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December 29, 1999

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

**FILED<sup>2</sup>**  
DEC 29 1999  
Missouri Public  
Service Commission

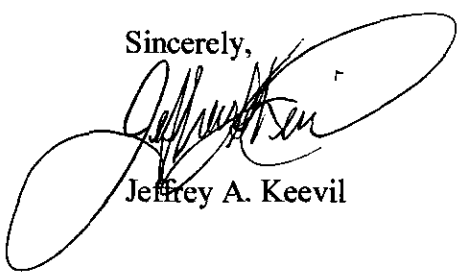
RE: Case No. EM-2000-292  
In the matter of the joint application of UtiliCorp United Inc. and St. Joseph Light  
& Power Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and fourteen (14) copies of an APPLICATION FOR REHEARING AND MOTION FOR RECONSIDERATION 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

DEC 29 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

**APPLICATION FOR REHEARING AND**  
**MOTION FOR RECONSIDERATION**

COMES NOW the City of Springfield, Missouri, through the Board of Public Utilities ("City Utilities") pursuant to Section 386.500 RSMo 1994 and 4 CSR 240-2.160, by and through the undersigned counsel, and for its application for rehearing and motion for reconsideration in the above-captioned case respectfully states as follows:

1. On December 21, 1999, the Commission issued an Order Denying Motion to Require Market Power Study and Adopting Procedural Schedule (the "Order") in this case. The Order provided that it would "become effective on December 31, 1999."

2. The Order is unjust, unreasonable, unlawful, arbitrary and capricious, an abuse of discretion, and deprives City Utilities of its rights to due process and equal protection as guaranteed by the Missouri and United States Constitutions for the reasons set out below.

3. The Order states on page 5 that "Applicants have the burden of producing sufficient evidence to support their application." However, by not requiring the Applicants to file a market power study as part of their direct testimony (market power being a crucial issue in an electric company merger case) the Order has shifted the burden

to the other parties to the case, including City Utilities, to prove that the merger is detrimental to the public interest, rather than placing the burden of proof on the Applicants to prove that the merger is not detrimental to the public interest. That the issue of market power is a crucial issue in electric company merger cases can be seen from the Commission's unanimous Order Requesting Additional Information in the Union Electric/CIPSCO merger case, which was issued at a time when the Commission was chaired by UtiliCorp's current counsel. In that Order Requesting Additional Information, the Commission stated

... the Commission is concerned that the issue of market power has not been adequately explored either in the proposed stipulation, the filed testimony, or at the hearing. Therefore, the Commission requests the parties [including Applicant] to submit additional testimony [regarding the issue of market power] ...

The term "market power" is commonly used in the electric industry to refer to the ability of a competitor to exercise some degree of control over the price which it receives for the sale of electricity. An individual competitor exercising such control may raise its prices and lower the quantity of electricity sold, thereby increasing its profits. The public interest may be harmed by the exercise of such market power. ...

... **It is also true that utilities serving other customers within the State of Missouri are now engaged in wholesale transactions with [Applicant] and can be expected to engage in such transactions with [Applicant] if the merger is approved. To the extent that [Applicant] can increase prices and decrease sales, the retail customers of other Missouri utilities might be adversely affected.**

*In the Matter of the Application of Union Electric Company*, 5 Mo.P.S.C. 3d 157, 158 (1996)(emphasis added). The above is equally true in the instant case. Furthermore, in his Concurring Opinion to the Commission's Report and Order approving the Union Electric/CIPSCO merger, the then Commission chair/current UtiliCorp counsel stated

**On the important issue of market power, I found it puzzling that the parties apparently avoided discussion of this topic in their efforts to arrive at the Stipulation and Agreement. If such discussions occurred, the record initially contained very little hint of it. While there**

exists no universally accepted method to analyze post-merger market power under the current system of monopoly franchises, all parties must engage in a comprehensive effort to develop the analytical tools to study this issue. While economies of scale through consolidation and merger may bring the benefits of lower prices, better service and more choices to customers, the market power of such new entities cannot be allowed to manipulate prices to generate excessive profits. . . .

**Any future merger case brought before this Commission should contain a careful analysis of market power issues,** in addition to the traditional means used to measure the alleged merger benefits for ratepayers. . . .

Concurring Opinion of Zobrist, Chairman, *In the Matter of the Application of Union Electric Company*, Case No. EM-96-149, March 10, 1997 (emphasis added).

