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FILED

AUG 31 1998

August 31, 1998

Missouri Public
Service Commission

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

Re: Case No. OO-99-44 (Utility Assessments)

Dear Mr. Roberts:

On behalf of West Elm Place Corporation, The Empire District Electric Company, St. Joseph Light & Power Company, Arkansas Western Gas Company d/b/a Associated Natural Gas Company, Laclede Gas Company, Missouri-American Water Company and UtiliCorp United Inc. d/b/a Missouri Public Service, enclosed is an original and fourteen (14) copies of a **Responsive Statement of Joint Applicants** for filing with the Commission in the referenced matter. I would appreciate it if you would see that the copies are distributed to the appropriate Commission personnel.

I have enclosed two (2) extra copies of the document which I request that you stamp "Filed" and return to the person delivering them to you.

Thank you in advance for your attention in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Paul A. Boudreau

PAB:db
enc.

cc: Office of the Public Counsel

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Assessment Against)	
the Public Utilities in the State of)	Case No. 00-99-44
Missouri for the Expenses of the Commission)	
for the Fiscal Year Commencing July 1, 1998.)	

RESPONSIVE STATEMENT OF JOINT APPLICANTS

On July 28, 1998, West Elm Place Corporation, The Empire District Electric Company, St. Joseph Light & Power Company, Arkansas Western Gas Company d/b/a/ Associated Natural Gas Company, Laclede Gas Company, Missouri-American Water Company and UtiliCorp United Inc. d/b/a Missouri Public Service (hereinafter "Joint Applicants") filed an Application for Rehearing and Stay ("Application") with respect to the Missouri Public Service Commission's ("Commission") June 29, 1998 *Supplemental Order No. 52* in Commission Case No. 11,110. On August 5, 1998, the Commission established the captioned docket to address the issues presented by Joint Applicants' filing and issued an *Order Regarding Application for Rehearing and Stay* which, among other things, directed Joint Applicants to file a pleading by August 31, 1998, responding to four (4) specific matters enumerated in paragraph Ordered: 3. The following information is submitted to the Commission in compliance with said directive on behalf of each of the individual applicants.

I. Nature of the Stay Requested and the Remedy Sought

As pointed out in the Application, the Commission's *Supplemental Order No. 52* is void and of no effect because it was made effective on the date of issuance, thus depriving interested parties of the opportunity to prepare and file an application for rehearing prior to the effective date thereof.

State ex. rel St. Louis County v. Public Service Commission, 360 Mo. 339, 228 S.W.2d 1, 2 (1950).

Accordingly, there is substantial doubt whether it is necessary for the Commission to stay the effectiveness of a void order. Notwithstanding the legal deficiency in the Commission's supplemental order, the Joint Applicants in good faith have each tendered payment of the first of four equal installments of the Commission's assessment. The Joint Applicants, however, upon advice of counsel, determined that it would be appropriate to request that the Commission stay the effectiveness of the order given the serious nature of the questions presented concerning the proper administration of the Public Service Commission Fund (the "Fund").

Without knowing more about how the amounts of the assessments were determined by the Commission through its internal accounting department or otherwise, the item that most concerns Joint Applicants is the line item relating to so-called "Article X transfers." Thus, at this time, Joint Applicants believe it is both reasonable and appropriate for the Commission, at a minimum, to stay the effectiveness of its assessment order to the extent that the assessments have been increased by said Article X transfers. If that amount is not capable of being reliably determined, the Commission should stay the requirement that any additional quarterly payments be made by the Joint Applicants until the issues presented are resolved.

The ultimate remedy sought by Joint Applicants is set forth in the prayer of the Application, that is, that the Commission enter upon a hearing concerning the propriety of the assessments and that it issue a new supplemental order consistent with the evidence presented and the applicable law. Joint Applicants note that a formal evidentiary hearing may not be necessary because all the basic facts, unknown at this time, may not be ultimately in dispute. In that event, it may be possible to present the matter to the Commission on a stipulation of facts and simply brief the legal issues

presented. Joint Applicants are open to the possibility of an informal exchange of information with the Commission's Staff to determine if there is some alternative manner in which to "package" and present the issues to the Commission. Toward that end, counsel for Joint Applicants have been advised that information relating to the calculation of the assessment will be presented by a Staff representative at the September 2, 1998, prehearing conference.

II. Nature of the Protest

Based upon their limited knowledge about how this year's assessment was calculated by the Commission through its internal accounting staff or otherwise, Joint Applicants are primarily concerned about the increased portion of the assessment related to the Article X transfers for the reasons set forth in the Application. However, any assessment for a cost not related to the regulation of public utilities by the Commission or for an improperly allocated cost would be a matter of concern as well. Based on the information provided at the prehearing conference, Joint Applicants will endeavor to identify other areas of concern, if any, at the earliest opportunity.

