

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 18, 2000**

CASE NO: EM-2000-292

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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 18th
day of January, 2000.

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)	<u>Case No. EM-2000-292</u>
with and into UtiliCorp United Inc., and,)	
in Connection Therewith, Certain Other)	
Related Transactions.)	

**ORDER DENYING THE CITY OF SPRINGFIELD'S APPLICATION
FOR REHEARING AND MOTION FOR RECONSIDERATION**

At a session of the Commission held on December 21, 1999, the Commission issued an Order Denying Motion to Require Market Power Study and Adopting Procedural Schedule. That order provided that it would become effective on December 31, 1999. On December 29, the City of Springfield, Missouri, through the Board of Public Utilities (City Utilities) timely filed an Application for Rehearing and Motion for Reconsideration. UtiliCorp United Inc. (UtiliCorp) and St. Joseph Light & Power (SJLP) filed suggestions in opposition to City Utilities' motion for rehearing on January 4, 2000.

The Application for Rehearing and Motion for Reconsideration urges the Commission to reconsider its decision to not require the applicants, UtiliCorp and SJLP, to prepare and file a retail market power study as part of their direct testimony. City Utilities argues that the issue of market power is a crucial issue in electric company merger cases. By not

requiring UtiliCorp and SJLP to file a market power study as part of their direct testimony, City Utilities argues that the Commission has shifted the burden of proof to the other parties to prove that the merger is detrimental to the public interest, rather than placing the burden of proof on UtiliCorp and SJLP to prove that the merger is not detrimental to the public interest.

In support of this argument, City Utilities points out that in an earlier electric merger case, In the Matter of the Application of Union Electric Company, 5 Mo. P.S.C. 3d 157 (1996), the Commission ordered the parties to address the issue of market power. From this, City Utilities argues that UtiliCorp and SJLP should be required to produce evidence, as part of its direct testimony, that the proposed merger is not detrimental to the public interest due to market power considerations. City Utilities argues that if it is to rebut UtiliCorp and SJLP's position regarding market power, then UtiliCorp must be required to include evidence supporting its position in its direct testimony.

In its suggestions in opposition to City Utilities' motion for rehearing, UtiliCorp and SJLP indicate that there is no express statutory or rule requirement that an electric utility file a market power study in support of a merger application. They argue that the fact that the Commission has required such a study in an earlier case does not mean that such a study must be required in this case. UtiliCorp and SJLP say that they have made a prima facie showing that their merger is not detrimental to the public interest in their prepared direct testimony and that the burden of persuasion has now shifted to those parties who would

contend otherwise. With respect to wholesale market power concerns, UtiliCorp and SJLP indicate that they have filed a wholesale market power study in connection with their merger case pending before the FERC. They suggest that any concerns about market power at the wholesale level should be addressed at the FERC.

City Utilities correctly points out that the Commission has required applicants in prior electric merger cases to prepare and file a retail market power study as part of their direct testimony. However, the Commission's experience in those cases has led the Commission to conclude that the preparation and filing of a retail market study should not be required. At this time no one knows when or if retail competition will become a reality in Missouri. Any number of parties could envision any number of scenarios about the nature of that competition. But until retail competition does become a reality, those scenarios would only be speculative. The Commission is not willing to delay the consideration of UtiliCorp and SJLP's application by requiring the applicants to engage in speculation about what the future might bring.

Section 386.500, RSMO (1994) provides that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." City Utilities has, in the judgment of the Commission, failed to establish sufficient reason to grant its Application for Rehearing and Motion for Reconsideration.

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing and Motion for Reconsideration filed by the City of Springfield, Missouri, through the Board of Public Utilities, is denied.

2. That this order shall become effective on January 18, 2000.

BY THE COMMISSION



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/Boyle

1-13
Date Circulated

EM-2000-292
CASE NO.

[Signature]
Lumpe, Chair

[Signature]
Crompton, Commissioner

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

[Signature]
Drainer, Vice-Chair

1-18
Agenda Date

Action taken:

5-OAS

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 18TH day of January 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

