

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
December 21, 1999**

CASE NO: EM-2000-292

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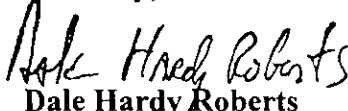
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 21st
day of December, 1999.

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

**ORDER DENYING MOTION TO REQUIRE MARKET POWER STUDY
AND ADOPTING PROCEDURAL SCHEDULE**

On October 19, 1999, UtiliCorp United Inc. (UtiliCorp) and St. Joseph Light & Power Company (SJLP) (together known as Applicants) filed a Joint Application seeking authority to merge SJLP with and into UtiliCorp. Along with their application, Applicants filed a Motion to Establish Procedural Schedule. On October 26, the Commission notified all interested parties that they would be allowed until ten days following the deadline for filing of requests for intervention, to file their responses to Applicants' Motion to Establish Procedural Schedule.

An Order and Notice issued on October 26, established an intervention deadline of November 15. On November 17, the Commission issued an order that granted applications to intervene filed by AG Processing Inc. (AGP), the Missouri Department of Natural Resources (MDNR), Union Electric Company d/b/a AmerenUE (AmerenUE), and the City

of Springfield, Missouri, through the Board of Public Utilities, (Springfield). On November 19, the Office of the Public Counsel (Public Counsel) filed a Motion to Require Market Power Study. That motion requested that the Commission require Applicants to file additional direct testimony including a market power study. Between November 22 and November 29, the Staff of the Commission (Staff), Public Counsel, Springfield and MDNR filed timely responses to Applicant's Motion to Establish Procedural Schedule. In response to a Motion filed by Applicants on November 23, the Commission issued an order on November 24, that allowed Applicants to file, no later than December 3, a combined response to the Motion to Require Market Power Study and a reply to the other parties' responses to the Motion to Establish Procedural Schedule. Applicants filed the contemplated response on December 3.

A prehearing conference was held on December 6. At that conference, the parties were directed to file a proposed procedural schedule on or before December 14. They were also informed that any party wishing to reply to Applicants' December 3 response could do so on or before December 13. Staff, Public Counsel, Springfield, and AGP filed replies on December 13.

The parties were unable to agree upon a single proposed procedural schedule and instead, Applicants, Staff and Public Counsel filed separate proposed procedural schedules. MDNR and AGP supported Staff's proposal and Springfield suggested that the Commission not issue a procedural schedule until after the parties have had an opportunity to evaluate the

anticipated merger between UtiliCorp and The Empire District Electric Company (Empire).

Applicants' proposed procedural schedule would bring this matter to hearing on April 10-14, 2000. Public Counsel suggests that the hearing begin on January 2, 2001. Staff's proposal does not suggest specific procedural dates, but instead suggests that the schedule in this case follow the pattern established in previous merger cases. Public Counsel's and Staff's proposals are both based on the assumption that the Commission will: 1) require Applicants to submit a market power study; 2) require Applicants to supplement its direct testimony; and 3) consolidate the procedural schedule in this case with the UtiliCorp/Empire merger case. Each of those assumptions must be dealt with before the Commission establishes a procedural schedule for this case.

First, as previously indicated, on November 19, Public Counsel filed a Motion to Require Market Power Study. In that motion, Public Counsel requests that the Commission order Applicants to "file additional direct testimony including a market power study that defines the relevant market for the proposed merged entity, provides quantitative analysis of the horizontal and vertical market power that the Applicants would have in wholesale markets and price deregulated markets, and proposes measures that would mitigate any such market power." Staff, AGP, MDNR, and Springfield echo public Counsel's request. Applicants responded to Public Counsel's motion by arguing that the Federal Energy Regulatory

Commission (FERC) is the proper forum for examining wholesale market power issues. Applicants indicate that they have already filed a wholesale market power study in the merger case pending with the FERC. Applicants acknowledge that retail market power is also an important issue that should be reviewed by the Commission. However, Applicants argue that retail competition does not now exist in Missouri and therefore, no meaningful retail market power study can be accomplished at this time.

The Commission will deny Public Counsel's motion and will not require Applicants to file a market power study as part of its direct testimony. At this time there are too many uncertainties surrounding the future of retail competition in Missouri to make any market power study definitive. Therefore, there is no sufficient reason to delay the Commission's consideration of this merger application while such a study is prepared. It is important to understand that the Commission is not, by this order, excluding consideration of market power issues in this case. The Commission is merely declining to require Applicants to file a market power study as part of its direct testimony. If the other parties wish to address the retail market power issue in their rebuttal testimony and at the hearing they are free to do so.

