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March 26, 2001

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

RE: Case No. ET-2001-482

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF REPLY TO UTILICORP'S SUGGESTIONS IN OPPOSITION TO OFFICE OF THE PUBLIC COUNSEL'S MOTION TO DISMISS OR SUSPEND.**

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
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DAM:sw
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAR 26 2001

Missouri Public
Service Commission

In the Matter of UtiliCorp United, Inc.'s)
Tariffs Filed to Update the Rules and)
Regulations for Electric and to Increase)
the Interest Rate Paid on Deposits, the)
Late Payment Charge, the Reconnection)
Fee, and the Charge for Returned Checks)

Case No. ET-2001-482

**STAFF REPLY TO UTILICORP'S SUGGESTIONS IN OPPOSITION TO OFFICE OF PUBLIC
COUNSEL'S MOTION TO DISMISS OR SUSPEND**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its reply to UtiliCorp's Suggestions in Opposition to the Office of the Public Counsel's Motion to Dismiss or Suspend, states as follows:

1. UtiliCorp, in paragraph 4 of its March 19, 2001 response, suggests that by file-stamping the proposed tariff and returning a copy under Commission letterhead, advising UtiliCorp that the tariff filing was "being made effective in accordance with Section 393.140.11 RSMo," the Commission has effectively issued an irrevocable order. The actions of the Commission do not reach the standards for a lawful Order set forth in *State ex rel. Philipp Transit Lines, Inc. v. Public Service Comm'n et al.*, 552 S.W.2d 696 (Mo.banc 1977). In *Philipp*, as in this case, the Commission did not act to adopt the tariff by voting in a properly noticed public meeting. *Id.* at 698. Notational voting is not permitted to create an Order. *Id.* at 702. The March 6, 2001 letter, which was not certified, does not indicate that a vote has occurred and how each Commissioner voted. Likewise, the March 6, 2001 letter does not indicate that a regulatory law judge had or was issuing an Order of the Commission by delegation of authority pursuant to Section 386.240. The Commission did not post notice of Tariff No. 200100847 on a Commission Agenda for discussion or vote. There is no Commission Agenda showing Tariff

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No. 200100847 nor do Commission Agenda Minutes show a vote on or discussion of that tariff. The tariff was submitted by cover letter, not by pleading, under the signature of UtiliCorp Senior Regulatory Analyst Matt Tracy, who does not purport to be an attorney licensed in Missouri or elsewhere. UtiliCorp did not request an effective date for the tariff of fewer than thirty days for good cause. In fact, the cover letter states that "[t]he effective date is beyond the required 30 days . . ." The effective date on each tariff sheet submitted by UtiliCorp is May 1, 2001, and the cover letter states that "[t]he sheets become effective May 1, 2001."

2. Assuming, *arguendo*, that the Commission has in fact acted to create an Order through the process that has taken place (without regard to the procedural infirmities created because the process did not adhere to the requirements of the *Philipp* decision, Section 610.020, and 4 CSR 240-2.150), then the Commission's actions are subject to the provisions of Section 386.500 and 4 CSR 240-2.160, governing rehearings and reconsiderations. If the Commission's actions constitute an Order, the Public Counsel's Motion to Dismiss or Suspend is tantamount to a Motion for Rehearing or Reconsideration and was timely filed -- the letter from the Commission's Secretary/Chief Regulatory Law Judge contains no effective date and the Public Counsel's Motion to Dismiss or Suspend was filed prior to the May 1, 2001 effective date of the UtiliCorp tariff sheets. *See State ex rel. Alton Railroad Co. v. Public Serv. Comm'n*, 155 S.W.2d 149 (1941).

3. UtiliCorp has also asserted that 4 CSR 240-2.065 prohibits the Public Counsel's Motion. The facts in this case appear to fulfill the requirements of 4 CSR 240-2.065(3), as a pleading requesting the suspension of a tariff was filed by the Office of the Public Counsel, and pursuant to that rule, the Commission must establish a case.

4. OPC proposed, and the Staff noted in its response filed on March 19, 2001, that UtiliCorp can synchronize its rates for the services addressed in its tariff filing for St. Joseph Light & Power (SJLP) by implementing the rates most beneficial to ratepayers, rather than implementing Missouri Public Service rates across the board. UtiliCorp has not indicated that it could not do this and has not indicated it would cost any more than the pending tariff. Staff strongly supports this proposal, which would be consistent with the standard applicable to the UtiliCorp - SJLP merger ("not detrimental to the public interest").

5. Also, it is not entirely clear to the Staff whether UtiliCorp is saying in Paragraph 2 that it will be filing a general rate increase case in 3 to 4 months for both MPS and SJLP. That appears to be the case. The Staff would note that if UtiliCorp wants to keep the interest it pays on customer deposits and charges for the services in question synchronized it will need to file its general rate increase cases for MPS and SJLP contemporaneously.

