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July 27, 2001

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FILED³

JUL 27 2001

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
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RE: Case No. ER-2001-672 – In the matter of the Tariff Filing of Missouri Public Service (MPS), 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.

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S RESPONSE TO COMMISSION ORDER DIRECTING FILING.**

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,

Nathan Williams
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Enclosure
cc: Counsel of Record

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

FILED³

JUL 27 2001

**Missouri Public
Service Commission**

In the matter of the Tariff Filing of)
Missouri Public Service (MPS), 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

STAFF'S RESPONSE TO COMMISSION ORDER DIRECTING FILING

Comes now the Staff of the Missouri Public Service Commission (Staff) and in compliance with the Commission's July 19, 2001 Order Directing Filing, responds to the Office of the Public Counsel's (Public Counsel) and UtiliCorp United Inc.'s (UtiliCorp)¹ arguments and points raised in their filings on June 15, June 25 and July 11, 2001, as identified by the Commission in its July 19, 2001 Order Directing Filing. Public Counsel filed an additional relevant pleading on July 19, 2001. Ultimately, it is the Staff's recommendation that the Commission deny Public Counsel's Motion To Reject Filing.

¹ At paragraph 3, page 2 of its Motion To Reject Tariff Filing, Public Counsel asserts that UtiliCorp "does business under the fictitious name 'Missouri Public Service Company,'" and that in its cover letter for the tariff filing UtiliCorp "recognizes that the applicant in this case is UtiliCorp 'd/b/a Missouri Public Service Company'" and, further, that "UtiliCorp's name is not included in the style that is suggested for this matter on the accompanying prepared direct testimony, where the 'Sponsoring Party' is listed as 'Missouri Public Service Company.'" At paragraph 4, pages 2-3 of Public Counsel's July 19, 2001 Supplemental Suggestions In Support, Public Counsel states that "'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." In its June 25, 2001 response UtiliCorp states in the very first sentence, "Comes now UtiliCorp United Inc. ('UtiliCorp') d/b/a Missouri Public Service ('MPS')". The word "company" does not appear in the fictitious name "Missouri Public Service" nor in UtiliCorp's filing.

INTRODUCTION

At paragraph 6, page 3 of its Motion To Reject Tariff Filing, Public Counsel quotes excerpts from the direct testimony of Gary L. Clemens, but does not identify for the Commission the consequence of Public Counsel's proposed procedure. As can be seen by the portion of Mr. Clemens' direct testimony that Public Counsel omitted and by Public Counsel's argument made in paragraph 2 in its July 19, 2001 Supplemental Suggestions In Support Of Its Motion To Reject Tariff Filing, the consequence of Public Counsel's proposed procedure is the relitigation in a refiled UtiliCorp rate case large portions of the St. Joseph Light & Power Company – UtiliCorp United Inc. merger case. Such a relitigation of the merger savings and recovery from ratepayers of acquisition premium issues, among others, presumably will eventually occur, but it is not necessarily dictated at this point. The Staff is not advocating a position out of mere convenience and directs the Commission's attention to the following language from *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo.banc 1979):

. . . Thus, while these statutes are remedial in nature, and should be liberally construed in order to effectuate the purpose for which they were enacted, "neither convenience, expediency or necessity are proper matters for consideration in the determination of" whether or not an act of the commission is authorized by the statute, *State ex rel. Kansas City v. Public Service Comm'n*, 301 Mo. 179, 257 S.W. 462 (banc 1923). . . .

This language also applies to Public Counsel's desire to provide to UtiliCorp's ratepayers the "merger synergies" which Public Counsel asserts at paragraph 2 of its July 19, 2001 Supplemental Suggestions that UtiliCorp is seeking to deny to UtiliCorp's ratepayers.

The portion of Mr. Clemens' testimony not cited by Public Counsel in its June 15, 2001, filing appears in boldface type below:

Q. What about the allocation of costs?

- A. UtiliCorp utilizes a central office administrative process whereby common administrative functions are allocated to each of its various jurisdictions. As UtiliCorp grows, normally these corporate costs are allocated over a larger pool thereby lowering the cost to each division. But for purposes of this case we do not intend to allocated [sic] any costs to the SJLP division. Ultimately, however, we will do this. In addition the transition and transaction costs from the SJLP merger will need to be allocated to those division receiving the benefit of lower corporate cost, along with a portion of any premium that may have been paid for stock in connection with the merger. Again, however, since the SJLP merger has only been in place for a very short time, our preference for this case is to treat MPS as though the merger did not take place with no merger impacts. **The second option would be to treat SJLP as being fully intergraded [sic] into UtiliCorp. Although the full impact of synergies is not known, Vern Siemek has filed direct testimony in this case which includes his synergy estimates as provided in the UtiliCorp and SJLP merger Case No. EM-2000-292. If the Commission Staff would pursue the second option, then our position would be to include for rate recovery the merger transition and transaction costs and a portion of the merger premium as well.**

