



Missouri Public Service Commission

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June 28, 2000

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Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED 2

JUN 28 2000

Missouri Public
Service Commission

RE: Case No. GE-2000-639

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a STAFF MEMORANDUM AND RECOMMENDATION.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Robert V. Franson
Robert V. Franson
Assistant General Counsel

(573) 751-6651
(573) 751-9285 (Fax)

RF/dkf
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

JUN 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 of )  
Commission Rules 4 CSR 240-40.115 and )  
4 CSR 240-40.016 Concerning Capacity )  
Release Credits )

Case No. GE2000639

STAFF MEMORANDUM AND RECOMMENDATION

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and respectfully states as follows:

1. On April 12, 2000, UtiliCorp United Inc. (UtiliCorp ), filed with the Commission, pursuant to 4 SCR 240-40.015(10), 4 CSR 240-40.016(1) and 4 CSR240-2.060(11), an Application (Application) for Waiver of 4 CSR 240-40.015 and 4 SCR 240-40.016.

2. In its Application, UtiliCorp requested that the Commission grant UtiliCorp a waiver from the Commission's affiliate transaction rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A). These sections specifically prohibit a regulated Local Distribution Company (LDC) from providing a financial advantage to an affiliated entity.

3. Staff has reviewed the application for waiver of the specific requirements of 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) (Staff Memorandum attached hereto as Exhibit A). Because this is the first waiver of its type since the promulgation of the affiliated rules and because of Staff's previous experience with UtiliCorp's record keeping and documentation practices, Staff believes that a temporary waiver for a two year trial period may be a reasonable

interim step to take to ensure that adequate records are kept which document how the market price was established.

4. A two year trial period would allow Staff to evaluate changes in the capacity release market, evaluate all documentation provided by UtiliCorp with regard to capacity release transactions which involves its affiliates and to determine if UtiliCorp's capacity release practices with regard to its affiliates are providing a benefit to its customers or resulting in a detriment to its customers. At the end of the two-year trial period, the Commission could review the adequacy of UtiliCorp's documentation and capacity release practices and decide whether to make the waiver permanent or terminate the waiver.

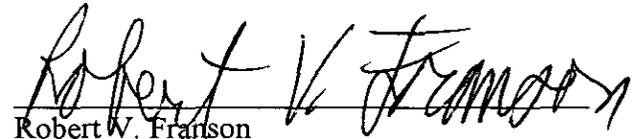
5. UtiliCorp asserts, in paragraph 20, page seven of its Application, that this Commission's affiliate transaction rules may be preempted by certain actions of the Federal Energy Regulatory Commission. The Staff does not agree, but will not address the issue further at this time in light of its recommendation for the limited two-year waiver. Staff will address the issue in the future, if the circumstances warrant.

6. The Staff recommends that the Commission issue an order which (1) grants UtiliCorp a temporary waiver solely for capacity release transactions for a two-year trial period and (2) requires UtiliCorp 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 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.

**WHEREFORE**, for the reasons set forth in its attached Memorandum (Exhibit A), Staff respectfully requests that the Commission issue an Order granting UtiliCorp's temporary waiver for a period of 2 years from the Commission's affiliate transaction rules 4 CSR-40.015(2)(A) and 4 CSR 240-40.016(3)(A) with regard to capacity release transactions only.

Respectfully submitted,

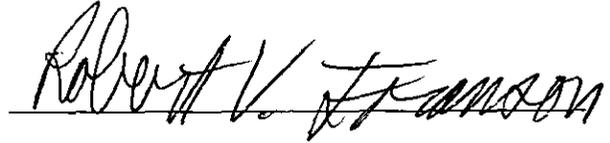
DANA K. JOYCE  
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## Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 28<sup>th</sup> day of June 2000.

  
Robert V. Johnson

MEMORANDUM

TO: Missouri Public Service Commission Official Case File,  
Case No. GE-2000-639, UtiliCorp United Inc.

