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March 23, 2001

FEDERAL EXPRESS

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

Re: **UtiliCorp United Inc.**
Case No. EO-2001-472

FILED³
MAR 26 2001
Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed are the original and eight (8) conformed copies of a pleading, which please file in the above matter and call to the attention of the Commission.

An additional copy of the material to be filed is enclosed, which kindly mark as received and return to me in the enclosed envelope as proof of filing.

Thank you for your attention to this important matter. If you have any questions, please call.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 

Stuart W. Conrad

SWC:s
Enclosures
cc: All Parties

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED 3

MAR 26 2001

Missouri
Service Commission

In the Matter of an Investigation)
respecting the sale of UtiliCorp)
United Inc's Utility Network Con-)
struction, Operation and Mainte-)
nance Organization)

EO-2001-472

RESPONSE TO UTILICORP OPPOSITION BY
AG PROCESSING INC A COOPERATIVE

Comes now AG PROCESSING INC, a COOPERATIVE ("AGP") and responds to the Opposition filed herein by UtiliCorp United ("UtiliCorp") on March 22, 2001 as follows:

1. UtiliCorp's stated opposition to AGP's Intervention is contained in two paragraphs of a seven-paragraph Opposition. Paragraph 1 is introductory and requires no response. Paragraphs 4-7 of that Opposition argue why the investigation should not be opened, are not responsive to AGP's Application and are not seriously directed to AGP. Response to those paragraphs may be made by others.^{1/}

^{1/}These last paragraphs may be the real reason that UtiliCorp submitted its response, in that it was chafing for an opportunity to object to the entire proposed proceeding and used this means as a mere vehicle to make its argument.

Interestingly, UtiliCorp appears to assert that its management prerogatives are its exclusive business. That might well be the case, but for UtiliCorp being a **public utility**. The best evidence that an investigation into this proposal as urged by Staff is both reasonable and necessary is found in UtiliCorp's apparent inability to discern the difference between: (a) a proposal that the regulator evaluate competing merger proposals or the terms of a utility's shareholder rights plan and (b) the utility proposing to contract out its **public utility operations** (continued...)

2. UtiliCorp acknowledges that AGP's stated interest is that of an electric and steam customer, **but fails to make note of the size of AGP's usage of these services.** UtiliCorp's restatement of AGP's interest is factually incorrect on several grounds.

a. AGP is, insofar as we are aware, the UtiliCorp St. Joseph Light & Power Division's (SJLP) **largest steam customer, largest electric customer** and certainly AGP may be SJLP's **largest individual source of revenue.**^{2/} Intervention, paragraphs 2 and 3. To assert that the interest of such a customer is "not different from that of the general public" is naive, either as to the nature of the service that AGP receives from SJLP or as to the nature of the service received by the "general public."^{3/}

^{1/}(...continued)
and maintenance functions. Since UtiliCorp continues to operate as a regulated monopoly, it will regularly have to endure regulatory scrutiny of its "management decisions" to protect the interest of those who have **no choice** but to take service from it. AGP will refrain from making the obvious comment that, if there is nothing that should be cause for regulatory concern, UtiliCorp should have nothing to fear from an investigation, since it would only reveal the merits and the virtue of the proposal being investigated.

^{2/}Does it not speak volumes about UtiliCorp's general attitude regarding its customers that when SJLP's largest customer expresses its concern about its public utility contracting out its operations and maintenance functions through a proposed intervention, UtiliCorp's considered response to its largest source of revenue is "go away"?

^{3/}It deserves note that the Office of the Public Counsel has repeatedly confirmed that it does not attempt to represent the interests of larger customers.

b. Although not noted by UtiliCorp, AGP also stated in its Application that

Because SJLP provides electricity and steam to AGP under **separate rate schedules** and because of AGP's **size and load factor**, AGP is in the **special and unique position** of representing an interest which will not and cannot be represented adequately by any other party and which interest is direct and immediate and **differs from that of the general public**.

