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August 24, 2001

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

FILED
AUG 24 2001
Missouri Public
Service Commission

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

Dear Mr. Roberts:

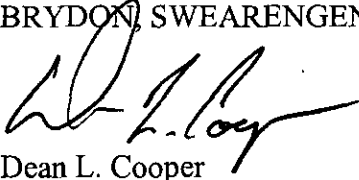
Enclosed for filing in the above-referenced proceeding please find an original and eight copies of UtiliCorp's Additional Suggestions Concerning OPC's Motion to Reject Tariff. Please stamp the enclosed extra copy "filed" and return same to me.

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 L. Cooper

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

FILED

AUG 24 2001

Missouri Public
Service Commission

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

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 ADDITIONAL SUGGESTIONS
CONCERNING OPC'S MOTION TO REJECT TARIFF**

Comes now UtiliCorp United Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS"), and, for its Additional Suggestions Concerning the Office of the Public Counsel's ("OPC") Motion to Reject Tariff, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

1. On August 14, 2001, the Commission heard oral arguments concerning the OPC's Motion to Reject Tariff, filed on June 15, 2001. On August 15, 2001, the Commission issued its Order and Notice wherein it stated that the parties "may file any additional suggestions relating to Public Counsel's Motion to Reject Tariff . . . and the issues raised in oral argument on August 14, 2001, on or before August 24, 2001." UtiliCorp's additional suggestions are in response to said Order and Notice.

JURISDICTION QUESTION

2. There has been no showing that the Commission lacks jurisdiction to entertain the subject tariffs. The language of Section 393.150 and past Commission practice does not require a public utility to 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. No statute, rule or case law has been presented to the Commission that refutes this proposition. Section 393.150 provides jurisdiction for the UtiliCorp filing.

3. The OPC's underlying argument is not that the Commission lacks jurisdiction, but rather that the Commission will somehow not decide the case properly if UtiliCorp's St. Joseph Light & Power ("SJLP") division electric tariffs are not before it. That is, the OPC alleges that the Commission will set electric rates for the MPS territory based upon something less than "all relevant factors."

4. This is a factual question, not a jurisdictional issue, and clearly not a reason to dismiss the proposed tariffs. There is nothing inherent about this case that will prohibit the Commission from fixing electric rates for the MPS division after hearing and investigation "upon consideration of all relevant factors." *State ex rel. Utility Consumer's Council of Missouri v. PSC*, 585 S.W.2d 41, 56 (Mo banc 1979). The Commission has the ability to determine a total UtiliCorp Missouri jurisdictional revenue requirement based on a total cost of service and to then allocate responsibility for the appropriate amount of that revenue requirement to the MPS division and specifically to the MPS electric operations. Again, this is a question of how the Commission goes about deciding this case, not a question of whether the tariffs should be dismissed for lack of jurisdiction.

CONSEQUENCE OF OPC POSITION

5. Any finding by the Commission in support of the OPC position would need to include sufficient information to provide UtiliCorp, and other public utilities, with notice

as to how the Commission believes rate filings must be made in the future. That is, parties will need to know whether a public utility must simultaneously file all Missouri jurisdictional electric tariffs (in UtiliCorp's case, MPS and SJLP tariffs); or, all corporate electric tariffs (in UtiliCorp's case, MPS, SJLP, Kansas and Colorado); or, all Missouri jurisdictional tariffs for all utility service (in UtiliCorp's case, MPS electric, MPS gas, SJLP gas, SJLP electric and SJLP steam); or, its corporate utility tariffs (in UtiliCorp's case, electric in Missouri, Kansas and Colorado; and natural gas in Missouri, Kansas, Colorado, Nebraska, Iowa, Michigan and Minnesota; and steam in Missouri).

6. Theoretically, there is no distinction between any of these levels under the OPC's argument because all of UtiliCorp's regulated United States operations are owned by, and conducted in, a single corporate entity, UtiliCorp United Inc. Under each of these above approaches, the Commission must still draw some line within the corporation and take a position on the allocation of costs in relation to that line. Even if the Commission took the position that all three state electrical filings and all seven state natural gas filings and the single state steam filing had to be made simultaneously the Commission would still have to address allocations to areas of the company that are not connected with the Missouri regulatory operations. The bottom line is that the Commission commonly addresses allocations within UtiliCorp in arriving at lawful rates. The process it would follow to set electric rates for the MPS division in this case would be no different.

