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August 24, 2001

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED

AUG 24 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 **Additional Suggestions in Support of Public Counsel's Motion to Reject Tariff**. 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:jb

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

AUG 24 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

**ADDITIONAL SUGGESTIONS IN SUPPORT OF
PUBLIC COUNSEL'S MOTION TO REJECT TARIFF**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Additional Suggestions in Support of Public Counsel's Motion to Reject Tariff states as follows:

1. The oral arguments heard by the Commission on August 14, 2001, brought into sharper focus fundamental ratemaking issues that are integral to the filing made by UtiliCorp United, Inc. (UtiliCorp) which created this case. Public Counsel believes that the following are inescapable legal conclusions:

a. **An internal corporate division of UtiliCorp, with no separate corporate identity, is not an "electrical corporation" as defined in Section 386.020(15) RSMo 2000, and may not request an increase in electric rates pursuant to Sections 393.140(11), 393.150, and 393.270(4) RSMo 2000.**

UtiliCorp United Inc. is the electrical corporation whose rates are regulated by the Commission. It is well established that "Missouri Public Service Company" ("MPS") is merely a fictional trade name which has no separate corporate identity apart from UtiliCorp. Despite the way that the style of this case is written, it is UtiliCorp that has signed pleadings in this case. UtiliCorp, not MPS, is the regulated entity. Only UtiliCorp has the certificate of convenience and necessity from the Commission

including the area involved in the requested rate increase in this case. UtiliCorp may have a right to file a case with the Commission using a fictional moniker; but if it does, then that name must reflect the entire Missouri- jurisdictional operations of this electrical corporation.

This is apparently confusing to some because "Missouri Public Service Company" (or "MPS") *used to be* a trade name that was used to represent UtiliCorp's total Missouri-jurisdictional electric operations. This is no longer the case since UtiliCorp has been permitted to merge with St. Joseph Light and Power Company (SJLP) – a request that the Commission approved in Case No. EM-2000-292.

During oral arguments, Judge Thompson asked Public Counsel if a parent company of an entity that provides electrical service in Missouri might fall within the definition of Section 386.020(15) RSMo 2000. A similar issue was raised in Case No. WM-99-244, when Public Counsel argued that the definition of "water corporation," pursuant to Section 386.020(58), was broad enough to include American Waterworks Company (the parent company owner of St. Louis County Water Company). The Commission rejected Public Counsel's arguments regarding this definition. *Ibid*, Report and Order, issued on March 23, 1999, pages 5-6.

Under Missouri law, UtiliCorp is the entity which the Commission regulates with regard to electric rates and electric service. The Commission may not legally allow a company to merge for the benefit of some regulatory functions and then subdivide itself for the purposes of ratemaking. UtiliCorp is the only entity that the Commission may recognize as a proper applicant in a request for an electric rate increase.

b. UtiliCorp chose to request a change in its corporate identity in the merger case. The Commission authorized this change and has recognized that UtiliCorp is now a new, larger entity for the purposes of regulation.

Over two years ago, UtiliCorp decided that it would like to merge with St. Joseph Light and Power Company (SJLP). UtiliCorp might have considered (and could have proposed) that a holding company be created which would hold separate electrical corporations within the State of Missouri. It did not choose to make that request. Instead, it requested that SJLP be wholly and completely merged into the "electrical corporation" that is UtiliCorp. There are no doubt several advantages and disadvantages to UtiliCorp as a result of this chosen corporate structure. During oral arguments, counsel for UtiliCorp cited the Public Utility Holding Company Act (PUHCA) as a reason that UtiliCorp has not attempted to become a holding company. No matter what the reason, UtiliCorp has chosen its new corporate structure and thus a new regulatory identity. There are many important consequences that flow from this decision.

On December 14, 2000, the Commission approved the merger between UtiliCorp and SJLP, and recognized the transaction resulted in SJLP being merged into UtiliCorp with "UtiliCorp United, Inc. being the surviving corporation." Case No. EM-2000-292, Report and Order, page 44. This merger structure was approved despite the fact that Public Counsel and the Commission's Staff both argued that it would be detrimental to the public interest. Public Counsel still believes that, for many reasons, this merger will be detrimental to consumers.

