

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 22nd
day of April, 1999.

In the Matter of the Application of)
UtiliCorp United Inc. Under Section)
32(k) of the Public Utilities Holding)
Company Act of 1935 Concerning a)
Proposed Power Sales Agreement Between)
MEP Pleasant Hill, L.L.C. and UtiliCorp)
United Inc. d/b/a Missouri Public)
Service.)

Case No. EM-99-369

ORDER REGARDING POWER SALES AGREEMENT

On March 1, 1999, UtiliCorp United Inc. (UtiliCorp) d/b/a Missouri Public Service filed an Application with the Commission seeking an order of the Commission regarding a Power Sales Agreement (PSA) between UtiliCorp and MEP Pleasant Hill, L.L.C. (MEPPH). UtiliCorp proposes to enter into a PSA agreement with MEPPH whereby UtiliCorp would purchase electric power generated by MEPPH beginning on June 1, 2001. MEPPH is an exempt wholesale generator of electric power and is an affiliate of UtiliCorp.

Section 32(k) of the Public Utility Holding Company Act of 1935 (PUHCA), codified at 15 U.S.C. 792-5a(k), provides that "an electric utility company may not enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator if the exempt wholesale generator is an affiliate or associate company of the electric utility company." The federal statute then goes on to indicate that an electric

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utility company may enter into such a contract with an affiliate if every state commission having jurisdiction over the retail rates of such electric utility company makes certain specific determinations in advance of the electric utility company entering into such contract. UtiliCorp's Application asks that the Commission enter an order making the required specific determinations. Because of the need to begin construction of a combustion turbine generation plant by the end of July of 1999, UtiliCorp asked that the Commission issue its order regarding this Application no later than May 1, 1999.

On March 5, the Commission issued a Notice Establishing Time for Filing of Recommendation that directed the Staff of the Public Service Commission (Staff) to file its recommendation regarding approval or rejection of UtiliCorp's Application no later than April 5. The Office of the Public Counsel (Public Counsel) was also allowed until April 5 to file its recommendation.

On April 5, Staff filed two memorandums, one submitted by Michael S. Proctor, Chief Regulatory Economist for the Commission, and the other submitted by Mark L. Oligschlaeger, Regulatory Auditor V, and Steven Dottheim, Chief Deputy General Counsel. Both memorandums evaluate the PSA and recommend that the Commission approve UtiliCorp's application. Staff did, however, recommend that the Commission's approval be subject to several conditions. Public Counsel also filed its recommendation on April 5. Public Counsel recommended approval but only upon certain conditions. 4 CSR 240-2.080(12) provides that parties are allowed ten days from the date of filing in which to respond to any motion or

pleading. No timely response was filed to the recommendations of either Staff or Public Counsel.

The Commission has reviewed and considered the Application filed by UtiliCorp and the recommendations of Staff and Public Counsel. The Commission finds that the Application of UtiliCorp should be granted subject to the conditions recommended by Staff and Public Counsel.

IT IS THEREFORE ORDERED:

1. That, in compliance with Section 32(k) of the Public Utility Holding Company Act of 1935, the Commission determines that:

- a) the Commission has sufficient regulatory authority, resources and access to books and records of UtiliCorp United Inc., MEP Pleasant Hill, L.L.C. and any relevant associate, affiliate or subsidiary company to exercise its duties under subparagraph (k) of Section 32 of the Public Utility Holding Company Act of 1935;
- b) the transaction will benefit consumers;
- c) the transaction does not violate any Missouri law;
- d) the transaction would not provide MEP Pleasant Hill, L.L.C. with any unfair competitive advantage by virtue of its affiliation or association with UtiliCorp United Inc.;
and
- e) the transaction is in the public interest.

2. That the Commission's approval of UtiliCorp United Inc. d/b/a Missouri Public Service's Application is specifically conditioned upon the following conditions:

- a) That UtiliCorp United Inc. shall make available to the Commission, its Staff and the Office of the Public Counsel, at reasonable times and reasonable places, all books and records and employees and officers of MEP Pleasant Hill, L.L.C. and any affiliate or subsidiary of UtiliCorp engaged in any activity with MEP Pleasant Hill, L.L.C.
- b) MEP Pleasant Hill, L.L.C. shall employ accounting and other procedures and controls related to cost allocations and transfer pricing to ensure and facilitate full review by the Commission and its Staff and to protect against cross-subsidization of non-Missouri Public Service business by Missouri Public Service's customers.
- c) This order is in no way binding on the Commission or any party regarding a future rate or earnings complaint case to contest the ratemaking treatment to be afforded the Power Sales Agreement. UtiliCorp United Inc. shall not seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by MEP Pleasant Hill, L.L.C. or UtiliCorp United Inc. d/b/a Missouri Public Service in or as a result of the Power Sales

Agreement on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the Federal Energy Regulatory Commission, or was incurred pursuant to the Power Sales Agreement.

3. That the Commission's approval of the instant Power Sales Agreement does not imply or assure approval of any future contracts to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of an electrical corporation within the Commission's jurisdiction.

4. That UtiliCorp United Inc. is authorized to enter into, execute and perform in accordance with the terms and conditions of the proposed Power Sales Agreement by and between MEP Pleasant Hill, L.L.C. and UtiliCorp United Inc. d/b/a Missouri Public Service.

5. That UtiliCorp United Inc. is authorized to enter into, execute and perform in accordance with the terms of all documents reasonably necessary and incidental to the performance of the transactions that are the subject of the Application.

6. That this order shall become effective on May 4, 1999.

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7. That this case may be closed on May 5, 1999.

BY THE COMMISSION

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Lumpe, Ch., Murray, Schemenauer
and Drainer, CC., concur
Crumpton, C., absent

Woodruff, Regulatory Law Judge

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**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 22ND day of APRIL, 1999.



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
April 22, 1999

CASE NO: EM-99-369

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Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copy: