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April 5, 1999

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

RE: UtiCorp United, Inc. d/b/a Missouri Public Service  
Case No.: EM-99-369

Dear Mr. Roberts:

Enclosed for filing in the above referenced case, please find the original and 14 copies of the **Public Counsel Recommendation**. Please "file stamp" the extra enclosed copy and return it to this office. I have on this date mailed, faxed, or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman  
Deputy Public Counsel

JBC:rjr

cc: Counsel of Record  
**COPY**  
Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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

PUBLIC COUNSEL RECOMMENDATION

COMES NOW the Office of the Public Counsel ("Public Counsel") and for its recommendation states as follows:

1. On March 1, 1999, UtiliCorp United, Inc. d/b/a Missouri Public Service ("Company") filed an Application requesting that the Public Service Commission ("Commission") make specific determinations regarding a proposed Power Sales Agreement ("PSA"). These determinations that are a prerequisite to approval of the PSA by the Federal Energy Regulatory Commission ("FERC"). Federal law ("PUHCA") requires these determinations be made by a state commission whenever an electric utility proposes a PSA with an affiliated exempt wholesale generator ("EWG"). Company is proposing a Power Sales Agreement ("PSA") between it and its affiliate MEP Pleasant Hill, L.L.C. ("MEPPH"). On March 5, 1999, the Commission requested recommendations regarding the approval or rejection of UtiliCorp's Application by April 5, 1999.

2. Company is accordingly requesting that the Commission specifically determine that it has sufficient regulatory authority:

...the Commission has sufficient regulatory authority, resources and access to books and records of UtiliCorp and MEPPH to exercise its duties under section 32(k) of PUHCA to ensure that the proposed PSA (i) benefits consumers, (ii) does not violate any state law, (iii) does not provide MEPPH with any unfair competitive advantage by virtue of its affiliation with UtiliCorp and (iv) is in the public interest; (B) authorizing UtiliCorp to enter into, execute and perform in accordance with the terms and conditions of the proposed Power Service Agreement by and between MEPPH and UtiliCorp; (C) authorizing UtiliCorp to enter into, execute and perform in accordance with the terms of all documents reasonably necessary and incidental to the performance of the transactions which are the subject of this Application; and (D) granting such other authority as may be just and proper under the circumstances. (Application, pp. 6-7).

3. Public Counsel recommends that the Commission make these requested determinations only upon certain conditions. The fact that Company is proposing a PSA with an affiliate (MEPPH) raises concerns that it may not be in the public interest. Public Counsel believes that the Commission should ensure that the cost advantage purported to be gained from this transaction is not outweighed by the potential negative impacts to Company's captive ratepayers. It is not as simple to monitor and determine the impact on the public from such an affiliate transaction as it is when the transaction occurs between entities that are wholly separate. The monitoring of yet another affiliate transaction will require the expenditure of additional regulatory resources.

4. Public Counsel is also concerned about the potential detrimental effects on wholesale and retail markets in Company's region. Such detrimental effects could develop as a result of an over-concentration of the ownership of generation facilities. As market power is

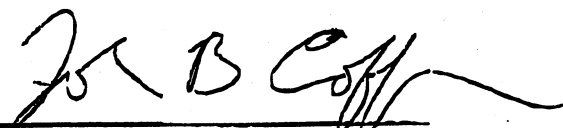
accumulated under one parent company, the potential harm to consumers in a future competitive retail marketplace grows.

5. Because of the concerns raised about the structure of the proposed PSA, Public Counsel urges the Commission to make the requested determinations in a very specific manner. Particularly, the Commission should require Company to assure the Commission that it would still retain jurisdiction over any and all generation costs that would be passed on to its regulated customers through retail rates. Company should also acknowledge that FERC jurisdiction does not supercede the Commission's ability to review and disallow any purchased power costs that are found to be imprudent or unreasonable after a proper review and hearing on the prudence of the costs and rate impact of such costs. In particular, Public Counsel has concerns that the pricing adjustment provisions contained in subsections (a) and (b) of section 5.1 of Article 5 constitute an inappropriate shifting of risk to the purchaser, UtiliCorp United, Inc.

6. Furthermore, Company should assure that the Commission and Public Counsel have full and unfettered access to all the books and records of Company and MEPPH in order to protect the public interest.

**WHEREFORE**, Public Counsel respectfully submits its recommendation that the Commission approve the proposed application only if it receives the specific assurances set out above from Company and MEPPH.

Respectfully submitted,  
**OFFICE OF THE PUBLIC COUNSEL**

BY: 

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document has been either faxed, mailed, or hand-delivered to the following counsel of record on this 5th day of April, 1999:

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General Counsel  
Missouri Public Service Commission  
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