

FILED³

MAR 07 2002

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Missouri Public
Service Commission

Missouri Coalition for Fair Competition)
)
Complainant,)
v.)
)
Missouri Public Service, a Division of)
UtiliCorp United Inc.)
)
Respondent.)

Case No. EC-2002-277

and

Missouri Coalition for Fair Competition,)
)
Complainant,)
v.)
)
St. Joseph Light & Power, a Division of)
UtiliCorp United Inc.)
)
Respondent.)

Case No. EC-2002-278

**REPLY OF COMPLAINANT TO UTILITIES MOTION TO DISMISS &
ALTERNATIVELY MOTION FOR MORE DEFINITE STATEMENT**

COMES NOW the Missouri Coalition for Fair Competition by and through its attorney's and
replies as follows to the Motion of the utility in each case to dismiss.

1. A Cause of Action is stated as the Complainant alleges violations of the affiliated
transaction law by the utility under §386.754 - 386.764 RSMo cum. Supp. 1998.

2. Under §386.754 (1) supra, the definition of affiliate involves control of the HVAC
contractor by the utility which is a matter of discovery (Complaint paragraph 3 says that the utility

9

is offering HVAC services through affiliates, i.e. those controlled by the utility is a matter of discovery and proof not statements of counsel in a Motion to Dismiss).

3. Section 386.754 (2) supra HVAC services include warranty, maintenance, modernization and repair of HVAC equipment, not merely financing as paragraph 2 above. This is also a matter of discovery. The Complainant believes that the contractual arrangements between utilities and contractor will demonstrate control, the providing of warranty, maintenance, modernization and the repair of HVAC equipment.

4. The utilities do not want discovery or they would be willing to proceed on the merits of the allegations. In the course of or at the conclusion of discovery, the Complainant may need to amend its complaint as the case unfolds (For example, there is a strong likelihood of tariff violations which will be mentioned below). The Complainant is entitled to discovery as a matter of due process.

5. The utilities have suggested they are protected by tariffs on financing - the tariffs (herewith attached) do not provide for a contractual relationship between the utilities and the affiliated contractor, the sharing of costs, training, warranty, maintenance, modernization, repair of HVAC equipment and exclusivity in that relationship. Nor do the tariffs provide for the manner and method of advertising or the subsidizing the contractor or allowing the costs to pass onto the consumer as part of the rate structure.

6. Indeed, the utilities have not followed 4CSR240.14.010 - 4CSR240.14.040 on utility promotional practices which recognize (as does the affiliated transaction law) and defines affiliate as any person who directly or indirectly controls or is controlled by or is under common control of a public utility 4CSR240.14.010 (6). In these cases, we believe discovery will show that affiliate transactions of the utilities by contract violate these rules and establish that no Promotional Tariff is

on file or approved by the Commission for the promotions in these cases as required by 4CSR240.14.040.

7. 4CSR240.14.030(2) prohibits promotional practices that discriminate against anyone in its offering. The promotional practices in these cases violate this rule. As to this new promotion (Power Tech), there is no tariff. Investigation by the staff will show the exclusive nature of the agreements between the utilities and the HVAC contractor and the control of the utilities over the contractor. The Promotional Practice rule does not contemplate the discriminatory promotion in these cases.

8. The utilities complain that Complainant did not call them first, for all the good it would do. Frankly, pleading the statute is sufficient because the statute does not require the Complainant to notify, call, complain or discuss with the utility. The Coalition acknowledges that it did not contact either utility with precedent for this filing in a prior case with Ameren UE, previously before this Commission and will file a Corrective Notice, if need be.

9. If permitted discovery, we believe that the utilities have violated the heart and soul of §386.754 - 386.764 RSMo 2000. It is not just in their brochures where there is no disclaimer language as the law requires. It is in the written agreements between the utilities and the affiliated HVAC contractor. It is not simply financing. It is control over the contractor and the executive relationship under the agreements.

10. Finally, the complaint rule calls for a statement of the nature of the complaint 4CSR240.2.070. It does not call for "fact" pleading. It is "notice" pleading. We would provide a greater "notice" pleading or complaint outlining the issues already plead and others mentioned. We encourage the Commission to have its staff examine all facts and not simply say it is merely financing.

As Complainant, we request permission to discover the facts. Section 386.762 (1), (2) RSMo supra provides that the PSC investigates the entire program not just the complaints. If need be, we are willing to amend our pleading broadening it into the other mentioned areas, as well as the affiliate practices.

11. Whether the HVAC contractor is an independent contractor will depend on the facts. Discovery will demonstrate that the relationships in this case are as affiliate.

12. There is no tariff indicating that the utilities were engaged in HVAC services 5 years before August 28, 1998 contrary to the affirmative defense of the utilities.