Second, Staff, as well as other parties, suggest that the direct testimony filed by Applicants is deficient in that it does not adequately address the allocation of merger savings and costs between UtiliCorp and SJLP and within the electric, gas and steam heating operations of SJLP.

Staff points out that Applicants have the burden of proving that their application meets the legal standards required for approval of a merger. Staff suggests that the Commission order Applicants to file additional direct testimony to address the areas that Staff believes have not been adequately addressed. Staff also suggests that the procedural schedule be delayed to allow Applicant's direct testimony to be supplemented.

Staff is correct that Applicants have the burden of producing sufficient evidence to support their application. If Staff and other parties believe that Applicant's testimony is insufficient they should point out those deficiencies in their rebuttal testimony and at the hearing. If Applicant's evidence is indeed insufficient, Applicants risk having their application denied. However, at this time the Commission has not had an opportunity to consider and weigh the sufficiency of Applicant's evidence. Indeed, that is the purpose of the hearing that will be conducted. It would be inappropriate for the Commission to prejudge the sufficiency of Applicants' evidence. Applicants will not be required to file supplemental direct testimony.

Third, Staff, Public Counsel, AGP, MDNR and Springfield, all suggest that this case should be consolidated with the proposed merger between UtiliCorp and Empire. The UtiliCorp and Empire merger was filed with the Commission on December 15, and has been assigned Case Number EM-2000-369. On December 17, Public Counsel filed a Motion to Consolidate in both cases. Now that both merger cases have been filed, the Commission will consider Public Counsel's Motions to Consolidate. The Commission will

not, however, rule on those motions until after interested parties have been given an opportunity to intervene in the UtiliCorp and Empire merger case. The Commission will proceed forward in this case by issuing a procedural schedule.

The Commission will apply the conditions set out below to the procedural schedule in this case.

(A) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(B) Pursuant to 4 CSR 240-2.130(15), testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless the Commission has first established a protective order. Any testimony or schedule filed without a protective order first being established shall be considered public information.

(C) The parties shall agree upon and the Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing and the order in which they shall be called, and the order of cross-examination for each witness. The Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution.

(D) Each party shall file a statement of its position on each disputed issue. Such statement shall be simple and concise, and shall not contain argument about why the party believes its position to be the correct one.

(E) The Commission's general policy provides for the filing of the transcript within two weeks after the hearing. If any party seeks to expedite the filing of the transcript, such request shall be tendered in writing to the regulatory law judge at least five days prior to the date of the hearing.

(F) All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080. Briefs shall follow the same list of issues as filed in the case and shall set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(G) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the three copies for the court reporter, copies for the five Commissioners, the regulatory law judge, and all counsel.

IT IS THEREFORE ORDERED:

1. That the Motion to Require Market Power Study filed by the Office of the Public Counsel is denied.

2. That the following procedural schedule is adopted for this case, subject to the conditions discussed above:

<u>Date</u>	<u>Event</u>
October 19, 1999	Direct Testimony filed by UtiliCorp and SJLP
April 20, 2000, 3:00 p.m.	Rebuttal Testimony by all other parties
May 18, 2000, 10:00 a.m.	Prehearing Conference
May 25, 2000, 3:00 p.m.	List of Issues to be filed by Staff
June 15, 2000, 3:00 p.m.	Surrebuttal Testimony to be filed by all parties
June 22, 2000, 3:00 p.m.	Statements of Positions to be filed by all parties.
July 10-14, 2000, 8:30 a.m.	Hearing

3. That the prehearing conference and the evidentiary hearing will be held in the Commission's office on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing conference at: Consumer Services Hotline - 1-800-392-4211 or TDD Hotline - 1-800-829-7541.

4. That this order shall become effective on December 31, 1999.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
Schemenauer, and Drainer, CC., concur

Woodruff, Regulatory Law Judge

ALJ/Sec'y: Woodruff/Boyce

12-17
Date Circulated

EM-2000-292
CASE NO.

[Signature]
Lumpe, Chair

[Signature]
Crumpton, Commissioner

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

mod p 3, 4, 5, 6
Drainer, Vice-Chair

12-21
Agenda Date

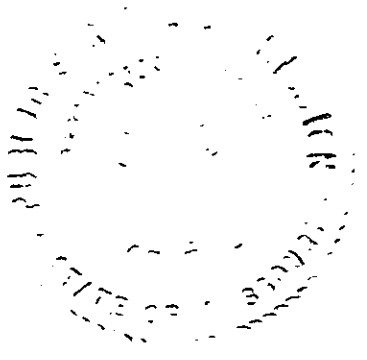
Action taken: 5-0 AA

Must Vote Not Later Than _____

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

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson
City, Missouri, this 21st day of December 1999.



Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge