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April 13, 2000

FILED²

APR 13 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, The Empire District
Electric Company and St. Joseph Light & Power Company - Case No. EE-2000-592**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of the Response to Public Counsel's Suggestions in Opposition to Application for Waivers. Please stamp the enclosed extra copy "filed" and return same to me.

If you have any questions, then please give me a call.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean Cooper
Dean L. Cooper *by Rg*

DLC/rhg

Enclosures

cc: Office of Public Counsel
Mr. Doug Micheel

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED³

APR 13 2000

**Missouri Public
Service Commission**

In the Matter of the Joint Application)
of UtiliCorp United Inc. d/b/a)
Missouri Public Service, The Empire)
District Electric Company and)
St. Joseph Light & Power Company)
for Waivers of Commission Rules)
4 CSR 240-20.015, 4 CSR 240-40.015,)
4 CSR 240-40.016 and CSR 240-80.015.)

Case No. EE-2000-592

**RESPONSE TO PUBLIC COUNSEL'S SUGGESTIONS
IN OPPOSITION TO APPLICATION FOR WAIVERS**

Come now UtiliCorp United Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS"), The Empire District Electric Company ("Empire") and St. Joseph Light & Power Company ("SJLP") by and through their counsel, and, in response to the Office of the Public Counsel's ("OPC") Suggestions in Opposition to Application for Waivers, state to the Missouri Public Service Commission ("Commission") as follows:

1. UtiliCorp, Empire and SJLP (collectively, the "Applicants") filed an Application for Waivers ("Application") with the Commission on March 22, 2000. The Application requested temporary waivers from the Commission's newly promulgated affiliate transaction rules. The primary basis for these waivers is the Order Granting Stay issued by the Circuit Court of Cole County, in Cases Nos. 00CV323156 and 00CV323164 on February 25, 2000. This Order stayed the effectiveness of the affiliate transaction rules as to certain utilities¹, and would thus prohibit the enforcement of the affiliate rules as to some, but not all, utilities. This uneven application of the rules creates an uneven playing field, uncertainty and immediate cost to the Applicants that would

¹ Atmos Energy Corporation; Arkansas Western Gas Company d/b/a Associated Natural Gas; Missouri Gas Energy (a division of Southern Union Company); Laclede Gas Company; Trigen-Kansas City Energy Corporation; and, Ameren Corporation.

not apply to other Missouri utilities. As a result, the Applicants requested that the Commission grant them waivers from the rules until such time as the effectiveness of the Orders and resulting rules is no longer stayed by the Missouri courts.

2. On April 3, 2000, the OPC filed its Suggestions in Opposition to Application for Waivers ("Suggestions").

3. In indicating its objections to Applicants' arguments, the OPC makes several statements which are not found in the proceedings that produced the affiliate transaction rules.

4. The OPC states that while "certain utilities via the Stay obtained in circuit court were able to frustrate the purpose of the Commission's Affiliate Rules of preventing regulated utilities from subsidizing their nonregulated operation is not 'good cause' to allow Joint Applicant a waiver from the Affiliate Rules." The Stay issued in circuit court is a lawful order of the courts of the State of Missouri. The statement that the Stay has somehow "frustrated" the prevention of subsidization of nonregulated operations is without basis.

5. There is no indication from the record in the rulemakings that produced the affiliate transaction rules that a delay in implementing these rules would in any way jeopardize public safety or interests. There is no evidence in those proceedings, and no finding of any kind, that any current utility practices are either unjustly discriminatory or unduly preferential. Likewise, there was no determination or finding by the Commission that the rules are necessary to address any particular existing concern. The issuance of a waiver as a result of this Application will not set back the commission's intent in promulgating these rules. Further, there is certainly no evidence in the rulemakings to indicate that a grant of this Application will "be condoning conduct" or will "exacerbate the harm" as also alleged by the OPC. No improper conduct has been found to exist.

6. A grant of the Application will prevent the potentially needless expenditure of funds

and the administrative burden associated with the affiliate transaction rules during a time of uncertainty. As stated in the Application, the Commission itself has estimated in its official filings associated with the rules that compliance with the rules will cost \$100,000 per utility in the first year of effectiveness and \$75,000 in each succeeding year². These costs have nothing to do with subsidization issues, but rather the need "to set up book keeping and programming requirements and personnel training." The funds for such programs should not be expended while there is still some doubt as to the eventual effectiveness of the affiliate transaction rules.

7. The OPC's disregard of the significance of these expenditures is misplaced. The OPC alleges that the Commission should not be concerned because the expenditure of \$100,000 is insignificant on a percentage basis as compared to the Applicants' consolidated net income. Contrary to this opinion, the Applicants believe that \$100,000 is significant no matter what percentage of income it may be. The Applicants also question whether the OPC would, during the course of a rate case, consider a \$100,000 expenditure insignificant because it did not represent a large enough percentage of the utilities overall revenue requirement.

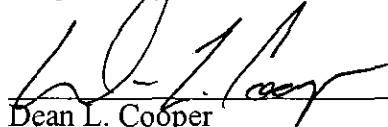
8. A grant of the requested waivers in this case until a final decision has been made by the Missouri courts will not "lend credence to the claims made by [the appealing] utilities," as alleged by the OPC, nor will it further any conduct adverse to Missouri rate payers. A simple delay in the effective date of these rules will provide an even playing field for both utilities and regulators until the conclusion of the appellate process and prevent the expenditure of significant dollars associated with rules compliance until this is deemed to be necessary.

² While individual utilities may have different estimates, these figures were calculated by the Commission Staff after a review of all utility responses and with full knowledge of what was intended by the rules.

WHEREFORE, UtiliCorp, Empire and SJLP request a Commission order:

- a) granting them waivers for good cause from Commission Rules 4 CSR 240-20.015, 4 CSR 240-40.015, 4 CSR 240-40.016 and 4 CSR 240-80.015 until such time as the effectiveness of the Orders and resulting rules is no longer stayed by the Missouri courts; 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, THE
EMPIRE DISTRICT ELECTRIC COMPANY
AND ST. JOSEPH LIGHT & POWER COMPANY

CERTIFICATE OF SERVICE

13th The undersigned certifies that a copy of the foregoing document was hand-delivered on this day of April, 2000, to the following:

Mr. Doug Micheel
Office of Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

General Counsel
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

