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July 19, 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>  
JUL 19 2001

**RE: UtiliCorp United Inc.**  
**Case No. ER-2001-672**

Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies **Public Counsel's Supplemental Suggestions in Support of Its Motion to Reject Tariff Filing**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman  
Deputy Public Counsel

JBC:jbb

cc: Counsel of Record

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

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

JUL 19 2001

Missouri Public  
Service Commission

In the Matter of the tariff filing of Missouri )  
Public Service ("MPS") a division of )  
UtiliCorp United Inc., ("UtiliCorp") 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

**PUBLIC COUNSEL'S SUPPLEMENTAL SUGGESTIONS IN SUPPORT OF ITS  
MOTION TO REJECT TARIFF FILING**

COMES NOW the Office of the Public Counsel (Public Counsel), pursuant to Rule 55.27(a)(6) of the Missouri Rules of Civil Procedure, §§ 393.130.2 and 393.270.4 RSMo 2000, and submits the following supplemental suggestions in support of Public Counsel's June 15, 2001 Motion to Reject Tariff Filing:

1. On June 25, 2001, UtiliCorp United, Inc. ("UtiliCorp") filed its "Response to OPC's Motion to Reject Tariff Filing." ("Response") On July 11, 2001, UtiliCorp filed its "Supplemental Response to OPC's Motion to Reject Tariff Filing." ("Supplemental Response") In response to Public Counsel's arguments that UtiliCorp's June 8, 2001 tariff filing was unlawful and deficient, UtiliCorp stated on page 10 of its Response that it planned to file proposed tariffs, initiating a separate rate case for its SJLP operating division. On July 11, 2001, UtiliCorp's Supplemental Response alerted the Commission to the fact that UtiliCorp had changed its mind and now will not be initiating a rate case for its SJLP operating division. *Ibid*, p. 2. However, even if UtiliCorp had gone forward with such a bifurcation of its company for ratemaking purposes, it would have been unlawful.

2. It should be apparent that UtiliCorp's unprecedented tariff filing in this case is designed for one purpose – to deny its ratepayers the “merger synergies” that it touted as justification for its recently approved merger with St. Joseph Light & Power Company in Case No. EM-2000-292. After convincing the Commission that the economies of scale and general efficiencies of this merger would be beneficial to ratepayers, it now openly admits that, in this rate case, it wants “to treat MPS as though the merger did not take place with no merger impact.” Prepared Direct Testimony of Gary L. Clemens, p. 4. UtiliCorp wants to have its cake and eat it, too.

3. UtiliCorp compares certain past cases to its deficient filing in this case. All of its examples of the Commission's “past practice” in this regard are distinguishable. UtiliCorp claims that the Commission has permitted separate rate increase requests for its natural gas service and for its electrical service. This is true because § 386.020 distinguishes between “gas corporations” and “electrical corporations.” However, the Commission has never permitted a rate increase request to proceed with regard to only one portion of an “electrical corporation.”

4. UtiliCorp's right to file a request for a general rate increase is conditioned upon the requirement that the Commission consider “all relevant factors” with regard to the corporation making the request. § 386.270.4 RSMo 2000; State ex rel. Utility Consumer's Council of Missouri v. PSC (UCCM), 585 S.W.2d 41 (Mo. banc 1979). No law permits UtiliCorp to limit what factors may be considered with regard to UtiliCorp's operations as the Commission establishes just and reasonable rates. “Missouri Public Service Company” is a fictitious name that now applies to only one of the divisions

served by the electrical corporation, UtiliCorp United, Inc. It is UtiliCorp alone that has the right to request a rate increase, not one of its divisions.

