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July 28, 2000

FILED²
JUL 28 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 Case No. GE-2000-639

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of UtiliCorp's Response to Staff Memorandum and Recommendation. Please stamp the enclosed extra copy "filed" and return same to me.

Thank you very much for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean L. Cooper
Dean L. Cooper *by Rg*

DLC/rhg

Enclosures

cc: Office of the Public Counsel
Robert V. Franson, Staff

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
JUL 28 2000

Missouri Public
Service Commission

In the Matter of the Application)
of UtiliCorp United Inc. d/b/a)
Missouri Public Service for a Waiver) Case No. GE-2000-639
of Commission Rules 4 CSR 240-40.015)
and 4 CSR 240-40.016 Concerning)
Capacity Release Credits.)

**UTILICORP'S RESPONSE TO
STAFF MEMORANDUM AND RECOMMENDATION**

COMES NOW UtiliCorp United Inc. ("UtiliCorp" or "Company") d/b/a Missouri Public Service, and, in response to the Missouri Public Service Commission ("Commission") Staff's ("Staff") Memorandum and Recommendation, states to the Commission as follows:

BACKGROUND

1. On April 12, 2000, UtiliCorp filed with the Commission its application for waiver for good cause from Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) as to capacity release credits. UtiliCorp sought a waiver from these Commission rules so that it could continue to operate in accordance with the process reviewed by the Commission in Cases No. GR-95-273 and GR-96-192. In those cases, the Commission examined the process by which UtiliCorp released capacity to unregulated affiliate entities and the credits provided in exchange for those releases. Releases to regulated affiliates and non-affiliates were not in dispute.

2. In Case No. GR-95-273, the Commission found as follows:

The Commission finds that UtiliCorp's captive firm customers received the appropriate capacity release credits during the 1994-95 ACA period. UtiliCorp presented persuasive testimony demonstrating that its sales of released capacity to UES were made at market rate. Staff's testimony corroborated UtiliCorp's assertion. Staff failed to demonstrate persuasively any competitive advantage accruing to UES as a result of these sales, or any improper affiliate transactions.

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3. The Commission repeated this finding in Case No. GR-96-192:

The Commission finds that it has previously addressed this issue in the Report and Order issued on September 23, 1998 in case number GR-95-273. In rejecting the Staff's position in that case, the Commission concluded that:

UtiliCorp's captive firm customers received the appropriate capacity release credits during the 1994-95 ACA period. UtiliCorp presented persuasive testimony demonstrating that its sales of released capacity to UES were made at market rate. Staff's testimony corroborated UtiliCorp's assertion. Staff failed to demonstrate persuasively any competitive advantage accruing to UES as a result of these sales, or any improper affiliate transactions.

STAFF RECOMMENDATION

4. On or about June 28, 2000, the Staff filed its Memorandum and Recommendation concerning UtiliCorp's application. The Staff recommended that the Commission issue an order with regard to capacity release transactions containing the following conditions:

- 1) That UtiliCorp be granted a temporary waiver solely for capacity release transactions for a two-year trial period; and,
- 2) UtiliCorp be required to collect and retain detailed documentation which shows that:
 - a) UtiliCorp is getting maximum market prices for any capacity release transactions which involve its affiliates;
 - b) the capacity release credits received by UtiliCorp from its affiliates are equal to or greater than the capacity release credits which it receives from non-affiliates;
 - c) UtiliCorp is not increasing the pipeline capacity in order to serve the capacity release needs of its affiliates; and,
 - d) provide this information to the Staff annually on the anniversary date of the Commission's order granting temporary waiver.

RESPONSE

5. UtiliCorp believes that a temporary waiver for a two year period (1) and the requirement that it provide information on the anniversary date of the Commission's order (2(d)) are reasonable and acceptable.

