading filing on November 24, 1999 that the Staff views the SJLP – UtiliCorp direct testimony as being deficient, among other reasons, in order to give UtiliCorp advance warning while the EDE – UtiliCorp merger filing still was being prepared. Thus, if EDE's – UtiliCorp's direct testimony is deficient, the Staff would propose that the procedural schedule for the filing of rebuttal testimony not start to run before EDE – UtiliCorp file supplemental direct testimony remedying the deficiency.

The Staff believes that the Commission on the basis of the SJLP – UtiliCorp direct testimony, the SJLP – UtiliCorp supplemental direct testimony of Mr. McKinney, the Staff's November 24, 1999 pleading and the instant pleading can, and should, direct SJLP – UtiliCorp to file supplemental direct testimony addressing the deficiencies identified by the Staff. If the Commission desires to set the matter of the deficiency of the SJLP – UtiliCorp merger filing for hearing, the Staff is prepared to submit testimony on this matter.

If the Commission orders the Joint Applicants to file a retail market power study, but does not order SJLP – UtiliCorp to file supplemental direct testimony in general respecting the merger, then depending upon when the Joint Applicants file a retail market power study, and how much time the Staff needs to file its rebuttal testimony to the Joint Applicants' retail market power study, will determine whether the retail market power issue can proceed on the same schedule as the other issues in the case.

<u>EVENT</u>	<u>UTILICORP – SJLP PROPOSAL</u>	<u>UE – CIPSCO</u>	<u>REVISED UE – CIPSCO</u>
Joint Application & Direct Testimony	October 19, 1999 115 Days	November 7, 1995 175 Days	November 7, 1995 182 Days
Rebuttal Testimony	February 11, 2000 28 Days	April 30, 1996 31 Days	May 7, 1996 27 Days
Surrebuttal & Cross - Surrebuttal Testimony	March 10, 2000 31 Days	May 31, 1996 31 Days	June 3, 1996 28 Days
Evidentiary Hearings	April 10-14, 2000	July 1-3, 8-12, 1996	July 1-3, 8-12, 1996
Briefs	May 2000		
Stipulation & Agreement Filed			July 12, 1996
Hearing Regarding Stipulation & Agreement			September 5, 1996
Order Directing Filing of Market Power Testimony			September 25, 1996
Market Power Testimony UE Staff & Public Counsel			November 1, 1996 November 26, 1996
Order Approving Merger			February 21, 1997

4. The Commission should not allow the Joint Applicants the option of attempting to meet the “not detrimental to the public interest” standard through surrebuttal testimony that is “unanswered.”

Based upon SJLP’s – UtiliCorp’s direct testimony filing on October 19, 1999 and their filing on December 3, 1999 of five pages of supplemental direct testimony, it is clear to the Staff that the Joint Applicants will attempt to make in their surrebuttal testimony their direct case that the proposed merger is not detrimental to the public interest. As a consequence, the Staff suggests to the Commission that should the Commission decide not to order the Joint Applicants to make a supplemental direct filing, and in lieu of dismissing the Joint Applicants’ October 19,

1999 filing in total as being inadequate, that the Commission adopt the Staff's request that adequate time be built into the procedural schedule to permit the Staff, Public Counsel and all intervenors to file responsive testimony to the Joint Applicants' surrebuttal testimony. In this manner the Staff, Public Counsel and the intervenors will be able to address the Joint Applicants' attempt to make their case in surrebuttal.

Included in the Table that follows are all steps involving the various scenarios that are discussed herein as ways of addressing the deficiencies in the SJLP – UtiliCorp merger filing and anticipated deficiencies in the imminent EDE – UtiliCorp merger filing:

<u>EVENT</u>	<u>DATES</u>
Joint Application and Direct Testimony of EDE – UtiliCorp Filed 12/13/99 or 12/14/99	
Staff, Public Counsel and Intervenors File Proposed Procedural Schedule After Reviewing EDE – UtiliCorp Direct Testimony	
Testimony Respecting Whether SJLP – UtiliCorp Should File Supplemental Direct Testimony	
Hearings On Whether SJLP – UtiliCorp Should File Supplemental Direct Testimony	
Supplemental Direct Testimony of SJLP – UtiliCorp	
Supplemental Direct Testimony of EDE – UtiliCorp	
Rebuttal Testimony of Staff, Public Counsel and Intervenors	
Joint Applicants' Surrebuttal Testimony and Other Parties' Cross-Surrebuttal Testimony To Each Other	
Other Parties' Surrebuttal Testimony To Joint Applicants SJLP – UtiliCorp and EDE - UtiliCorp	
Evidentiary Hearings	

UtiliCorp's, SJLP's And EDE's November 23, 1999 Filing At The FERC

The Joint Applicants UtiliCorp and SJLP noted in their December 3, 1999 Response that they had made their merger filing with the FERC on November 23, 1999. UtiliCorp and SJLP

did not reveal in their December 3, 1999 Response that the November 23, 1999 FERC filing included the proposed EDE – UtiliCorp merger as well as the UtiliCorp – SJLP merger. The Staff had not yet received the UtiliCorp, SJLP and EDE FERC filing by the time the Staff filed on November 24, 1999 its initial response to the SJLP – UtiliCorp merger filing.

