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December 13, 1999

FILED<sup>2</sup>

DEC 13 1999

Missouri Public  
Service Commission

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

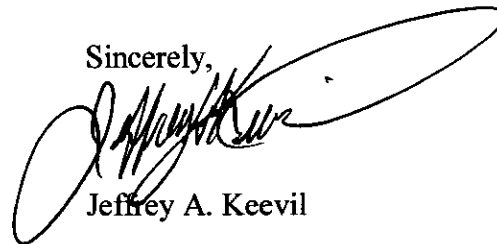
RE: Case No. EM-2000-292  
In the Matter of the Joint Application of UtiliCorp United Inc. and St. Joseph  
Light & Power Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and fourteen (14) copies of a REPLY TO RESPONSE OF UTILICORP AND SJLP on behalf of the City of Springfield, Missouri, through the Board of Public Utilities ("City Utilities").

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,



Jeffrey A. Keevil

JAK/er  
Enclosures  
cc: counsel of record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

ORIGINAL  
FILED<sup>2</sup>

DEC 13 1999

Missouri Public  
Service Commission

In the Matter of the Joint Application of     )  
UtiliCorp United Inc. and St. Joseph Light & )  
Power Company for Authority to Merge St.    )  
Joseph Light & Power Company with and     )  
into UtiliCorp United Inc., and, in            )  
Connection Therewith, Certain Other         )  
Related Transactions.                            )

Case No. EM-2000-292

**REPLY TO RESPONSE OF UTILICORP AND SJLP**

COMES NOW Intervenor, the City of Springfield, Missouri, through the Board of Public Utilities ("City Utilities"), pursuant to the statements of the regulatory law judge at the prehearing conference held in this case on December 6, 1999, and for its Reply to Response of UtiliCorp and SJLP respectfully states as follows:

In their response filed herein on December 3, 1999, UtiliCorp and SJLP ("Joint Applicants") imply that their "proposed regulatory plan" should allay the Commission's fears regarding market power because it would freeze customers' rates. However, the Commission should keep in mind that there is no guarantee at this time that such plan will ultimately be approved in this case; indeed, in Staff's Response to Commission Notice Regarding Motion to Establish Procedural Schedule filed herein on November 24, 1999, Staff referred to such plan as "unique and very complex." Furthermore, the proposed plan does nothing to ease the concerns of other utilities who are also connected to the transmission grid.

The Joint Applicants also claim in their response that "the market power studies completed by Union Electric Company and Western Resources, Inc./Kansas City Power

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& Light Company ("Western/KCPL") did not result in any substantive action by the Commission;" whether accurate or not, Joint Applicants miss the point. As even the response of the Joint Applicants indicates, in those cases the applicant utilities prepared and filed market power studies; any action subsequently taken therein was done after the Commission and parties had had the opportunity to examine and analyze the market power studies.

The Joint Applicants herein – UtiliCorp United, Inc. and St. Joseph Light & Power Company – should be ordered to supplement their filing respecting the issue of market power, and present a valid market power analysis/study. As stated in City Utilities' Application to Intervene, "concerns regarding market power have become an important issue in recent electric utility mergers. *See, Re: Union Electric Company/Central Illinois Public Service*, Case No. EM-96-149 (for an Order of the Commission Requesting Additional Information concerning market power, see 5 MPSC 3d 157 (1996)); *Re: Western Resources Inc./Kansas City Power & Light*, Case No. EM-97-515." Even the Commission has indicated that market power is an issue which electrical corporations should address when seeking Commission authority to merge. *See, Re: Union Electric Company/Central Illinois Public Service*, Case No. EM-96-149.