SEPARATE CERTIFICATES

7. The Regulatory Law Judge asked counsel for UtiliCorp during the course of the oral argument whether MPS and SJLP operated under separate certificates of

convenience and necessity. The answer to this is that there are separate certificates for the two operating divisions.

8. The Commission approved the merger between UtiliCorp and St. Joseph Light & Power Company 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"). In Paragraph 2 of its Report and Order, the Commission stated:

That St. Joseph Light & Power Company is authorized, through the merger, to transfer to UtiliCorp United Inc. all the properties, rights, privileges, immunities and obligations of St. Joseph Light & Power Company, including, but not limited to, those under St. Joseph Light & Power Company's certificates of public convenience and necessity, works, systems and franchises, and all securities, evidences of indebtedness and guarantees, effective as of the date of the closing of the merger.

Thus, UtiliCorp acquired the separate certificates formerly held by the St. Joseph Light & Power Company. No further action concerning these certificates has taken place since the Merger Case.

SEPARATE BOOKS AND RECORDS

9. The Regulatory Law Judge also asked counsel for UtiliCorp during the course of the oral argument whether MPS and SJLP continued to keep separate books and records. UtiliCorp does keep separate books and records for the two divisions. In paragraph 9 of the "Ordered" section of the Report and Order in the Merger Case, the

Commission established the following condition (among others):

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.

In order to comply with this condition, UtiliCorp continues to keep separate books and records for the two operating divisions.

FERC ORDER

10. During the oral argument, the Regulatory Law Judge requested that UtiliCorp provide the Federal Energy Regulatory Commission ("FERC") "integration" order that had been referred to by the parties at the hearing. Marked Appendix A, attached hereto and hereby incorporated by reference is the Order Accepting Compliance Filing and Authorizing Integrated Operations, issued on June 4, 2001, by the FERC, in Docket No. EC00-27-003.

11. UtiliCorp would point out that the "integration" referred to by the FERC Order concerns only those matters which are within the FERC's jurisdiction – generation and transmission. The FERC has not, and cannot, address distribution property.

12. Some continued separation of the generation and transmission functions was contemplated by the parties to the Merger Case before the Commission. In the Merger Case, UtiliCorp proposed an Electric Allocation Agreement (also known as a Joint Dispatch Agreement) in Schedule RWK-10 to the direct testimony of Robert W. Holzwarth. "In addition to specifying how power supply resources will be used, the agreement specifies how the costs resulting from the use of these resources will be

allocated among the various divisions; e.g., MPS and SJLP." (Merger Case, Proctor Reb., Ex. 714, p. 23). The Staff proposed changes to this agreement in the rebuttal testimony of Michael S. Proctor. UtiliCorp and the Staff later reached an understanding as to the terms of the Electric Allocation Agreement.

METHOD OF CHANGING RATES

13. During the oral argument, counsel for UtiliCorp suggested that utility rates could be changed in one of two ways – either by the utility putting its rates at issue with the filing of tariffs or as the result of a complaint action. The Regulatory Law Judge requested that UtiliCorp provide whatever authority it might have for this proposition. In *State ex rel. Midwest Gas Users Association v. Public Service Commission*, 976 S.W.2d 470 (Mo.App. 1998), this issue was addressed as follows:

In this regard, Section 393.150 permits the PSC to hold a hearing on the propriety of a utility's rates on its own motion, or upon complaint by any interested party. A utility may also "file a schedule stating a new rate or charge, rule or regulation, which shall become valid unless suspended by the Commission." *Utility Consumers Council*, 585 S.W.2d at 48. See §§§§ 393.150, 393.260, 393.270. After notice, investigation and hearing, the PSC "within lawful limits may, by order, fix the maximum price of gas, . . . not exceeding that fixed by statute to be charged by such corporation . . .". §§ 393.270(2).

Id. at 477.

14. A more complete discussion of the methods of changing rates is found in *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, (Mo. 1975).

In *Jackson County*, the Missouri Supreme Court found and determined that the file and suspend method and the complaint process were the two methods available for altering utility rates.

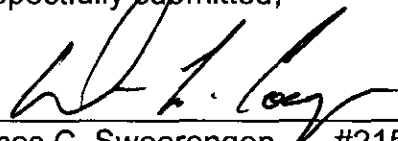
DISCOVERY ISSUES

15. Lastly, there was some mention of discovery issues by the OPC counsel at the end of the oral argument. UtiliCorp is unaware of the existence of any discovery dispute between the parties. Additionally, this Commission has an established procedure for addressing discovery disputes, should they arise, and consequently the OPC's unfounded allegations were inappropriate. UtiliCorp believes that discovery is not an issue and, beyond that, is completely unrelated to the OPC's Motion to Reject.

