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October 12, 2001

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Missouri Public
Service Commission

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

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 **MOTION TO CLARIFY.** 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

OCT 1 2 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

MOTION FOR CLARIFICATION

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Motion for Clarification states as follows:

1. On June 15, 2001, Public Counsel moved to reject the June 8, 2001 tariff filing which initiated this case because, among other reasons, the proposal invited the Public Service Commission (Commission) to issue a decision which determined a *revenue requirement* for only one selected portion of UtiliCorp United, Inc.'s (UtiliCorp's) service territory. This timely filing put the Commission and UtiliCorp on notice that an order which determined a revenue requirement on less than a company-wide basis would violate §393.720.4 RSMo 2000. State ex rel. Utility Consumers Council of Missouri v. Public Service Commission (UCCM), 585 S.W.2d 41,49 (Mo. banc 1979). Public Counsel's most serious concern was, and continues to be, that the Commission not commit reversible error in the revenue requirement phase of the ratemaking process. This is not necessarily a rate design concern.

2. After numerous responsive pleadings were filed and oral arguments held on August 14, 2001, the Commission issued an order which did not address Public

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Counsel's most serious objection regarding the status of this rate case. In its October 2, 2001 Order Regarding Motion Reject to Reject Tariff and Motion to Dismiss, the Commission made a preliminary ruling which stated that the Commission "may treat the service areas of the formerly independent companies separately for ratemaking purposes." As Public Counsel discusses below, it is not entirely clear whether this preliminary order refers to both the determination of revenue requirement and rate design, or is merely limited to rate design determinations. Public Counsel respectively requests that the Commission clarify this distinction.

3. Despite the fact that the parties briefed and discussed before the Commission the difference between two basic steps that are taken in the ratemaking process, the October 2, 2001 Order does not specify whether the Commission is referring specifically to rate design or to revenue requirement as well as when it uses the phrase "for ratemaking purposes." See August 2, 2001 Order, pp. 1, 16.

4. There are certain findings that are explicitly or implicitly made in the Commission's October 2, 2001 Order to which Public Counsel agrees:

A. The Commission correctly recognizes that it is UtiliCorp, not "Missouri Public Service" or "MPS", which has initiated this rate case. MPS is merely a fictitious name which UtiliCorp uses to refer to a portion of its certificated service territory. UtiliCorp is an electrical corporation as defined by §386.020(15) RSMo 2000 and is the entity which is regulated by the Public Service Commission with regard to just and reasonable rates and adequate electric service. Pretending that an internally-recognized subdivision of UtiliCorp was itself an electrical corporation regulated by the Commission could only create confusion and challenges to the legality of Commission action.

B. Public Counsel agrees with the Commission that, pursuant to §393.150.1 RSMo 2000, even a single proposed tariff is sufficient to initiate a general rate case. Of course, once a rate case is initiated, the Commission must consider all relevant factors in determining a company-wide revenue requirement. It is important to understand that UtiliCorp's tariff filing does not limit the scope of the revenue requirement determination that the Commission must make or the rate design which must be subsequently determined to allow the regulated utility an opportunity to recover the approved revenue requirement.

C. Public Counsel agrees that the Commission has the legal authority to set different rates for different service territories within one regulated utility, provided the Commission does not unduly discriminate between similarly situated customers when it does so. For instance, Public Counsel has never supported "single-tariff pricing" for the different water service provided among the various divisions of Missouri-American Water Company. It should be recognized that this is a *rate design* issue. Although different cities have had different rates set within Missouri-American Water Company and within other utilities, but such a rate design has been set only after a total company-wide revenue requirement is established.

5. The Commission's preliminary order, issued on October 2, 2001, relies primarily on an appellate case reviewing a Commission merger case, State ex rel. McKittrick v. PSC, 175 S.W.2d 857 (Mo. banc 1943). In that case, the court rejected an argument made by the Missouri Attorney General that the Commission should have equalized rates

company-wide in a Commission order approving a merger between two Missouri electrical corporations.

McKittrick correctly held that the Commission did not have to change rates in that merger case. Issues about appropriate rate design are to be appropriately addressed in a subsequent rate case. McKittrick cited the following case from other states in support of its decision:

> The same course was followed by the California Railroad Commission in the exchange of two electric distribution properties with different rates, **awaiting the outcome of a separate case involving the rates of one of the companies**. P.U.R.1923C, 535, 538.
>
> Id., p. 866.

It should be noted that the Commission correctly did not order a rate change as a result of the order approving the merger between UtiliCorp and St. Joseph Light & Power Company (SJLP) Case No. EM-2000-292, Report and Order issued on December 14, 2000. The instant case, Case No. ER-2001-672 is the separate rate case filed subsequent to a merger case.

