



Missouri Public Service Commission

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February 4, 2002

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General Counsel

FILED²
FEB 04 2002

Missouri Public
Service Commission

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

RE: Case No. EM-2002-297-In the Matter of the Application of the UtiliCorp United, Inc., a Delaware Corporation, for Authority to Merge to Effect a Name Change.

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF'S RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

David A. Meyer
Associate General Counsel
(573) 751- 8706
dmeyer@mail.state.mo.us

Enclosure

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

FEB 04 2002

Missouri Public
Service Commission

In the Matter of the Application of)
UtiliCorp United, Inc., a Delaware)
Corporation, for Authority to Merge to)
Effect a Name Change.)

Case No. EM-2002-297

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its recommendation, states:

1. On December 21, 2001, UtiliCorp filed an Application seeking approval from the Commission of the merger between UtiliCorp Renaming Corporation ("URC") and UtiliCorp United, Inc. ("UtiliCorp") by January 31, 2002. After the Office of the Public Counsel requested a hearing, the Commission held a prehearing conference in this matter on January 29, 2002, and the parties have been directed to provide a proposed procedural schedule no later than February 21, 2002.

2. On January 30, 2002, Staff filed a Status Report discussing the discovery it had performed in this matter. In its filing, Staff indicated its willingness to either provide a Recommendation should the Commission not order a hearing as requested by the Office of the Public Counsel, or file testimony for any hearing that the Commission might order, should the Commission order a hearing as requested by the Office of the Public Counsel. On January 31, 2002, the Commission ordered Staff to file this Recommendation.

3. In its January 7, 2002 filing Staff noted that UtiliCorp only seeks Commission approval over the statutory merger between UtiliCorp and URC, the stated sole purpose of which is to change the UtiliCorp name. UtiliCorp did not seek Commission authorization to (1) issue

UtiliCorp shares of common stock and acquire with these shares, through a special acquisition subsidiary ("SAS"), 50% of the outstanding publicly held Class A common shares of Aquila; and (2) to merge Aquila and SAS in a short-form merger and thereby own 100% of Aquila's Class A common shares. Accordingly, Staff's Recommendation only addresses the former transaction. However, the discovery Staff conducted, and submitted to the Commission as a part of its Status Report, does address all three transactions.

4. In its Recommendation, which is attached as Exhibit A, Staff recommends that the Commission approve UtiliCorp's Application, subject to four conditions. First, Staff recommends that the Commission specify that nothing in the Commission's order shall be considered a finding by the Commission of the value of this transaction for rate making purposes, and that the Commission reserves the right to consider the rate making treatment to be afforded this transaction in any subsequent proceeding. UtiliCorp acquiesces in this condition, as it stated in paragraph 14 of its *Motion for Reconsideration by the Commission*, "[i]n transactional dockets such as this case, ratemaking issues are not properly before the Commission. *See Re Gateway Pipeline Company et al.*, Case No. GM-2001-585." Second, Staff recommends that the Commission state that the Commission's order shall not be deemed precedent for any future transaction even if the facts may be similar. Third, Staff recommends that the Commission condition its approval on the premise that any adverse financial effects of this merger shall be borne by UtiliCorp's stockholders and not by Missouri ratepayers. Finally, Staff asks that the Commission require that all records pertaining to this transaction shall be maintained at UtiliCorp's headquarters and made available to the Staff as the Staff deems necessary.

5. The Staff further recommends that if the merger is approved, rather than filing entirely new tariffs for its Missouri Public Service (MPS) and St. Joseph Light & Power (SJLP) divisions, UtiliCorp, under its new name, should file adoption notices adopting the electric, gas, and steam tariffs on file for MPS and SJLP, similar in form to the ones that UtiliCorp filed in Case No. EM-2000-292.

WHEREFORE, Staff recommends that the Commission approve the UtiliCorp Application subject to the conditions listed in its Recommendation.

Respectfully submitted,

DANA K. JOYCE
General Counsel


David A. Meyer
Associate General Counsel
Mo. Bar. #46620

Steven Dottheim
Chief Deputy General Counsel
Mo. Bar #29149

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 4th day of February, 2002.



MEMORANDUM

To: Missouri Public Service Commission's Official Case File
Case No. EM-2002-297, UtiliCorp United Inc.

From: David Murray, Financial Analysis Department

Subject: Staff's Recommendation for Approval of the Application of UtiliCorp United, Inc.
for Authority to Merge to Effect a Name Change

Date: February 4, 2002

Approved by: David Murray 2/4/02
Project Coordinator / Date

Steven G. Gotsch 2/4/02 *DM*
General Counsel's Office / Date

UtiliCorp United Inc.

On December 21, 2001, UtiliCorp United Inc. (UtiliCorp, Company) filed pursuant to Section 393.190 RSMo. 2000 and 4 CSR 240-2.060, an Application requesting authority to merge with UtiliCorp Renaming Corporation (URC) to effect a name change. URC has been incorporated by UtiliCorp for the sole purpose of effecting a name change through a statutory merger. URC is not currently conducting any business in Missouri or elsewhere.

This application is a request to merge with a corporation, URC, to effect a name change in accordance with Delaware General Corporation Law. URC has no business or assets, and therefore, the Merger will not have any impact on the financial statements of UtiliCorp or the surviving corporation. The transaction that may have had an impact on UtiliCorp's financial statements -- the reacquisition of the 20 percent of Aquila Inc. (Aquila) shares outstanding -- has already taken place and is not the subject of this application.

In the Response Of UtiliCorp United Inc. To Staff Notice, Motion For Clarification And Request Of Compliance With Commission Rule filed on January 14, 2002, UtiliCorp has clarified that it is not seeking approval from the Commission to complete the transaction of reacquiring the 20 percent of Aquila shares that were outstanding. In fact, UtiliCorp has already completed this transaction. UtiliCorp has indicated that it did not need Commission authorization to complete this transaction because Section 393.190 RSMo 2000 did not apply. In addition, UtiliCorp has indicated that this application is not seeking approval from the Commission to issue the additional shares that are needed to complete this transaction. Again, UtiliCorp has already issued these shares and has indicated in a data request response that because it is a Delaware Corporation it does not have to file for approval with this Commission to issue these shares. This application is only a request to merge to effect a name change.

In conclusion, the Staff believes that the transaction described in UtiliCorp's Application will not be detrimental to the ratepayers of its Missouri Public Service or St. Joseph Light & Power division. The Staff recommends that the Commission approve UtiliCorp's Application, with the following conditions applicable to the proposed transaction:

1. That nothing in the Commission's order shall be considered a finding by the Commission of the value of this transaction for rate making purposes, and that the Commission reserves the right to consider the rate making treatment to be afforded this transaction in any subsequent proceeding.
2. That the Commission's order shall not be deemed precedent for any future transaction even if the facts may be similar.
3. That any adverse financial effects of this merger shall be borne by UtiliCorp's stockholders and not by Missouri ratepayers.
4. That all records pertaining to this transaction shall be maintained at UtiliCorp's headquarters and made available to the Staff as the Staff deems necessary.

Service List for
Case No. EM-2002-297
Verified: January 7, 2002 (rr)

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