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January 11, 2002

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

FILED<sup>2</sup>  
JAN 11 2002  
Missouri Public  
Service Commission

Re: **UtiliCorp United Inc.,**  
**Case No. EM-2002-297**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **RESPONSE TO APPLICATION FOR AUTHORITY TO MERGE AND REQUEST FOR HEARING**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill  
Assistant Public Counsel

MRO:KH

cc: Counsel of Record

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

**FILED<sup>2</sup>**  
JAN 11 2002  
Missouri Public  
Service Commission

In the Matter of the Application	)	
of UtiliCorp United, Inc., a Delaware	)	
Corporation, for Authority to Merge to	)	Case No. EM-2002-297
Effect a Name Change.	)	

**RESPONSE TO APPLICATION FOR AUTHORITY TO MERGE AND  
REQUEST FOR HEARING**

COMES NOW, the Office of the Public Counsel, and respectfully responds to the Application by UtiliCorp United, Inc.'s (Company's or UtiliCorp's) application to Merge with a "naming corporation" in order to "effect a name change" and requests that the Missouri Public Service Commission deny the Company's request that this matter be "approved" "no later than January 31, 2002, bearing an effective date of February 12, 2002" for the reason that this proposed deadline provides insufficient time in which to meaningfully evaluate the proposed transaction. Further, Public Counsel respectfully requests that the Commission set this matter for evidentiary hearing, in order to ascertain whether the proposed transaction will be detrimental to the public interest. Public Counsel further requests that the Commission set this matter for an early pre-hearing conference for the purpose of establishing a procedural schedule. These requests are made for the following reasons:

1. The Company has proposed that this Commission make a finding that the proposed merger is not detrimental to the public interest, (Application, at p. 5), but has presented insufficient information from which the Commission could make such a determination.

2. The Company has proposed that this Commission approve the merger of UtiliCorp and the "UtiliCorp Re-naming Company" (Application, at p. 5), but fails to

explain the ramifications of UtiliCorp's plans to rename itself something which "will have the name 'Aquila' in it" (Application, at p. 3), now that UtiliCorp has reacquired the outstanding shares of its unregulated subsidiary, Aquila, Inc.

3. The Company has proposed that this Commission authorize "UtiliCorp and URC to execute and perform in accordance with the terms of all documents and to take all actions necessary and incident to the Merger" (Application, at p. 5), but has not provided the Commission with copies of such documents, or descriptions of such documents which may not yet exist, nor has the Company apprised the Commission of the specific "actions necessary and incident to the Merger" which the Company plans to take. Under the present circumstances, this request is vague and overly broad.

4. The Company has alleged in its application that "The Merger will have no adverse effect on the Missouri customers of UtiliCorp.... customers will see no change in their day-to-day utility service or rates" (Application, at p. 4). However, the Company has also indicated that it may seek to "true-up" its capital structure in its currently pending rate case (ER-2001-672) to account for an increased level of equity in the Company's capital structure as a result of the reacquisition of Aquila, Inc. by UtiliCorp, which Public Counsel believes is related to the Company's plan to change its name to an undetermined name that "will have the name 'Aquila' in it" (Application, at p. 3). Because an increased level of equity in the Company's capital structure could result in a higher overall rate of return on capital, customer will see rates higher than would otherwise be appropriate absent this transaction, if there is no corresponding reduction in another component of the revenue requirement in case ER-2001-672, as a result of this

transaction. This seeming contradiction should be carefully explored by the Commission before deciding whether to grant the request to Merge and Effect a Name Change.

5. Public Counsel has begun to investigate, by the sending of data requests, whether or not it believes that this transaction will result in a detriment to the public interest. However, the information provided in the application is insufficient for Public Counsel to make such a determination.

6. Although it is not perfectly clear from the paucity of information contained in the application, the application, and the response of the Commission Staff to the application, raises the issue of whether the Company has complied with the requirements of §393.190 RSMo. 2000 in structuring this (series of) proposed transaction(s). Providing Public Counsel and the Staff with additional time to investigate this issue would be appropriate in this matter.


WHEREFORE, Public Counsel respectfully requests that this Commission:

1. **Deny** the Company's request to rule on its application by January 31, 2002 (with an effective date of February 12), as premature; and further,

2. Set this matter for an early pre-hearing conference, at which the parties may agree to and propose a procedural schedule which will allow adequate time for discovery and the filing of testimony and an evidentiary hearing, at which the Commission may determine, from the evidence, whether or not the proposed transaction will be detrimental to the public interest.

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 11<sup>th</sup> day of January 2002:

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