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October 3, 2000

FILED<sup>3</sup>

OCT 03 2000

Missouri Public Service Commission  
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Missouri Public  
Service Commission

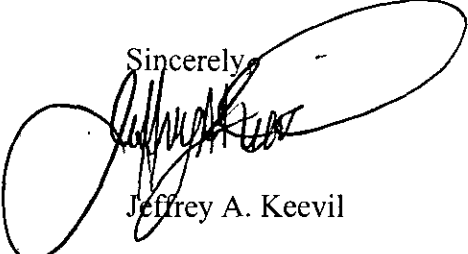
RE: Case No. EM-2000-292  
UtiliCorp United Inc./St. Joseph Light & Power Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and the appropriate number of copies of the REPLY 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 03 2000

Missouri Public  
Service Commission

In the Matter of the Joint Application of )  
UtiliCorp United Inc. and St. Joseph )  
Light & Power Company for Authority to )  
Merge St. Joseph Light & Power Company )  
with and into UtiliCorp United Inc., and, )  
in Connection Therewith, Certain Other )  
Related Transactions. )

Case No. EM-2000-292

REPLY BRIEF OF THE CITY OF SPRINGFIELD, MISSOURI,  
THROUGH THE BOARD OF PUBLIC UTILITIES

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October 2000

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In the Matter of the Joint Application of       )  
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Related Transactions.       )

Case No. EM-2000-292

**REPLY 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 Granting Request for Extension of Time to File Reply Briefs issued on September 27, 2000, submits this Reply Brief. This Reply Brief will focus on those portions of the initial brief of UtiliCorp United Inc. ("UCU") of most direct concern to Springfield. Since these issues were addressed in detail in Springfield's initial brief filed herein, attempt will be made to avoid, to the extent possible, repeating facts and arguments presented in Springfield's initial brief; however, Springfield would direct the Commission to the discussion of the issues of Transmission Access and Reliability (and conditions associated therewith) and Market Power (and associated conditions) set forth in its initial brief for a full explication of the issues addressed herein. Furthermore, failure of this Reply Brief to address any matters set forth in the initial brief of UCU or any other party should not be deemed as agreement

therewith unless specifically so stated. For convenience purposes, this brief will use the same section headings and numbers used by UCU in its initial brief.

*Market Power*

32. *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?*

In its brief, UCU relies upon the testimony of UCU witness Rick Kreul for the proposition that there will be no reduction in available transmission capacity (ATC) post-merger. First, it must be remembered that, as exhaustively discussed in Springfield's initial brief (pages 6-11), Mr. Kreul's testimony is simply not credible. For example, as stated therein, although he testified that ATC would be increased post-merger he did not know by how much ATC will increase, nor did he know how much ATC will be gained on a north to south transfer of electricity or on a south to north transfer. (Tr. 1252).

Second, it should be noted that UCU's position is in contradiction to the position it took in its comments to FERC in Docket No. RM99-2-000, which are attached to Mr. Kreul's direct testimony (Ex. 12) as Schedule RCK-11. On pages 16-17 of Schedule RCK-11 to Exhibit 12, 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.

Finally, UCU cites the case of *Transmission Access Policy Group, et al. v. FERC*. The Commission should be aware that this decision is still subject to *certiorari* to the Supreme Court, so any reliance on it at this point would be risky at best.

*Transmission Access and Reliability*

33. *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?*

Since the record in this case is devoid of factual evidence to support UCU's position on this issue in this case – which should in itself prove that UCU has not conducted and provided adequate studies of the impact of the merger upon the region's transmission system – in its brief UCU merely states that this is a matter for FERC, not the state commission, and refers to the FERC's order conditionally approving its merger with St. Joseph and Empire (the Commission should be aware that the Order Conditionally Approving Mergers is currently pending rehearing and could be changed). As stated in Springfield's initial brief, the Companies (*i.e.*, UCU) have not analyzed the impact of their combined uses of the region's transmission system upon transmissions customers such as, but not limited to, Springfield (with the resulting impact upon such transmission customers' retail customers). (Ex. 300, p. 23). Staff witness Proctor agrees (Ex. 715, pp. 7-8; *see also*, Ex. 715, pp. 3-4), and even states "that the Commission should support region-wide optimization of the transmission system." (Ex. 715, p. 7).

Even though it now opposes a region-wide study by the Southwest Power Pool such as that recommended by Mr. Russell and Dr. Proctor, in its comments to FERC in Docket No. RM99-2-000, which are attached to Mr. Kreul's direct testimony (Ex. 12) as Schedule RCK-11, UCU stated that "regional approaches are necessary." (Ex. 12, Schedule RCK-11, p. 1).

