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

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Missouri Public Service Commission  
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200 Madison Street, Suite 100  
P.O. Box 360  
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Missouri Public  
Service Commission

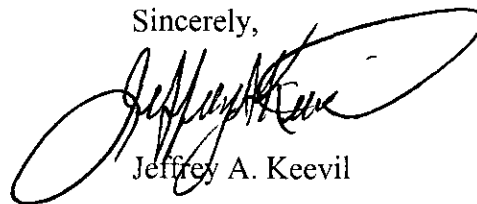
RE: Case No. EM-2000-369  
UtiliCorp United Inc./The Empire District Electric Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and the appropriate number of copies of the INITIAL BRIEF of the City of Springfield, Missouri, through the Board of Public Utilities.

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,



Jeffrey A. Keevil

JAK/er  
Enclosures  
cc: counsel of record

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

**FILED<sup>3</sup>**  
OCT 31 2000

Missouri Public  
Service Commission

In the Matter of the Joint Application of )  
UtiliCorp United Inc. and The Empire )  
District Electric Company for Authority to )  
Merge The Empire District Electric )  
Company with and into UtiliCorp United )  
Inc., and, in Connection Therewith, )  
Certain Other Related Transactions. )

Case No. EM-2000-369

**INITIAL BRIEF OF THE CITY OF SPRINGFIELD, MISSOURI,  
THROUGH THE BOARD OF PUBLIC UTILITIES**

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October 2000

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OF THE STATE OF MISSOURI**

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Certain Other Related Transactions.     )

Case No. EM-2000-369

**INITIAL BRIEF OF THE CITY OF SPRINGFIELD,  
MISSOURI, THROUGH THE BOARD OF PUBLIC UTILITIES**

COMES NOW the City of Springfield, Missouri, through the Board of Public Utilities ("Springfield"), and pursuant to the Order Establishing Briefing Schedule issued on September 29, 2000, submits its Initial Brief.

**INTRODUCTION**

The standard applicable to this case is, as stated in the List of Issues, whether "the proposed merger and related transactions and proposals satisfy *the not detrimental to the public interest standard* required for the approval of mergers by the Commission." (List of Issues, Roman Numeral I)(emphasis added). As with all contested case orders of the Commission, the Commission's order must be based on competent and substantial evidence on the record as a whole as a matter of state law. *Deaconess Manor Association v. Public Service Commission*, 994 S.W.2d 602 (Mo. App. 1999); *Friendship Village v. Public Service Commission*, 907 S.W.2d 339, 348 (Mo. App. 1995). In other words, in order to approve the proposed merger, the Commission must find, based on competent

and substantial evidence on the whole record, that the proposed merger is not detrimental to the public interest.

This, in turn, raises the question of what is meant by “the public interest.” The Commission has in the past, in a change of electric supplier case, defined “the public interest” “to include the applicants, the other members of the cooperative, and **the public at large.**” *In the Matter of the Application of Carol June Tyndall*, 3 Mo. P.S.C. 3d 28 at 48 (1994)(emphasis added). Some parties to the instant case may argue for a more narrow definition of “the public interest;” however, in a case of this magnitude, with its public policy implications and impact upon the electric grid in the state of Missouri, the definition of “the public interest” set forth above should be used by the Commission.

The issues of most direct concern to Springfield, as delineated in the List of Issues, together with remedial conditions to address those issues, will now be discussed.

***I. Does the proposed merger and related transactions and proposals satisfy the not detrimental to the public interest standard required for approval of mergers by the Commission?***

No. Not as proposed by UtiliCorp United Inc. (“UCU”) and The Empire District Electric Company (“EDE”). In fact, **the proposed merger is detrimental** to the public interest (which detriment is aggravated when viewed in conjunction with the proposed related merger of UCU and St. Joseph Light & Power Company, Case No. EM-2000-292), and can have adverse effects on both retail rates and reliability. (Ex. 300, p. 2). Furthermore, UCU and EDE have not fully evaluated the impacts of their post-merger flows on the state’s electric grid, which leaves the Commission without necessary information on issues crucial to evaluating the proposed merger. (Id.)

