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April 12, 2000

Mr. Dale Hardy Roberts
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²
APR 12 2000 *rh*
Missouri Public
Service Commission

RE: UtiliCorp United Inc. d/b/a Missouri Public Service - Case No. GE-2000-639

Dear Mr. Roberts:

Enclosed for filing please find an original and fourteen copies of an Application for Waiver Concerning Capacity Release Credits. 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 RS*

DLC/rhg
Enclosures
cc: Office of Public Counsel
Mr. Steve Jurek

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

APR 12 2000

Missouri Public
Service Commission

In the Matter of the Application)
of UtiliCorp United Inc. d/b/a)
Missouri Public Service for a Waiver)
of Commission Rules 4 CSR 240-40.015)
and 4 CSR 240-40.016 Concerning)
Capacity Release Credits.)

Case No. GE-2000-639

APPLICATION FOR WAIVER
CONCERNING CAPACITY RELEASE CREDITS

Comes now UtiliCorp United Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS"), and, in accordance with 4 CSR 240-40.015(10), 4 CSR 240-40.016(11), and 4 CSR 240-2.060(11), states to the Missouri Public Service Commission ("Commission") as follows:

GENERAL BACKGROUND

1. UtiliCorp is a Delaware corporation, in good standing in all respects, with its principal office and place of business at 911 Main Street, Suite 3000, Kansas City, Missouri 64105. UtiliCorp is authorized to conduct business in Missouri through its MPS operating division and as such is engaged in providing electrical and natural gas utility service in its service areas subject to the jurisdiction of the Commission. A certified copy of MPS's Certificate of Corporate Good Standing-Foreign Corporation and fictitious name registration as issued by the Secretary of State of the State of Missouri was previously filed with the Commission in Case No. EM-2000-292 and is hereby incorporated by reference in accordance with 4 CSR 240-2.060(2)(E).

2. All correspondence, communications, notices, order and decisions of the Commission with respect to this matter should be sent to:

Steve Jurek
Vice President, Regulatory Services
UtiliCorp United Inc.
1815 Capitol Avenue
Omaha, Nebraska 68102
(402) 221-2375

Dean L. Cooper
BRYDON, SWEARENGEN & ENGLAND P.C.
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WAIVER

3. Commission Rules CSR 240-40.015 and 4 CSR 240-40.016 became effective on February 29, 2000, as to some utilities.¹ These rules apply to affiliate transactions between regulated natural gas utilities and their nonregulated operations and the marketing affiliate transactions of regulated natural gas utilities.

4. CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) state as follows:

A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if –

1. It compensates an affiliated entity for information, assets, goods or services above the lesser of –

A. The fair market price; or

B. The fully distributed cost of the regulated gas corporation to provide the information, assets, goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of –

A. The fair market price; or

¹ Prior to the effective date, certain public utilities (“the Relators”) filed petitions for writs of review concerning these rules in the Circuit Court of Cole County, Missouri (Cole County Circuit Court Case Nos. 00CV323156 and 00CV323164.). On February 25, 2000, after hearing, the Circuit Court issued its Order Granting Stay thereby staying the effectiveness of the Orders and the resulting rules, as to the Relators.

B. The fully distributed cost to the regulated gas corporation.

5. UtiliCorp seeks by this application relief from these pricing provisions for the purposes of capacity release credits.

CAPACITY RELEASE

6. Historically, local distribution companies ("LDC") have purchased transportation, or "capacity," from interstate pipelines in sufficient quantities to meet the anticipated peak day needs of their firm gas supply customers. This means UtiliCorp must contract for a firm entitlement of interstate pipeline capacity which is great enough to cover MPS's busiest day of the year. If this busiest day does not occur, UtiliCorp has unneeded capacity for which it is still contracted to pay, a situation which challenges all LDC's.

7. The Commission has described "capacity release credits" as follows:

Capacity Release Credits: A local distribution company (LDC) such as UtiliCorp purchases its natural gas from a supplier and pays a pipeline for transport of the gas supplies. Transportation charges include two rate elements: reservation charges and commodity charges. Commodity charges are based on the amount of natural gas that is actually transported. If no gas is transported, no commodity charges apply. The reservation charges are designed to pay for the portion of the pipeline company's total capacity reserved specifically for the LDC. The reservation charges apply whether the LDC actually transports any natural gas or not. In order to meet their human needs requirements, LDCs typically contract for at least enough capacity to meet all firm load requirements on a day when the load is at or near peak. These days are relatively rare so there is often idle capacity for which the LDC must pay but which it does not currently require.