6. In Paragraph 3 of its March 19 filing, UtiliCorp notes that it met on February 8, 2001 with representatives of the Staff and the Office of the Public Counsel (OPC). The representatives of the Staff that attended that meeting recall that OPC expressed its lack of support for what UtiliCorp indicated it intended to file. The Staff's representatives who attended that meeting do not recall that OPC indicated it would not oppose UtiliCorp's planned tariff filing. Thus, the Staff is puzzled by UtiliCorp's statement in Paragraph 12 that "[h]ad UtiliCorp known that the tariff would be opposed by OPC, it could have undertaken the task at a much lower cost than is now the case." Unless OPC indicated otherwise to UtiliCorp out of the presence of Staff representatives, OPC's Motion to Dismiss or Suspend should have come as no surprise to UtiliCorp, despite UtiliCorp's intimations in its March 19, 2001 filing.

7. In Paragraph 7, UtiliCorp argues that “two relatively recent examples of tariffs that modify or amend particular rates or charges or terms and conditions of services associated with regulated activities outside the context of a full-blown rate case or complaint” are the UtiliCorp tariff modifying the terms of its line extension policy and the McDonald’s aggregation tariff. These two tariffs can be distinguished. The line extension policy tariff, docketed as Case No. ET-99-126, concerned tariff modifications that led to a significant departure from the current practice of both MPS and other similar utilities, and led the Commission to suspend it. There was no opposition to the tariff suggesting that it constituted single-issue ratemaking; rather, the International Brotherhood of Electrical Workers, Local Union No. 814, objected to the tariff alleging job protection and safety concerns. The McDonald’s aggregation tariff, docketed as Case No. ET-97-209, was an experiment respecting a service not previously provided by UtiliCorp. The Commission held an informational hearing in this case, in keeping with the case’s importance, to present all relevant factors for the Commission’s consideration.

UtiliCorp also argues in Paragraph 7 that the seminal single-issue rate case *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm’n*, 585 S.W.2d 41 (Mo.banc 1979) (hereinafter referred to as *UCCM*) only applies to tariffs that allow rates over a prospective period to increase (or decrease) along with increases (or decreases) in the cost of a single item without consideration of offsetting increases (or decreases) in other expenses or costs. Thus, UtiliCorp argues that any reliance on *UCCM* and the single-issue ratemaking prohibition is “misplaced” because “the charges sought to be modified by the tariff changes in this case are line item *fixed* charges. As such, they will not be indexed to some underlying element of cost of service. The charges are known and published. The prohibition against single-issue ratemaking is simply not applicable to these facts.” UtiliCorp interprets the *UCCM*

Court's holding far too narrowly – the quote from *UCCM* in the March 19, 2001 Staff Response And Motion To Consolidate demonstrates that the Court intended to address broader issues than those discussed by UtiliCorp here. *See* 585 S.W.2d at 49.

8. This same quote from *UCCM* in the March 19, 2001 Staff Response And Motion To Consolidate addresses UtiliCorp's argument in Paragraph 8 of its March 19, 2001 pleading, where UtiliCorp selectively quotes from *UCCM*. Even when the Commission permits revised charges to go into effect without suspension, it must consider all relevant facts. *See* 585 S.W.2d at 49.

9. In Paragraphs 9 and 10, UtiliCorp asserts that proposed tariffs are consistent with its objective that there be no deterioration in quality of service, which UtiliCorp forebodingly warns may occur respecting call center operations if there is not call center standardization. Moreover, UtiliCorp claims in Paragraph 12 that suspending its proposed tariff changes "would potentially create a serious practical obstacle to the integration of the SJLP Division into CIS." All of this argument of UtiliCorp serves to point out that the tariff filings resulting in this case and Case Nos. HT-2001-485 and GT-2001-484 are related to the merger of SJLP and UtiliCorp, and should have been requested by UtiliCorp in its merger application so that the items of quality of service, rate terms, call service operations and merger cost could have been evaluated and addressed by the parties, including the Staff.


10. Finally, but significant to UtiliCorp's position, is its statement in Paragraph 2 that "the proposed revised fees and charges will be in effect for only a short period of time because UtiliCorp intends to file a general rate increase for its Missouri electric and steam operations within 3 to 4 months at which time all of the charges addressed by the tariff sheets will be subject to further revision and modification in the context of the determination of UtiliCorp's

overall revenue requirement." Thus, this short period of time which UtiliCorp's proposed rates and charges will be in effect is more likely fourteen or fifteen months, rather than three or four months, because the Commission has a maximum of eleven months after UtiliCorp files its case to complete the proceedings and reach a decision.

WHEREFORE, Staff respectfully suggests that the Commission is not bound by its inaction regarding UtiliCorp's proposed tariffs to date, and may consider the matter before it at its convenience.

Respectfully submitted,

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General Counsel


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Missouri Bar No. 46620

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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 26th day of March, 2001.



Service List for
Case No. ET-2001-482
Revised: March 26, 2001 (SW)

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