Although the November 23, 1999, UtiliCorp, SJL and EDE joint merger filing at the FERC provides for separate docket numbers for the two mergers, EC00-27-000 for the SJLP – UtiliCorp merger and EC00-28-000 for the EDE – UtiliCorp merger, the filing is for both mergers. The Joint Application of UtiliCorp, SJLP and EDE states, in part, as follows:

The transactions that are the subject of this Joint Application are distinct, but represent two essential pieces of a coordinated strategy to create a new, financially and operationally stronger electric utility entity based in the State of Missouri, which will be a more effective competitor in the larger regional market in which the existing companies are located.

UtiliCorp, SJLP and EDE jointly filed the testimony of eight witnesses, six of who are testifying to matters relating to both mergers. Three of these six witnesses specifically state that they are testifying on behalf of UtiliCorp, SJLP and EDE, and all six witnesses identify the purpose of their direct testimony as covering both mergers:

Robert K. Green:

My testimony is focused on three areas:

1. background information about UtiliCorp and its corporate strategy;
2. description of the merger transactions with St. Joseph Light & Power Co. (“SJLP”) and The Empire District Electric Co. (“EDE”); and
3. introduction of other witnesses. (Direct Testimony, p. 2, lines 3-7).

Richard C. Krueel:

The purpose of my testimony in this proceeding is to provide an overview and generally describe the configurations of high voltage transmission systems and their operations for Empire District Electric (“EDE”), SJLP and UCU, as these entities are today, and as they are planned to function in the future after the proposed merger. (Direct Testimony, p. 2, lines 12-15).

Frank A. DeBacker:

I am testifying on behalf of the joint applicants in these proceedings, UtiliCorp, St. Joseph Light & Power Company ("St. Joseph") and Empire District Electric Company ("Empire"). (Direct Testimony, p. 2, lines 18-20).

The purpose of my testimony is to describe the power supply resources of the applicants' U.S. utility operations which are located in the states of Missouri and Kansas and connected to the eastern interconnected transmission system. (Direct Testimony, p. 3, lines 1-3).

Michael R. Apprill:

I am testifying on behalf of UtiliCorp, St. Joseph Light & Power Company, ("SJLP"), and the Empire District Electric Company ("EDE") (collectively "Applicants"). (Direct Testimony, p. 2, lines 15-16).

My testimony will discuss the impact of the merger on wholesale customers and describe the Applicants' customer protection plan. (Direct Testimony, p. 2, lines 18-19).

Mark W. Frankena:

I was asked by counsel for UtiliCorp United Inc. (UtiliCorp), St. Joseph Light & Power Co. (St. Joseph), and The Empire District Electric Co. (Empire) (collectively, Applicants) to carry out an analysis of the likely competitive effects of the proposed mergers of UtiliCorp with St. Joseph and with Empire in markets for electric power. . . . (Direct Testimony, p. 5, line 15 to p. 6., line 1).

Applicants are seeking Commission [(FERC)] approval for two simultaneous but separate mergers, one between UtiliCorp and St. Joseph and the other between UtiliCorp and Empire. Because these mergers do not raise competitive concerns, I generally address these two transactions as though they were a three-way merger. However, the analysis that I present, including the detailed results in my electronic workpapers, could be used to evaluate the two mergers separately. . . . (Direct Testimony, p. 6, lines 5-10).

Laurie Hamilton:

I am testifying on behalf of the joint applicants in these proceedings, UtiliCorp, St. Joseph Light & Power Company ("St. Joseph") and Empire District Electric Company ("Empire"). (Direct Testimony, p. 2, lines 6-8).

The purpose of my testimony is to describe the effect of mergers on state and federal regulation. As I will explain, the mergers will not impair effective regulation at either the state or federal level. (Direct Testimony, p.2, lines 10-12).

Although witness Terry F. Steinbecker, President and Chief Executive Officer of SJLP, makes no mention of EDE in his direct testimony, witness Myron W. McKinney, President and Chief Executive Officer of EDE, does mention SJLP in his direct testimony as follows:

We believe that UtiliCorp has exhibited these core values and that with the addition of St. Joseph Light & Power Co., a unique opportunity has presented itself to form a world class utility from three Missouri companies who share a common vision of how utility customers would like to be served. . . . (Direct Testimony, p. 5, line 21 to p. 6, line 1).

Wherefore the Staff requests that the Commission order SJLP – UtiliCorp, the Joint Applicants, to file a retail market power study and supplemental direct testimony remedying the deficiencies of the direct testimony and supplemental direct testimony filed by the Joint Applicants on October 19, 1999 and December 3, 1999, respectively.

Respectfully submitted,
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 13th day of December, 1999.



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Case No. EM-2000-292
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