When the LDC has capacity reserved that it does not need, it may choose to make the idle capacity available to a third-party purchaser by means of a capacity release agreement. The agreement is between the LDC and a gas marketer or a large-volume end user. The parties must advise the pipeline company of the capacity release transaction. The pipeline company then bills the marketer for the amount negotiated between it and the LDC, and for whatever commodity charges the marketer incurs in transporting gas. The pipeline company then credits the LDC/marketer contract amount against the reservation charges billed to the LDC. This credit is called a capacity release credit.

Report and Order, Case No. GR-95-273.

8. In 1992, the Federal Energy Regulatory Commission ("FERC") issued Order 636. One of the results of FERC Order 636 is that a market exists to allow unused interstate pipeline capacity to be resold, as described by the Commission, to other marketers, LDCs, or brokers who desire that capacity. This is generally encouraged because the price that the acquiring shippers agree to pay the LDC becomes a credit to regulated gas sales costs thereby lessening the burden on regulated customers.

STEPS CURRENTLY TAKEN BY UTILICORP

9. UtiliCorp's initial capacity release process has been in existence and followed by UtiliCorp since October 1993. When capacity is transferred or released by MPS, UtiliCorp Gas Supply personnel examine the pipeline electronic bulletin boards which track such releases and conduct telephone surveys to determine the price for which others are selling similar capacity. The telephone surveys are done at least monthly, and sometimes on a daily basis, with UtiliCorp personnel calling between five and ten LDC's or marketers to determine a range of current prices.

10. Based upon the information gathered, UtiliCorp personnel establish a market rate -- the range of prices which willing parties will pay for capacity release in the relevant time period through the electronic bulletin board bid process. Any UtiliCorp affiliates purchasing capacity then pay a price which is in this market range. The price paid is then credited to MPS and, in turn, to MPS's firm customers to reduce the cost of providing natural gas. UtiliCorp releases capacity at this market rate whether the purchaser is an affiliate or a nonaffiliate.

EFFECT OF REGULATIONS

11. 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) generally would require UtiliCorp to disregard the prevailing market rate for this unneeded capacity and would instead

require UtiliCorp to reflect credits equal to the higher original cost of the interstate pipeline capacity.

12. In the case of capacity release credits, the market based price is a fair and equitable credit and in the best interest of regulated customers. The result of 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) will likely be credits in an amount that is less than those currently received by customers.

13. This is because 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) provide an incentive for UtiliCorp affiliates to purchase capacity from another marketer, broker or LDC. By doing this, they can continue to purchase capacity at the market rate. The cited regulations would, in effect, remove UtiliCorp affiliates viable competitors on UtiliCorp's system. UtiliCorp would be forced to find another acquiring shipper or have its capacity sit idle without any reimbursement. If UtiliCorp is unable to find another shipper for this capacity, the credits otherwise received by regulated customers would be reduced. The inevitable outcome will be that UtiliCorp regulated sales customers actually receive fewer capacity transfer credits than they otherwise receive.

14. Having a ready market for capacity releases is to the benefit of UtiliCorp's regulated customers. This ready market is only available, however, as long as UtiliCorp's affiliates are able to obtain capacity at a market rate -- the rate they would pay if they purchased the capacity elsewhere. On the market, UtiliCorp cannot expect to receive a rate above the prevailing market rate. Logic dictates that the very best UtiliCorp can hope to recover from releases to nonaffiliated marketers is an amount equal to what it currently receives for releases to its affiliates -- market price.

COMMISSION HAS PREVIOUSLY ADDRESSED THIS ISSUE

15. The Commission has previously addressed this issue in two cases --

In the Matter of Missouri Public Service's Tariff Revisions to be Reviewed in its 1994-1995 Actual Cost Adjustment, Case No. GR-95-273 (September 23, 1998); and,

In the Matter of Missouri Public Service's Tariff Revisions to be Reviewed in its 1995-1996 Actual Cost Adjustment, Case No. GR-96-192 (December 16, 1998).