6. The most important thing to recognize about the McKittrick case is that it addressed *rate design*. As stated above, Public Counsel does not contest the ability of the Commission to set different rates in different regions under appropriately lawful circumstances. What Public Counsel would consider reversible error is a Report and Order in the instant case which did not determine a company-wide *revenue requirement*. The Commission has great flexibility in the manner in which it slices the pie, but it first must bake the entire pie (total Missouri jurisdictional electric corporation).

7. Surprisingly, UtiliCorp agrees with Public Counsel regarding the Commission's obligation to determine a total company-wide revenue requirement in this case. At the oral argument held on August 14, UtiliCorp counsel made the following comments:

> We would expect that the Staff and the Public Counsel and others and this Commission would look at **all of UtiliCorp's costs and determine a total revenue requirement**. I think that's what's always been done in the past.
>
> . . .
>
> So we think that what we have done is entirely supported by the statutes of this state and by past Commission practice, and absolutely nothing that we have done will allow you, or allow us to avoid the type of scrutiny that we would normally expect in a rate proceeding when you would consider all relevant factors in setting rates for the electric operating division of this company.
>
> . . .
>
> Our position is, you look at everything and you get a **total company revenue requirement**, and then you decide what customers ought to pick up that - - those costs or get a reduction.

Transcript, pps. 42-43, 77. (emphasis added).

The Commission recognized UtiliCorp's position in its October 2 Order, stating "If this case is permitted to proceed, UtiliCorp expects that the Commission will develop a total Missouri jurisdictional revenue requirement for its electric service operations."

Ibid., p. 6.

8. However, it is not clear whether the Staff of the Commission (Staff) agrees with Public Counsel's interpretation of the law or with UtiliCorp's expectations in this case. During the oral argument, Staff counsel made the following comments in response to questions from Commissioner Steve Gaw:

> The type of audit that the Staff would perform if Public Counsel prevailed on its motion would be a different type of audit than the Staff would perform if the commission denied Public Counsel's motion.

The Staff in the present situation where it's just the Missouri Public Service tariffs that have been filed will look at certain items respecting St. Joseph Light and Power, but it will not look at all of the items in the detail, or all of the items, period, that it would look at for purposes of an audit if it was both the Missouri Public Service and the St. Joseph Light and Power tariffs that were filed before the Commission.

The Staff will look in the present situation at things such as corporate overheads, fuel revenues, probably payroll, but it would be a different scenario if it was both the Missouri Public Service and the St. Joseph Light and Power tariffs that were filed.

The Staff will not in the present stance of the case determine a - - what the Staff would consider to be a definitive revenue requirement for St. Joseph Light and Power. The Staff would determine what it considered to be appropriate review in the necessary detail for determination of the revenue requirement of Missouri Public Service.

The Staff believes that the moment that our review would be of a nature, that we think we would have a handle on whether St. Joseph Light and Power was likely in a revenue deficiency or revenue excess position.

COMMISSIONER GAW: Mr. Dottheim, does that mean that you would treat the analysis of the case as though the - - the St. Joseph division were a separate corporation in your analysis as opposed to it being a part of the same corporation?

MR. DOTTHEIM: I don't know if we would say that it was a separate corporation, but it would be a different - - it would be a different audit just as - - what you're saying is that the Staff in looking at both Missouri Public Service and St. Joseph Light and Power would look at it as if it was a different corporation than the UtiliCorp properties in other jurisdictions, other states.

COMMISSIONER GAW: So you're telling us that your review would not necessarily include the same scope?

MR. DOTTHEIM: That is correct.

Transcript, pp. 83-85.

9. As Public Counsel has repeatedly pointed out in this case, the "all relevant factors" requirement of §386.270(4) RSMo 2000 requires the Commission to establish a total company-wide revenue requirement in any rate case request or excess earning complaint

case. The Commission should reaffirm this consumer principle, as it did in the UtiliCorp/SJLP merger case, when it condemned the idea of allowing "a company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area." Case No. EM-2000-292, Report and Order, p. 40.

Therefore, in order to prevent Pandora's Box from opening any wider, the Commission should make it clear that it will establish a total company-wide Missouri jurisdictional revenue requirement for UtiliCorp in this case prior to developing the appropriate rate design.

WHEREFORE, Public Counsel respectfully requests that the Commission clarify its October 2, 2001 preliminary order in such a manner.

Respectfully submitted,

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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 12th day of October 2001:

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