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March 15, 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, MO 65102

FILED²
MAR 15 2001
Missouri Public
Service Commission

**Re: In the Matter of an Investigation respecting the sale of UtiliCorp United Inc.'s
Utility Network Construction, Operation and Maintenance Organization
Case No. EO-2001-472**

Dear Mr. Roberts:

On behalf of UtiliCorp United Inc., I deliver herewith an original and eight (8) copies of a Response of UtiliCorp United Inc. to the Motion of the Staff of the Missouri Public Service Commission to Open an Investigatory Proceeding to be filed with the Commission in the referenced case. A copy is also being hand-delivered to The Office of the Public Counsel this date.

I have also enclosed an extra copy of the Response of UtiliCorp United Inc. to the Motion of the Staff of the Missouri Public Service Commission to Open an Investigatory Proceeding which I request that you stamp "Filed" and return to the person delivering same to you.

Thank you for your attention in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Paul A. Boudreau

PAB:aw
Enclosures

FILED

MAR 15 2001

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of an Investigation)
respecting the sale of UtiliCorp United)
Inc.,'s Utility Network Construction,) Case No. EO-2001-472
Operation and Maintenance Organization.)

**RESPONSE OF UTILICORP UNITED INC. TO THE MOTION OF THE
STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION
TO OPEN AN INVESTIGATORY PROCEEDING**

COMES NOW UtiliCorp United Inc. ("UtiliCorp"), by and through counsel, and provides the following response to the Motion to Open an Investigatory Proceeding filed by the Staff of the Missouri Public Service Commission ("Staff"):

1. On or about March 6, 2001, Staff filed with the Missouri Public Service Commission (the "Commission") a Motion to Open an Investigatory Proceeding (the "Motion"). The Commission docketed the Motion as Case No. EO-2001-472. UtiliCorp concurs with the Staff in its recognition, as manifested in the Motion, that the Commission should be fully informed as to UtiliCorp's plans to sell the network construction, operation and maintenance business servicing UtiliCorp's electric and gas distribution and transmission network in Missouri (the "CO&M Business") to a third-party and UtiliCorp intends to keep the Commission so informed as the facts become known. UtiliCorp, however, disagrees with the Staff with respect to the most appropriate time and method to accomplish this.

2. UtiliCorp acknowledges and recognizes the broad authority of the Commission to undertake investigations of public utilities, like UtiliCorp, with respect to the manner in which they provide a public service. Staff, in its Motion, invokes the Commission's general investigatory power requesting, specifically, that the Commission establish an investigatory docket and to authorize the Staff to prepare and file a report with respect to UtiliCorp's potential sale of the CO&M Business.

Such plans were publicly announced by UtiliCorp in a November 16, 2000, news release, a copy of which has been attached to Staff's Motion as Attachment A.

3. Whether or not the Commission has the power to embark on a formal investigation of UtiliCorp's plan in this regard, UtiliCorp submits that in any event it would be premature for the Commission to do so at this time. Although the process leading up to the potential sale of the CO&M Business is well underway, the negotiated bid process has not yet been completed and, consequently, the structure of any transaction which might take place is not yet known. Until the final agreements, if any, with respect to this potential transaction are executed, it is not possible for UtiliCorp to make definitive representations in response to inquiries about the nature of the transaction or its regulatory implications, if any. At such time as final agreements with respect to any sale of the CO&M Business are executed, UtiliCorp will be in a position to make the details of the transaction and its regulatory ramifications known to the Commission and its Staff.

4. As the Staff notes in its Motion, UtiliCorp made a presentation to the Staff and the Office of the Public Counsel ("Public Counsel") shortly after UtiliCorp's November 16, 2000, announcement that it would seek a buyer for the CO&M Business. In fact, on December 12, 2000, representatives of UtiliCorp provided Staff and Public Counsel with an extensive general overview of the proposed transaction, including a rough transaction time line. UtiliCorp's outline of that detailed presentation is attached to the Staff's Motion as Appendix B.

5. As indicated, at UtiliCorp's own initiative, a great deal of information has already been provided to the Staff and Public Counsel. UtiliCorp's synopsis of the possible transaction is contained in the copy of the transaction overview materials accompanying Staff's Motion (Appendix B). Moreover, when it became apparent that additional questions concerning the timing and

structure of the proposed transaction had arisen since UtiliCorp's December 12 presentation, UtiliCorp offered to make another presentation, this time to the Commission at one of its regularly scheduled and public agenda sessions, anticipating that it would be followed up with a more detailed discussion in a break-out session with representatives of Staff and the Public Counsel to take place immediately afterward. The undersigned was subsequently advised that the opportunity to meet with the Commission had been declined because the Commission had been advised that Staff expected to be filing a pleading with regard to UtiliCorp's decision to explore the possibility of selling the CO&M Business. UtiliCorp continues to believe that a more meaningful and timely exchange of information, to the extent it is available, would be better accomplished through an informal process than through a formal, structured proceeding.

6. In addition, there is no reason for the Commission to conclude that taking formal action now is driven by any impending corporate action on the part of UtiliCorp. The potential transaction in question, if agreed to, would be subject to the filing and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"). The HSR Act filing materials will not be prepared until after the transaction agreements are signed. After the filing materials are completed, the HSR Act filing will be made, and then the transaction will be subject to a thirty (30) day waiting period. In short, there is no urgency for the Commission to act at this time.

7. UtiliCorp is also concerned that the opening of a formal docket to investigate UtiliCorp's business plan and the ongoing competitive bidding process could seriously impair its ability to maintain the confidentiality of that process to its conclusion. The opening of an investigatory docket may make public what is currently a private and confidential business activity.

A formal docket will invite the participation of intervenors who have no legitimate interest in the negotiated bid process that is still underway. The confidentiality of that process is essential for UtiliCorp to obtain an agreement that is most beneficial to its customers and shareholders.