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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Attorneys for UtiliCorp United Inc.

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 24th day of August, 2001, to:

Mr. Nathan Williams
Missouri Public Service Commission
Governor State Office Building
P.O. Box 360
Jefferson City, MO 65102-0360

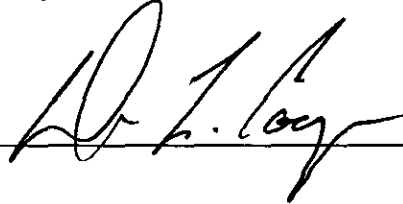
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

UtiliCorp United Inc.
and
St. Joseph Light & Power Company

Docket No. EC00-27-003

ORDER ACCEPTING COMPLIANCE FILING
AND AUTHORIZING INTEGRATED OPERATIONS

(Issued June 4, 2001)

I. Introduction

In this order, we accept UtiliCorp United Inc.'s (UtiliCorp) compliance filing and authorize UtiliCorp and St. Joseph Light & Power Company (St. Joseph) (collectively, Applicants) to commence integrated operations.¹

II. Background

By order issued on July 26, 2000, the Commission conditionally authorized the mergers of UtiliCorp and St. Joseph, and of UtiliCorp and Empire.² The July 26 Order found that although Applicants' analysis of system integration raised questions, the proposed merger raised no competitive concerns because Applicants did not plan to integrate their systems until mid- to late 2002 and there were no competitive concerns without system integration. However, the Commission required Applicants to file a revised competitive analysis six months prior to the commencement of integrated

¹In this proceeding, UtiliCorp had also proposed to merge with Empire District Electric Company (Empire) (Docket No. EC00-28-000). However, as explained below, UtiliCorp and Empire terminated their merger agreement. Therefore, "Applicants," as used herein, now refers only to UtiliCorp and St. Joseph, not to Empire.

²UtiliCorp United Inc. and St. Joseph Light & Power Co., UtiliCorp United Inc. and Empire District Electric Co., 92 FERC ¶ 61,067 (July 26 Order), reh'g denied, 93 FERC ¶ 61,303 (2000).

operations.³ On March 27, 2001, UtiliCorp submitted Applicants' revised competitive analysis and requested that the Commission authorize the integrated operations of UtiliCorp and St. Joseph.

Notice of Applicants' revised competitive analysis was published in the Federal Register, 66 Fed. Reg. 18,761 (2001), with motions to intervene or protests due on or before April 26, 2001. None was filed.

III. Discussion

A. Applicants' Revised Competitive Analysis

UtiliCorp completed the merger with St. Joseph and terminated the merger agreement with Empire.⁴ As a result, Applicants' revised competitive analysis evaluates only the planned integration of UtiliCorp's Missouri Public Service Division (MPS) and St. Joseph. Applicants plan to integrate MPS and St. Joseph operations through a 161 kV transmission line owned by Kansas City Power & Light Company (KCPL), which will be upgraded (by January 1, 2003) and leased from KCPL. In the interim, Applicants state that MPS and St. Joseph will integrate their systems using a 150 MW bi-directional firm contract path.

Applicants' revised competitive analysis identifies non-firm energy and short-term capacity as the relevant products and uses economic and available economic capacity as proxies for suppliers' ability to participate in relevant markets. They further define as relevant products fifteen different time/load periods. Applicants identify, define, and evaluate twenty-five destination markets. They perform analyses assuming system integration through the transmission line upgrade and the 150 MW firm contract path and with different assumptions regarding electricity market prices and fuel prices.⁵ Their

³92 FERC at 61,233; see also 93 FERC at 62,045.

⁴See UtiliCorp's January 4, 2001 Letter, Docket No. EC00-27-002, et al., informing the Commission that the UtiliCorp-St. Joseph merger (Docket No. EC00-27-000) was completed on December 31, 2000, and that UtiliCorp has terminated the merger agreement with Empire (Docket No. EC00-28-000).