City Utilities is vitally concerned about the issue of market power in this case **and the related UtiliCorp/Empire merger case**, as well as with the impact the market power issue may have on transmission access, especially when one recognizes that what we are dealing with here is really a combination of three utilities rather than just a combination of two. Staff stated in its Response to Commission Notice Regarding Motion to Establish Procedural Schedule filed herein on November 24, 1999:

Discovery needs in the two merger cases [this case and the UtiliCorp/Empire merger case] also will be related owing to the fact that one of the three companies is common to the two mergers and **what is being proposed is the merger of three, not just two companies.** The analysis required will be as follows: (a) is the merger of UtiliCorp and SJLP detrimental to the public interest; (b) is the merger of UtiliCorp and [Empire] detrimental to the public interest; and (c) **is the merger of UtiliCorp, SJLP and [Empire] detrimental to the public interest.**

Staff Response to Commission Notice Regarding Motion to Establish Procedural Schedule, page 7 (emphasis added).

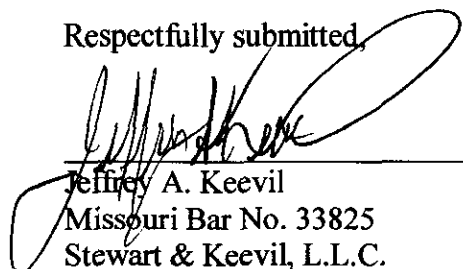
The immediately preceding discussion demonstrates why this case and the impending UtiliCorp/Empire merger case should either be consolidated or a joint schedule established for the two cases – and may also demonstrate why the Joint Applicants herein are opposed to such a procedure. In any event, the Commission should withhold its determination regarding a procedural schedule in this case until the parties have had an opportunity to review and assess the impending merger filing of UtiliCorp and The Empire District Electric Company and its relation to the instant proceeding.

The Joint Applicants herein, in their response at pages 4-5, stated that “to the extent appropriate, discovery in one case should be utilized in the other. Issues common to the two transactions need only be litigated one time, namely in the context of the UtiliCorp/SJLP filing and procedural schedule.” The UtiliCorp/Empire merger case had not been filed as of the date of the prehearing conference, and to the best knowledge of the undersigned has not yet been filed as of the date of drafting this reply; having issues common to the two cases (one of which has yet to be filed) litigated only one time in the context of the UtiliCorp/SJLP filing and procedural schedule as proposed by the Joint Applicants would obviously be unworkable and would even further reduce the time that

Staff, Office of the Public Counsel and Intervenors would have to prepare to litigate the UtiliCorp/Empire issues. While it may be true that "[i]ssues common to the two transactions need only be litigated one time," City Utilities submits that the only reasonable and practical way to accomplish this objective in a manner which provides all parties with due process is for the Commission to **consolidate the cases** and withhold a determination regarding a procedural schedule in this case until the parties have had an opportunity to review and assess the impending merger filing of UtiliCorp and The Empire District Electric Company.

WHEREFORE, City Utilities respectfully requests that the Commission (1) withhold any determination regarding a procedural schedule for the instant proceeding until the parties have had an opportunity to review and assess the impending merger filing of UtiliCorp and The Empire District Electric Company and its relation to the instant proceeding and (2) order the Joint Applicants to supplement their filing respecting market power and the impact thereof on transmission access and (3) make such further orders as are consistent with the above Reply.

Respectfully submitted,



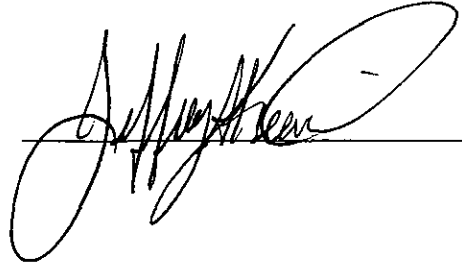
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ATTORNEY FOR THE CITY OF  
SPRINGFIELD, MISSOURI, THROUGH  
THE BOARD OF PUBLIC UTILITIES

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by placing same in first-class mail with proper postage affixed, or by hand delivery, to counsel of record on this 13th day of December, 1999.



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A handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read "Jeffrey K. Kern".