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June 25, 2001

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

**FILED<sup>2</sup>**  
JUN 25 2001  
Missouri Public  
Service Commission

**RE: Missouri Public Service - Case No. ER-2001-672**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of UtiliCorp's Response to OPC's Motion to Reject Tariff Filing. Please stamp the enclosed extra copy "filed" and return same to me.

If you have any questions concerning this matter, then please do not hesitate to contact me. Thank you very much for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

*Dean Cooper*  
Dean L. Cooper *by Rg*

DLC/rhg  
Enclosures

cc: Office of the Public Counsel  
Office of the General Counsel  
Mr. Nathan Williams, OPC  
Mr. Stuart Conrad

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

**FILED<sup>2</sup>**

JUN 25 2001

Missouri Public  
Service Commission

In the Matter of the tariff filing of Missouri )  
Public Service, a division of UtiliCorp )  
United Inc., to implement a general rate )  
increase for retail electric service provided )  
to customers in the Missouri service )  
area of MPS. )

Case No. ER-2001-672

**UTILICORP'S RESPONSE TO OPC'S MOTION TO REJECT TARIFF FILING**

Comes now UtiliCorp United Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS") and for its Response to the Motion to Reject Tariff Filing (the "Motion") filed by the Office of the Public Counsel ("OPC"), respectfully states as follows to the Missouri Public Service Commission ("Commission").

**PURPOSE**

1. The Motion should be denied as there is no statutory authority, no regulatory requirement, no judicial or Commission precedent and no factual-based compelling reason to require that a public utility propose new rates for all its operating divisions simultaneously when those divisions provide service under separate tariffs and certificates of public convenience and necessity and are otherwise treated separately by the utility and/or the Commission for operating, ratemaking, reporting and other purposes.

**BACKGROUND**

2. UtiliCorp is authorized by this Commission to provide both electric and natural gas service through its MPS operating division and electric, natural gas and industrial steam service through its St. Joseph Light & Power ("SJLP") operating

division. On June 8, 2001, UtiliCorp filed revised tariff sheets designed to implement a general electric rate increase for its MPS operating division. On June 15, 2001, the OPC filed its Motion wherein it claims that proposed MPS tariff sheets be rejected on the grounds that UtiliCorp did not file tariffs designed to implement a general electric rate increase for its SJLP division. On June 21, 2001, the Commission suspended the tariffs and established certain procedural dates for processing same.

### **CITED STATUTES AND REGULATIONS**

3. The OPC cites as support for its Motion various statutes (Sections 386.020(15), 393.140(11), 393.150 and 93.270 RSMo 2000) and regulations (4 CSR 240-2.065(1) and 4 CSR 240-2-10.070(2)).

4. None of the three statutes cited by the OPC describe what tariffs must or may not be put at issue by a public utility when initiating a proposed rate increase. The OPC seemingly cites these statutes only to support the proposition that the statutes speak in terms of "electrical corporations," rather than "operating divisions." (OPC Motion, p. 2). A review of the cited statutes reveals, however, that Section 393.150, RSMo makes it quite clear that a public utility is not required to put at issue all tariffs related to all of its operations if it only desires to propose a change for certain operations of one of its divisions. Moreover, as indicated, UtiliCorp is in fact authorized by Missouri law to conduct business in this state under two separate and distinct fictitious names – Missouri Public Service and St. Joseph Light & Power – recognized by the Commission.

5. Section 393.150 RSMo., states in part that "Whenever there shall be filed with the commission by any [public utility] *any schedule stating a new rate or charge*, or

any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service or to any general privilege or facility, the commission shall have . . . authority . . . to enter upon a hearing concerning the propriety of such rate, charge, form of contract [etc.] . . . .” (Emphasis added). In other words, Section 393.150 contemplates that the public utility may file, and the Commission may consider, something less than all of the tariff sheets and all of the rates and charges involving all of the service provided by a public utility.

6. Neither of the Commission regulations cited by the OPC purport to establish requirements as to what tariffs must be put at issue in a general rate case filing. 4 CSR 240-2.065(1) and 4 CSR 240-2-10.070(2) merely provide a definition of the term “general rate increase” and state that this is a request “where the company or utility files for an overall increase in revenues through a company-wide increase in rates for the utility service it provides. . . .” The OPC’s pleading takes a large leap in logic by suggesting that these regulations “do not permit a partial filing of tariffs.” (OPC Motion, p. 3).