6. UtiliCorp also agrees that condition 2(c) (not increasing pipeline capacity to serve affiliates) is an appropriate subject for Commission review. However, this is a subject which is always relevant during the course of a rate proceeding. Thus, UtiliCorp would suggest that it should not be a condition placed on the grant of a waiver in this matter. Also, UtiliCorp believes that a list of the analyses and "detailed documentation" that it is required to "retain and collect" concerning this issue should be identified in order for it to be included in the Company's annual ACA filing.

7. The remaining conditions, 2(a) and 2(b), contain ambiguity that is confusing. First, it is unclear what is meant by "maximum market prices." Is this in the "range of maximum prices" or "the maximum price?" Is it limited by time period and pipeline? If so, is the maximum market price determined in the hour, day, week or month when the capacity is sold?

8. Second, 2(b) requires that capacity release credits "received by UtiliCorp from its affiliates are equal to or greater than the capacity release credits which it receives from non-affiliates." Is this over a day -- week -- month -- year? Or, if it is on the individual transaction, should it instead say "equal to or greater than the credits which it *could receive* from non-affiliates?"

ALTERNATIVE PROPOSAL

9. In light of this confusion, UtiliCorp has an alternative proposal which it believes will be more straight forward and satisfy the objectives identified by the Staff in its Memorandum dated June 9, 2000 (Appendix A to Staff's Response). In that Memorandum, the Staff stated the following:

- a) "The purpose of the rule was to prevent the subsidization of affiliates by their regulated counterparts and an attempt to make sure that rates (and ultimately the consumers) are not adversely impacted by an LDC's non-regulated activities;" and
- b) "While Staff does not argue with the market pricing concept of released pipeline capacity, it does have concerns on how this market level will be arrived at and documented."

10. UtiliCorp hereby proposes to satisfy these objectives by posting (or offering) its available capacity on the interstate pipeline electronic bulletin boards. The interstate pipeline would then receive bids for the capacity to be released and sell the capacity to the highest bidder – be it an affiliate or a non-affiliate. The determination of the highest bidder, under this process, would be made by the interstate pipeline.

11. It is UtiliCorp's intent that capacity would only be released to a non-regulated subsidiary after this posting and bidding process and such releases would not be "prearranged." UtiliCorp does, however, intend to continue to perform prearranged capacity release transactions with non-affiliates as such transactions would not implicate the Commission's affiliate transaction rules. Similarly, UtiliCorp does not propose to post for bid capacity released by one Missouri regulated operation to another regulated Missouri operation as this regulated to regulated transaction is also not implicated by the Commission's affiliate transaction rules

12. The proposed bidding process would clearly establish a market rate -- the highest price at which a willing party would pay for the released capacity in the relevant time period. Thus, this would eliminate any question as to whether UtiliCorp is getting "maximum market prices." If, after a bidding process, the capacity is released to the highest bidder, the price paid by that bidder IS the "maximum market price" irrespective of what price may have associated with the sale of other

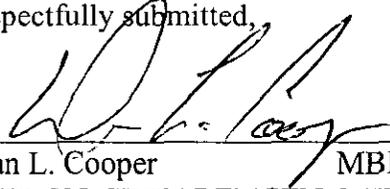
capacity. The record keeping for this process would be simplified in that it would only need consist of evidence of the posting of the capacity and a summary of the capacity release which have been awarded by the interstate pipeline.

13. Therefore, UtiliCorp proposes that the Commission grant a waiver for good cause from Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) as to capacity release transactions posted on the interstate pipelines' electronic bulletin boards.

WHEREFORE, UtiliCorp requests a Commission order:

- a) granting a waiver for good cause from Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) as to capacity release transactions posted on the interstate pipelines' electronic bulletin boards; 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

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was either hand-delivered or mailed, U.S. Mail, postage prepaid, on July 27th, 2000, to: Robert V. Franson, Public Service Commission, 5th Floor, Truman State Office Building, Jefferson City, Mo 65101; and, the Office of the Public Counsel, 2nd Floor, Truman State Office Building, Jefferson City, Mo 65101.