WHEREFORE, Complainant prays that its Complaint not be dismissed, that Complainant be permitted to go forward with discovery or to amend its complaint as it may be needed, that the Staff investigate and examine the entire relationship of the utilities to the HVAC contractor in these cases, including control, promotions, allocation of costs affecting the rates and for such further relief as may be appropriate in these cases.

Respectfully submitted,



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ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was mailed, first-class postage prepaid, this 7 day of March, 2002, to the following:

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102-7800

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Missouri Public Service Commission
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Jefferson City, MO 65102

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Light & Power, a division
of UtiliCorp United, Inc.
520 Francis Street
P.O. Box 998
St. Joseph, MO 64502-0998

Paul A. Boudreau
Brydon, Swearingen & England, P.C.
312 East Capitol Avenue
Jefferson City, MO 65102



Terry C. Allen

MISSOURI PUBLIC SERVICE
KANSAS CITY, MO 64138

FOR: All Territory Served by Missouri Public Service **RECEIVED**

PROMOTIONAL PRACTICES (CONTINUED) ELECTRIC	MAR 18 1998 MO. PUBLIC SERVICE COMM
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Residential Customer Purchase Plan

(a) This plan is available to residential customers who own and reside in one, two, three or four-family dwellings that are occupied on a year-round basis. These customers must meet uniform credit qualifications established by Missouri Public Service. Items that can be financed include:

- (1) Electric space heating equipment, including dual fuel heat pumps. A dual fuel heat pump is a heat pump that utilizes electricity as the primary source for heating and cooling and is operated with an alternative fuel as a secondary heating source.
- (2) Central air conditioning equipment.
- (3) Humidifier or electronic air cleaner when installed in conjunction with the above equipment.
- (4) Electric water heaters.
- (5) Other high efficiency or demand reducing technologies, either new or retrofit.
- (6) Extended warranties, installation, wiring and duct work pertaining to the above equipment.

(b) Equipment financed must exceed the NAECA minimum-efficiency requirements in effect at the time of financing.

(c) The annual rate of interest will be two percent above the annual prime rate as quoted in The Wall Street Journal for the first business day in December. This annual rate of interest will apply to the following calendar year loan repayments. The annual interest rate can change each year for the term of the loan. The financing period will be established by Missouri Public Service and can range from six to one hundred and twenty months. The interest rate and financing terms will not exceed those allowed by Missouri law, nor be more favorable than those generally prevailing in the applicable retail markets. The monthly loan repayment amount will appear as a separate item on the customer's regular monthly Missouri Public Service utility bill.

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97-394
APR 17 1998
98-103

MO. PUBLIC SERVICE COMM

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MISSOURI PUBLIC SERVICE

(Name of Issuing Corporation)

All Territory Served by Missouri
For Public Service

(Community, Town, or City)

NOV 17 1994

PROMOTIONAL PRACTICES (CONTINUED)

MO. PUBLIC SERVICE COM. 1.

Residential Customer Purchase Plan (Continued)

(d) Financing will be made available directly to customers by Missouri Public Service. Dealers or persons who sell and install equipment for residential customers can make information regarding this purchase plan available to their customers and complete and forward necessary paperwork to Missouri Public Service.

(e) Financing in excess of \$10,000 will be at the discretion of Missouri Public Service on a case-by-case basis. These customers must meet the same uniform credit qualifications established by Missouri Public Service for all other customers.

(f) Revenue and expenses associated with the operation of this plan shall be subject to Commission review in all general rate proceedings.

Commercial and Industrial Customer Purchase Plan

(a) This plan is available to new or existing Missouri Public Service commercial and industrial customers. Items that can be financed include:

- (1) Electric heating equipment.
- (2) Electric cooling equipment.
- (3) Electric process heating equipment, which includes commercial cooking.
- (4) Electric water heating equipment.
- (5) Other high efficiency or demand reducing technologies, either new or retrofit.
- (6) Extended warranties, installation, wiring and duct work pertaining to the above equipment.

(b) Equipment financed must exceed the ASHARE minimum-efficiency requirements in effect at the time of financing.

(c) Missouri Public Service shall put interested customers in contact with lending organization(s) that have funds available.

