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February 6, 2002

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

FILED³

FEB 06 2002

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

Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **OFFICE OF THE PUBLIC COUNSEL'S RESPONSE TO STAFF RECOMMENDATION**. 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

FEB 06 2002

Missouri Public
Service Commission

Case No. EM-2002-297

TO STAFF RECOMMENDATION

1. On December 21, 2001,¹ UtiliCorp filed an Application seeking the Commission's approval to merge with a newly created entity, the "UtiliCorp Renaming Corporation" and asked that the approval be finalized by January 31, 2002. Although an effective date a mere 40 days after filing would require expedited treatment, UtiliCorp did not file a specific request for expedited treatment. No reason was given in the application for requesting this defacto expedited treatment. There is no claim in the application that any part of the transaction is or was contingent on an effective date of January 31, 2002.

¹ December 21 was the Friday before a 4-day weekend created by Governor Holden's executive order closing state offices on December 24, and the state and federal holiday of Christmas on December 25. Two other legal holidays in January, January 1 and January 21, further shortened the period in which the parties could file information with the Commission in regard to this transaction.

The application did not explicitly seek Commission approval of the re-acquisition or the issuance of company stock. In part because UtiliCorp was in the midst of a rate case, this raised questions regarding the level of equity in UtiliCorp's capital structure. Although the Application seeks authority to merge in order to effect a name change, the "new" name for UtiliCorp is not contained in the application, and has not been made available, to date, to Public Counsel. For these and other reasons, Public Counsel became concerned that the proposed transaction could be detrimental to the public interest. Therefore, Public Counsel took a step which would allow further time for Public Counsel to investigate this application: it requested a hearing and the establishment of a procedural schedule.

3. The Commission held a pre-hearing conference in this matter on January 29, 2002, and the parties were directed to file a proposed procedural schedule no later than February 21, 2002. At that pre-hearing conference, information was exchanged by the parties which answered a number of questions that Staff and Public Counsel had about the proposed transaction.

4. On January 30, 2002, the Staff filed a Status Report in this case, stating, among other things, that it was prepared to file a recommendation in this matter, or would file testimony if the Commission set the matter for hearing. On January 31, the Commission ordered the Staff to file recommendations. Staff filed its recommendation on February 4, 2002.

5. Public Counsel continues to be concerned about the possible adverse impact of this merger/renaming transaction on UtiliCorp's Missouri customers.

However, as the Staff's recommendation is limited to UtiliCorp's stated "sole purpose" of this transaction, the changing of the company name, and because the recommendation contains conditions, which should operate to protect Missouri customers, Public Counsel substantially supports the Staff recommendation, with minor alterations.

6. Public Counsel identified five (5) conditions which the Staff seeks to impose. Public Counsel's position on each is as follows:

(1) The Commission specify that nothing in the Commission's order shall be considered a finding by the Commission of the value of this transaction for ratemaking purposes. Public Counsel agrees with this recommendation.

(2) The Staff recommends that the Commission state that the Commission's order not be deemed precedent for any future transactions, even if the facts may be similar. Public Counsel agrees with this recommendation.

(3) The staff recommends that the Commission condition its approval on the premise that any adverse effects of this merger shall be borne by UtiliCorp's stockholders, and not by Missouri ratepayers. Public Counsel agrees with the basis for this recommendation, but believes that the language should be even stronger, to wit, that the Commission condition its approval on the acceptance by the Company of the requirement that any adverse effects shall be borne by stockholders in UtiliCorp, under whatever name, rather than by Missouri customers.

(4) The staff recommends that the Commission require that all records pertaining to this transaction shall be maintained at UtiliCorp's headquarters and made available to the Staff as the Staff deems necessary. Public Counsel agrees that these records should be maintained as proposed, but would ask the Commission to also direct

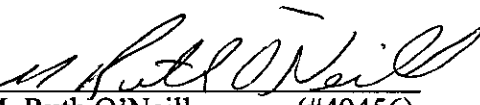
UtiliCorp, by whatever name, to also make those records available to Public Counsel as Public Counsel deems necessary.

(5) The Staff further recommends that, if the merger is approved, rather than filing entirely new tariffs for its Missouri Public Service and St. Joseph Light & Power Divisions, UtiliCorp, under its new name, should file adoption notices adopting the electric, gas, and steam tariffs on file for MPS and SJLP, similar in form to the ones UtiliCorp filed in Case No. EM-2000-292. Public Counsel has no objection to this recommendation.

WHEREFORE, subject to the above modifications suggested in paragraph 6 above, Public Counsel supports the Staff recommendation in this case. Therefore, Public Counsel respectfully recommends that the Commission conditionally approve the application to merge for the sole purpose of effecting a corporate name change.

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 6th day of February, 2002:

GENERAL COUNSEL
Missouri Public Service Commission
P O Box 360
Jefferson City, MO 65102

PAUL BOUDREAU
Byrdon, Swearengen & England PC
P. O. Box 456
Jefferson City, MO 65102-0456

A handwritten signature in cursive script, appearing to read "Paul Boudreau", is written over a horizontal line.