### **PAST PRACTICE**

7. If the cited regulations were to require the filing of a “company-wide” rate increase request, many of the filings entertained by the Commission in the past and presumably in the future would be deficient. UtiliCorp, for example, as indicated, provides natural gas and electric service through its MPS division. It also provides natural gas, industrial steam and electric service through its SJLP division. These services are all provided through the same corporate entity -- UtiliCorp. Consequently, if truly required to file a “company-wide increase in rates,” UtiliCorp, in seeking to

increase electric rates for its MPS operations, would necessarily be required to also seek increases for its MPS gas operations as well as its SJLP electric, natural gas and industrial steam operations. Surely the OPC, in the exercise of its statutory responsibilities, cannot be serious in seeking a ruling that would impose on the public four additional rate increase requests.

8. Historically, the Commission has not required that rate cases be filed on a "company-wide" basis where the public utility does not propose an increase for all other aspects of its operations. UtiliCorp has never been required to do this in connection with its gas and electric operations. Likewise, Ameren-UE has both electric and gas operations in Missouri. Ameren-UE has never been required to seek rate increases for all of these operations if it only desired to seek an increase for a portion. SJLP was never required to put at issue its gas and industrial steam tariffs if it only sought an adjustment to its electric rates. Moreover, the Commission has not required its Staff to file complaints on a "company-wide" basis when challenges have been made to existing rates.

9. Assuming that the OPC's focus here is only on UtiliCorp's electric operations, the conclusion is no different. In at least two situations, the Commission has previously considered proposed rate increases for some public utility divisions, but not others, offering the same utility service. The first example concerns Missouri Water Company, which was a public utility engaged in providing water service through two operating divisions – the Lexington Division and the Independence Division. In *In the matter of Missouri Water Company for authority to file tariffs increasing rates for water service provided to customers in the Independence Division of the Company*, 23

Mo.P.S.C.(N.S.) 451 (1980), the Commission considered and ordered an increase for the Independence Division without requiring the consideration of any similar proposal for the Lexington Division. The Commission considered similar Independence Division rate case filings in *In the matter of Missouri Water Company for authority to file revised tariffs reflecting increased rates for water service and new Rate J to customers in the Independence Division of the Company*, 22 Mo.P.S.C.(N.S.) 77 (March 28, 1978) and in *In the matter of Missouri Water Company for authority to file tariffs reflecting increased rates for water service provided to customers in the Independence Division of the Company*, 18 Mo.P.S.C.(N.S.) 203 (October 4, 1973).

10. Similarly, in *In the matter of Missouri Cities Water Company for authority to file tariffs reflecting increased rates for water service*, 18 Mo.P.S.C.(N.S.) 421 (1974), the Commission entertained a company proposal for a "general increase in rates in [the company's] Brunswick and Mexico division affecting all residential, commercial and industrial customers" and a rate increase proposal in the company's "Platte County and St. Charles County divisions [which] would affect only apartments and condominiums served with a single connection." (*Missouri Cities* at p. 423). No proposals were made concerning the company's Warrensburg division and not all customers in the involved divisions were even impacted by the company proposal.

11. Thus, while there is absolutely no express statutory or regulatory requirement mandating the simultaneous filing of a rate case for all divisions of a public utility providing the same service, there is also Commission-established precedent in favor of the filing and processing of rate cases for something less than all of a public utility's operating divisions, even though the same service is involved.

12. The OPC's claim in paragraph 10 that MPS's request will somehow lead to the "manipulation" of earnings among selective portions of operating areas ignores the fact that this Commission and its Staff historically have dealt with multi-jurisdictional utilities. UtiliCorp, for example, conducts electric operations in Missouri, Kansas and Colorado. It conducts gas operations in Missouri and seven other states. The Empire District Electric Company operates in four states. Ameren-UE operates in two states. This does not mean, as suggested by the OPC, that all relevant "company-wide" information concerning revenue, expenses and other financial information is not available for review and consideration. In fact, just the opposite is true. The Commission does have access to this information and is able to determine the appropriate allocations among jurisdictions to ensure that rates are just and reasonable. The charge of "manipulation" is unfounded.

#### **THE MERGER CASE**

13. As the OPC points out, the existence of two electric operating divisions for UtiliCorp resulted from the recent merger of St. Joseph Light & Power Company with UtiliCorp. The Commission approved this merger in Case No. EM-2000-292, *In the Matter of the Joint Application of UtiliCorp United Inc. and St. Joseph Light & Power Company for Authority to Merge* (December 14, 2000) (the "Merger Case").