8. Finally, Staff has made no allegations of a material issue which warrant a formal investigation. Although the Commission has broad investigatory powers, formal investigations have typically only been authorized for good cause. Staff has not alleged any facts or circumstances which provide a compelling basis to open a formal docket. For example:

- Staff states that the information with which it has been provided to date "does not clearly indicate that UtiliCorp will file for regulatory authorization" in connection with the sale of the CO&M Business. (Motion, ¶ 8, pp. 2-3) Additionally, Staff states that "there appears to be some confusion regarding whether UtiliCorp will seek Commission authorization for any part of the transaction." (Motion, ¶ 9, p. 3) UtiliCorp has stated from the beginning that it will file for and obtain approval of the transaction, or any aspect of the transaction, to the extent it is required to do so under Missouri law. A determination of whether there is any legal obligation to file for regulatory approval in Missouri for any aspect of the possible disposition of the CO&M Business has not yet been made and, in fact, cannot be made because, as noted above, no definitive agreement with respect to terms of any such transaction have yet been entered into. Accordingly, statements that there is "uncertainty" with respect to the necessity for filing for regulatory approval does not present an issue to be determined at this time. Rather, it is simply evidence that the issue is not yet ripe because not all of the relevant facts are known. This "uncertainty" cannot possibly

be resolved until and if an agreement is ultimately reached.

- Staff indicates that it has received inquiries from members of the Missouri General Assembly and the public expressing an interest in the transaction. (Motion ¶ 9, p. 3) Similarly, a general curiosity about the possible sale of the CO&M Business does not warrant the opening of a formal investigation particularly when, as noted above, no definitive agreement exists and, consequently, the specifics of the transaction are not yet known. When, and if, the definitive terms of the transaction are reached, UtiliCorp will make them known to the Commission, Staff and Public Counsel and, to the extent that it is consistent with good commercial practice and contractual obligations with respect to confidentiality, the information will be made known to the public as well. As noted above, UtiliCorp announced publicly its intentions to sell the CO&M Business on November 16, 2000. It has every intention of publicly announcing the results of the competitive bidding process when its final decision has been made and to seek regulatory approval as may be required by law.
- Staff has alleged that it has "concerns about the timing of any potential filing by UtiliCorp for Commission authorization." (Motion ¶ 10, p. 3) This statement, too, fails to present a matter which justifies the opening of a formal investigation. The specific nature of Staff's concerns are not identified. Although UtiliCorp appreciates and welcomes Staff's commitment to the timely processing of an application for regulatory approval, if required, it is premature to embark on a dialogue concerning timing issues when the necessity for such approval is not yet apparent. Like all the other concerns set forth by Staff, this issue can be addressed only when a final

decision has been made by UtiliCorp with respect to the specifics of any sale of the CO&M Business.

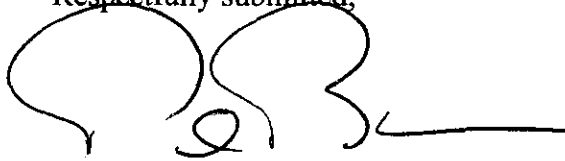
- Finally, Staff states that it "has concerns with the effect of the proposed transaction on the provision of safe and adequate electric service by UtiliCorp." (Motion, ¶ 11, p. 4) The provision of safe and adequate electric service is of no less importance to UtiliCorp. UtiliCorp understands that it will still be accountable for all aspects of utility service, irrespective of whether a sale of the CO&M Business is consummated. It is for that reason that UtiliCorp has specifically required prospective bidders to commit to stringent customer service benchmarks. They will ensure the continued high quality of service currently provided by UtiliCorp. Staff does not state whether any of the specified components of the customer service benchmarks would be unacceptable to it or would impair the continued safe and adequate electric service that UtiliCorp's customers currently enjoy. Accordingly, the statement lacks the specificity necessary to warrant the opening of a formal investigatory docket.

9. UtiliCorp has conducted itself in a very open and forthright manner. It has every intention of maintaining a meaningful and open dialogue with respect to the issues that the potential transaction implicates in a manner consistent with its business obligations to maintain the confidentiality of the competitive bidding process through to its completion. UtiliCorp is willing to continue to keep the Commission and its Staff, as well as the Public Counsel, advised throughout this process as the facts become known. In the meantime, UtiliCorp should be free to conduct its business and make appropriate business decisions with respect to this matter unencumbered by a

contemporaneous formal investigation. Certainly, no showing has been made of the necessity of a Commission investigation of UtiliCorp's management prerogatives at this time. Nevertheless, UtiliCorp is keenly aware of the Commission's important regulatory responsibilities with respect to UtiliCorp's public utility obligations and it remains ready, willing and able to meet with the Commission, its Staff and the Public Counsel informally at any mutually agreeable time to discuss the status of the potential sale of the CO&M Business.

WHEREFORE, UtiliCorp opposes the opening of an investigatory docket as requested by Staff, because the matter is not sufficiently ripe for formal inquiry and because none of the allegations contained in the Motion provide the specificity or materiality to warrant the opening of a formal docket at this time, and renews its request to make an informal presentation to the Commission, Staff and Public Counsel at a regularly scheduled public agenda session.

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 15th day of March, 2001, to the following:

Mr. Dana K. Joyce, General Counsel
Mr. David A. Meyer, Associate General Counsel
Mr. Eric William Anderson, Assistant General Counsel
Missouri Public Service Commission
Governor Office Building
200 Madison Street, P.O. Box 360
Jefferson City, MO 65102

Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 7800
Jefferson City, MO 65102

A handwritten signature in black ink, appearing to read 'P. A. Boudreau', written over a horizontal line.

Paul A. Boudreau