FROM: Dave Sommerer,<sup>DS</sup> Manager- Procurement Analysis Department;  
Mike Wallis,<sup>MW</sup> Regulatory Auditor IV-Procurement Analysis Department

*Paul Sommerer / 6-8-00*  
Project Coordinator / Date

*Thomas L. Schwaner, Jr. 6/27/00*  
General Counsel's Office / Date

SUBJECT: Staff Recommendation In UtiliCorp's Application For Waiver From 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) As To Capacity Release Credits

DATE: June 9, 2000

On April 12, 2000, UtiliCorp United Inc. (UtiliCorp) d/b/a Missouri Public Service filed an **APPLICATION FOR WAIVER CONCERNING CAPACITY RELEASE CREDITS** (Application). In its Application, UtiliCorp requested that it be granted a waiver from the Commission's affiliate transaction rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) with regard to capacity release transactions only. These cited rule sections specifically prohibit a regulated Local Distribution Company (LDC) from providing a financial advantage to an affiliated entity. This financial advantage is described as being when a regulated LDC (1) compensates an affiliated entity for goods or services above the lesser of the fair market price or the fully distributed cost to the regulated LDC to provide the goods or services for itself, or (2) transfers information, assets, goods or services of any kind to an affiliated entity below the greater of the fair market price or the fully distributed cost to the regulated LDC.

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. UtiliCorp discussed the inherent problems faced by regulated LDCs in releasing idle capacity at other than the prevailing market rate and the measures/steps currently taken by them to determine the range of current market prices. Conceptually, the Staff believes the capacity release market revolves around market prices for unused capacity, so the rule's pricing criteria may not be appropriate.

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. In the two cases referred to in the Application (Case Nos. GR-95-273 and GR-96-192), Staff discovered and testified to the fact that UtiliCorp failed to provide adequate or sufficient documentation to verify that the LDC released its idle capacity at a fair market price.

Because this is the first waiver of its type since the promulgation of the affiliated transaction rules and because of Staff's previous experience with UtiliCorp's record keeping and documentation practices, Staff believes that a temporary waiver for a two year trial period may be a reasonable interim step to take to make sure adequate records are kept which document how the market price was established. Staff believes that UtiliCorp should be required to provide detailed documentation which demonstrates that (a) UtiliCorp is getting prevailing market prices for any capacity release transactions which involve its affiliates, (b) the capacity release credits received by UtiliCorp from its affiliates are comparable to the capacity release credits which it receives from non-affiliates, and (c) UtiliCorp is not increasing its pipeline capacity in order to serve the capacity release needs of its affiliates.

A two year trial period would allow Staff to (1) evaluate changes in the capacity release market, (2) evaluate all documentation provided by UtiliCorp with regard to capacity release transactions which involve its affiliates, and (3) determine if UtiliCorp's capacity release practices with regard to its affiliates are providing a benefit to its customers or resulting in a detriment to its customers. At the end of the two-year trial period, the Commission Staff can review the adequacy of UtiliCorp's documentation and capacity release practices and recommend to the Commission whether to make the waiver permanent or terminate the waiver.

In summary, the Staff recommends that the Commission issue an order which (1) grants UtiliCorp a temporary waiver solely for capacity release transactions for a two-year trial period, (2) requires UtiliCorp to collect and retain detailed documentation which shows that (a) UtiliCorp is getting prevailing market prices for any capacity release transactions which involve its affiliates, (b) the capacity release credits received by UtiliCorp from its affiliates are comparable to the capacity release credits which it receives from non-affiliates and, (c) UtiliCorp is not increasing its pipeline capacity in order to serve the capacity release needs of its affiliates, and (3) requires UtiliCorp to provide this information to the Staff annually on the anniversary date of the Commission's order granting temporary waiver.

**Service List for  
Case No. GE-2000-639  
June 28, 2000**

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