



## Missouri Public Service Commission

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March 19, 2001

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Secretary/Chief Regulatory Law Judge

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

**RE: Case No. ET-2001-482**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF RESPONSE AND MOTION TO CONSOLIDATE**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

David A. Meyer  
Associate General Counsel  
(573) 751-8706  
(573) 751-9285 (Fax)

DAM:sw  
Enclosure  
cc: Counsel of Record

**FILED<sup>2</sup>**  
MAR 19 2001  
Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

MAR 19 2001

Missouri Public  
Service Commission

In the Matter of UtiliCorp United, Inc.'s )  
Tariffs Filed to Update the Rules and )  
Regulations for Electric and to Increase )  
the Interest Rate Paid on Deposits, the )  
Late Payment Charge, the Reconnection )  
Fee, and the Charge for Returned Checks )

Case No. ET-2001-482

STAFF RESPONSE AND MOTION TO CONSOLIDATE

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its response to the Office of the Public Counsel's Motion to Dismiss or Suspend filed in this case states as follows in support, and additionally moves the Commission to (1) schedule an early prehearing conference for the purpose of establishing a procedural schedule and (2) consolidate Case Nos. HT-2001-485, ET-2001-482 and GT-2001-484:

1. Staff has re-reviewed the filing by UtiliCorp United, Inc. (UtiliCorp), proposing to change the reconnection charges and increase the late payment charge, returned check charge, and the interest paid on customer deposits of its St. Joseph Light & Power division (SJLP). UtiliCorp desires to synchronize these miscellaneous charges between its SJLP division and its Missouri Public Service division. UtiliCorp indicated that its filing is designed to economically combine the billing of former SJLP customers with the billing of Missouri Public Service customers in UtiliCorp's new billing system. UtiliCorp, in its cover letter to its tariff filing, identifies these changes as "merger-related synchronizations of the SJLP tariffs to MPS's." UtiliCorp has calculated that the combined net effect on SJLP's revenues of all proposed changes to SJLP's electric, gas and steam tariffs will be to increase SJLP's revenues by \$11,240.18. According to UtiliCorp, the majority of the increase will impact electric service costs.

2. Regardless of Staff's initial review of UtiliCorp's filing and meetings with Utilicorp, Staff has some of the same concerns that the Office of the Public Counsel (Public Counsel) has expressed. First, these changes may constitute single-issue ratemaking. Second, these changes would create a detriment to the SJLP's customers resulting from the recently approved merger with UtiliCorp.

The Missouri Supreme Court in *State ex rel. Utility Consumers Council of Missouri v. Public Service Comm'n*, 585 S.W.2d 41, 56 (Mo.banc 1979) stated that the Commission must look at all relevant factors in reaching a rate determination. The Court also opined that "neither convenience, expediency or necessity" should be considered when deciding whether the Commission has authority to act in any case. *Id.* at 49, citing *State ex rel. Kansas City v. Public Service Comm'n*, 257 S.W. 462 (banc 1923). The court further stated:

. . . Even under the file and suspend method, by which a utility's rates may be increased without requirement of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return, in determining that no hearing is required and that the filed rate should not be suspended. See *State ex rel. Missouri Water Co. v. Public Service Comm'n*, 308 S.W.2d 704, 718-19, 720 (Mo.1957). However, a preference exists for the rate case method, at which those opposed to as well as those in sympathy with a proposed rate can present their views. See *State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 535 S.W.2d at 574.

*Id.* UtiliCorp can avoid the single-issue ratemaking prohibition of the *UCCM* case by proposing changes in the various miscellaneous services in the context of a rate increase case or a Staff excess earnings rate decrease case.

At page 32 of its December 14, 2000 Report And Order in Case No. EM-2000-292, concerning the merger of UtiliCorp and SJLP, the Commission applied the standard that the merger must not be detrimental to the ratepayers, and presumed that a merger resulting in higher rates or deterioration in service would be detrimental to ratepayers. UtiliCorp did not raise the

merger-related matter of synchronizing these miscellaneous charges between its new SJLP division and the Missouri Public Service division in that case before the Commission. Staff notes that generally it has not recommended or concurred in these types of rate increases and that the Commission has not permitted such rate changes. Again, as UtiliCorp acknowledges in its cover letter submitting the tariffs: "These changes are merger-related synchronizations of the SJLP tariffs to MPS's," and could have been raised as a part of the merger case.

3. Staff recommends that UtiliCorp consider adjusting its charges to the rate most favorable to the customer, as Public Counsel has suggested. This will avoid creating a situation where, due to the SJLP – UtiliCorp merger, some customers will be charged more than they would if the merger had not occurred. As Public Counsel indicates, the increases in charges sought by UtiliCorp may wait until UtiliCorp has the opportunity to engage in the general ratemaking process, when the Commission may consider all relevant factors.

4. The issues before the Commission in this case are virtually identical to those in cases GT-2001-484 and ET-2001-482. 4 CSR 240-2.110(3) states:

When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.

The Western District Court of Appeals has held that the "PSC's discretionary order of consolidation is clothed with a presumption of validity, and appellant carries a heavy burden of overcoming that presumption by showing unfairness in the procedure used." *Churchill Truck Lines, Inc. v. Public Serv. Comm'n*, 734 S.W.2d 586, 595 (Mo.App. 1987).

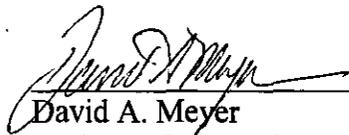
Staff anticipates that UtiliCorp and the Commission will want a uniform result from the proceedings in these cases. Therefore, if the Commission chooses to suspend the tariffs

pending a hearing, Staff moves that this case be consolidated with the related cases in the gas and electric areas.

**WHEREFORE**, Staff recommends that the Commission issue an order (1) suspending the tariffs filed by UtiliCorp in this matter, (2) scheduling an early prehearing conference for the purpose of establishing a procedural schedule and (3) consolidating this case with cases HT-2001-485 and GT-2001-484.

Respectfully submitted,

DANA K. JOYCE  
General Counsel



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Missouri Bar No. 46620

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 19<sup>th</sup> day of March, 2001.



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**Service List for**  
**Case No. ET-2001-482**  
**Revised: March 19, 2001**

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