III. Article X Distributions Received by Joint Applicants

Joint Applicants contend that the total amount of Article X distributions received by them is irrelevant to (1) whether the Article X transfers out of the Fund by the Commission were authorized by law, and (2) whether the Article X transfers are expenses "to be incurred" by the Commission in the coming fiscal year or are "reasonably attributable to the regulation of public utilities" as those phrases are used in §386.370.1 RSMo Supp. 1997. Without in any way waiving their objections to the relevance of the information requested, the total amount of Article X distributions received by each of the Joint Applicants relating to tax years 1995 and 1996 are set forth in the attached Appendix A.

IV. Legal Authority

The Commission is referred to the legal authority cited by Joint Applicants in the Application. Joint Applicants offer the following general breakdown by issue.

1. The Stay of the Commission's Assessment Order. *St. Louis County, supra*; §386.500.3 RSMo 1996.

2. Whether the Article X Transfers from the Fund are authorized by law. §386.370.4, RSMo Supp. 1997.

3. Whether the Increased Assessments for Article X transfers are authorized by law. §386.370.1 RSMo Supp. 1997.

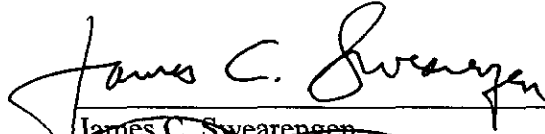
4. Authority for Application for Rehearing. §386.500 RSMo 1996; *Union Electric Company v. Clark*, 511 S.W.2d 822 (Mo. 1974);

5. Payment of Assessment under Protest. The action taken by Joint Applicants is analogous to the procedure provided for by the Missouri General Assembly to protest taxes. *See*, §139.031 RSMo 1996. This procedure may be applicable if the Commission's utility assessments are ultimately construed to be in the nature of a tax. In any event, the only alternative available to Joint Applicants is to simply withhold payment of the assessments pending resolution of the issues presented by the Application should the Commission determine that the payment of utility assessments under protest is not appropriate. As the Commission is probably aware, resolution of all the factual and legal issues may take a good deal of time. Joint Applicants have chosen to pay the assessments under protest in order to avoid causing disruption to the Commission's day-to-day operations while at the same time reserving their rights to a refund of any portion of the assessments paid which ultimately may be determined to have been unauthorized by law.

Joint Applicants reserve the right to raise additional issues and provide legal authority as the same may come to their attention.

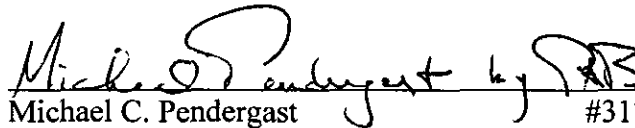
WHEREFORE, having fully responded to the Commission's request for additional information, Joint Applicants rest.

Respectfully submitted,


James C. Swearengen #21510


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Attorneys for West Elm Place Corporation, The Empire District Electric Company, St. Joseph Light & Power Company, Arkansas Western Gas Company d/b/a Associated Natural Gas Company, Missouri-American Water Company and UtiliCorp United Inc. d/b/a Missouri Public Service


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720 Olive Street, Room 1520
St. Louis, MO 63101
(314) 342-0532

Attorney for Laclede Gas Company

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was either hand-delivered, or mailed, U.S. Mail, postage prepaid, on this 31st day of August, 1998, to all parties of record.

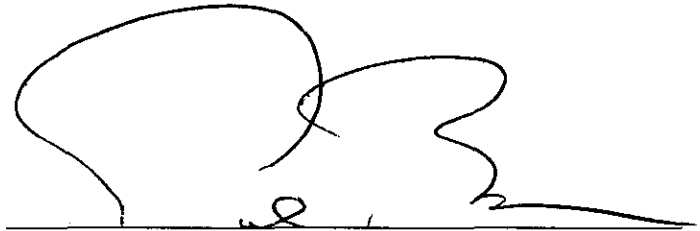
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A handwritten signature in black ink, appearing to be 'J. M. Fischer', written over a horizontal line.

APPENDIX A

Article X Distributions

Missouri-American Water Company	\$ 11,762
The Empire District Electric Company	\$123,220
St. Joseph Light & Power Company	\$ 75,055
Arkansas Western Gas Company d/b/a Associated Natural Gas Company	\$ 5,150
UtiliCorp United Inc. d/b/a Missouri Public Service	(To be late-filed)
Laclede Gas Company	\$ 89,886
West Elm Place Corporation	\$ 861