

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

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Missouri Public
Service Commission

In the matter of the Joint Application of)
UtiliCorp United Inc. and The Empire)
District Electric Company for authority to)
merge The Empire District Electric)
Company with and into UtiliCorp United)
Inc. and, in connection therewith, certain)
other related transactions.

Case No. EM-2000-369

**MOTION TO STRIKE CERTAIN EMPIRE DISTRICT ELECTRIC RATE CASE
DIRECT, SUPPLEMENTAL DIRECT AND SURREBUTTAL TESTIMONY
AND ESTABLISH A SEPARATE CASE ON IN-SERVICE CRITERIA, OR IN
THE ALTERNATIVE, PERMIT SUBSTITUTION OF STAFF REPLACEMENT
PAGES ON THE ISSUE OF IN-SERVICE CRITERIA**

Comes now the Staff of the Missouri Public Service Commission (Staff) and requests that the Missouri Public Service Commission (Commission) strike the direct and surrebuttal testimony of Empire District Electric Company (EDE) witnesses which seek that the Commission address discrete rate case issues in the instant merger case, rather than in the yet to be filed EDE rate increase case, or in the alternative grant leave for the Staff to file and substitute replacement pages to its rebuttal testimony on the in-service criteria issue.

Thus, the Staff requests that the Commission strike (1) the six pages of direct testimony of Robert B. Fancher, (2) the three pages of supplemental direct testimony of Robert B. Fancher, (3) part of the surrebuttal testimony of Robert B. Fancher, page 4, line 14 to page 5, line 20 and (4) the six pages of surrebuttal testimony of Virgil E. Brill. These issues found in these testimonies have been denominated as the Pre-Moratorium EDE Rate Case Issues and presently are scheduled to be heard by the Commission on Thursday, September 14, 2000.

03

In support of the Staff Motion To Strike And Establish A Separate Case On In-Service Criteria, Or Permit Substitution Of Staff Replacement Pages On The Issue Of In-Service Criteria, the Staff states as follows:

1. EDE – UtiliCorp identify in their Application and Mr. Fancher identifies in his direct testimony that EDE and UtiliCorp are seeking in the instant merger case resolution of certain rate case matters that are related to the “pre-moratorium rate case” that EDE will file in the second half of 2000. According to Mr. Fancher, the EDE rate case will be filed “preferably around September 1, 2000.” (Fancher Direct, p. 3, line 7). As of this date, September 8, 2000, EDE has yet to make its rate case filing. The Commission’s rule 4 CSR 240-2.065(1) requires that “[a]ny public utility which submits a general rate increase request shall simultaneously submit its direct testimony with the tariff.” Therefore, EDE’s impending pre-moratorium rate case testimony and schedules should address these rate case matters in the very near future.

Mr. Fancher identifies in his direct testimony at page 3, lines 4-5 that EDE – UtiliCorp are seeking that this Commission make rate case determinations in the instant merger case “[t]o remove the uncertainty of these matters prior to the closing of the merger which should occur by the end of 2000.”

2. Mr. Fancher’s direct testimony (See page 3, line 10 to page 5, line 16) and the EDE – UtiliCorp Application (See page 8, line 4 to page 9, line 13) identify as the rate case issues respecting which ratemaking decisions are being requested by EDE – UtiliCorp in the context of the merger case as follows:

- The test year will be the last 12 months of operation of Empire as an independent company or the 12 months ending 12-31-00, whichever is earlier

- The test year will be updated, adjusted or trued-up to at least 6-1-01 or the in-service/commercial operation date of SLCC, whichever is later
- The in-service/commercial operation criteria for SLCC will be established in the merger docket
- The update or adjustment period for the test year or the items to be trued-up will include the SLCC plant along with the following, directly associated adjustments only:
 - Rate base
 - SLCC plant and associated transmission plant, less accumulated depreciation
 - Revenues
 - Customer growth
 - Expenses
 - Fuel associated with customer growth
 - O&M (fixed and variable for SLCC)
 - Depreciation for SLCC
 - Property taxes for SLCC
 - Incremental demand charges for purchased power contracts
 - The cost of gas and the fixed gas transportation charges for SLCC
 - Wage rates
- The capital structure for the Pre-Moratorium Rate Case will be the normalized capital structure of Empire
- The return on equity for the Pre-Moratorium Rate Case will be based on Empire as a stand-alone entity
- All open positions that are in existence because of the UtiliCorp/Empire merger will be built into the cost of service in the Pre-Moratorium Rate Case as if the positions are filled
- No synergies from the UtiliCorp/Empire merger will be flowed through the cost of service in the Pre-Moratorium Rate Case
- No costs of the UtiliCorp/Empire merger, transition or transaction costs, will be recovered through the cost of service in the Pre-Moratorium Rate Case

The Staff submitted the rebuttal testimony of Mark L. Oligschlaeger and David W. Elliott (which stated that the EDE rate case issues, including test year, true-up and in-service determinations, were not proper matters for the EDE – UtiliCorp merger case, but were proper matters for the EDE rate increase case. (Oligschlaeger Rebuttal, page 56, line 12 to page 57, line 18; Elliott Rebuttal, page 4, line 1 to page 5 line 2). One of the problems, with placing rate case issues in a merger case is that in a merger case the Staff and parties other than the merging companies only have a rebuttal filing respecting the matters relating to the companies' issues and other matters which they identify as issues respecting the utilities' case. In a rate case, the Staff and all parties have the opportunity to file direct, rebuttal, surrebuttal and cross-surrebuttal testimony.

