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August 30, 2001

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

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

**AUG 31 2001**

**Missouri Public  
Service Commission**

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

Dear Judge Roberts:

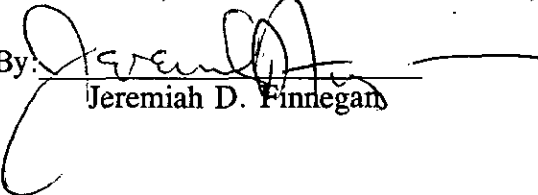
Enclosed for filing find an original and nine (9) copies of County of Jackson's Suggestions in Response to Staff's Additional Response to Public Counsel's Motion to Reject Tariff.

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>3</sup>

AUG 31 2001

STATE OF MISSOURI  
MISSOURI PUBLIC SERVICE COMMISSION

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 RESPONSE TO STAFF'S ADDITIONAL RESPONSE TO**  
**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 Suggestions in Response to Staff's Additional Response to Public Counsel's Motion to Reject Tariff:

In Staff's Additional Response, Staff cites *State ex rel. McKittrick v. Public Service Commission*, 175 S.W.2d 857, 865-866 (Mo. banc 1943) as the only case addressing the language of Section 393.130.3, RSMo.<sup>1/</sup> prohibiting a utility from making or granting an undue or unreasonable preference or advantage to any locality in any respect whatsoever, or subjecting any particular locality to an undue or unreasonable prejudice or disadvantage in any respect whatsoever. Staff notes that prior to its citation of *McKittrick* it has not been cited by any party.

There is, of course, an obvious reason that *McKittrick* has not been cited before. *McKittrick* was a merger case, not a rate case. It should be noted that in the UtiliCorp/SJLP

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

merger case (EM-2000-292), the rates for each locality to be provided electrical service by the merged entity were unchanged, just as in *McKittrick*. As the *McKittrick* Court noted at p. 865:

"The Commission therefore very cautiously continued the established rates of the two systems to the customers of each until 'prior to, at or after the transfer.' In other words the existing rates were permitted to stand **ad interim**." [Emphasis added.]

The important thing here for the Court is the fact that it was dealing with a merger case and not a rate case and that the rates were permitted to stand in the interim until the unification of the two systems was accomplished or the effect thereof is reasonably ascertainable. As it later explains at p. 866:

"Until the unification of the two systems is accomplished or the effect thereof is reasonably discernible, we think and hold the Commission in its reasonable discretion is justified in treating the two systems as separate units for rate purposes, notwithstanding the ownership and control of both have come into the same hands. This disposes of the other kindred assignments that the question of rates is involved; ..."

This was a proper ruling in a merger case. As the Court said, the question of rates was not involved.

This is not a merger case. Although subject to judicial review, the merger case has already occurred and in that case the Commission treated the two systems separately for rate purposes on an interim basis. In other words, the Commission did not change any rates at that time. Now, however, we are in a rate case and the effect of the unification of the two systems "is accomplished or the effect thereof is reasonably discernible". Thus, this is now the time that the question of electric rates for all of UtiliCorp's Missouri localities is to be decided.

Jackson County is not necessarily advocating that it is now time to go to a single rate for both of UtiliCorp's Missouri jurisdictional electric divisions. Jackson County is merely advocating that it is now the time to review the rates in all electric divisions of UtiliCorp. It is possible after such review that the two operations may still not be unified enough to justify a single rate for the entire company and, therefore, separate rates in the two districts would continue to be the reasonable method to continue. It is folly, however, to ignore what has happened since the merger. Apparently, substantial savings have already occurred in the St. Joseph division as a result of the merger and it appears that UtiliCorp wants to keep those savings in order to offset them against its excessive acquisition fee. In other words, by the procedure it has chosen, UtiliCorp is in effect implementing on a de facto basis the regulatory plan that it proposed in the merger case and the Commission rejected. Each day that the St. Joseph customers pay excessive rates, UtiliCorp recovers back a portion of the excessive acquisition fee it paid for the St. Joseph system, thereby frustrating the Commission's decision in the merger case.

Staff argues that it will only perform a mini-audit of the St. Joseph division while conducting a full-scale audit of the MPS division. Unfortunately, since the St. Joseph tariffs are not on the table and the public in the St. Joseph locality has not been put on notice that there may be a change in their rates, even if the Staff's mini-audit discloses that UtiliCorp is earning an excessive return on equity in its St. Joseph locality, this means that the Commission's hands are tied as to the St. Joseph rates. It will take a complaint followed by a Staff full-scale audit and another year or so before the Commission can act to relieve the St. Joseph locality customers from continuing to pay excessive rates.

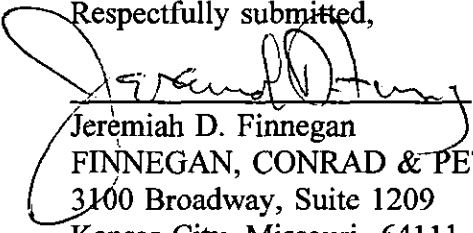
Why have a mini-audit at all? It is just an extra step with no consequences. It will still take a full-scale audit before any action can be taken to relieve the prejudice and disadvantage being suffered by customers in UtiliCorp's St. Joseph locality. Instead of having a full-scale audit of the MPS locality and a mini-audit of the St. Joseph locality followed by a full-scale audit of the St. Joseph locality at a later date, the Staff could merely perform two full-scale audits at one time and thereby empower the Commission to act on the rates of both localities in one case.

Staff notes that it does not have time to perform two full-scale audits under the current procedural schedule. Furthermore, to consider the rates in the St. Joseph locality at this time under the present procedural schedule may cause a due process problem in failing to notify the public in an expeditious manner so that members of the public from the St. Joseph locality could participate effectively in the proceeding. This can be cured in two ways: 1) get the utility to agree to an extension of the operation of law date of its MPS tariff filing for an additional three months and send out notice to its St. Joseph locality customers to the effect that their electric rates may be subject to change and allow them a reasonable time to intervene; or, if no such agreement can be reached, 2) grant Public Counsel's motion and reject the tariffs.

It is UtiliCorp that is attempting to game the system and tie the Commission's hands. It is Utilicorp that has only filed for rate changes in its MPS locality. It is UtiliCorp that decided to have the St. Joseph locality become a division and not a separate affiliate or subsidiary. Unless UtiliCorp is agreeable to extending the time that the MPS tariffs are to take effect by operation of law, the Commission has no other course but to reject these tariffs.

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 all the localities it serves electricity at issue so that the Commission may properly perform its duties in setting just and reasonable rates for all localities served with electricity by UtiliCorp.

Respectfully submitted,



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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:

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

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

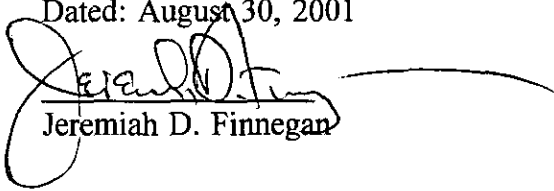
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Dated: August 30, 2001

  
Jeremiah D. Finnegan