Application, paragraph 6, p. 3 (emphasis added).

c. Provision of service under these separate rate schedules tacitly recognizes the dramatic difference in load, load factor, size of demand, voltage and pressure levels and other characteristics of AGP's service that distinguish its service from that of the "general public." Insofar as we are aware, UtiliCorp has not sought to eliminate these separate rate schedules and combine all its SJLP division customers under one rate schedule applicable to the "general public." As SJLP's largest combined steam and electric customer **served under separate rate schedules**, these allegations state an interest in these proceedings sufficient to support intervention.^{4/}

d. UtiliCorp also asserts that AGP would "bring no special expertise to bear on the topic." **First**, we were unaware of any "topic" that has been determined. While we are familiar with the general contours of the UtiliCorp proposal, it

^{4/}UtiliCorp also fails to recognize that AGP's steam service is pursuant to a separate contract approved by this Commission. Absent renewal, AGP would revert to tariffed steam service, assuming such is still provided at rate levels that are economic, or would employ other options to provide its steam service needs.

remains unproven what "expertise" will be required. Moreover, UtiliCorp assumes that some "expertise" is needed, which may state reams about its proposal. As the case (if it goes forward) develops, there will be more than adequate time for determination of what "expertise," if any, is needed. **Second**, when needed, AGP has demonstrated in past cases that it is quite capable of bringing sufficient "expertise" to the proceeding. Since that "expertise" often is directed at the abject failure of the public utility involved to recognize its responsibilities to its customers generally and to its larger customers specifically, that "expertise" is often not welcomed by the utility, particularly one that is as apparently sensitive to the least hint of criticism as is UtiliCorp.

e. UtiliCorp notes that AGP has stated its general position that cost of service principles should govern in public utility regulation. UtiliCorp, however, conveniently fails to note the remainder of AGP's allegations of interest, namely:

AGP is also deeply concerned with the reliability of both electric and steam service for its facilities in SJLP's service territory and that rates for such service be properly based on cost of service principles. Inasmuch as the exact nature of the UCU proposals has not been clarified, AGP cannot state with certainty its specific position regarding those proposals other than to state its general concern that such divestitures or disposition may affect the cost, reliability and adequacy of the electric and steam service that it presently receives from SJLP.

Application, paragraph 8, pp. 3-4.

f. Since UtiliCorp has questioned this concern, we will amplify: Prior to the acquisition, SJLP's track record of service reliability was poor. Looking first at electric service, AGP (and other similarly situated customers) use numerous expensive high-horsepower electric motors requiring three-phase current. Unfortunately, SJLP power frequently "blinks" or "drops a phase" causing protective devices for these motors to take them off-line requiring several hours of shut-down and restart time for AGP's production line. These service interruptions translate into operational costs to AGP of wasted time and product that do not appear on AGP's electric bill. There are similar issues of long standing on the steam side of AGP's service. Unanticipated loss of this service also results in shut-down, lost production time, loss of product and lost time in restart. These problems have continued following the merger. Reliability is an issue.^{5/} The implications of UtiliCorp's

^{5/}The Commission's record will bear out AGP's interest. In EM-2000-292, the recent merger case, the transcript contains the following exchange in cross-examination of Mr. Ketter, Staff's witness on reliability indexes (EM-2000-292 Transcript, pp. 1105-08, lines indicated, emphasis added):

7 A. *St. Joe Light and Power includes customer*
8 *interruptions and blinks as it was reported.*

9 Q. Let me focus on the blinks for just a
10 second. Do they report the blinks in their
11 indices?

12 A. Apparently it's counted as an outage, as
13 an interruption.

14 Q. So a blink would be -- it talks about
15 blinks and maybe I talk about blips -- how long a
16 duration would a blink be?