5. UtiliCorp cites four past rate cases (all decided by the Commission prior to the Missouri Supreme Court's ruling in UCCM) for the proposition that the Commission has permitted rate cases to proceed in the past that involved only selected divisions within one company. All four of these cases involve the non-interconnected operations of water companies. More relevant to the point is the fact that the Commission determined an overall total company Missouri revenue requirement for each of these water corporations and then determined how that increase in revenue requirement was to be allocated among the various service territories (i.e. divisions). In other words, the Commission made a rate design decision about how to allocate the increase in revenue requirement, allocating it to certain service areas based upon an appropriate analysis of the cost to serve each of these areas. However, these rate design decisions were only made after an appropriate company-wide revenue requirement was determined based upon "all relevant factors."

6. The Commission must look at all relevant factors in establishing a total Missouri jurisdictional revenue requirement for UtiliCorp. There is no legal authority or Commission precedent for setting rates while considering only selected territories within an electrical corporation. This issue could open the floodgates. If the Commission permits this case to go forward, it may soon expect AmerenUE to file an electric rate increase request solely for its Jefferson City division in an attempt to have a revenue requirement determined for only one portion of its service territory in isolation of its entire integrated system.

7. In addition to the legal grounds already laid out in its Motion to Reject Tariff Filing, Public Counsel asserts that establishing rates by considering only one service territory of an electrical corporation it could also violate the Commission's anti-discrimination statute, which states:

2. No ... electrical corporation, ... shall directly or indirectly by any special rate, ... collect or receive from any person or corporation a greater or less compensation for... electricity, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

§ 393.130.2 RSMo 2000.

If the Commission issues a Report and Order increasing rates for residential customers in UtiliCorp's MPS division that are greater or lesser than the rates charged for the same residential service elsewhere within its interconnected electrical corporation service territory, it would be unlawful discrimination. If UtiliCorp asserts that similar customers in different division have different cost of service due to constraints caused by a lack of adequate interconnection, that is an issue to be addressed in rate design. It is not an issue that affects the total Missouri jurisdictional electric revenue requirement.

8. The merger conditions cited by UtiliCorp as being ordered in anticipation of a "separation between the MPS and SJLP divisions" on pages 7-8 of its Response are relevant for rate design. In the merger order, the Commission reserved the right to consider ratemaking decisions to a later proceeding. Case No. EM-2000-292, Report and Order, p.47. Certainly, the Commission's decision in the merger case granted no rights to file any rate case in the future which would allow a revenue requirement to be determined

based upon less than all factors relevant to the entire merged electrical corporation. UtiliCorp should not be allowed to have it both ways.

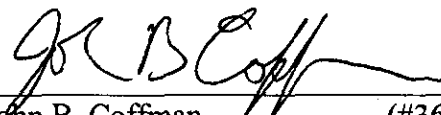
9. To the extent that UtiliCorp is requesting increased rates for a mere selected portion of its service territory, and essentially asking the Commission to hypothetically assume that the merger did not take place, it is requesting relief that cannot lawfully be granted. Pursuant to Rule 55.27(a)(6), failure to state a claim upon which relief can be granted is proper grounds to grant summary judgement against a petitioner. In the case of a tariff filing with the Commission, the proper remedy is for the Commission to reject or dismiss the filing.

WHEREFORE, Public Counsel respectfully requests that the Commission reject or dismiss UtiliCorp's tariff filing in this case as unlawful and deficient and because it fails to state a claim upon which relief can be granted as explained in Public Counsel's Motion to Reject Tariff Filing and as supplemented by this pleading.

Public Counsel further requests an opportunity to present oral arguments in support of its Motion.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

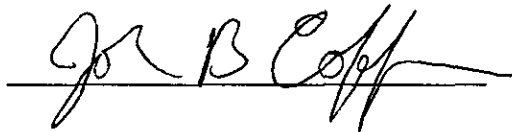
By:   
John B. Coffman (#36591)  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 19<sup>th</sup> day of July 2001:

General Counsel  
Missouri Public Service Commission  
P O Box 360  
Jefferson City, MO 65102

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

A handwritten signature in black ink, appearing to read "JC Swearengen", is written over a horizontal line.