14. Several contested issues were heard by the Commission in the Merger Case. The Commission's resulting Report and Order makes it very clear, through its treatment of these issues, that the Commission Staff, the OPC, the intervenors and the Commission itself contemplated that if the merger was consummated the SJLP properties would be operated by UtiliCorp as a separate division from the existing MPS

properties and that rates would be set separately for each Division. One example of the Commission's intent in this regard is found in the discussion of corporate allocation factors on page 9 of the Report and Order wherein it is stated that – “. . . the Commission will be able to consider that fact when setting the rates for UtiliCorp's SJLP operating division.” (Emphasis added)

15. The nature of certain of the conditions imposed by the Commission in the merger case indicates that the separation between the MPS and SJLP divisions was viewed as a form of protection for the public. In paragraph 9 of the “Ordered” section, the Commission established the following conditions (among others):

- “That in post-merger cases *involving UtiliCorp United Inc.'s St. Joseph Light & Power Company operating division*, UtiliCorp United Inc. will maintain the pre-merger funded status of the St. Joseph Light & Power Company pension fund by accounting for it separately.
- “That if the merger is determined to be a taxable event and deferred taxes of St. Joseph Light & Power Company are thereby lost, UtiliCorp United Inc. shall include an amount equal to those deferred taxes *in future rate proceedings for its St. Joseph Light & Power Company operating division* as an offset to rate base.” (Emphasis added)
- “That UtiliCorp United Inc. shall continue to file separate surveillance reports for its Missouri Public Service and St. Joseph Light & Power Company operating divisions following the closing of the merger.”

16. These conditions established by the Commission in the Merger Case certainly contemplated that the MPS and SJLP operating divisions would each be

treated separately by the Commission for ratemaking purposes. The OPC did not see fit to challenge that Report and Order. To do so now is an impermissible collateral attack. (Section 386.550, RSMo (2000)).

### **PROPER SETTING OF RATES**

17. The OPC also alleges in its Motion that consideration of the MPS operating division rates exclusive of the SJLP operating division rates would violate the "all relevant factors" requirement (also known as the prohibition against single issue ratemaking)." (OPC Motion, p. 4). The allegation lacks merit as nothing about treating the MPS operating division separate from the SJLP operating division violates this principal.

18. The Commission must keep in mind how the courts have described this "all relevant factors" requirement. Two of the cases in which this requirement has been discussed are *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo.banc 1979), and *Midwest Gas Users' Association v. Public Service Commission*, 976 S.W.2d 470 (Mo.App.W.D. 1998).

19. The Court of Appeals in *Midwest Gas Users'* gave the following description of the requirement:

*Utility Consumers Council* held that use of the [fuel adjustment clause] at issue there constituted single-issue ratemaking. It so held because the [fuel adjustment clause] permitted the adjustment of electric utility rates based on consideration of a single factor and without consideration by the PSC of whether other costs had decreased and thus had offset any increase in fuel costs. *Utility Consumers Council* held that this violates

Section 393.270.4, which provides:

In determining the price to be charged for gas, electricity, or water the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable rate of return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.

*Midwest Gas Users'* at p. 479.

20. Nothing about UtiliCorp's filing in this case asks that the Commission make a decision based on a single factor. UtiliCorp's filing was made in a fashion to invoke all normal rate case considerations. It has filed its direct testimony as required by Commission rule with an eye toward hearing and its expectation that new rates will eventually be authorized by the Commission after consideration of all facts which in its judgment have any bearing upon a proper determination of the question. This would include the Commission's consideration of the implications of any allocations to or from the SJLP operating division that the Commission should find to be relevant to its decision.

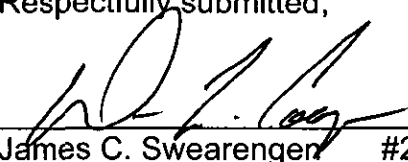
21. A decision on the appropriate rates and charges for UtiliCorp's MPS operating division will not require the consideration of costs in isolation or permit the raising of rates without recognizing counterbalancing savings in another area. The "single issue ratemaking" principal is not violated by UtiliCorp's filing in this case.

22. Finally, UtiliCorp now anticipates that on or before July 13, 2001, it will file with the Commission revised tariffs designed to implement a general electric rate increase for its SJLP operating division. Consequently, the Commission will know by mid-July whether it will have before it tariffs involving the electrical operations of both of UtiliCorp's Missouri operating divisions. Whether or not this will satisfy the OPC's apparent desire for more rate increase requests remains to be seen.

WHEREFORE, UtiliCorp respectfully requests that the Commission:

- (a) deny the OPC's Motion to Reject Tariff Filing; and,
- (b) grant such further relief as the Commission deems appropriate.

Respectfully submitted,



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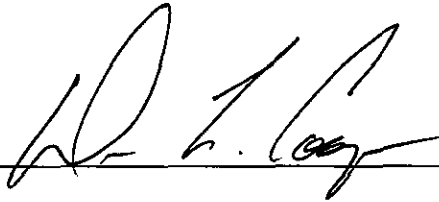
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 25<sup>th</sup> day of June, 2001, to:

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