(Clemens Direct Testimony, pp. 4-5). A desire to avoid relitigation in the instant case of large portions of the St. Joseph Light & Power Company – UtiliCorp United Inc. merger case should not be the basis for rejecting Public Counsel's June 15, 2001 Motion To Reject Tariff Filing; however, it should be clear that that is what will be the consequence of sustaining Public Counsel's Motion To Reject Tariff Filing.

Public Counsel asserts at paragraph 9, page 5 of its July 19, 2001 Supplemental Suggestions In Support that "[t]o the extent that UtiliCorp is . . . essentially asking the Commission to hypothetically assume that the merger did not take place, it is requesting relief that cannot lawfully be granted." UtiliCorp appears to be basing its rate case on a hypothetical that the merger has not occurred. The UtiliCorp books and records reflect post-merger results. It is not unlawful for UtiliCorp to file its case based on its hypothetical. The Staff assumes that all

parties, including Public Counsel, will be permitted to present their positions based or not based on the UtiliCorp hypothetical.

The Staff notes that in the UtiliCorp – SJLP merger case, Case No. EM-2000-299, various parties requested that the Commission order UtiliCorp – SJLP to perform and file in the merger case a market power study. The Commission declined to do so. One of the parties to that case, Ag Processing Inc., caused the Cole County Circuit to issue a Writ Of Review respecting that decision of the Commission in a case that is now docketed before the Cole County Circuit Court as Case No. 01CV323152. That case is now before the Cole County Court.

**MISSOURI STATUTES DO NOT REQUIRE THAT THIS CASE DIRECTLY REFLECT
THE COST OF SERVICE OF THE MERGED SJLP DIVISION**

Public Counsel contends that Chapters 386 and 393 of the Missouri Statutes do not recognize divisions of an electrical corporation as separate entities for the purpose of official filings before the Commission and thus do not permit an electrical corporation to initiate a general rate case by filing revised tariffs for only selective regions within its certificated electric service area. The Staff notes that Public Counsel cites no express statutory language that prohibits the Commission from proceeding with a general rate case on a division of operation basis when the divisions of operation are formerly separate and distinct electrical corporations that have not been fully integrated, as is the instant case, and have different costs of service and rate designs. UtiliCorp commented on this very matter in its June 25, 2001, Response. The two operating divisions of UtiliCorp at issue are the product of a very recent merger of two former separate and distinct electrical corporations with separate and distinct revenue requirement cost of service determinations and separate and distinct customer class cost of service rate designs. The Staff also notes that the Public Counsel has cited no case law in support of its contention.

UtiliCorp commented in its June 25, 2001 Response To OPC's Motion To Reject Tariff Filing that the Commission does not require, and Public Counsel has not sought, that when UtiliCorp files a general rate increase case for the electric operations of its Missouri Public Service operating division in Missouri that UtiliCorp must file a general rate increase case for the natural gas operations of its Missouri Public Service operating division in Missouri. UtiliCorp also related in its June 25, 2001 Response To OPC's Motion To Reject Tariff Filing that the Commission previously did not require, and Public Counsel previously did not seek, that when SJLP filed a general rate increase case for its electric operations that SJLP must also file a general rate increase case for both its natural gas and industrial steam operations. Public Counsel in its July 19, 2001 Supplemental Suggestions In Support states at paragraph 3, page 2 that "[t]his is true because Section 386.020 distinguishes between 'gas corporations' and 'electrical corporations.'" Public Counsel did not address UtiliCorp's argument respecting the history of separate rate cases for the electric and steam operations of SJLP. The Staff adds that the Commission historically has not required consolidated rate cases for the electric, gas and steam operations of UE and still does not require consolidated rate cases for the electric and gas operations of UE. Furthermore, UtiliCorp was an "electrical corporation" and a "gas corporation" before its merger with St. Joseph Light & Power Company and after the merger it is an "electrical corporation," a "gas corporation" and a "heating company." The MPS operating division of UtiliCorp is not an "electrical corporation" or a "gas corporation," and the SJLP operating division of UtiliCorp is not an "electrical corporation," a "gas corporation" or a "heating company."