FILED

DEC 19 1994

DATE OF ISSUE November 17, 1994
(month day year)DATE EFFECTIVE December 15, 1994
Public Service Commission

St. Joseph Light & Power, a division of
UTILICORP UNITED, INC.
KANSAS CITY, MO 64138

FOR: All Territory served by St. Joseph Light & Power

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**RULES AND REGULATIONS
ELECTRIC**

FEB 07 2001

8. PROMOTIONAL PRACTICES

**MISSOURI
Public Service Commission**

- 8.01 Fuel Cost Comparisons - St. Joseph Light & Power assists customers and prospective customers in evaluating the optional energy to be used for any particular application.
- 8.02 Equipment Selection - St. Joseph Light & Power provides customers and prospective customers with educational information on the latest technical improvements in electric equipment.
- 8.03 Energy Consulting - St. Joseph Light & Power provides customers, prospective customers, suppliers or other interested parties with technical information.
- 8.04 Promotion of High Efficiency Electric Appliances - St. Joseph Light & Power encourages the use of high efficiency electric appliances by making available educational material. Upon request, St. Joseph Light & Power will supply to customers and prospective customers a cost comparison showing possible energy savings through the use of high efficiency equipment.
- 8.05 Educational Services - St. Joseph Light & Power engages in an educational process to familiarize the communities we serve with the benefits of electricity.
- 8.06 Residential Customer Purchase Plan
- A. This plan is available to residential customers who own and reside in one, two, three or four-family dwellings that are occupied on a year-round basis. These customers must meet uniform credit qualifications established by St. Joseph Light & Power. Items that can be financed include:
1. Electric space heating equipment, including dual fuel heat pumps. A dual fuel heat pump is a heat pump that utilizes electricity as the primary source for heating and cooling and is operated with an alternative fuel as a secondary heating source.
 2. Central air conditioning equipment.
 3. Humidifier or electronic air cleaner when installed in conjunction with the above equipment.
 4. Electric water heaters.
 5. Other high efficiency or demand reducing technologies, either new or retrofit.
 6. Extended warranties, installation, wiring and duct work pertaining to the above equipment.
- B. Equipment financed must exceed the National Appliance Energy Conservation Act ("NAECA") minimum-efficiency requirements in effect at the time of financing.
- C. The annual rate of interest will be two percent above the annual prime rate as quoted in The Wall Street Journal for the first business day in December. This annual rate of interest will apply to the following calendar year loan repayments. The annual interest rate can change each year for the term of the loan. The financing period will be established by St. Joseph Light & Power and can range from six to one hundred and twenty months. The interest rate and financing terms will not exceed those allowed by Missouri law, nor be more favorable than those generally prevailing in the applicable retail markets. The monthly loan repayment amount will appear as a separate item on the customer's regular monthly St. Joseph Light & Power utility bill.

FILED

DATE OF ISSUE: January 22, 2001
ISSUED BY: Gary Clemens, Regulatory Services

FEB 21 2001 February 21, 2001

**MISSOURI
Public Service Commission**

St. Joseph Light & Power, a division of
 UTILICORP UNITED, INC.
 KANSAS CITY, MO 64138

FOR: All Territory served by St. Joseph Light & Power

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RULES AND REGULATIONS ELECTRIC	FEB 07 2001
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8.06 Residential Customer Purchase Plan (Continued)

MISSOURI

Public Service Commission

- D. Financing will be made available directly to customers by St. Joseph Light & Power. Dealers or persons who sell and install equipment for residential customers can make information regarding this purchase plan available to their customers and complete and forward necessary paperwork to St. Joseph Light & Power.
- E. Financing in excess of \$10,000 will be at the discretion of St. Joseph Light & Power on a case-by-case basis. These customers must meet the same uniform credit qualifications established by St. Joseph Light & Power for all other customers.
- F. Revenue and expenses associated with the operation of this plan shall be subject to Commission review in all general rate proceedings.
- G. The failure of a customer to make payments under this plan shall not constitute sufficient cause to discontinue electric service.

8.07 Commercial and Industrial Customer Purchase Plan

- A. This plan is available to new or existing St. Joseph Light & Power commercial and industrial customers. Items that can be financed include:
 - 1. Electric heating equipment.
 - 2. Electric cooling equipment.
 - 3. Electric process heating equipment, which includes commercial cooking.
 - 4. Electric water heating equipment.
 - 5. Other high efficiency or demand reducing technologies, either new or retrofit.
 - 6. Extended warranties, installation, wiring and duct work pertaining to the above equipment.
- B. Equipment financed must exceed the American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc. ("ASHRAE") minimum-efficiency requirements in effect at the time of financing.
- C. St. Joseph Light & Power shall put interested customers in contact with lending organization(s) that have funds available.
- D. The lending organization will apply its usual and customary underwriting and credit due diligence standards in considering loan applications. The customer will apply for the loan directly with the lending organization. Each customer will be notified in writing by the lending organization if the loan is accepted or denied. St. Joseph Light & Power will not be involved in determining eligibility for loans.
- E. All terms and conditions of the loan, including but not limited to, interest rate, term, collateral, repayment provisions, representations and warranties of the customer, financial reporting and covenants, and defaults and remedies shall be negotiated between the lending organization and the customer.

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