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August 31, 2001

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

**FILED<sup>3</sup>**

**AUG 31 2001**

**Missouri Public  
Service Commission**


**RE: UtiliCorp United Inc.  
Case No. ER-2001-672**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies **PUBLIC COUNSEL'S SUGGESTIONS IN REPLY REGARDING ITS 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<sup>3</sup>**

AUG 31 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

**PUBLIC COUNSEL'S SUGGESTIONS IN REPLY  
REGARDING ITS MOTION TO REJECT TARIFF**

COMES NOW the Office of the Public Counsel (Public Counsel) and, pursuant to the Order and Notice dated August 15, 2001, submits the following comments in reply to the pleadings of the Commission's Staff (Staff) and UtiliCorp United, Inc. (UtiliCorp) filed on August 24, 2001:

1. Public Counsel continues to assert that the Commission does not have the lawful jurisdiction or authority to entertain the rate increase request filing which initiated this case because, among other things, it would violate §393.270.4 RSMo 2000, which requires the Commission set rates only upon a consideration of all relevant factors. As the Commission has done in previous cases where unlawful filings have been made, it should simply dismiss this case so that UtiliCorp has an opportunity to make a lawful tariff filing.

2. Not only is the remedy requested by Public Counsel the legally correct response to UtiliCorp's filing, it is apparently the only relief that would now ensure that this electrical corporation would be fully and completely audited through the normal rate case process. Staff has made it very clear that if the Commission does not grant Public

Counsel's Motion to Reject Tariff, then it cannot conduct a full audit of UtiliCorp's operations in the St. Joseph area. The concerns expressed in the August 24, 2001 "Additional Staff Response" regarding the current limitations of its auditors should be a matter of great concern to the Commission. Staff states that "due to limitations in the number of Staff auditors," it cannot perform a full-scale audit of UtiliCorp's St. Joseph area within the time limits of the procedural schedule that the Commission issued for Case No. ER-2001-672. Additional Staff Response, p. 11. Staff further suggests that, if the Commission were to adopt Public Counsel's position on this issue, then it "would suggest that the Commission dismiss UtiliCorp's Case No. ER-2001-672 rather than permit UtiliCorp to keep Case No. ER-2001-672 in place and make a separate filing for SJLP. Id.

3. It should be noted that other parties have only a fraction of the resources available to the Staff. Public Counsel has only two accountants that can be assigned to this on a part time basis and it is currently uncertain whether any state resources would be available for Public Counsel to hire outside auditors for the purposes of this case. It should be noted that, although UtiliCorp bears the burden of proof in any rate increase request case, if the Commission allows this case to proceed, there will be no assurance that a full audit will be performed by any party on UtiliCorp's total Missouri electric operations.

4. Public Counsel takes exception to UtiliCorp's claim that, if the Commission grants Public Counsel's Motion it would require electric, gas and steam operations to be included in one rate case. UtiliCorp's Additional Suggestions, p. 3. Section 386.020 RSMo 2000 distinguishes between the definitions of "electrical corporation," "gas

corporation,” and “heating company.” However, Sections 386 and 393 do not recognize internal divisions within an electrical corporation as separate entities for any method of Commission ratemaking.

5. If the Commission does not grant Public Counsel’s Motion to Reject Tariff Filing, it is very important that the Commission recognize the impact that such a ruling would have for the consumers of other utilities in this state **or** the Commission should make a concerted effort to distinguish this particular situation from the facts relating to the other utilities it regulates. For instance, if the Commission suggests that UtiliCorp can file separate rate cases for different territories in which it operates based on the reasoning that these territories are not yet “integrated” or “unified”, it should be aware that AmerenUE serves geographic areas within its certificated territory that are not even contiguous. Under such a legal theory, AmerenUE could file for multiple separate rate increase requests for isolated territories within its certificated area. AmerenUE’s certificated area within Missouri is far from fully integrated and contains at least four geographically distinct areas. These areas include service territory isolated in the northeast part of the state, another area in the far southeast portion of the state, and another isolated area sandwiched between non-contiguous portions of what UtiliCorp calls its Missouri Public Service territory. The precedent that such a ruling could set would have ramifications far beyond this case.

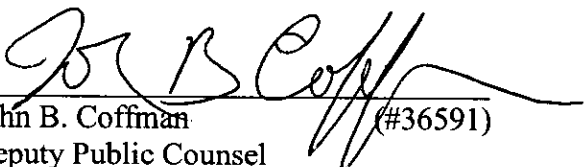
6. Denying Public Counsel’s Motion would create a new procedural opportunity for utilities to “game the system” by slicing up certificated territory and staggering separate rate cases to maximize revenue. Moreover, the additional regulatory resources that would be required for multiple staggered rate case filings would create significant

inefficiencies. The only way to ensure that the entire pie is properly baked and fairly sliced is to examine the total revenue requirement of an "electrical corporation's" electric operations in Missouri in one single rate case.

WHEREFORE, Public Counsel respectfully requests that the Commission grant its Motion to Reject Tariff Filing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 25<sup>th</sup> day of July 2001:

Nathan Williams  
Missouri Public Service Commission  
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Jefferson City MO 65102

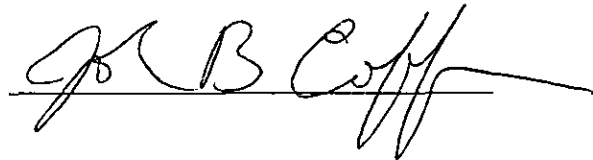
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A handwritten signature in black ink, appearing to read "J. B. Coffey", is written over a horizontal line.