Nonetheless the Commission has now recognized a new corporate structure for UtiliCorp as of December 31, 2000. One of the consequences that UtiliCorp must now

accept is that all of the rates for its Missouri jurisdictional operations must be considered at one time whenever it requests an electric rate increase.

c. **The “all relevant factors” requirement, as interpreted by the Missouri Supreme Court, requires the Commission to establish a total revenue requirement in any rate increase request or any excess earnings complaint case. Section 386.270(4) RSMo 2000, as interpreted by the Missouri Supreme Court in State ex rel. Utility Consumers’ Council of Missouri v. PSC (“UCCM”), 585 S.W.2d 41 (Mo banc 1979), and in several other cases.**

The Commission acknowledged this fundamental legal protection for consumers in its order approving the merger:

... The law is quite clear that when determining a rate the Commission is obligated to review and consider all relevant factors, rather than just a single factor. See. State ex rel. Missouri Water Co. v. Public Service Commission, 308 S.W.2d 704 (Mo. 1957); 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). To consider some costs in isolation might cause the Commission to allow a company to raise rates to cover increased costs in *one area* without realizing that there were counterbalancing savings in *another area*. Such a practice is justly condemned as single-issue ratemaking. Midwest Gas Users’ Association at 480.

Case No. EM-2000-292, Report and Order, pages 39-40. (emphasis added).

Public Counsel believes that the “all relevant factors” requirement prevents the Commission from determining a revenue requirement for only some selected geographical slice of UtiliCorp’s Missouri-jurisdictional electric operations. “All relevant factors” may not be split among two or more different cases.

Staff is in complete disagreement with Public Counsel on this issue. Staff asserts that “All relevant factors can be considered if the SJLP cost of service is not directly

reflected in the MPS general rate case.” Staff’s Response to Commission’s Order Directing Filing, page 11. At the oral argument, Staff insisted that it would only perform a limited audit of the SJLP area of UtiliCorp if the current case is allowed to proceed. If the Commission does not have the benefit of a detailed audit of all of UtiliCorp’s Missouri jurisdictional operations, the Commission will not have the competent and substantial evidence to make a decision in this case.

Staff has also claimed that it may file an excess earnings complaint case regarding the SJLP area alone, if it decides to do so based upon a “related audit.” Id., p. 12. Public Counsel believes that an earnings complaint filed regarding less than UtiliCorp’s total Missouri-jurisdictional electric operations would be legally deficient, just as the filing that initiated this case is legally deficient. Requiring the Commission or other parties to file cases for those areas not included in the current filing would shift the burden of proof regarding rates away from UtiliCorp. An inappropriate shifting of the burden of proof from an electric utility to the Commission was one problem noted by the Missouri Supreme Court when it held that fuel adjustment clauses violate the “all relevant factors” requirement. See UCCM, pp. 56-57.

Staff also suggested during oral arguments that the Commission has the discretion to define the scope of a general rate case and should do so on a case-by-case basis. Public Counsel disagrees with this conclusion. The Commission is bound by the statutory authority granted by Chapters 386 and 393 and by its own rules and does not have the authority to subdivide its regulated utilities for the purposes of ratemaking.

It is unclear whether UtiliCorp agrees with Public Counsel regarding the Commission’s responsibility to set a revenue requirement in a rate case which covers an

electrical corporation's total Missouri jurisdictional operations. Despite statements made at the oral argument which appeared to agree with Public Counsel on this point, UtiliCorp's filings in this case suggest otherwise. The "minimum filing requirements" submitted by UtiliCorp pursuant to 4 CSR 240-10.070(3)(B) suggest that UtiliCorp believes that the Commission may only review the revenue requirement of its internally-defined MPS division. For instance, UtiliCorp states in response to Item 1 of the minimum filing requirements:

The aggregate annual increase over current revenues which the tariffs propose is \$49,352,769 which is an overall increase of 16.8% on a Pro Forma Basis.

June 8, 2001 Tariff Filing, Tariff No. 200101173.