16. In both GR-95-273 and GR-96-192, the Staff alleged that "as a result of [UtiliCorp's affiliate's] use of the pipeline transportation contracts and pipeline capacity to serve UtiliCorp's end-user customers and because the firm captive customers are paying the fixed/reservation charges associated with the pipeline transportation service, . . . the captive firm customers of UtiliCorp are entitled to a credit equal to the transportation charges assessed to the end-user customers of UtiliCorp by [UtiliCorp's affiliate]." Report and Order, Case No. GR-96-192.

17. UtiliCorp responded in a similar fashion to the following in both cases. This response was described by the Commission as follows:

UtiliCorp witness Daniel W. Warnock, the Vice President - Gas Supply for UtiliCorp, testified regarding the release of capacity from UtiliCorp to UES. Mr. Warnock testified that UES does not have a competitive advantage over other marketers on UtiliCorp's system. Mr. Warnock pointed out that UtiliCorp releases its capacity to entities other than UES and that almost half of the transportation customers on UtiliCorp's system are served by marketers other than UES. According to Mr. Warnock, UtiliCorp reviews the interstate pipeline's electronic bulletin board and calls other LDCs, marketers and brokers to determine that UES pays the prevailing market rate when it purchases capacity from UtiliCorp.

Mr. Warnock testified that Staff's recommendation will result in capacity transfers from UtiliCorp to UES at above-market rates. The result of this action, according to Mr. Warnock, is that UES will be forced to get its capacity from a source other than UtiliCorp, at a market based rate, and UtiliCorp will be forced to find another purchaser for its capacity. Mr. Warnock testified that there is a high likelihood that another purchaser will not be found for at least some of the capacity, so the end result will be lower capacity transfer credits to UtiliCorp's customers, which will harm the general system customers.

Report and Order, Case No. GR-96-192.

18. The Commission first addressed this issue in Case No. GR-95-273 and found as follows:

The Commission finds that UtiliCorp's captive firm customers received the appropriate capacity release credits during the 1994-95 ACA period. UtiliCorp presented persuasive testimony demonstrating that its sales of released capacity to UES were made at market rate. Staff's testimony corroborated UtiliCorp's assertion. Staff failed to demonstrate persuasively any competitive advantage accruing to UES as a result of these sales, or any improper affiliate transactions.

19. The Commission repeated this finding in Case No. GR-96-192:

The Commission finds that it has previously addressed this issue in the Report and Order issued on September 23, 1998 in case number GR-95-273. In rejecting the Staff's position in that case, the Commission concluded that:

UtiliCorp's captive firm customers received the appropriate capacity release credits during the 1994-95 ACA period. UtiliCorp presented persuasive testimony demonstrating that its sales of released capacity to UES were made at market rate. Staff's testimony corroborated UtiliCorp's assertion. Staff failed to demonstrate persuasively any competitive advantage accruing to UES as a result of these sales, or any improper affiliate transactions.

FEDERAL PREEMPTION

20. Lastly, application of the pricing provisions contained in the affiliate transaction rules is preempted by federal law. As stated above, a pipeline capacity release mechanism exists which is mandated by the FERC. This process is established through FERC Order No. 636 and Order No. 637 and requires that capacity be transferred at a market rate. To the extent that the affiliate transaction rules would require pricing different from the market price (i.e. fully distributed costs), these rules are preempted.

CONCLUSION

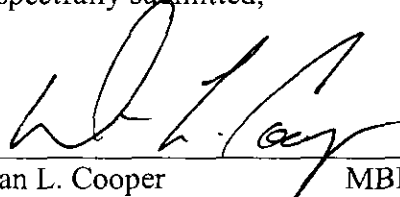
21. When applied to capacity release credits, Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) work to the detriment of UtiliCorp's regulated customers. These customers otherwise would receive market based credits for unneeded capacity. If forced to reimburse MPS at a rate above the market, UtiliCorp affiliates will purchase their capacity elsewhere. Additionally, the existence of a FERC mandated capacity release mechanism preempts

the pricing rules. Thus, the application of these rules to capacity release credits will result in fewer credits, is not in the best interests of UtiliCorp's regulated customers and is preempted by FERC provisions.

WHEREFORE, UtiliCorp requests a Commission order:

- a) granting a waiver for good cause from Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) as to capacity release credits; 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