Respecting Public Counsel's statutory construction argument, the Staff observes that, although there are separate statutory definitions for "electrical corporation," "gas corporation"

and "heating company" in Section 386.020, there are not separate statutory chapters for electrical corporations, gas corporations and heating companies. All such corporations/companies are covered by both Chapters 386 and 393, whereas telecommunications companies and services, which are also defined in Section 386.020, are covered by Chapters 386 and 392. (The Missouri Public Service Company, predecessor to UtiliCorp, was also a water corporation for a span of years; those operations were also covered by Chapters 386 and 393.)

The Staff suggests that if Public Counsel's argument respecting not combining "electrical corporation" and "gas corporation" revenue requirement determinations is correct, then the practice of combining "water corporation" and "sewer corporation" revenue requirement determinations under the small company rate increase procedure, 4 CSR 240-2.200, is unlawful.

Public Counsel states at page 2 of its July 19, 2001 Supplemental Suggestions In Support Of Its Motion To Reject Tariff Filing that "[i]t 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." The merger of SJLP and UtiliCorp was a merger involving not only the electric divisions/operations of SJLP and UtiliCorp, it was a merger of the electric, natural gas and industrial steam divisions/operations of SJLP and UtiliCorp. The consistent application of Public Counsel's arguments in its June 15, 2001, and July 19, 2001, pleadings leads to a requirement that UtiliCorp file a general rate case covering the electric, natural gas and industrial steam divisions of SJLP and MPS, not just a general rate case covering the electric divisions of SJLP and MPS.

Public Counsel's citation in its July 19, 2001 Supplemental Suggestions In Support Of Its Motion To Reject Tariff Filing to Section 393.130.2 RSMo 2000 to support its statement that

“[i]f 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” presupposes the conclusion in its argument. The issue in Section 393.130.2 is whether the different rate is “for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.” If the cost of service or rate design is truly different for the different divisions, then there is no unlawful discrimination, undue or unreasonable preference or advantage, or undue or unreasonable prejudice or disadvantage.

**COMMISSIONS RULES DO NOT REQUIRE THAT THIS CASE
DIRECTLY REFLECT THE COST OF SERVICE OF THE MERGED SJLP DIVISION**

Public Counsel asserts at paragraph 7, pages 3-4 of its Motion To Reject Tariff Filing the following: “The Commission’s rules do not permit a partial filing of tariffs in a general rate case for an electrical corporation. Commission rules 4 CSR 240-2.065(1) and 4 CSR 240-10.070(2) require that a general rate increase be made ‘company-wide.’” In footnote 3 of its July 19, 2001 Order Directing Filing, the Commission states that “Rule 4 CSR 240-02070(2), which refers to informal complaints against utilities by consumers, was presumably cited in error.” UtiliCorp in paragraph 3, page 2 and paragraph 6, page 3 of its June 25, 2001 Response refers to “4 CSR 240-2-10.070(2).” Public Counsel and UtiliCorp both appear to have intended to refer to 4 CSR 240-10.070(2).

UtiliCorp’s June 25, 2001, Response notes the definition of the term “general rate increase request” found in 4 CSR 240.065(1) and 4 CSR 240-10.070(2). In that definition of “general rate increase request” in 4 CSR 240.065(1) and 4 CSR 240-10.070(2) are the phrases

“an overall increase in revenues,” “a company-wide increase in rates,” and “for the utility service it provides.” The Commission’s rules do not provide a definition for any of these phrases. There is nothing which indicates that the Public Counsel’s argument, in its July 19, 2001 Supplemental Suggestions In Support, that “general rate increase,” “overall increase in revenues,” “company-wide increase in rates” and “for the utility service it provides” is limited to the electric service tariffs, the gas service tariffs or heating company tariffs of a utility that is an electrical corporation, a gas corporation and a heating company as is UtiliCorp.