In regard to UCU's contention that the State should not concern itself with transmission since transmission, according to UCU, is under the jurisdiction of FERC (a recurring theme throughout UCU's brief on these issues), several matters should be mentioned. First, in his rebuttal testimony, Mr. Russell addressed at length why a state commission such as the Missouri Commission should be concerned about, and take an active role regarding, transmission. (Ex. 300, pp. 4-12). His testimony is unrefuted by competent, credible evidence on the record. Second, UCU's comments to FERC in Docket No. RM99-2-000 recognize that "state regulatory authorities effectively determine the rate of return on equity on all but a relatively small percentage of [transmission-owning utilities'] transmission assets." (Ex. 12, Schedule RCK-11, p. 19). Third, it was recognized in FERC's Order No. 2000 that state commissions possess authority over siting, planning and reliability of the transmission system. (*See*, Order No. 2000, pp. 629, 633, 635). Fourth, at the hearing in this matter, Mr. Green of UCU stated that various state commission take an active role in transmission reliability issues; approve utilities' plans for transmission systems; and that state jurisdiction over transmission varies from state to state (Tr. 189-190) - which could not be true if the states were preempted at the federal level. Fifth, this Commission has enacted certain rules

relating to transmission issues. *See*, 4 CSR 240-20.080(3)(E); 4 CSR 240-22.040(1), (3), (5), (6), (7).

Although the FERC order conditionally approving the mergers, referenced by UCU, may require additional studies, that fact should not eliminate the concerns of this Commission with respect to harm to Missouri ratepayers and detriments to the public interest of Missouri. The FERC order contains numerous statements indicating that the merger is detrimental to the public interest. FERC's order is contrary to UCU's position and supportive of Springfield's recommendations in the instant case. Also, any studies ordered by this Commission and done in collaboration with the Missouri PSC Staff and Springfield will be more rigorous and targeted to local problems and almost certainly will satisfy FERC's requirements. Thus, the studies recommended by Springfield and Staff in Missouri should be done to safeguard Missouri concerns and will incidentally add nothing to UCU's burden to file at FERC, UCU's statements to the contrary notwithstanding. The harm occasioned by the merger will occur as soon as the merger takes effect and transactions between the Joint Applicants (which are now separate companies and separate control areas) begin. The harm will only worsen as integration proceeds. Therefore, the studies are needed now, before the merger is approved, not later, as required by the FERC order.

Even the FERC Order Conditionally Authorizing Mergers, upon which UCU relies, noted that Applicants have not accounted for the effects of their joint dispatch on transmission availability. Beginning on page 10 of the Order Conditionally Authorizing Mergers 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)

Finally, as stated in Springfield's initial brief, the Commission should bear in mind the standard applicable to this case – whether the proposed merger has been proven to be not detrimental to the public interest. This analysis should look to the effect of the merger on the Missouri public at large (*In the Matter of the Application of Carol June Tyndall*, 3 Mo. P.S.C. 3d 28 at 48 (1994)) given the regional implications and impact of the proposed merger. As the undersigned asked during opening statements, aren't the citizens of Kansas City or Southwest Missouri members of the public simply because they don't live within the certificated service territory of UCU or St. Joseph Light & Power Company? (Tr. 87). It is this Commission's duty to ensure that these citizens are not detrimentally affected by this proposed merger, and the Commission should not abdicate that duty to the FERC.

34. *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?*

UCU's initial brief fails to explain the contradiction between its stated position in this case and certain evidence which UCU itself presented in this case, namely the UCU comments to FERC in Docket No. RM99-2-000 (Ex. 12, Schedule RCK-11). In Exhibit 12, 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. 12, 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. 12, Schedule RCK-11, p. 10, footnote 8).<sup>1</sup> 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. Rather than address this issue directly – which it could not do, given its stated position to FERC – in its brief UCU once again simply tells the state commission that this is a FERC matter. Therefore, Springfield would refer the Commission to the discussion under Point 33 above regarding UCU's contention that the State should not concern itself with transmission since transmission, according to UCU, is under the jurisdiction of FERC.

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<sup>1</sup> Springfield would also refer the Commission to the discussion under Point 32 above regarding ATC and CBM, and UCU's comments to FERC regarding ATC and CBM.

35. *Could a post-merger UtiliCorp re-functionalize its transmission facilities in anti-competitive ways to the detriment of the public?*

Under this point of its brief, UCU refers to the “seven factor test;” Springfield also addressed the seven factor test in its initial brief. As stated in Springfield’s initial brief, FERC Order No. 888 permits utilities to refunctionalize their transmission facilities to transmission or distribution pursuant to 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. 11, 46). In its brief, UCU once again simply tells the state commission that this is a FERC matter. Therefore, Springfield would refer the Commission to the discussion under Point 33 above regarding UCU’s contention that the State should not concern itself with transmission since transmission, according to UCU, is under the jurisdiction of FERC.

