

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

1209 PENNTOWER OFFICE CENTER
3100 BROADWAY
KANSAS CITY, MISSOURI 64111

(816) 753-1122
TELECOPIER (816) 756-0373

JEREMIAH FINNEGAN, P.C.
STUART W. CONRAD
C. EDWARD PETERSON*

*ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS

December 13, 1999

FEDERAL EXPRESS

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
301 West High R530
Jefferson City, Missouri 65102

FILED²
DEC 1³ 1999 *js*
Missouri Public
Service Commission

Re: In re St. Joseph Light & Power Company and UtiliCorp
United, Inc.
Commission Case No. EM-2000-292

Dear Mr. Roberts:

Enclosed are the original and fourteen (14) conformed copies of **REPLY OF AG PROCESSING INC TO DECEMBER 3, RESPONSE OF UTILICORP AND ST. JOSEPH LIGHT & POWER**, which please file in the above matter and call to the attention of the Commission.

An additional copy of the material to be filed is enclosed, which kindly mark as received and return to me in the enclosed envelope as proof of filing.

Thank you for your attention to this important matter. If you have any questions, please call.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 

Stuart W. Conrad

SWC:s
Enclosures
cc: All Parties

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

DEC 1³ / 1999

Missouri Public
Service Commission *jo*

Case No. EM-2000-292

In re 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 con-)
nection therewith, certain other)
related transactions.)

REPLY OF AG PROCESSING INC TO DECEMBER 3, RESPONSE
OF UTILICORP AND ST. JOSEPH LIGHT & POWER

COMES NOW Intervenor Ag Processing Inc. a Cooperative (AGP) and replies to the December 3, 1999 Response of UtiliCorp and St. Joseph Light & Power Company (SJLP) (collectively, Joint Applicants or Applicants) as follows:

1. AGP believes that it is critically important that Commission Staff and Public Counsel, and no less the other parties, have adequate time to address this filing, as well as the expected filing concerning Empire District Electric Company. Although AGP expects to be active in this proceeding on several selected issues that have not yet been fully determined or identified, Commission Staff virtually alone has the resources necessary to make a thorough examination of the filing and address many of the issues raised by the filing so as to protect the public interest of ratepayers generally as well as the public interest.

2. For that reason, AGP generally supports the recommendation of Commission Staff as regards scheduling of this matter for further processing by the Commission.

3. Although Joint Applicants urge expedited treatment of their filing, Joint Applicants fail to note that the proposed business combination was announced months ago and even the shareholder meetings and approvals were obtained months ago. Given this casual treatment of the passage of time, it is disingenuous for Joint Applicants to urge expedient treatment to the disadvantage of other interested parties and seek to deny Commission Staff adequate time to do its job.

4. This filing is highly complex in several aspects, including (but not limited to) the following:

a. First, although joint savings are claimed, Applicants have not broken out or disaggregated electric, steam and gas systems savings that they claim. AGP takes both electricity and steam from SJLP and thus is concerned about assertions of savings that may be obtained from the operation of the steam system as well as the electric system. Such claimed savings should be identified and mechanisms developed to test whether they are achieved so that rates may be reduced accordingly and without discrimination as regards divisions of the utility operations of SJLP.

b. The relationship of these claims of separate system savings and the implications of the proposed regulatory

plan will significantly complicate analysis of this case as well as the issues presented.

c. Despite claimed joint savings, it appears that only insignificant savings have been allocated to UtiliCorp. This is unusual and will require additional analysis into the operations of UtiliCorp to discern whether, in fact, there are **negative** savings to UtiliCorp, or, if there are positive savings, why and under what justification they have not been so allocated in accordance therewith.

d. Applicants appear to request recovery from ratepayers of acquisition premium, a recovery which AGP will directly oppose. The complexity of the "regulatory plan" will require extensive analysis to track and identify the aspects thereof which permit the recovery of acquisition premium from ratepayers.

e. The proposed "rate freeze" is not an answer. It is the responsibility of regulated utilities to operate their businesses as de facto public trustees. As savings are obtained they will need to be flowed back to ratepayers on a current basis so that generational inequities are avoided. Only through such a mechanism can ratepayer detriment be avoided. It does not avoid, but rather confirms ratepayer detriment for Applicants to seek to retain cost savings and efficiencies from their operations. Moreover, such cost reductions should not be offset with other costs, sometimes called "costs to achieve" so as to reduce ratepayer benefit and shift acquisition premium to ratepayers.

Such costs are entirely the responsibility of the shareholders who have approved the transaction. The complex nature of the filing, the regulatory proposals contained, and the timing and nature of claimed savings will all need to be carefully examined by Commission Staff and others to assure that ratepayers are not detrimentally affected by the merger.

f. The initial failure of Joint Applicants to submit a market power study, coupled with their apparent refusal or resistance to requests to provide such, suggests that such a study, when done, will demonstrate detriment to the ratepayers and the general public of the state. Such failure is inconsistent with Joint Applicants' claim for expeditious treatment. The asserted basis for such failure, that retail competition does not yet exist, could, in the alternative, form the basis of a refusal to process the application entirely, or a dismissal without prejudice to refile when such study is provided. We need not long pause to note federal legislative proposals and the advent that some 23 states, perhaps more by this writing, have now authorized retail competition. We consider a retail market power study to be a necessity for the Commission to evaluate ratepayer detriment from the proposed combination.

g. Several aspects of the existing filing suggest that the transaction is yet evolving. There is reference to "transition teams" and the suggestion in Mr. Meyers' testimony that the savings (or the lack thereof) have not yet been identified or analyzed. While this may form a basis for Joint

Applicants' delay in filing this application, it suggests that there may be negative benefits that will remain "undiscovered" until after the Commission is asked to approve the package. Accordingly, time to thoroughly investigate the claims of post-merger integration benefits is crucial. Asserting a "rate freeze" as a palliative does not establish that there is no resultant ratepayer detriment, it only defers recognition of that detriment.

