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January 4, 2001

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

**FILED<sup>3</sup>**

JAN 04 2001

Missouri Public  
Service Commission

**RE: UtiliCorp United Inc.**  
**Case No. ER-2001-294**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Objection to Motion for Expedited Treatment**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill  
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**FILED<sup>3</sup>**  
JAN 04 2001  
Missouri Public  
Service Commission

In the Matter of the Tariff Filing of	)	
UtiliCorp United Inc., d/b/a Missouri	)	Case No. ER-2001-294
Public Service	)	

**OBJECTION TO MOTION FOR EXPEDITED TREATMENT**

COMES NOW, the Office of the Public Counsel (Public Counsel) and Objects to the Motion for Expedited Treatment filed by UtiliCorp United, Inc., d/b/a Missouri Public Service (Company). In support of this Motion, Public Counsel states the following:

1. On December 28, 2000, Public Counsel, the Company represented by Mr. Swearengen and an officer of the Company, Counsel for the Staff of the Public Service Commission (Staff), and Stuart Conrad, attorney for Intervenors in this case, met for a pre-hearing conference in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. The purpose of that conference was to draft a proposed procedural schedule.

2. In the course of that conference, Company's attorney was advised of a number of matters pending which would preclude the witnesses for Public Counsel and Staff from being able to file testimony in this matter in January, early February and late April, 2001, because of commitments in other cases. At that conference, the parties, including the Company in a "tentative" posture, agreed to submit the following proposed procedural schedule to the Commission for approval:

January 16, 2001	Filing of Company's direct testimony
March 20, 2001	Filing of direct from all other parties
March 29, 2001	Pre-Hearing Conference
May 9, 2001	Filing of rebuttal testimony by all parties
June 7, 2001	Filing of surrebuttal testimony by all parties
June 12, 2001	Filing of List of Issues
June 15, 2001	Filing of Statement of Positions
June 21-22, 2001	Evidentiary Hearing

3. In its order suspending the proposed tariff, and directing the parties to file a proposed procedural schedule, the Missouri Public Service Commission (Commission) suspended the proposed tariff until September 30, 2001.

4. The tentative schedule set forth above was reached in order to accommodate the schedules of Staff and Public Counsel, each of whom have numerous scheduling conflicts with the abbreviated schedule proposed by the Company. It is especially distressing to note that the Company has no provision in its schedule for the filing of direct testimony by Staff, Public Counsel and Intervenor. The scheduling conflicts which cause Public Counsel to object to the Company's proposed procedural schedule include the fact that all legal and technical staff of Public Counsel who are assigned to this matter are also assigned to the St. Louis County Water Company general rate increase case (WR-2000-844). That case schedule includes:

January 16, 2001	Filing of list of disputed issues, list of witnesses and order of cross-examination
January 17, 2001	Local public hearings
January 23, 2001	Filing of Position Statements on disputed issues
January 25, 2001	Filing of surrebuttal testimony
February 5-9, 2001	Evidentiary Hearing

The schedule Company has proposed in this case (ER-2001-294) will directly conflict with the dates set for the filing of Company's surrebuttal testimony, the proposed pre-

hearing conference date, and the due dates for the list of issues and statement of position on issues in WR-2000-844, as well as the evidentiary hearing in WR-2000-844.

In addition, counsel assigned from the Public Counsel's office to this matter has briefs due in Commission Case Number EA-2000-308 on January 19 and February 9, 2001. Counsel also has appellate briefs due January 9, January 22, January 30, February 14, February 16, February 27 and February 28, 2001, in cases arising out of Commission Case Number WR-2000-281, which have appeals pending in Buchanan, Cole and Jasper counties.