17 A. *I would expect that is the automatic*
18 *operation of equipment on the system, transmission*
19 *of distribution system.*

20 Q. *Just 5, 10 seconds, something like that?*

21 A. *Or less, yes.*

22 Q. And St. Joe is reporting that now; is that

(continued...)

proposal for service reliability, and their costs are, presently uncertain and merit investigation.

5/ (...continued)

23 your understanding?

24 A. Yes. From the numbers that I reported in
25 my testimony.

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1 Q. Okay. Now, would you agree with me that
2 if there was a change so that these blinks would
3 not be reported, then those types of interruptions
4 that occur would simply not show up anywhere in any
5 of these indices; is that correct?

6 A. Well, changes -- any changes in definition
7 is going to change the product at the end. If it's
8 frequency, every time it blinks, it's going to
9 count one. Other indices if you have got a number
10 of customers might weight the way it impacts the
11 indices.

12 Q. Now, would you agree with me that with
13 respect to one of these blinks that might last just
14 one or two seconds after which power was restored
15 insofar as the utility systems were concerned, with
16 that type of a service interruption could still
17 have repercussions for the customer?

18 A. Yes. Any interruption would be of
19 interest to the customer.

20 Q. All the way from perhaps lost power to a
21 personal computer, something as simple as that, to
22 having to restart a production process that might
23 take as much as five or six hours because of that
24 one little two or three second blip. Would you
25 agree with me?

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1 A. That's possible.

2 Q. And that would depend on the -- in the
3 latter case the nature of the process. Would you
4 agree with me it's also possible that you might in
5 certain circumstances even see lost production and
6 product waste to product that was [previously]
7 processed would simply have to be discarded?

8 A. I have known of customers to where that's
9 a problem, yes.

10 Q. Now, in any of these indices -- well, let
11 me strike that.

12 As I read your background, Mr. Ketter,
13 you've got some background in engineering?

14 A. Yes.

15 Q. So you're familiar with the concept,
16 perhaps far better than I of multi-phase power,
17 particularly three-phase power?

18 A. Yes.

19 Q. Can you -- well, agree with me or not,
20 that a series of motors or whatever kind of
21 machinery it is that's set up requires three-phase
22 power, if one of those phases goes away, what
23 happens?

24 A. Could be trouble. If you're operating a
25 process, you may not sense that, but if your motors

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1 are starting, you're probably going to have damage
2 to your equipment.

3. Statement of an interest sufficient to support intervention should not and does not require prescience such that a customer or other interested entity must state its positions on every possible issue in the case. 4 CSR 240-2.075(2) anticipates that the proposed intervenor may be "unsure" of the position it will take. AGP has supported the investigation proposed by Staff because we believe an investigation is both reasonable and appropriate. Beyond that, UtiliCorp rather foolishly presumes that it is of necessity dealing with an opponent to its proposal rather than its largest SJLP division customer that has concerns about that the proposal's implications.

4. Clearly AGP's interest is "different from that of the general public" and that interest "may be adversely affected by a final order arising from the case." That is all that is required under the Commission's rules. 4 CSR 240-2.075(4) (A). AGP has also asserted and shown that its involvement would be beneficial to the public interest. Development and exploration of AGP's concerns would obviously allow the Commission to be better informed regarding the implications of its decisions for large, high load-factor customers who use both electric and steam service from this utility. 4 CSR 240-2.075(4) (B).

WHEREFORE, having responded, AGP renews its prayer that **upon the condition** that an investigation is established as proposed by Staff: (a) that AGP be permitted to intervene therein and be made a party thereto with all rights to have notice of and participate in hearings to present evidence, cross-

examine witnesses, file briefs and participate in argument, should any be had; (b) for all other needful and proper relief appropriate in the premises.

Respectfully submitted,

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ATTORNEYS FOR AG PROCESSING INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application for Leave to Intervene by U.S. mail, postage prepaid addressed to all parties by their attorneys of record as provided by the Secretary of the Commission and shown on the sheet following.



Stuart W. Conrad

Dated: March 23, 2001