## MARKET POWER

*(3) Will the merger allow the Companies to take valuable, limited transmission capacity necessary for other Missouri utilities to maintain deliveries under their purchased power contracts?*

Yes. Other parties to the case<sup>1</sup> may address the issue of market power from a more traditional economic perspective related to matters of horizontal and vertical market power, and possibly the Herfindahl-Hirschman Index ("HHI"). Springfield's witness, however, approached the issue of market power from an engineering perspective. From such a perspective, rather than simply focusing on the relative size of the Joint Applicants' (UCU and EDE) systems, the Commission should determine whether the merger would give the Joint Applicants the opportunity, ability and incentive to utilize scarce transmission resources for their own use, leaving other utilities (which serve the Missouri public) no economic alternatives for delivery of needed power supplies. The Commission should further determine whether to impose a condition on its approval of the merger (if the Commission decides to approve the merger) that the Joint Applicants (or UCU as the surviving company) upgrade the transmission infrastructure at their/its expense, so as to preserve existing benefits. (Ex. 300, pp. 48-49).

If transmission serving the state becomes constrained as a result of the post-merger behavior of the merger partners, it will not be possible to dispatch the most cost-effective combination of generating resources; re-dispatch will be required; energy costs will rise (constrained interfaces can lead to severe price spikes). (Ex. 300, p. 49).

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<sup>1</sup> It should be noted that Staff, in its Statement of Positions, took the position that the answer to this issue needs to be determined through a study to be performed by the Southwest Power Pool that includes the assumptions for connecting UCU, EDE and St. Joseph Light & Power. Springfield agrees with Staff that the Joint Applicants have not conducted adequate studies, and that such study(ies) should be performed by the SPP, and will address this issue later in this brief.

Impacts such as these may not directly translate into increased economic benefit to the Joint Applicants, but will improve their competitive position and present obstacles to other market participants (Ex. 300, p. 51) and certainly constitute a detriment to the public at large, including customers of other utilities in the state. Furthermore, the Joint Applicants appear to be aware of the likelihood of such impacts. (Id.).

Rather than address this issue head-on, the Joint Applicants' only witness on the issue, UCU witness McKinney, in his prefiled testimony, took the position that it was premature to address market power at this time, *i.e.*, that addressing the issue could only be accomplished after retail electric competition is allowed in Missouri. (Ex. 4, pp. 31-33; Ex. 5, p. 15). The closest he comes to addressing the issue is when he states that "as the third largest retail electric company in Missouri -- both before and after the merger -- [UCU] does not believe that the merged company will exercise any significant measure of retail market power." (Ex. 4 at 32). While Mr. McKinney's statements may or may not be true in regard to traditional market power analysis (*i.e.*, HHI), they certainly do not begin to address the detrimental impacts discussed above from an engineering perspective. Indeed, under Mr. McKinney's approach, once the issue could be addressed it would be too late; the merger would be consummated and the public at large would already be suffering the negative consequences of the merger.

The Commission should also be aware that, according to UCU's own evidence submitted in this case, UCU took a different position on this matter before the FERC when the shoe was on the other foot. In its comments to FERC in Docket No. RM99-2-000, which are attached to Mr. Kreul's direct testimony (Ex. 24) as Schedule RCK-11, on pages 16-17 UCU commented to FERC as follows:



Specifically, UtiliCorp is one of those which the NOPR identifies as having alleged “that *transmission providers who also compete in power markets against their competitors have both the incentive and ability to post unreliable ATC numbers.*” We [UCU] submit that the same thing is true in the case of Capacity Benefit Margin (“CBM”) calculations. This issue is at the core of the discriminatory behavior UtiliCorp and other power marketers have experienced at the hands of certain large transmission-owning utilities, *which have appeared to use ATC and CBM calculations in attempts to shield their high-cost generation from effective competition.* (emphasis added)

UCU’s criticism of others as set forth above is equally applicable to UCU; as the saying goes, those who live in glass houses should not throw stones.