5. Public Counsel also objects because the Company has proposed a procedural schedule which eliminates the opportunity for direct testimony by the Staff, Intervenor and Public Counsel. The time proposed for filing rebuttal testimony is unfairly short and will create an undue hardship on Public Counsel. It should be noted that the proposed tariff was filed in early November 2000, without contemporaneous filing of direct testimony. Under the Company's proposed schedule, it will not file direct testimony until January 16, 2001. The Company proposes that rebuttal be filed nine (9) working days after the filing of direct testimony. This will not allow time for Public Counsel to review the testimony, make necessary data requests, and allow the Company to provide the requested data, prior to the rebuttal date. Rule 4 CSR 240-2.090(2) provides that a party shall have twenty (20) days to respond to a data request. Thus, even if Public Counsel was able to prepare and submit data requests by January 17, 2001, the responses to those requests will not be due until February 7. The Company's proposed procedural schedule, which allows Public Counsel only one opportunity to pre-file testimony, is patently unreasonable. Although Public Counsel has been able to submit a

limited number of data requests prior to the filing of testimony, it is extremely likely that matters will present themselves for the first time in Company's direct testimony which will require further discovery be conducted in this case. Adequate time for discovery is necessary in order for Public Counsel to meet its obligation to ensure that all relevant factors are presented to the Commission when it decides how to rule on this request for rate increase. [See, State ex Rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806, 812 (Mo. App. WD 1993)].

6. The Company's proposed tariff filing is a request to increase rates. It should be considered like any other general rate increase. As such, it should have filed direct testimony at the time of filing, as provided in 4 CSR 240-2.065. While 4 CSR 240-10.070(2) does not require complete compliance with this rule in the case of fuel adjustment clauses, fuel adjustment clauses for electric utilities are not lawful in Missouri. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41 (Mo. banc 1979). By not filing testimony along with its proposed tariffs affecting an increase in rates, it appears that the Company is conceding that its proposed tariff constitutes a fuel adjustment clause.

7. In addition to the reasons set forth above, Public Counsel informs the Commission that the Company's proposed hearing dates are not acceptable because Monday, February 12, 2001 is a state holiday.

8. While Public Counsel is willing to accept some adjustment of the tentative schedule arrived at in the pre-hearing conference, any adjustments to that schedule must include the opportunity, **at a bare minimum**, for Public Counsel to review the direct testimony of the Company, submit data requests, and obtain the responses in a timely

fashion. This is a matter where Company seeks to raise rates but where no information has yet been provided by the Company in support of its plea of potential poverty. Nine (9) working days between the filing of the Company's direct testimony and Public Counsel's only opportunity to pre-file testimony is insufficient and effectively denies Public Counsel, and the customers it represents, due process. Given that this tariff, if allowed, will increase rates, Public Counsel should be afforded the opportunity to file direct testimony, as well as rebuttal testimony and surrebuttal testimony. The Company provides no opportunity for direct or surrebuttal to Public Counsel under this proposed procedural schedule. Further, as Company is aware from discussions at the pre-hearing conference, the dates suggested by Company are not acceptable to Public Counsel because of other significant, pre-existing obligations in several cases, as set forth above.

WHEREFORE, it is not possible for Public Counsel to adequately prepare to rebut testimony regarding a proposed rate increase less than two weeks after the filing of direct testimony. The Commission should not expect Public Counsel to adequately and competently represent the public's interests at a hearing set to begin twenty-seven (27) days after the filing of direct testimony in support of a rate increase, especially given Public Counsel's other commitments in other Commission cases. The Public Counsel will not be able to present complete information to the Commission, which addresses all relevant factors in this case if Public Counsel has not had time to adequately prepare for this hearing. For the forgoing reasons, it is respectfully requested that this Commission deny the Company's Motion for Expedited Hearing in this case.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By:   
M. Ruth O'Neill (#49456)  
Assistant Public Counsel

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Deputy Public Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 4th day of January 2001:

James Swearengen  
Brydon, Swearengen & England P. C.  
P O Box 456  
Jefferson City, MO 65102

Steve Dottheim  
Missouri Public Service Commission  
P O Box 360  
Jefferson City, MO 65102

Stuart W. Conrad  
Finnegan, Conrad & Peterson  
1200 Penntower Office Center  
3100 Broadway  
Kansas City, MO 64111

A handwritten signature in cursive script, appearing to read "Stuart W. Conrad", is written over a horizontal line.