This stated revenue increase percentage does not refer to UtiliCorp's total Missouri jurisdictional operations, rather it inappropriately suggests that MPS has its own separate revenue requirement. As Public Counsel has also pointed out previously, the direct testimony which accompanied the June 8 tariff filing requested that MPS be treated "as though the merger did not take place." The Commission may not engage in such a fiction regarding UtiliCorp's identity for ratemaking purposes. Furthermore, it is clear from data request responses received from UtiliCorp in this case that UtiliCorp still believes that the revenue requirement in this case is limited to its "MPS division." See Attachment 1 to this pleading.

d. No statute, no case law, and no Commission rule allows an electrical corporation to limit what rates the Commission may review when a rate case is filed.

Company asserts that Section 393.150.1 RSMo 2000 allows an electrical corporation to put "into play" only those rates that it chooses to put "in play." Specifically, in this case, Company asserts that it may limit any changes in rates that may be proposed to those geographical sections of its certificated area which it has hand-picked (the MPS area). Certainly, this statute permits a utility to propose the rate design that it chooses for any change to its total revenue requirement, but it does not allow a utility to limit the Commission's rate design options for how for the electrical corporation collects its total revenue requirement to selected parts of its service territory.

It is here that it is important to understand the relationship between revenue requirement and rate design. There are many possible rate designs that could result from a rate increase for UtiliCorp. Once a proper revenue requirement is determined, a multitude of potential rate designs are possible for this Company; however, there may only be one company-wide revenue requirement determined by the Commission. Once a total revenue requirement is established, this total revenue requirement must be recovered through one of these variations from its entire Missouri electric operations. At this point, Public Counsel has not yet performed a cost of service study and has no pre-conceived notions regarding whether it would recommend that rates for UtiliCorp's entire Missouri jurisdictional operations be based on identical rates for all areas or whether different rates should apply to certain geographical areas.

Section 393.150, as interpreted by UtiliCorp, would render the "all relevant factors" requirement meaningless. If a company is allowed to limit the scope of a general rate increase to only one area of its operations, it would also be able to limit the scope of a general rate increase case to only residential customers or to limit a rate case to only

those geographic areas within its certificated territory which contain residential customers. The Commission does not have the legal authority to proceed under any of these scenarios.

Just as a utility may not ask the Commission to change one of its rates for one type of service in isolation (i.e. late payment fees, connection charges, etc.), it cannot ask the Commission to set rates for a selected piece of its Missouri certificated territory in isolation. The Commission lacks the legal authority to grant such a request. The Commission has just recently acknowledged the constraints placed upon it by the "all relevant factors" requirement (prohibition against single-issue ratemaking), when UtiliCorp argued that it should be allowed to limit a rate increase to only selected charges and avoiding a general rate case for its total operations, arguing that it should be allowed to proceed with a case of such limited scope because of convenience and a small revenue impact. The Commission rejected this attempt, pointing out the fundamental legal requirements to consider all relevant factors in one rate case:

UtiliCorp's practical arguments have a certain appeal. But the Commission simply does not have the authority to engage in single-issue ratemaking, and convenience, expediency, and necessity are not proper matters for consideration when determining the extent of the Commission's authority.

The Commission takes seriously its obligation to consider all factors before approving any tariff that would increase the rates or charges paid by the consumers of a utility. Thus, for example, the Commission recently rejected, as single-issue ratemaking, a tariff offered by a small telephone company that would have introduced a \$5.00 late-payment charge. UtiliCorp asks the Commission to approve changes to its customer charges without considering all factors. The Commission does not have the authority to do so. Therefore, UtiliCorp's tariffs cannot be approved.

Because it violates the prohibition against single-issue ratemaking, the Commission is without authority to approve UtiliCorp's tariff.

Case No. ET-2001-482, Order Rejecting Tariff, issued on April 3, 2001, p. 5.

2. Even if the Commission adopts the Staff argument that the Commission has the discretion to limit the geographic scope of a rate case, there are many public policy reasons why the Commission should not permit an electrical corporation to split up its electric operations among two or more rate cases staggered over time. Such a public policy would be detrimental to the public interest and create the potential for tremendous mischief.