Since the Joint Applicants chose to ignore the issue in the instant case rather than address it head-on, there is no competent and substantial testimony on the issue on which the Commission could find that the merger would be not detrimental to the public interest. Indeed, UCU’s own evidence discussed above reflects one such detriment. Accordingly, as testified by Mr. Russell, “If the Applicants are not willing to commit themselves to identify and resolve problems prior to merging and to participate fully in an established regional solution, the only alternatives are: (1) To deny the merger or (2) To impose strict conditions upon the merging parties.” (Ex. 300, p. 57). The conditions which should be imposed will be addressed in detail under the Transmission Access and Reliability section of this brief.

#### **TRANSMISSION ACCESS AND RELIABILITY**

(1) *Have the Companies conducted and provided adequate studies of the impact of the proposed merger upon transmission facilities within, and interconnecting with, the State of Missouri, and upon all providers of electric service in the State, to prove that the proposed merger is not detrimental to the public interest?*

No. Applicants (the Companies) have not analyzed the impact of their combined uses of the region's transmission system upon transmission customers such as, but not limited to, Springfield (with the resulting impact upon such transmission customers' retail customers). (Ex. 300, p. 23). At the hearing, Mr. Florom of UCU did not recall what facilities were included in UCU's study, and admitted that the Southwest Power Pool impact study (Schedule 7 to Exhibit 300), which showed numerous criteria violations and overloads, included facilities that UCU's study did not include. (Tr. 1126-1127). Staff apparently agrees with Springfield on this point, as reflected in Dr. Proctor's cross-surrebuttal testimony, where he states that he "cannot recommend that the Commission support the UCU proposal for connecting MPS, SJLP and EDE until it is clear that this plan does not have detrimental impacts on the regional grid. In order to determine the impact on the regional grid, the Commission should require UCU to have a region-wide load-flow study performed that models the load-flow impacts of UCU's proposal to connect MPS, SJLP and EDE. Such a study can be requested of the SPP by UCU" (Ex. 714, p. 8; *see also*, pp. 4-5).

Mr. Russell presented the results of a limited<sup>2</sup> load flow study of the pre- and post-merger system conditions conducted by his firm which revealed numerous criteria violations can be expected on the UCU transmission system – "this means (in layman's terms) that the MoPub [UCU] transmission system is weak and unreliable as measured by prevailing engineering standards and might experience even more criteria violations after UtiliCorp integrates" operations as a result of the merger. (Ex. 300, pp. 32-33). The

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<sup>2</sup> The study was "limited" due to UCU's failure to provide sufficient information necessary to perform a wider study. (Ex. 300, p. 31; *see also*, Ex. 714, p. 4).

study showed numerous lines being overloaded, with several lines being loaded beyond even their emergency ratings. (Ex. 300, pp. 33-34).

According to Applicants, they intend to decrease power purchases and replace that power with increased output from internal generation. (*See* Ex. 300, p. 36). However, this planned post-merger shift in dispatch will result in increased power transfers between parts of the merged company; transfers of power within the merged company which serve native load will not be posted on OASIS; therefore, these new post-merger transfers within the company will be effectively protected from curtailment, and when congestion occurs the burden of curtailments will be imposed on other parties using the transmission system and therefore on the Missouri ratepayers of other utility companies. (*Id.*). As Mr. Russell testified, “Applicants are claiming efficiencies that can only be obtained by increased use of transmission, but have not done the studies to show the impact of such uses on other systems.” (*Id.*).