**LACK OF PRECEDENT ON WHICH TO RELY FOR DECIDING
THE ISSUE OF WHETHER TO PROCEED WITHOUT CONSIDERATION
OF THE SJLP COST OF SERVICE IN THE MPS GENERAL RATE CASE**

Merger Of Union Electric Company, Missouri Power & Light Company, Missouri Edison Company and Missouri Utilities Company

Prior to 1984, Missouri Power & Light Company, Missouri Edison Company, and Missouri Utilities Company were subsidiaries of Union Electric Company. Each had its own service area, tariff book, and rate sheets. Those rate sheets contained no obvious designation indicating that each was a “subsidiary” of Union Electric Company. All three companies ceased to exist as separate companies as an outcome of Case No. EM-83-248.²

In that merger case, the Commission determined that most, but not all, of the subsidiaries’ electric customers were to be billed on UE’s existing electric rates. Due to rate impact concerns, selected rate groups of the three former subsidiary companies were retained temporarily and the tariff sheets were incorporated into Union Electric Company’s tariff book

² *In the matter of the joint application of the utility companies comprising the Union Electric System for permission and authority (i) to merge Missouri Utilities Company, Missouri Power & Light Company and Missouri Edison Company with and into Union Electric Company and (ii) to carry out the transactions contemplated by the mergers.*

and were designated as Limited Service Area Rates, effective January 27, 1984.³ Each of these rate sheets bore the designation "Applying to the Former [company name] Service Area." As a result of the proceedings in Case No. EM-83-248, the Commission ordered UE to perform, for its next rate case, customer class cost-of-service studies for these rate groups. These separate electric rate sheets were eliminated from the UE tariff book on September 27, 1988. In that case the Commission also ordered that UE would continue to apply the already existing subsidiary rates for its existing gas, water and steam customers.

Because the Staff believes that selected excerpts from the Commission's Report And Order in Case No. EM-83-248 may assist the Commission in its deliberations, the Staff has attached those excerpts to this filing as Appendix A.

Union Electric Company And Sho-Me Power Corporation Purchase Of Arkansas Power & Light Company Assets In Missouri

The Re Union Electric Company, Arkansas Power & Light Company and Sho-Me Corporation, Case Nos. EM-91-29 and EM-91-404,⁴ Report And Order, 1 Mo.P.S.C.3d 96

³ The Missouri Power & Light Company rate schedules that were retained temporarily were as follows: 70(M) Irrigation Service; 71(M) Flood Lighting Rate; 72(M) Private Street and Outdoor Area Lighting; 73(M) Highway Intersection Lighting Rate; 74(M) Municipal Service Schedule; and 75(M) Municipal Street Lighting Service.

The Missouri Edison Company rate schedules that were retained temporarily were as follows: 80(M) Irrigation Service; 81(M) Municipal Street Lighting Service; 82(M) Municipal Service Schedule; 83(M) Flasher, Traffic and Signal Light Service; and 84(M) Private Street and Outdoor Area Lighting.

The Missouri Utilities Company rate schedules that were retained temporarily were as follows: 90(M) Private Street and Outdoor Area Lighting; 91(M) Municipal Street Lighting; 92(M) Municipal Pumping; 93(M) Cotton Gin; and 94(M) Irrigation Service.

⁴ Case No. EM-91-29: *In the matter of the joint application of Arkansas Power & Light Company and Union Electric Company for an order authorizing the sale, transfer and assignment of certain assets, real estate, leased property, easements and contractual agreements and, in connection herewith, certain other related transactions.*

Case No. EM-91-404: *In the matter of the joint application of Arkansas Power & Light Company and Sho-Me Power Corporation for an order authorizing the sale, transfer and assignment of certain assets, real estate, easements and licenses fro AP&L to Sho-Me and, in connection therewith, certain other related transactions.*

(Rate moratorium for UE customers to January 1, 1993 as a result of resolution of Case No. EO-87-175 – comprehensive customer class cost of service and rate design case – and Case Nos. EM-91-29 and EM-91-404).

(1991), dealt with the sale of the Missouri assets of Arkansas Power & Light Company (APL) to UE, principally, or Sho-Me Power Corporation. The Stipulation And Agreement approved by the Commission in these cases specified that APL customers would become customers of UE, would be subject to UE's electric rules and regulations and UE's Missouri tariffs, as long as the annual revenues from each major customer class,⁵ when billed on UE rates, did not exceed the annual revenues generated by the APL rates. The Staff analysis indicated that this revenue constraint would not be met for the Large General Service and Large Power Service customer classes. As a result, the former APL customers in these two customer classes were to be billed on UE rates but were given a reduction of either 2.10% (Large General Service) or 1.50% (Large Power Service) beginning March 13, 1992. These adjustments were to remain in effect until the resolution of the next electric rate/earnings complaint case respecting UE. UE's electric tariff book described these adjustments in two paragraphs placed in the Table of Contents. There were no separate tariff sheets applying to the former APL customers after Case Nos. EM-91-29 and EM-91-404. These adjustments were eliminated on December 31, 1992, as a consequence of Case No. ER-93-52.⁶

Existing Division Distinctions in Electric and Gas Tariffs

UtiliCorp has two electric divisions (Missouri Public Service and St. Joseph Light & Power) each with separate tariff books and each with distinct rates and rate structures. UtiliCorp also has two gas divisions (Missouri Public Service and St. Joseph Light & Power) each with separate tariff books and each with distinct rates and rate structures.