⁵In revising their analysis, Applicants have, among other things: assumed that UtiliCorp (including St. Joseph) is a member of the Midwest Independent Transmission System Operator (Midwest ISO); updated data on transmission pricing, losses, limits, and
(continued...)

results show that pre- to post-merger (reflecting integration) increases in market concentration using economic capacity exceeds the thresholds set forth in the Merger Policy Statement (i.e., fail the screens) in 20 of 120 cases in the MidAmerican Energy Company (MidAmerican) market and in 22 of 120 cases in the MPS market. The screen failures in the MidAmerican market are in winter periods assuming contract path integration, primarily in moderately concentrated post-merger markets. The screen failures in the MPS market occur in certain summer periods under both integration scenarios, primarily in moderately concentrated post-merger markets.

Applicants note that their post-merger market share in the MidAmerican market is negligible and that the screen failures are due to system integration, which reduces import capability and raises MidAmerica's market share. Applicants argue, among other things, that the merger would not significantly increase their market power because UtiliCorp and St. Joseph are small companies that would not compete significantly in any relevant market. They assert that economic capacity is of limited relevance in Missouri and Kansas because utilities there retain their obligations to serve and that the transmission line upgrade should be completed before economic capacity becomes relevant. Despite their conclusion that their revised analysis does not raise competitive problems, Applicants propose two commitments to alleviate any concerns regarding the competitive effects of integrated system operations in Missouri.⁶ Applicants also state that they will limit bi-directional transfers between MPS and St. Joseph to 150 MW for three years after system integration.

⁵(...continued)

loads; and accounted for changes in transmission use resulting from integration. With respect to joining the Midwest ISO, Applicants indicate that on February 28, 2001, UtiliCorp submitted a conditional application to join the Midwest ISO. See also Midwest ISO Press Release (March 2, 2001) at <http://midwestiso.org>.

⁶These measures are commitments: (1) for the MidAmerican market, to reduce energy flows between MPS and St. Joseph upon request if doing so will allow market participants access to transmission service to import energy to the MidAmerican market; and (2) for the MPS market, not to implement any interconnection plan that would reduce available transmission capacity in or out of the MPS and St. Joseph control areas below the levels needed by a transmission dependant entity to serve its load or to export energy from existing generation and, if necessary, to reduce flow between MPS and St. Joseph to permit access to transmission service.

B Commission Determination

We find that Applicants' revised competitive analysis addresses the issues regarding integrated system operation raised by the Commission in its July 26, 2000 Order. Based on Applicants' analysis, we find that the proposed integrated operation of the merged MPS and St. Joseph systems will not adversely affect competition in the MPS and MidAmerican relevant markets. As a result, we find that Applicants proposed commitments are not necessary.

While Applicants identify screen failures in the MPS and MidAmerican markets, the screen failures in this particular case do not indicate that the merged, integrated company could adversely affect electricity prices or output. Pre- to post-merger increases in market concentration in the MPS and MidAmerican markets are largely due to increases in market shares of the non-merged companies that result from system integration, as opposed to combining Applicants' pre-merger, pre-integration market shares. As we stated in prior orders, we are not concerned about screen violations of this nature because our major concern in evaluating the effect of combining control over generation is whether the transaction eliminates a competitor, which is revealed by the combination of pre-merger market shares.⁷ Moreover, one or both of Applicants' pre-merger, pre-integration market shares are negligible, also indicating, as we have found elsewhere, that it is unlikely that one or both of the companies exert a significant degree of competitive discipline in the MPS and MidAmerican markets.⁸ We also note that no intervenor argues otherwise.

Accordingly, we accept UtiliCorp's compliance filing and authorize UtiliCorp to integrate its MPS and St. Joseph operations.

⁷See, e.g., *Ohio Edison Co., et al.*, 94 FERC ¶ 61,291 at 62,044, *reh'g denied*, 95 FERC ¶ 61,178 (2001). The increase in market concentration attributable solely to the combination of the merged companies is twice the product of the merging company's pre-merger market shares. U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, April 2, 1992 at Section 1.51, note 8.

⁸See, e.g., *Northern States Power Co., et al.*, 90 FERC ¶ 61,020 at 61,132 (2000); *CP&L Holdings, Inc., et al.*, 94 FERC ¶ 61,023 at 61,054 (2000), *reh'g denied*, 94 FERC ¶ 61,096 (2001); *Sierra Pacific Power Co., et al.*, 92 FERC ¶ 61,217 at 61,723 (2000), *reh'g pending*.

Docket No. EC00-27-003

-5-

The Commission orders:

UtiliCorp's compliance filing is hereby accepted, and authorization for UtiliCorp to integrate its MPS and St. Joseph operations is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

David P. Boergers
David P. Boergers,
Secretary.