Mr. Russell also identified other constraints on the transmission system in Missouri. (*See*, Ex. 300, pp. 37-39). One of these constraints is of particular concern to Springfield, namely, constrained facilities which are associated with a line extending from the Montrose generation plant of Kansas City Power & Light to Brookline substation-City Utilities of Springfield; this line is important to delivering Springfield’s entitlement in the Montrose plant. (*Id.*). The Stockton-Morgan section of this line experiences heavy loadings during north to south transfers and the line can limit transfers during the outages of the 345 kV lines from LaCygne to Neosho and from Morgan to Brookline. (*Id.*). UCU is aware of this, and in its study of the interconnection between UCU and EDE recommended addition of a 161 kV line between Nevada (UCU) and

Asbury generating station (EDE). (Ex. 300, Sch. 5 and Ex. 300, p. 44 footnote 7). UCU has now committed to build the Nevada to Asbury line (Ex. 25, p. 12), and the Commission should so order.

Mr. Russell's study was corroborated by a system impact study (referenced above) conducted by the Southwest Power Pool ("SPP") at the request of UCU to examine the impact of combining UCU, SJLP and EDE into one control area. (Ex. 300, Schedule 7 and Ex. 300, pp. 33-35). The SPP study found "that facility upgrades and system improvements are required to accommodate the requested transmission service." (Ex. 300, Schedule 7 at p. 3). The study also found numerous overloads and voltage violations. (Ex. 300, Schedule 7).

In fact, even FERC agrees that the Applicants have not performed sufficient studies. Beginning on page 10 of the Order Conditionally Authorizing Mergers, attached to Mr. John McKinney's surrebuttal testimony (Ex. 5) as Schedule JWM-1, FERC stated:

In the Merger Policy Statement, ... [t]he Commission [*i.e.*, FERC] explained that transmission line loadings are likely to change as a result of merger applicants' combined operations and that such changes are likely to result in transmission availability different from historical experience [footnote omitted]. Transmission availability is a critical parameter in defining relevant markets, particularly in the transmission-constrained areas affected by the proposed merger, as Springfield points out. Therefore, failure to fully reflect the effects of joint dispatch may result in inaccurate identification and definition of relevant markets and, in turn, an inaccurate assessment of the effect of the proposed mergers in those markets.

....

Applicants' [*i.e.*, UCU, St. Joseph Light & Power Company and The Empire District Electric Company] analysis also shows that in many cases, the effect of post-merger system integration is to increase the combined companies' market share beyond the simple combination of their pre-merger market shares, further increasing concentration in relevant markets. [footnote omitted]. Our concern regarding Applicants' treatment of system integration is also relevant to an analysis of whether combining

Applicants' generation and transmission creates or enhances the merged company's ability and/or incentive to adversely affect electricity prices or output. **Applicants have not performed such an analysis.** (Emphasis added) (Ex. 5, Schedule JWM-1, pp. 10-11)

**Conditions (List of Issues, Transmission Access and Reliability Conditions (1)(a)-(d))**

A reasoned decision on the merits of the merger must include a full assessment of post-merger operating conditions and appropriate mitigation measures. As a result of the Joint Applicants' failure to provide adequate studies as discussed above, prior to approving the merger the Commission should order the Applicants to conduct production cost, load flow and stability studies of the effects of combining their systems and control areas upon other utilities. (Ex. 300, p. 28). The Joint Applicants should be ordered to provide these studies in hard copy and electronic form to the other parties, and the Commission should keep this case open until such time as the studies have been completed and all parties have been allowed sufficient time (*i.e.*, 30 days) to review/analyze and file comments in this case on such studies. (*Id.*). If, after the comments are filed, the Commission determines that additional hearings are warranted, hearings could be continued at that time similar to what was done in the Union Electric/CIPSCO merger case.