⁵ General Purpose Residential, Small General Service, Large General Service, and Large Power Service

⁶ End of amortization Of Callaway generating station phase-in deferrals, \$40 million decrease in annual revenues effective January 1, 1993, rate moratorium to September 1, 1994 (1 Mo.P.S.C.3d 416, Report And Order, 1992)).

Atmos Energy Corporation has two gas divisions (United Cities Gas Company and Greeley Gas Company) in addition to providing gas service in its corporate name. It has three separate tariff books, each with distinct rates. Atmos Energy Corporation acquired all of its Missouri gas service areas through mergers with existing companies and there have been no Atmos, United Cities or Greeley Gas general rate cases/excessive earnings complaint cases since these mergers.

Laclede Gas Company lists four divisions (Laclede Gas Company, St. Charles Gas Company, Missouri Natural Gas Company and Midwest Missouri Gas Company) in its tariff. Each corresponds to one of the four companies that Laclede acquired long ago. Laclede has only one tariff book and there are no rate differences between Laclede's divisions.

The current UE gas tariff makes no mention of separate divisions, although it lists three separate PGA schedules. Each is designated by the name of the pipeline supplier (Panhandle Eastern Pipeline Company, Texas Eastern Transmission Company and Natural Gas Pipeline Company) and each lists the specific communities that are served. Each of the three distinct geographic areas served by each pipeline is identical to the service area of one of the three subsidiary companies (Missouri Power & Light Company, Missouri Edison Company, and Missouri Utilities Company) that merged with UE in 1983.

ALL RELEVANT FACTORS CAN BE CONSIDERED IF THE SLJP COST OF SERVICE IS NOT DIRECTLY REFLECTED IN THE MPS GENERAL RATE CASE

Public Counsel at paragraph 8, page 4 of its June 15, 2001 Motion To Reject Tariff Filing argues that "[p]ermitting a regulated utility to file for a general rate case that only covers the tariffs of selected service territories of that utility violates the 'all relevant factors' requirement (also known as the prohibition against single-issue ratemaking) as upheld by the Missouri

Supreme Court in State ex rel. Utility Consumers Council of Missouri v. PSC, 585 S.W.2d 41 (Mo.banc 1979).” Public Counsel opines that “[t]he Commission must consider all relevant factors company-wide to ensure that ultimate decision of the Commission is just and reasonable.”

The Staff will consider all relevant factors in making a determination whether the rates proposed by UtiliCorp in UtiliCorp’s June 8, 2001, filing are just and reasonable. The Staff in the course of its audit and through its audit will address the concerns raised by Public Counsel in paragraph 10, page 4 of its June 15, 2001 Motion To Reject Tariff Filing that overhead expenses are being overcollected from consumers, that allocations are not being determined fairly, and that certain costs are being shifted from one area to another to take advantage of separate filings.

Even though UtiliCorp has not filed the SJLP electric, gas and industrial steam tariffs or the MPS gas tariffs, the Staff will conduct discovery respecting the SJLP electric, gas and industrial steam operations, the MPS gas operations and UtiliCorp to assure that the rates set for the MPS electric customers are just and reasonable. The Staff need not and may not determine a revenue requirement for the SJLP electric, gas or industrial steam operations, or the MPS gas operations in the manner that it will make such a determination respecting MPS’s electric operations. The Staff and the other parties should be permitted to conduct discovery as needed to do so. As stated by UtiliCorp at paragraph 20, page 9 of its June 25, 2001, Response “[n]othing about UtiliCorp’s filing in this case asks that the Commission make a decision based on a single factor.” This includes the UtiliCorp hypothetical that the merger did not occur. Should the Staff conclude through its related audit of SJLP electric, gas or industrial steam operations, or MPS gas operations that those rates are excessive, the Staff ultimately will file an excessive earnings complaint case respecting those UtiliCorp rates.

