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\*ALSO ADMITTED IN  
KANSAS AND MASSACHUSETTS

August 23, 2001

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

AUG 24 2001 MS

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison, P.O. Box 360  
Jefferson City, MO 65102-0360

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

Dear Judge Roberts:

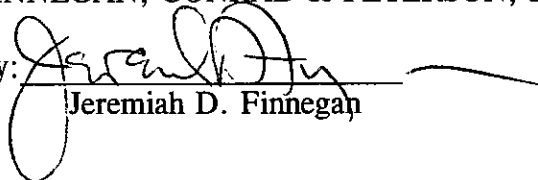
Enclosed for filing find an original and eight (8) copies of Suggestions in Support of Public Counsel's Motion to Reject Tariff.

Also enclosed is a self-addressed and stamped envelope for you to return the extra copy with the file stamp thereon.

If you have any questions regarding this filing, please contact me.

Very truly yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By:   
Jeremiah D. Finnegan

JDF:crb

Enclosures

cc: Office of Public Counsel  
General Counsel's Office  
James C. Swearengen  
Duncan E. Kincheloe, III  
Stuart W. Conrad  
Mark W. Comley  
Jane McQueeny

FILED<sup>2</sup>

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Missouri Public  
Service Commission

STATE OF MISSOURI  
MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Tariff Filing of Missouri )  
Public Service (MPS) a Division of UtiliCorp )  
United, Inc. to Implement a General Rate In- )  
crease for Electric Service Provided to Custom- )  
ers in the Missouri Service Area of MPS. )  
)  
)

Case No. ER-2001-672

COUNTY OF JACKSON'S  
SUGGESTIONS IN SUPPORT OF PUBLIC COUNSEL'S MOTION  
TO REJECT TARIFF

COMES NOW the County of Jackson, Missouri ("Jackson County"), pursuant to the Order and Notice dated August 15, 2001 and files the following additional suggestions in support of Public Counsel's Motion to Reject Tariff:

In addition to the reasons advanced by Public Counsel, Jackson County would add that the tariff filing violates Section 393.130.3, RSMo.<sup>1/</sup>, which provides in pertinent part:

"No ... electrical corporation... shall make or grant any undue or unreasonable preference or advantage to any ...locality ... in any respect whatsoever, or subject any locality ... to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

A provision with virtually identical language pertaining to common carriers found at Section 387.110.1, was determined to create two offenses: 1) giving any undue or unreasonable preference or advantage to any particular locality; and 2) subjecting any particular locality to any undue or unreasonable prejudice or disadvantage by the Missouri Supreme

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<sup>1/</sup> All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

Court *en banc*. In *Alexander v. Chicago, Milwaukee & St. Paul Ry. Co.*, 221 S.W.712, 715 (Mo. banc 1920), the Supreme Court stated the following as to the two offenses created by the statute:

"Either act is an offense against the law. Both might be committed at the same time, and conceivably in the same transaction; but, the offenses are not necessarily concomitant, nor in any sense interdependent. It is not necessary for the carrier to violate the law twice in order to be held liable once."

Thus, under Section 393.130.3, it is unlawful for UtiliCorp to: unduly

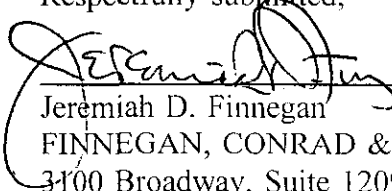
Missouri Public Service (MPS) is not the electrical corporation subject to the jurisdiction of the Commission, it is merely a division of UtiliCorp United, Inc., the electrical corporation regulated by the Commission. The MPS service areas is no more than one locality served by UtiliCorp, the electrical corporation subject to the jurisdiction of the Commission. UtiliCorp, the electrical corporation, serves two such localities, nevertheless, it is only seeking to increase rates in one of the localities it serves and does not seek to increase the rates in the other locality it serves. It can only be assumed by such inaction, that the rates in the St. Joseph locality are too high, otherwise UtiliCorp would be seeking an increase there as well. Because UtiliCorp has not filed to change the tariffs of the St. Joseph locality, the Commission cannot do anything in this proceeding to change such rates even if it is discovered during the investigation of all factors that such rates produce overearnings to UtiliCorp. There has been no notice to the public as to such rates. The Commission will be powerless to do anything about decreasing the rates for the St. Joseph locality except after further notice and hearing.

By the same token, were the Commission to utilize the overearnings in the St. Joseph locality to reduce the increase in UtiliCorp's revenue requirement as a result of a revenue deficiency in the MPS locality, the result will be undue discrimination against the St. Joseph locality and undue advantage given to the MPS locality. Without all of UtiliCorp's electric tariffs on the table, the Commission cannot do its job of regulating UtiliCorp properly. Without the St. Joseph locality rates also on the table, the Commission can only exacerbate the overearnings of UtiliCorp by granting an increase in rates in the MPS locality and not being able to order a decrease in rates in the St. Joseph locality.

At this time, because it is almost three months since UtiliCorp filed these tariffs, the only solution is to reject the tariff as requested by Public Counsel and to start over. Had something been done shortly after the filing, it may have been solved by requiring UtiliCorp to give notice to electrical customers in the St. Joseph locality to the effect that their rates may be impacted by this proceeding and allowing them an adequate time to intervene and participate. The passage of time has made this solution impractical, because they will have lost three months time in preparing to take action. The Commission should reject the tariff filing.

WHEREFORE, for the foregoing reasons, the County of Jackson respectfully requests that the Commission reject UtiliCorp's tariff for only one of the localities it serves with electrical service and not entertain a general increase for this electrical corporation until it puts the rates for both its localities at issue so that the Commission may properly perform its duties in setting just and reasonable rates for all localities served by UtiliCorp.

Respectfully submitted,

  
Jeremiah D. Finnegan

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ATTORNEY FOR THE COUNTY OF JACKSON

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing pleading by hand delivery or U.S. mail, postage prepaid addressed to the following persons:

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P.O. Box 7800  
Jefferson City, MO 65102

General Counsel's Office  
Public Service Commission  
P.O. Box 456  
Jefferson City, MO 65102

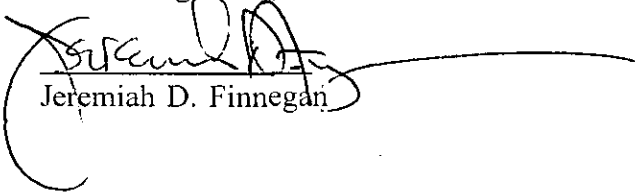
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Dated: August 23, 2001

  
Jeremiah D. Finnegan