Such studies should include, but not necessarily be limited to, the following: (1) Production cost simulations that indicate the hourly amount of power flow that can be expected to occur between each of the separate pockets of load and generation in connection with the merged company's internal dispatch. This should include hourly determinations of net exports and imports for each of those pockets. The output of this analysis should also include hourly indications of (i) the amount of generating capacity probabilistically determined to be available from each generating resource owned and

purchased by the merged company, (ii) the amount of that capacity dedicated to native load, (iii) the amount dedicated to firm off-system sales, and (iv) the amount available for additional off-system sales. (2) Load flow and stability analyses of necessary additions of equipment (and employment of must-run generation) to support transmission voltages within a +/- 5% range of nominal voltage under base case conditions, heavy transfer conditions and under all single contingency outage conditions. The starting conditions should reflect alterations of internal dispatch that Applicants expect to occur in the post-merger scenarios. (3) Analyses of transmission facility additions necessary to integrate operations of Applicants' control areas without impairing Springfield's ability to carry out a planned purchase of a firm unit entitlement from KCPL's Montrose unit. The reliability criteria should include a requirement that Applicants comply with regional reliability standards. (*Id.* at 30-31).

UCU had originally committed to make the upgrades shown to be necessary by the SPP study reflected in Schedule 7 to Exhibit 300. (*See*, UCU response to data request, Ex. 300, pp. 40-41). However, after the SPP study was concluded, UCU has backed away from this commitment due to the cost of the numerous upgrades shown to be necessary by the SPP study. (Ex. 300, p. 40). However, the Commission should not allow UCU to so easily evade the consequences of its merger, and Applicants (or UCU as the surviving company) should be ordered to construct, at their expense, any transmission lines which the studies ordered by the Commission identify as being necessary, as well as the 161 kV line between Nevada and Asbury which UCU has finally committed to construct (Ex. 300, p. 43-44; Ex. 25, p. 12), if the Commission allows the merger to proceed.

(2) *Will the proposed merger provide the Companies the ability to gain unduly preferential priority of access to limited transmission facilities and/or exercise their post-merger transmission access anti-competitively, to the detriment of other customers in the State and therefore to the detriment of the public?*

Native Load Priorities

Native load priorities can be invoked by transmission owners such as the Applicants to favor deliveries of their own purchases and sales of generation and to obtain favored access for their native loads through transmission bottlenecks. (Ex. 300, p. 12). If the Commission allows them to proceed, by virtue of the merger of UCU with EDE (and SJLP), Applicants will be able to expand the coverage of their native load priorities to cover deliveries between Applicants' native loads in what are now three separate control areas. They will be able to import their own firm resources through constrained transmission interfaces, while potentially curtailing Springfield's firm purchase of power from KCPL's Montrose generating resource, and may be able to assert a higher priority for their imports of non-firm energy over Springfield's use of non-firm point-to-point transmission service. (Ex. 300, pp. 12-13).

Expansion of native load priorities beyond their present scope by virtue of the merger could allow Applicants to "game the system." For example, the Applicants might move power from one operating company (MPS) into another operating company (SJLP or EDE) by asserting a native load priority and "reducing" the generation in the receiving company; however, simultaneously, they could initiate an off-system sale from generation located in the area of the receiving operating company, thus allowing them – under the guise of meeting a native load requirement – to exploit their expanded post-

merger native load priority and move generation through a bottleneck for a non-native load purpose: making off-system sales. (Ex. 300, p. 13). The Applicants (or UCU as the survivor) should not be allowed to expand the use of existing native load priorities beyond their present geographic scope to the detriment of others who also need to use the transmission network.

The Commission should also be aware that UCU's position on this issue in this case conflicts with certain evidence which UCU itself presented in this case, namely, the UCU comments to FERC in Docket No. RM99-2-000 (Ex. 24, Schedule RCK-11). In Exhibit 24, Schedule RCK-11, UCU told FERC that FERC should strengthen and enforce "its policies and precedent prohibiting utility discrimination against wholesale users of transmission in favor of their own uses of transmission for native load" (Ex. 24, Schedule RCK-11, p. 5, footnote 4) and that UCU believes "in the importance of the RTO's ability to thwart market power, especially in the context of *eliminating participating utilities' capabilities and incentives to obtain undue preferences for transmission used to serve native load.*" (emphasis added)(Ex. 24, Schedule RCK-11, p. 10, footnote 8). Clearly, in its comments to FERC, UCU recognized Springfield's point – that UCU will gain an undue preference for transmission over an expanded territory if the merger is approved.