Respecting the legal requirement that the Commission "consider all relevant factors," the Staff cites the Commission to *State ex rel. Missouri Pub. Serv. Co. v. Public Serv. Comm'n*, 627 S.W.2d 882 (Mo.App. 1982), wherein the Western District Court of Appeals stated as follows respecting "all relevant factors" and the Commission's discretion:

There can be no argument but that the Company and its stockholders have a constitutional right to a fair and reasonable return upon their investment. That right carries as a corollary the duty by the Commission to consider all relevant factors including the effects of inflation. *State ex rel. Missouri Water Company v. Public Service Commission*, 308 S.W.2d 704 (Mo.1958); *New England T. & T. Company v. Dept. of Pub. Util.*, 371 Mass. 67, 354 N.E.2d 860 (1976); *So. Cent. Bell Tel. Co. v. La. Public Service Commission*, 352 So.2d 964 (1977); *New England Telephone & Telegraph Co. v. State*, 113 N.H. 92, 302 A.2d 814 (1973); *Potomac Elec. Power Co. v. Public Service Commission*, 402 A.2d 14 (D.C.1979); *Utah Power & Light v. Idaho Public Utility Commission*, 102 Idaho 282, 629 P.2d 678 (1981).

It is no answer to the foregoing duty to say that a forecast as to future inflation is merely speculative. Despite that hazard, the Commission must make an intelligent forecast with respect to the future period for which it is setting the rate; rate making is by necessity a predictive science. *State v. N.J. Bell Tel. Co.*, 30 N.J. 16, 152 A.2d 35 (1959).

627 S.W.2d at 886.

. . . A rate tariff is intended only to permit an opportunity to make the percentage of return determined by the Commission to be reasonable. As put by one authority, "the utility's return allowance might be compared with a fishing or hunting license with a limit on the catch. Such a license does not guarantee that the holder will catch anything at all; it simply makes the catch legal (up to a specified limit) provided the holder is successful in his own efforts." 1 Priest, *Principles of Public Utility Regulation* 202 (1969) (quoting Welch, *Cases and Text on Public Utility Regulation* 478 (Rev.Ed.1968)).

Id. at 887 fn. 3.

. . . The choice of method with which to meet the inflation problem rests largely within the expert discretion of the administrative body, and for that reason the court will not presume to dictate the choice of method to the Commission. *New England Tel. & Tel. Co. v. Public Utilities*, *supra*; *State v. N.J. Bell Tel. Co.*, *supra*; *Potomac Elec. Power Co. v. Public Service Commission*, *supra*.

Id. at 888.

**BAD PUBLIC POLICY WOULD BE SET BY THE COMMISSION PRECLUDING
PARTIES FROM PROPOSING IN THEIR OWN CASES IN THIS PROCEEDING
THAT THE SJLP MERGER BE REFLECTED AND CONSIDERED**

At the outset, the Staff would like to indicate that it does not take lightly the public policy concerns raised by Public Counsel and does not want to leave any impression that those concerns should be taken lightly by the Commission.

Although it is not clear from Public Counsel's June 15, 2001 and July 19, 2001 filings, the Staff surmises that it may be a concern of Public Counsel that if UtiliCorp is permitted to proceed as it proposes, the Commission will not be able to offset increased costs of one division of electric operations, i.e., MPS, against a decrease in costs of another division of electric operations, i.e., SJLP. Thus, under Public Counsel's proposal if the MPS electric operating division were experiencing negative net earnings and the SJLP electric operating division were enjoying excessive net earnings, Public Counsel might propose (1) a netting of these two revenue requirement determinations, or (2) a rate increase for the MPS electric operating division and a rate decrease for the SJLP electric operating division. Public Counsel can file testimony in the pending case seeking to effectuate option 1 above and/or file an excessive earnings complaint respecting UtiliCorp's SJLP operations, thereby, seeking to effectuate the rate decrease of option 2 above.

It would be bad public policy for the Commission to limit discovery in this proceeding solely to matters directly related to MPS and its operations.

Finally, the Staff does not concur with UtiliCorp, if it is contending at paragraphs 14-16, pages 6-8 of its June 25, 2001, Response that the conditions which it agreed to or were required by the Commission in Case No. EM-2000-292 prohibit parties to a SJLP general rate case from

conducting discovery in the SJLP proceeding to respecting SJLP electric, gas and industrial steam operations, MPS gas operations and UtiliCorp.

