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April 24, 2000

FILED²

APR 24 2000

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

**RE: UtiliCorp United Inc. d/b/a Missouri Public Service, The Empire District
Electric Company and St. Joseph Light & Power Company - Case No. EE-2000-592**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of the Reply to Staff's Response In Opposition to Application for Waivers. Please stamp the enclosed extra copy "filed" and return same to me.

If you have any questions, then please give me a call.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean Cooper

Dean L. Cooper

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DLC/rhg

Enclosures

cc: Mr. Steve Dottheim, PSC
Mr. Doug Micheel, OPC

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

FILED²

APR 24 2000

Missouri Public
Service Commission

In the Matter of the Joint Application)
of UtiliCorp United Inc. d/b/a)
Missouri Public Service, The Empire)
District Electric Company and)
St. Joseph Light & Power Company)
for Waivers of Commission Rules)
4 CSR 240-20.015, 4 CSR 240-40.015,)
4 CSR 240-40.016 and CSR 240-80.015.)

Case No. EE-2000-592

REPLY TO STAFF'S RESPONSE
IN OPPOSITION TO APPLICATION FOR WAIVERS

Come now UtiliCorp United Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS"), The Empire District Electric Company ("Empire") and St. Joseph Light & Power Company ("SJLP"), by and through their counsel, and, in response to the Missouri Public Service Commission Staff's ("Staff") Response in Opposition to Application for Waivers, state to the Missouri Public Service Commission ("Commission") as follows:

1. UtiliCorp, Empire and SJLP (collectively, the "Applicants") filed an Application for Waivers ("Application") with the Commission on March 22, 2000. The Application requested temporary waivers from the Commission's newly promulgated affiliate transaction rules. The primary basis for these waivers is the Order Granting Stay issued by the Circuit Court of Cole County, in Cases Nos. 00CV323156 and 00CV323164 on February 25, 2000. This Order stayed the effectiveness of the affiliate transaction rules as to certain utilities¹, and would thus prohibit the enforcement of the affiliate rules as to some, but not all, utilities. This uneven application of the rules creates an uneven playing field, uncertainty and immediate cost to the Applicants that would not apply to other Missouri utilities. As a result, the Applicants requested that the Commission grant

¹ Atmos Energy Corporation; Arkansas Western Gas Company d/b/a Associated Natural Gas; Missouri Gas Energy (a division of Southern Union Company); Laclede Gas Company; Trigen-Kansas City Energy Corporation; and, Ameren Corporation.

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them waivers from the rules until such time as the effectiveness of the Orders and resulting rules is no longer stayed by the Missouri courts.

2. On April 13, 2000, the Staff filed its Response in Opposition to Application for Waivers ("Staff Response").

PARTIAL APPLICATION NOT APPROPRIATE

3. The Staff, in part, "maintains that the purposes of the affiliated transaction rules can be better, and at least partially, accomplished by the Commission denying the Joint Application For Waivers than by the Commission granting the relief sought by this application." (Staff Response, p. 2).

4. The Commission has previously addressed a similar piecemeal approach to affiliate transaction regulation and ruled against the Staff. In Commission Case No. GR-95-273, the Staff recommended that the Commission order UtiliCorp to place in its tariff certain Standards of Conduct related to affiliate transactions. The Commission found in that case that absent evidence of any improper transactions between UtiliCorp and an affiliate it would be improper to impose tariffed standards of conduct on UtiliCorp alone. (*In re Missouri Public Service's 1994-1995 ACA*, Case No. GR-95-273 (1998), p. 23-24).

5. Similarly, there is no evidence of any improper affiliate transactions involving UtiliCorp, Empire or SJLP in this case and no such finding in the cases that lead to the affiliate transaction rules. Likewise, even if there are to be affiliate transaction rules, it is much better policy to apply them to all public utilities, not merely to some.

SIGNIFICANT EXPENDITURE

6. The Staff, in arguing that the required expenditure of funds is insignificant, alleges that its arguments made to the Circuit Court of Cole County as to "great or irreparable harm" are "no less valid now because the Circuit Court issued its Order Granting Stay." The Staff may continue

to believe in the validity of these arguments. However, this does not make them relevant to this proceeding. No matter what the basis, a lawful, valid and effective stay issued by the Circuit Court is in place which has stayed the effectiveness of the affiliate transaction rules as to numerous public utilities.

7. The Staff next suggests that there is no significant expenditure involved with affiliate transaction rule compliance because of an estimate that was previously provided by SJLP. The Staff also alleges that it has believed that costs of compliance “have been, for whatever reason, overstated.” (Staff Response, p. 4). The Staff should be reminded that while individual utilities may have had different estimates, its own estimates found in the official filings associated with the rules state that compliance with the rules will cost \$100,000 per utility in the first year of effectiveness and \$75,000 in each succeeding year. These figures were presumably calculated by the Staff after a review of several utility responses as well as with full knowledge of what was intended by the rules. It would seem to be somewhat difficult for the Staff to now attempt to minimize its own estimates.

8. Lastly, the Staff argues, in an attempt to minimize financial impacts, that “if a utility has appropriate recordkeeping in place, then any additional recordkeeping expenses required by the rules should not be significant.” (Staff Response, p. 3). This was based on the Staff’s argument that “utilities within the Commission’s jurisdiction already should be maintaining their books and records in a manner that keep their regulated and unregulated operations substantially separate.” (Id.). If everything required by the affiliate transaction rules is already required by existing statutes and regulations, it is very curious that the Staff has gone to the trouble of proposing the affiliate transaction rules. It appears that the reason Staff has gone to this trouble is because there are very detailed requirements in the rules that go far beyond a mere requirement to maintain separate books and records. The affiliate transaction rules require the tracking and production of a great amount of

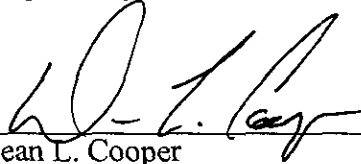
information. This is why the Staff has estimated the compliance cost to be \$100,000 in the first year and \$75,000 in year thereafter. The only conclusion can be that significant expenditures are required to achieve compliance with the rules.

9. A grant of the requested waivers in this case until a final decision has been made by the Missouri courts will provide an even playing field for both utilities and regulators until the conclusion of the appellate process and prevent the expenditure of significant dollars associated with rules compliance until this is deemed to be necessary.

WHEREFORE, UtiliCorp, Empire and SJLP request a Commission order:

- a) granting them waivers for good cause from Commission Rules 4 CSR 240-20.015, 4 CSR 240-40.015, 4 CSR 240-40.016 and 4 CSR 240-80.015 until such time as the effectiveness of the Orders and resulting rules is no longer stayed by the Missouri courts; and,
- b) granting such further relief as may be necessary which is consistent with the relief requested herein.

Respectfully submitted,



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ATTORNEYS FOR UTILICORP UNITED INC.
D/B/A MISSOURI PUBLIC SERVICE, THE
EMPIRE DISTRICT ELECTRIC COMPANY
AND ST. JOSEPH LIGHT & POWER COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was hand-delivered on this 24th day of April, 2000, to the following:

Mr. Doug Micheel
Office of Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Steven Dottheim
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