#### Internal Dispatch

Joint operation of the merged companies (internal dispatch) could subject the region to unanticipated swings in power flows as Applicants re-dispatch their units, which could result in the imposition of additional curtailments on other utilities, shifts in losses and loss burdens, force other utilities to re-dispatch, and impose congestion costs and other adverse impacts on other utilities in the region. (Ex. 300, p. 15). Transmission



constraints currently limit UCU's integration of the UCU, SJLP and EDE control areas and no study has addressed these adverse consequences of the merger. (*Id.*)

Applicants' post-merger internal dispatch would be exempt from the capacity posting, reservation, scheduling and monitoring requirements (OASIS) of their Open Access Transmission Tariff and from similar requirements of any regional transmission provider. Post-merger consolidation of the pre-merger control areas (UCU, SJLP and EDE) would transform what are currently pre-scheduled and readily curtailable resale transactions reported on the OASIS of each affected transmission owner into "internal dispatch" that is exempt from the usual rules regarding reservation, scheduling, reporting, monitoring, and tagging of transmission service. (Ex. 300, p. 16). This would be true even if the transactions of the merged company actually flow as circulating loop flow over the transmission systems and control areas of neighboring utilities. (Ex. 300, pp. 16-17). Transmission capacity necessary to carry out these flows would be exempt from disclosure even when they take up what would otherwise be Available Transmission Capacity ("ATC") on the relevant regional interfaces, and such flows would not have to be pre-scheduled. (*Id.* at 17). As Mr. Russell testified:

Unless special analyses are conducted beforehand and special monitoring is added, one cannot easily predict the magnitude, direction and duration of internal dispatch flows and cannot determine the magnitudes of internal dispatch flows in real time. As a result, a large buffer or cushion of transmission capacity must be left unloaded in order to accommodate these unpredictable and unknown flows. . . . Thus, the ATC in the region might be "soaked up" with a resulting loss in economic efficiency to the region. (Ex. 300, p. 17).

Capacity Benefit Margins/Transmission Reserve Margins

Furthermore, Applicants could attempt to set aside transmission capacity for capacity benefit margins ("CBM") or transmission reserve margins ("TRM"), which will

soak up ATC for use by others (such as Springfield) on a firm basis. (Ex. 300, p. 46). If constrained transmission interfaces are anticipated, as they should be in the situation posed by the proposed merger, setting aside capacity for CBM or TRM will deny needed capacity to other users of the constrained facilities. (*Id.*).

Furthermore, as stated previously herein, in its comments to FERC in Docket No. RM99-2-000, which are attached to Mr. Kreul's direct testimony (Ex. 24) as Schedule RCK-11, on pages 16-17 UCU commented to FERC as follows:

Specifically, UtiliCorp is one of those which the NOPR identifies as having alleged "*that transmission providers who also compete in power markets against their competitors have both the incentive and ability to post unreliable ATC numbers.*" We [UCU] submit that the same thing is true in the case of Capacity Benefit Margin ("CBM") calculations. This issue is at the core of the discriminatory behavior UtiliCorp and other power marketers have experienced at the hands of certain large transmission-owning utilities, *which have appeared to use ATC and CBM calculations in attempts to shield their high-cost generation from effective competition.* (emphasis added).

In its comments to FERC, UCU clearly recognized the problem, but takes a different position before this Commission.