CONCLUSION

WHEREFORE the Staff submits this pleading in response to the Commission's July 19, 2001 Order Directing Filing and ultimately recommends that the Commission deny Public Counsel's Motion To Reject Filing

Respectfully submitted,

DANA K. JOYCE
General Counsel



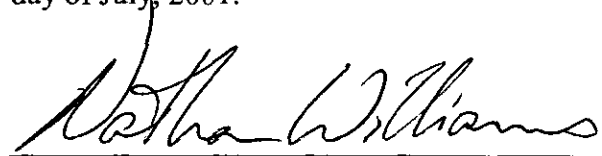
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Certificate of Service

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 27th day of July, 2001.



Service List for
Case No. ER-2001-672
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Re Union Electric Co., Case No. EM-83-248, Report And Order, 26 Mo.P.S.C. (N.S.) 418 (1983); In the matter of the joint application of the utility companies comprising the Union Electric System for permission and authority (i) to merge Missouri Utilities Company, Missouri Power & Light Company and Missouri Edison Company with and into Union Electric Company and (ii) to carry out the transactions contemplated by the mergers:

On January 31, 1983, Union Electric Company (UE), Missouri Utilities [sic] Company (MU), Missouri Power & Light Company (MPL) and Missouri Edison Company (ME), (Applicants) filed a joint application to merge MU, MPL and ME into UE and to carry out the transactions contemplated by the mergers. . . .

26 Mo.P.S.C. (N.S.) at 419-20.

A hearing was held on October 31, 1983, November 1, 1983, November 3, 1983, November 9, 1983, and November 10, 1983. . . . On November 28, 1983, the Staff and the Applicants filed a Stipulation and Agreement on the issues relating to irrigation rates, municipal street lighting rates and Whiteman Air Force Base.

Id. at 421.

The UE System is composed of MU, MPL, ME and UE. . . . MU, MPL and ME currently purchase almost all of their electric requirements from UE under wholesale rates regulated by the Federal Energy Regulatory Commission (FERC).

Id. at 422.

. . . MPL is engaged in providing electric service to approximately 94,000 customers residing in . . . Missouri MPL also distributes natural gas in 38 communities to approximately 35,000 customers in central and northeast portions of Missouri and steam service to the state government in Jefferson City, Missouri, under the jurisdiction of this Commission.

MPL owns two combustion turbines and 11 internal combustion engine units which have an estimated aggregate net capability of 76,000 kilowatts. MPL's generating capacity is used primarily for peak power requirements. During 1982 MPL purchased approximately 89 percent of its electric energy from UE and 10 percent from Kansas City Power & Light. . . .

. . . ME is engaged in the business of providing electric service to approximately 32,300 customers residing in . . . Missouri. . . . ME also distributes natural gas in

northeastern Missouri to approximately 6,200 customers in 20 communities under the jurisdiction of this Commission. . . . During 1982, ME purchased 100 percent of its electric energy requirements from UE. . . .

Id. at 422-23.

. . . MU is engaged in the business of furnishing electric service to approximately 60,000 customers residing in . . . Missouri. . . . MU also distributes natural gas to approximately 49,000 customers in 32 communities in central and southeastern Missouri and water service to approximately 11,000 customers in the City of Cape Girardeau, Missouri, as a public utility under the jurisdiction of this Commission. MU owns one combustion turbine and two internal combustion engine units which have an estimated aggregate capability of 27,000 kilowatts. During 1982, MU purchased approximately 98 percent of its electric energy requirements from UE and two percent from Arkansas Power & Light. . . .

Id. at 423.

Applicants have requested authority from this Commission to merge MU, MPL and ME with and into UE, to apply the existing subsidiary rates for gas, water and steam service, to apply the existing UE electric rates and rules and regulations throughout the subsidiaries' service areas. . . .

Generally, application of UE's tariffs to the subsidiaries' electric customers would result in a decrease in rates; however, it would result in an increase in rates to certain classes of customers including municipalities.

The Staff of the Public Service Commission (Staff) and the Office of Public Counsel (Public Counsel) recommend approval of the merger because of the increased efficiency and resulting cost savings to be flowed through to customers. . . .

The Commission finds that the proposed merger will result in certain economies by eliminating duplication of efforts, will contribute to management efficiency and will result in a net annual savings of \$9.7 million.

Shares of preferred stock of MU and MPL will be acquired by UE which will convert them into shares of its preferred stock. All of the issued and outstanding shares of common stock of MU, MPL and ME, of which UE is the sole owner, will be cancelled after the effective date of the merger and no stock of UE will be issued in exchange therefor. . . .

Id. at 423-25.