4. Furthermore, by not requiring the Applicants to file a market power study as part of their direct testimony (market power being a crucial issue in an electric company merger case), the Order violates the Commission's own rule governing what prefiled written testimony is to contain. 4 CSR 240-2.130 requires direct testimony to "include all testimony and schedules asserting and explaining that party's [the party filing direct testimony] entire case-in-chief." As shown above, evidence that the proposed merger is not detrimental to the public interest due to market power considerations is a crucial part of the case-in-chief for electric company merger applicants; it must therefore be contained in direct testimony pursuant to the Commission's rule. The Commission cannot allow the Applicants in this case to "make their case" in their surrebuttal testimony; such a procedure would violate both the Commission's rule and due process. However, that is precisely the result to which the Order will lead if the Commission does not grant rehearing/reconsideration. It is an elementary principle of due process that parties who are expected to rebut another party's position are entitled to know the basis (legal and evidentiary) upon which the adverse party intends to proceed and which they

are expected to defend against; Applicants' direct testimony does not afford City Utilities that opportunity. Therefore, the Order denies City Utilities its rights to due process.

5. On page 4 of the Order, the Commission stated that "At this time there are too many uncertainties surrounding the future of retail competition in Missouri to make any market power study definitive." If, however, a market power study showed the proposed merger did not meet the "not detrimental to the public interest" standard, it is unclear from the Order why that would not be definitive. The Commission needs to clarify, at a minimum, what it meant by this language.

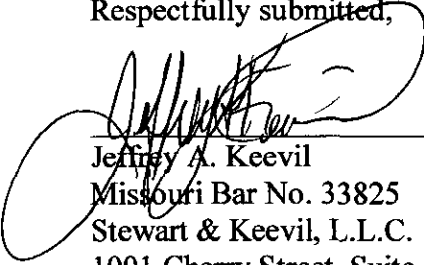
6. The Order fails to set forth adequate findings of fact and conclusions of law as required by Missouri law and accordingly City Utilities is unable to discern the actual basis of the Commission's decision in general in a manner sufficient to more specifically frame issues for judicial review. Accordingly, the Order is unlawful and unreasonable as a matter of law.

7. In all other respects, the Order is unlawful, unreasonable, and is not supported by competent and substantial evidence upon the whole record in violation of Missouri law.

WHEREFORE, City Utilities respectfully requests the Commission grant rehearing/reconsideration of its Order Denying Motion to Require Market Power Study and Adopting Procedural Schedule and upon such rehearing/reconsideration issue its

Order requiring UtiliCorp United Inc. and St. Joseph Light & Power Company to file a market power study as part of their direct testimony.

Respectfully submitted,

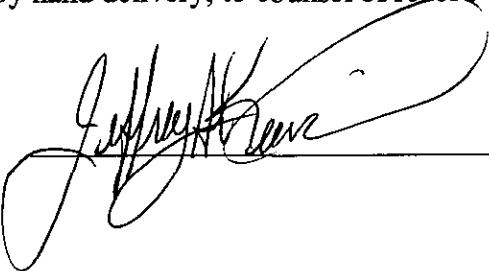


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ATTORNEY FOR THE CITY OF  
SPRINGFIELD, MISSOURI, THROUGH  
THE BOARD OF PUBLIC UTILITIES

**CERTIFICATE OF SERVICE**

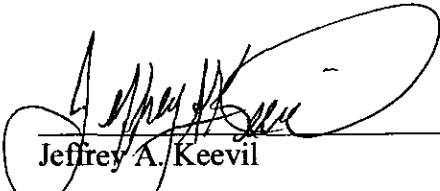
I hereby certify that a copy of the foregoing was served by placing same in first-class mail with proper postage affixed, or by hand delivery, to counsel of record on this 29th day of December, 1999.



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State of Missouri     )  
                                  )  
County of Boone     )     ss.

I, Jeffrey A. Keevil, being first duly sworn verify that I: am an attorney for the City of Springfield, Missouri, through the Board of Public Utilities ("City Utilities"), licensed to practice law in the State of Missouri; have been authorized to file the foregoing on behalf of City Utilities; and that the foregoing is correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Jeffrey A. Keevil

Subscribed and sworn to before me this 28<sup>th</sup> day of December, 1999.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 5/8/2000