#### SPP ISO/RTO

Integration of transmission facilities under a regional transmission organization will identify and protect against potential abuses likely to arise from Applicants' plan to integrate their post-merger generation. (Ex. 300, pp. 20-21). ISO/RTO membership is important because control over transmission, generation and distribution facilities has all too often been exercised in anti-competitive ways, such as when an owner of vertically integrated transmission and generation facilities denies competing generators access to its transmission and/or distribution facilities. (*Id.* at 21). In its comments to FERC in Docket No. RM99-2-000, even UCU stated "that regional approaches are necessary in

order to move toward the elimination of continuing impediments to competitive electricity markets in the United States. (Ex. 24, Schedule RCK-11, p. 1).

**Conditions (List of Issues, Transmission Access and Reliability Conditions (2))**

To remedy all of the detriments set forth above under Transmission Access and Reliability sub-point/sub-issue (2), if the Commission is otherwise inclined to approve the merger it should impose the following conditions for the reasons discussed above.

**Native Load Priorities**

The Joint Applicants should be required by the Commission to commit that with respect to any and all generating resources associated with any one of their existing control areas (including purchased generating resources) serving load in any other control area of the merging companies, the merging companies should waive or not assert: (i) native load priority on scheduling non-firm network transmission service; (ii) the native load preference arguably accorded to bundled retail loads over wholesale loads under the decision in Northern States Power Co. v. FERC, 176 F.3d 1090 (8<sup>th</sup> Cir. 1999); and (iii) use of any native load priority that will enable any one of the merging companies (*i.e.*, control areas) to import power through constrained interfaces so as to free up its local generating resources for off-system sales. (Ex. 300, p. 14).

**Internal Dispatch**

The Joint Applicants should not be allowed to combine any or all of their existing control areas without first submitting their plans for such combinations to peer group review and approval by the SPP ISO/RTO and the affected regional reliability councils. (Ex. 300, p.18).

The merged companies should be required to reserve transmission capacity on the relevant OASIS for purposes of carrying out any internal dispatch between what are now geographically separate control areas of the merging companies; to implement real-time monitoring of intra-company flows associated with internal dispatch; to report continuously the amount of such flows on its OASIS; and to make all reasonable efforts to limit internal dispatch to levels at or below the transmission capacity reserved for purposes of carrying out internal dispatch. This will simply preserve the status quo, and avoid merger-related detriment. (*Id.*).

Also, the Commission should order that, if the burdens on Springfield attributable to internal dispatch of the Joint Applicants turn out to be substantial (*i.e.*, curtailments of Springfield's firm schedules from Montrose), UCU is required to reimburse Springfield for the incremental costs to Springfield of re-dispatching Springfield's generating resources that are attributable to the post-merger integrated operations of what are now the Joint Applicants' separate systems. (*Id.* at 19).

#### Capacity Benefit Margins/Transmission Reserve Margins

As a condition for approval of the merger, UCU should be required to agree to (i) not set aside transmission capacity for Capacity Benefit Margins (CBM) and Transmission Reserve Margins (TRM) and (ii) to waive any future claims for CBM and TRM. (*Id.* at 46).

#### SPP ISO/RTO

The merged company should be required to put all of its transmission facilities under the control of the SPP ISO/RTO in a single zone under the SPP transmission tariff and to join - and maintain membership in - the SPP ISO/RTO and also be required to file

an integrated open access transmission tariff ("OATT") and an integrated transmission rate for what are now separate control areas. (*Id.* at 22-23).

(3) *Could a post-merger UCU refunctionalize its transmission facilities in anti-competitive ways to the detriment of the public?*

Simply put, yes. FERC Order No. 888 permits utilities to refunctionalize their transmission facilities under the "seven-factors test" in Order 888; however, FERC gave states the right to establish the dividing line between transmission and distribution pursuant to this "seven-factors test." (Ex. 300, pp. 10, 47). Many utilities have done this in a manner which creates anti-competitive impacts such as unwarranted cost shifts which impose inappropriate costs upon customers and shield certain customers from competition through alternative supply sources. (*Id.* at 47). It may also be used to grant more favorable treatment to the utility's own generation, to discourage on-site cogeneration or distributed generation, and deny appropriate jurisdictional protection. (*Id.*). Through expansion of its facilities and service area by virtue of the merger, UCU would have even greater incentive and ability to refunctionalize its facilities in such an anti-competitive manner.