Upon the effectiveness of the merger, MU, MPL and ME will cease to exist and will become part of UE, the surviving corporation. UE will acquire all the certificates of convenience and necessity, franchises, works or systems, licenses, leases and permits of MU, MPL and ME. UE will directly provide electric, gas, water and steam service to subsidiary customers as of the effective date of the merger. The Applicants propose to provide electric service under UE's tariffs as of the effective date of the merger and other services under the subsidiaries' tariffs.

Id. at 425.

The Commission is of the opinion that UE's plant investment represents 89 percent of all electric utility property on a merged basis, that the subsidiary companies have not reviewed their depreciation rates in recent years, and that UE's tariff rates will be applied to most of the electric service customers. The Commission finds that for the natural gas properties, the present tariffs of each of the subsidiaries are to be maintained; therefore, separate depreciation expense, plant and reserve should be maintained by each individual company. The Commission concludes that the depreciation rates to encompass all electric companies after the merger should be UE's present depreciation rates and that the depreciation rates presently prescribed by each subsidiary company for gas properties should be maintained after the merger.

Id. at 425-26.

The subsidiary companies buy their power with certain exceptions from UE. These contracts to buy power from other sources have been cancelled and UE will provide all power needs in the future. The subsidiaries and UE are bound by contracts to buy, except for the subsidiaries own generation, and to provide all the requirements. . . .

. . . Public Counsel pointed out that since 1959 UE and its subsidiaries have had its power centrally dispatched by UE dispatchers so the power is supplied on a systemwide basis.

Id. at 426-27.

Having considered all of the evidence in the record, the Commission finds that no detriment to the public has been shown to exist if this application to merge MU, MPL and ME with and into UE is granted.

The Commission must also consider the rates to be applied. Applicants request that UE's rates be applied to the subsidiaries' electric customers and all other customers would be served under their present rates. Staff agrees with UE's proposal to apply UE's rates to subsidiary electric customers except for municipal service rates, street lighting rates, traffic signal rates and cotton ginning rates. Public Counsel agrees with Staff's proposal and emphasized no surcharge should be levied. . . .

The Commission finds that the level of revenue generated by the application of UE rates to the subsidiary electric customers as proposed by UE results in a net revenue effect for the UE System of a negative \$740,000 taking into consideration annual savings and one-time savings. This revenue figure does not include the \$2,000,000 in savings to the Company in 1983.

UE's proposal to flow through savings to the electric subsidiary customers is based upon the reduction in administrative and general expenses in the subsidiary companies' service areas. Based upon these facts, the Commission finds that flowing through savings to the electric subsidiary companies' customers in the form of a rate reduction is reasonable.

Id. at 427-28.

The Commission finds that the municipal fixed rates and municipal fixed street lighting rates should be increased to the municipal service rates and the municipal street lighting rates in effect for each subsidiary company. The Commission, in Case Nos. ER-82-180 and ER-82-198 found that these contracts were below cost and discriminatory. The Commission ordered that service under the fixed rate contracts for municipal services and street lighting should be eliminated in two phases. . . .

. . . the Commission believes that the final phase-in of municipal fixed contract rates proposed in orders in ER-82-180 and ER-82-198 should be implemented.

By not increasing the municipal tariff rates, the Commission is allowing all municipalities approximately one year to anticipate the possibility of a substantial increase in rates in the future. . . .

The Commission finds that the present subsidiary rates for municipal pumping rates, traffic signals rates, private lighting rates, outdoor lighting rates, athletic field lights rates, cotton ginning and irrigation rates, irrigation rates, Whiteman Air Force Base and SEMO rates should be maintained until the effective date of the Report and Order in the next rate case. .

The Commission does not approve the Stipulation and Agreement entered into by the Staff and Company regarding irrigation rates, municipal street lighting rates and the Whiteman Air Force Base rates.

Id. at 429.

The Commission further finds that UE is to provide cost-of-service studies relating to municipal service, municipal and private lighting, irrigation, cotton gin and traffic signal rates in its next rate case. The Commission expects UE to make other appropriate cost studies in its next rate case. . . .

The Commission authorizes UE to provide gas, water and steam service under the subsidiaries' present rates to the subsidiary customers.

Id. at 429-30.

The Commission finds that UE should be authorized to apply the existing UE rules and regulations throughout the subsidiaries' service areas. However, upon UE's first assessment of a late payment charge on a given customer of MPL or ME during 1984, the customer should be notified of the assessment but should not be charged.

Id. at 430.