36. *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?*

Under this point of its brief, UCU once again relies upon the testimony of Mr. Kreul - as exhaustively discussed in Springfield’s initial brief (pages 6-11), Mr. Kreul’s testimony is simply not credible. UCU also refers to the *Order Conditionally Authorizing Mergers* which was issued by FERC – however, rehearing of that order is pending and the order may be changed. Finally, UCU once again tells the state commission that this is a FERC matter. Therefore, Springfield would refer the Commission to the discussion under Point 33 above regarding UCU’s contention that the State should not concern itself

with transmission since transmission, according to UCU, is under the jurisdiction of FERC.

*Market Power Conditions*

60. *Respecting transmission capacity, should Springfield's proposed conditions regarding Transmission Access and Reliability (which are set forth in detail herein under the heading "Transmission Access and Reliability Conditions") be adopted?*

See discussion below.

*Transmission Access and Reliability Conditions*

61. *(a) Should the Commission order the Joint Applicants to conduct production cost, load flow and stability 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, prior to approval of the merger and if so, what should such studies contain? (b) Should the Joint Applicants be ordered to provide these studies in hard copy and electronic form to the other parties, and should the Commission keep this case open until such time as the studies have been completed and all parties have been allowed sufficient time to review/analyze and file comments in this case on such studies? (c) Should the Joint Applicants be required to construct and/or upgrade, at their expense, transmission facilities necessary to insure that their integrated operation will not adversely impact others? (d) If the answer to (c) is yes, what transmission facilities?*

UCU once again tells the Commission that this is a FERC matter and that the Commission cannot get involved. Therefore, Springfield would refer the Commission to

the discussion under Point 33 above regarding UCU's contention that the State should not concern itself with transmission.

62. *Should the Commission impose conditions on the merger such that:*

- *The Joint Applicants be required by the Commission to commit that with respect to any and all generating resources associated with any one of their existing four 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 and curtailing 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 to import power through constrained interfaces so as to free up its local generating resources for off-system sales?*

Same response as under Point Number 61.

- *The Joint Applicants not be allowed to combine any or all of their existing control areas without first submitting their plans for such combination to peer group review and approval by the SPP ISO/RTO and the affected regional reliability councils?*

See the discussion under Point Number 61.

- *The merged Companies be required to schedule all power flows and/or reserve transmission capacity on the relevant OASIS for purposes of carrying out any internal dispatch between what are now four geographically isolated pockets of load and generation in four 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 it out?*

See the discussion under Point Number 61.

- *If the burdens on Springfield attributable to internal dispatch of the Joint Applicants turn out to be substantial (i.e., a substantial increase in curtailments of Springfield's firm schedules from Montrose), the merged company be 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 the Joint Applicants' separate systems?*

See the discussion under Point Number 61.

- *The merged company be required to put all of its transmission facilities in Missouri and Kansas under the control of the SPP ISO/RTO in a single zone under the SPP transmission tariff and that the merged company join - and maintain membership in - the SPP ISO/RTO and be required to file an integrated open access transmission tariff ("OATT") and an integrated transmission rate for their four control areas in Missouri and Kansas?*

See the discussion under Point Number 61.

- *UtiliCorp be required to (i) 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?*

See the discussion under Point Number 61 and Point Number 32.

*63. Should UtiliCorp be required to not seek refunctionalization of any currently categorized transmission lines of the merging companies that operate at or above 69kV?*

See the discussion under Point Number 61.

*64. Should the Joint Applicants be required (i) to establish and implement a single standard for transmission system design and operation for the entirety of the merged company and (ii) to comply with the Southwest Power Pool Criteria?*

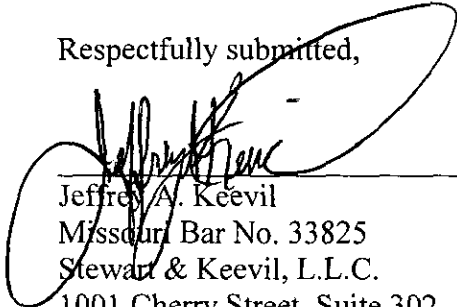
See the discussion under Point Number 61.

## **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 in Springfield's initial brief; no competent and substantial evidence on the record refutes this, nor does UCU's initial brief, for the reasons set forth 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 in Springfield's initial brief.

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 3rd day of October, 2000.