**Conditions (List of Issues, Transmission Access and Reliability Conditions (3))**

Due to the foregoing, if the Commission approves the merger, UCU should be required to commit not to seek refunctionalization of any currently categorized transmission lines of the merging companies that operate at or above 69 kV. (Ex. 300, p. 47).

(4) *Do the companies being merged adhere to a single, consistent set of standards for designing and operating their transmission facilities and, if not, would not*

*adhering to a single, consistent set of standards for designing and operating their transmission facilities be detrimental if the merger is approved?*

Upon examination it appears that UCU and EDE allow voltage to drop 10% below nominal voltage, while SJLP allows voltages to range from 94% to 110% of nominal. (Ex. 300, p. 44). Southwest Power Pool criteria recognize the problems which can arise if voltage standards are not enforced:

System voltages must be maintained within the range of acceptable minimum and maximum voltage limits. For example, minimum voltage limits can establish the maximum amount of electric power that can be transferred without causing damage to the electric system or customer facilities. A widespread collapse of system voltage can result in a blackout of portions or all of the interconnected network. Acceptable minimum and maximum voltages are network and system dependent.

(Ex. 300, p. 45).

**Conditions (List of Issues, Transmission Access and Reliability Conditions (4))**

To address these concerns, the Joint Applicants should be required to establish and implement a single standard for transmission system design and operation for the entirety of the merged company and should be required to at least comply with the Southwest Power Pool Criteria. (Ex. 300, p. 45).

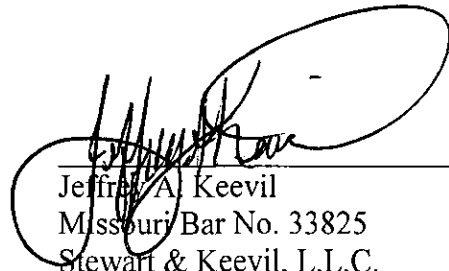
In regard to the Commission's imposition of conditions upon the Applicants/UCU (the surviving company), lest the Commission question its ability to impose conditions, it should be remembered that the Commission would only do so to alleviate what it found to be detriments to the public interest due to the merger. If the Commission has found the merger to be detrimental, it could simply reject/deny the merger. Therefore, the Commission could surely allow UCU the choice of having its merger denied or agreeing to remedial conditions found necessary by the Commission. The Commission should

also be aware that it has in the past imposed conditions in a contested merger case. *See, In the matter of the Joint Application of Missouri Gas Company, Missouri Pipeline Company, and UtiliCorp United Inc.*, Case No. GM-94-252, 3 Mo. P.S.C. 3d 216 (1994).

### **CONCLUSION**

Competent and substantial evidence on the record as a whole shows the proposed merger to be detrimental to the public interest for the reasons discussed above. The Commission must therefore either (i) deny the proposed merger or (ii) authorize the merger only upon the imposition of the conditions set forth under each issue herein.

Respectfully submitted,

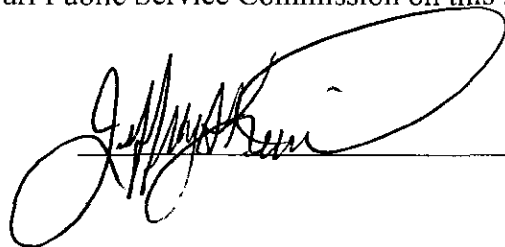


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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was delivered by first-class mail, or hand-delivery, to counsel for parties of record; the Office of the Public Counsel; and the General Counsel's Office of the Missouri Public Service Commission on this 31st day of October, 2000.



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