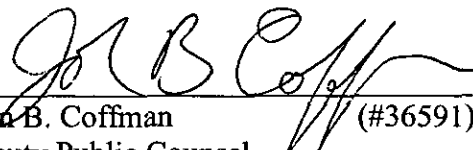
Both Staff and Company apparently find no legal problem with separate rate cases, proceeding on separate procedural schedules, which divide up UtiliCorp's total Missouri jurisdictional electric operations; however, such a procedure would create a practical and legal nightmare. If the Commission determines the total UtiliCorp revenue requirement and then designs rates to recover that total revenue requirement deficiency from only the MPS area, may UtiliCorp then make another "pancaked" rate case filing, which attempts to recover its total revenue requirement from the SJLP area? If "all relevant factors" are divided among two or more UtiliCorp rate cases, possibly staggered over time using slightly different test year information, the Commission's job will become rather complicated indeed. Public Counsel asserts that the only way to ensure that just and reasonable rates are set for UtiliCorp is in a case where a total company-wide revenue requirement is determined and where a total company-wide rate design is approved to recover that total revenue requirement.

If UtiliCorp is allowed to proceed as it requested in this case, on what legal ground will the Commission stand when AmerenUE requests a rate increase request for

the selected geographical area of one of its internal corporate divisions? As a matter of sound utility regulation, as well as by legal requirement, the Commission should not permit an electric rate case to be limited to anything less than the total Missouri-jurisdictional electric operations of the regulated electrical corporation.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 
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**UTILICORP UNITED
CASE NO. ER-01-672
DATA REQUEST NO. OPC-712**

DATE OF REQUEST: July 26, 2001
DATE RECEIVED: July 26, 2001
DATE DUE: August 15, 2001
REQUESTOR: Hong Hu

QUESTION:

If not provided in response to OPC DR No. 702, please provide a breakdown by customer rate schedule of Forfeited Discount Revenues (Account 450) for the test year. Please provide this information for UtiliCorp's total Missouri jurisdictional electric operations and a breakdown for each of UtiliCorp's operational division. If your response to this data request includes or references multi-page document(s) where the requested information will be found, please include a reference to the document name, page number, section, and line number where the requested information will be found.

RESPONSE:

No such calculation was prepared, as the rate change is across-the-board. Further, as of the date this response was prepared, only the MPS division was involved in this case.

ATTACHMENTS: None

ANSWERED BY: Matt Tracy, Regulatory Services, 20 W. 9th

**UTILICORP UNITED
CASE NO. ER-01-672
DATA REQUEST NO. OPC-713**

DATE OF REQUEST: July 26, 2001
DATE RECEIVED: July 26, 2001
DATE DUE: August 15, 2001
REQUESTOR: Hong Hu

QUESTION:

Please provide the following information by rate class for customers in UtiliCorp total Missouri jurisdictional operations, as well as a breakdown for each operational division:

a) Pertaining to FERC Account 370 – Meters:

Type	Capacity	No. of Meters	Total Embedded Installed Cost
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b) Pertaining to FERC Account 369 – Services:

Type	Diameter (Inches)	Length (Feet)	Total Embedded Installed Cost
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c) For the above items, please identify the "typical" installation by rate class.

If embedded installation costs are not available for all of the meters or services utilized by UtiliCorp, provide whatever embedded installed cost information is available and specify the time period that it covers. The number (length) of each type of meter (service) should correspond to the embedded cost information beside it.

If your response to this data request includes or references multi-page document(s) where the requested information will be found, please include a reference to the document name, page number, section, and line number where the requested information will be found.

RESPONSE:

As the rate change is across-the-board and no class cost of service study has been prepared, the requested information is not available. Further, as of the date this response was prepared, only the MPS division was involved in this case.

ATTACHMENTS: None

ANSWERED BY: Matt Tracy, Regulatory Services, 20 W. 9th

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 24th day of August 2001:

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

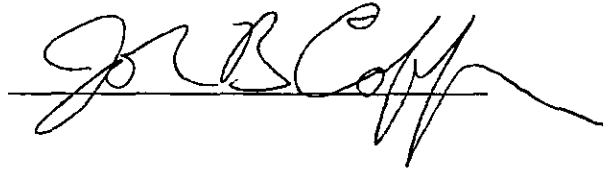
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A handwritten signature in dark ink, appearing to read "J. R. Coffey", is written over a horizontal line. The signature is stylized with a large, sweeping initial "J" and a long, horizontal flourish extending to the right.