5. Apparently the filing of a similar package for Empire District Electric Company is imminent and may even take place before these matters are addressed by the Commission. Already, Joint Applicants have made their FERC filing. Although obtaining two FERC **docket** numbers (EC00-27-000 and EC00-28-000), the filing was apparently submitted to FERC on a consolidated basis and even the notice of filing addressed the two dockets together. Consolidation is no doubt expected at the federal level. Consolidation is likely here, indeed, seemingly not opposed by Joint Applicants who assert the existence of considerable "common" issues. From the market power and general public aspects, the entire affect of the larger combination cannot be appreciated by addressing them on a piecemeal basis. And, since that is the case, no real procedural schedule can be addressed or estimated until the Empire filing has been made, the complete package is before the Commission, and the parties have even a

reasonable opportunity to review that filing.^{1/} The potential of a cost shift **from** Empire **to** SJLP cannot be dismissed at this time. That would present obvious detriment to the ratepayers of SJLP. And it is no less true that costs could be shifted to Empire and to its customers to their detriment.

6. Given all these considerations, AGP strongly believes that the recommendation of the Commission Staff with respect to the amount of time that it will need to appropriately analyze and respond to **both** filings should be given significant weight by the Commission. Moreover, we believe that the case simply cannot proceed without a market power study submitted by the Joint Applicants with sufficient time for the parties, including Commission Staff to analyze that aspect of the filing and respond. Absent a market power study, the Commission simply lacks critical information necessary to evaluate whether there is ratepayer detriment.

7. Finally, it is also apparent that, given the dearth of information that is provided to the Commission and the parties in the initial filing, the Joint Applicants intend to try this case on rebuttal and surrebuttal evidence. This, also, is inconsistent with assertions of a need for expeditious treatment and consideration. If expeditious treatment is desired, then all necessary information and data should be made available to Commission Staff, Public Counsel and the other parties at the

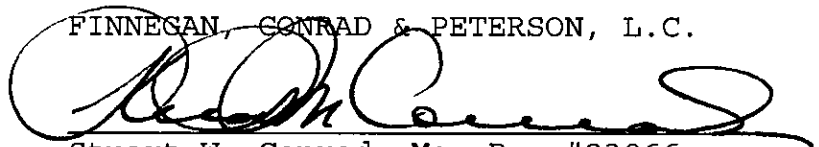
^{1/}Unfortunately, indications are that the Empire filing will be similarly deficient with respect to a market power study.

earliest possible date. If the transaction is beneficial to the ratepayers and the public, what is there to hide? What conceivable interest is served by delaying demonstration of that fact, if fact it be? Engaging in "gamesmanship" raises suspicions regarding the merits of the transaction, ill-serves the interests of the public and ratepayers, and unnecessarily complicates the difficult job of the Commission. In truth, it ill-serves the interests of the Joint Applicants if they are truly interested in expeditious consideration of their application.

WHEREFORE, for the foregoing reasons, AGP requests the Commission to reject the schedule of Joint Applicants and adopt the general processing time limits that are recommended by Commission Staff. Further, AGP requests that the Commission order Joint Applicants to submit a market power study and to defer further processing of this filing, or to dismiss the filing without prejudice until Joint Applicants are prepared to submit a complete application including a market power study and other necessary disaggregation details as noted in this pleading.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

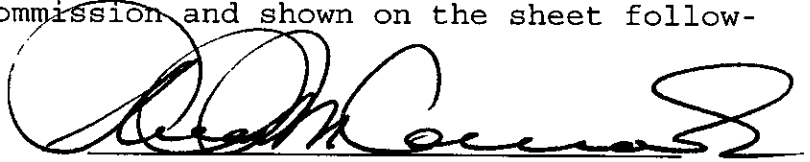


Stuart W. Conrad Mo. Bar #23966
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122
Facsimile (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR AG PROCESSING INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application for Leave to Intervene by U.S. mail, postage prepaid addressed to all parties by their attorneys of record as provided by the Secretary of the Commission and shown on the sheet following.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", written over a horizontal line.

Stuart W. Conrad

Dated: December 13, 1999

Service Listing for EM-2000-292

Mr. Paul A. Boudreau
Attorney
Brydon, Swearngen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102-0456

Ms. Christine Egbarts
Attorney
Blackwell Sanders Peper Martin LLP
Two Pershing Square
2300 Main, Suite 1100
Kansas City, MO 64108

Mr. Gary L. Meyers
Vice President, General Counsel
St. Joseph Light & Power Co.
P. O. Box 998
St. Joseph, MO 64502

Mr. James C. Swearngen
Brydon, Swearngen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102-0456

Mr. Mark W. Comley
Attorney
Newman, Comley & Ruth
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537

Mr. Dan Joyce
General Counsel
Missouri Public Service Commission
Truman Office Building - R530
P. O. Box 360
301 West High - P.O. Box 360
Jefferson City, MO 65102-0360

Mr. Douglas E. Micheel
Senior Public Counsel
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Mr. Karl Zobrist
Attorney
Blackwell Sanders Peper Martin LLP
Two Pershing Square
2300 Main, Suite 1100
Kansas City, MO 64108