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August 9, 2001

FILED²
AUG 9 2001
Missouri Public
Service Commission

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

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 Motion for Reconsideration. 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 *wy Rg*

DLC/rhg
Enclosures

cc: Office of the Public Counsel
Nathan Williams, General Counsel
John Coffman, OPC
Stuart Conrad
Duncan Kinchloe
Mark Comley
Jeremiah Finnegan
John McKinney

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

FILED²

AUG 9 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 MOTION FOR RECONSIDERATION

Comes now UtiliCorp United Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS"), by counsel, and, as its Motion for Reconsideration, pursuant to Commission Rule 4 CSR 240-2.160, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

PURPOSE

1. UtiliCorp moves that the Commission reconsider that portion of its Order Granting Intervention, dated August 6, 2001, that grants status as an intervenor to the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") because the Order is inconsistent with Commission Rule 4 CSR 240-2.075, governing intervention, in that the MJMEUC has no right to intervene and the Commission did not find that the intervention of the MJMEUC would serve the public interest

BACKGROUND

2. On or about July 6, 2001, the MJMEUC filed its Application for Intervention with the Commission (the "Application"). Over UtiliCorp's objection, the Commission issued its Order Granting Intervention (the "Order") on August 6, 2001, wherein, among other things, the Commission granted MJMEUC status as an intervenor.

DISCUSSION

3. In the Order, the Commission found in relevant part as follows:
 - “The [MJMEUC] is not a retail customer of UtiliCorp, but a wholesale customer. Its interest in this matter is indirect and the Commission concludes that [the MJMEUC] does not have a right to intervene in this matter.”
 - “An economic interest, such as the [MJMEUC] claims, will support permissive intervention. Permissive intervention is, by its nature, discretionary. . . . Upon consideration of all of the circumstances and the arguments of the parties, the Commission will grant the MJMEUC’s application to intervene.”

4. Commission Rule 4 CSR 240-2.075 governs intervention in Commission proceedings and states, in part, that:

The commission may on application permit any person to intervene on a showing that –

- (A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or
- (B) Granting the proposed intervention would serve the public interest.

5. The Commission’s Order in regard to MJMEUC does not comport with the Commission’s own regulations concerning intervention. The Commission found in the Order that the first provision of this regulation (4 CSR 240-2.075(A)) does not apply. That is, that MJMEUC’s interest is “indirect” at best and, thus, the MJMEUC will not be adversely affected by a final order arising from the case - and has no “right” to intervene.

6. Therefore, by Commission rule, the only remaining potential basis for intervention was that "granting the proposed intervention would serve the public interest." The Commission order equates this to "permissive intervention under the civil rules." However, the wording of the civil rules on permissive intervention is different from Commission Rule 4 CSR 240-2.075. Missouri Rule of Civil Procedure 52.12(b) states:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common; or (3) when the validity of a statute, regulation or constitutional provision of this state, or an ordinance or regulation of a governmental subdivision . . . is not a party, the court may in its discretion notify the chief legal officer of the state or governmental subdivision thereof, and the state or governmental subdivision may in the discretion of the court be permitted to intervene, upon proper application.

7. Section 386.410.1, RSMo states, in part, that "[a]ll hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission." The Commission did not adopt the language of Mo. R. Civ. P. 52:12(b) to govern intervention in its proceedings. It instead promulgated a separate and distinct rule. As a result, the "permissive" side of the Commission's intervention rule speaks only in terms of an intervention that "would serve the public interest." The Commission's Order found no such public interest.

8. This is for good reason. MJMEUC's only attempt to identify a "public interest" came in its "Further Suggestions in Support of its Application for Intervention," filed with the Commission on August 2, 2001. In paragraph 5 of that document, the MJMEUC spoke of how it represented the interests of various UtiliCorp wholesale

customers, asserted that it represented the interests of customers served by these wholesale customers and identified a municipal member which may sell its system to UtiliCorp. These "interests" all relate exclusively to UtiliCorp's wholesale rates – rates that will not be changed by the Commission's Report and Order in this matter. Additionally, they concern entities that are beyond the Commission's jurisdiction and unaffected by Commission order.

9. Lastly, the MJMEUC indicated that "it is important for the Commission to have on record all information relevant to a requested order" and that "as a consequence of the nature and status of MJMEUC, and its access to information derived from that status, the public interest would be served by its participation." MJMEUC fails to identify what special information it has or what access it has that is superior to that of the Commission Staff or the Office of the Public Counsel. Such a broad statement cannot be the basis for "public interest" without further specification.

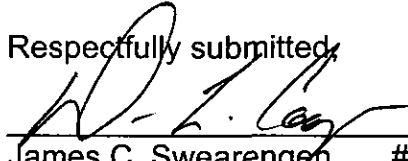
10. The purported statements of public interest found in the MJMEUC pleading make it clear that MJMEUC has nothing to add to this proceeding. It appears instead that MJMEUC merely seeks status as an intervenor in order to fish through UtiliCorp's records.

11. Commission Rule 4 CSR 240-2.075 is a rule that has been "adopted and prescribed by the Commission" for this purpose. The aspect of the Order Granting Intervention which grants intervention to the MJMEUC is unlawful in that its support of this intervention is inconsistent with Commission Rule 4 CSR 240-2.075.

WHEREFORE, UtiliCorp respectfully requests that the Commission grant its Motion for Reconsideration and, thereafter:

- (a) deny the MJMEUC's Application for Intervention; 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 9th day of August, 2001, to:

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