4. In his direct testimony at page 5, lines 13 through 16, Mr. Fancher testified that:

Empire's proposed [in-service] criteria [for the State Line Combined Cycle Unit (SLCC)] will be filed as Supplemental Direct Testimony after consultations with the Commission Staff. The criteria should be finally determined in the context of this merger case.

On March 7, 2000, the supplemental direct testimony of Robert B. Fancher was filed in the instant merger case. At page 1, lines 7-9 of said supplemental direct testimony, Mr. Fancher states that the purpose of this supplemental direct testimony is "[t]o present proposed 'in-service criteria' for Empire's State Line Combined Cycle Plant ('SLCC')."

Commission rule 4 CSR 240-2.130(8) states, in part, "No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission." Mr. Fancher's supplemental direct testimony

was filed in violation of 4 CSR 240-2.130(8) and remains in violation of 4 CSR 240-2.130(8). Neither Empire nor UtiliCorp has sought leave of the Commission to file such supplemental direct testimony of Mr. Fancher.

6. The Staff has been engaged in discussions with EDE in an effort to settle the in-service criteria issue. Based on the Staff's last conversation with EDE on Thursday, September 7, 2000 on this matter, it is clear that those discussions have not reached a successful conclusion. As a consequence, the Staff is filing this Motion To Strike And Establish A Separate Case On In-Service Criteria, Or Permit Substitution Of Staff Replacement Pages On The Issue Of In-Service Criteria.

7. Since the Commission may decide not to strike the supplemental direct and surrebuttal testimony of EDE on in-service criteria, the Staff is asking leave of the Commission to file and substitute replacement pages to the rebuttal testimony of David Elliott on the in-service criteria issue. As a result of a meeting between EDE and the Staff and subsequent exchanges between EDE and the Staff, all of which occurred after the Staff's rebuttal testimony was filed and after EDE had an opportunity to review Mr. Elliott's rebuttal testimony, Mr. Elliott modified the in-service criteria that is being proposed by the Staff. Mr. Elliott submitted to EDE on August 24, 2000 for EDE's consideration modifications to the in-service criteria that he had previously filed as rebuttal testimony in this proceeding. The modified in-service criteria submitted by Mr. Elliott to EDE on August 24, 2000 is the same in-service criteria contained in Mr. Elliott's replacement pages to his rebuttal testimony being filed this date, Friday, September 8, 2000, along with this pleading.

The Staff mentions that EDE has had the Staff's modified in-service criteria since August 24, 2000 solely to indicate that EDE has had for a period of time the modified in-service criteria that the Staff is filing this date. EDE did not have these modifications when EDE submitted its surrebuttal testimony. There is no element of surprise to EDE regarding the substantive content of Mr. Elliott's modified in-service criteria. Since EDE did not have Mr. Elliott's modifications to his in-service criteria when EDE filed its surrebuttal testimony, the Staff has no objection to EDE being afforded an opportunity to respond to these modifications.

Only those pages of Mr. Elliott's rebuttal testimony that contain changes are being submitted. All changes are indicated by red type. Deletions are indicated by a line through red type and additions are indicated by red type with no line through it.

The nature of the changes in the in-service criteria are as follows:

Criterion 1 – Rather than requiring that all construction work and pre-operational tests must have been successfully completed, the modified criterion requires that major construction work and pre-operational tests must have been successfully completed. What is meant by major construction work and pre-operational tests are specified in Criterion 2.

Criterion 2 – The contract guarantees made by the manufacturers which the Staff believes must be met are specifically identified and are limited to the new Westinghouse Combustion Turbine, the Heat Recovery Steam Generator and the new Westinghouse Steam Turbine.

Criterion 3 – The Combined Cycle Unit must demonstrate its ability to startup on natural gas fuel when prompted by the operator. The Staff is no longer recommending that the Combined Cycle Unit must demonstrate its ability to startup when prompted locally or remotely by the operator.

Criterion 4 – The Combined Cycle Unit must demonstrate its ability to shutdown from load when prompted by the operator. The Staff is no longer recommending that the Combined Cycle Unit must demonstrate its ability to shutdown when prompted locally or remotely by the operator.

Criterion 5 – The Combined Cycle Unit must demonstrate its ability to operate at minimum load for one hour on natural gas. No change in this criterion, other than the unit name.

Criterion 6 – The Combined Cycle Unit must demonstrate its ability to operate at or above 95% of nominal load for four continuous hours on minimum load for one hour on natural gas fuel. The Staff changed the word 'base' to 'nominal', and added the item that the unit must demonstrate this criterion at the proper heat rate.

Criterion 7 – The Combined Cycle Unit must demonstrate its ability to produce an amount of energy within a period of hours at a specified capacity factor. The Staff has changed the number of hours and capacity factor, but the total megawatt hours for which the unit needs to generate remains the same.

Criterion 8 – No change respecting this criterion.

Criterion 9 – The Combined Cycle Unit will demonstrate it has met the required environmental guarantees and regulations. The Staff added this criterion.

8. Should the Commission strike the EDE in-service criteria pre-moratorium rate case testimony, the Staff herein suggests that there is an alternative to hearing the in-service criteria issue in the yet to be filed EDE rate case. The Staff suggests that a separate case for the in-service criteria issue be established. The Staff would propose the following schedule for such a case:

Direct Testimony and Schedules – All parties	September 21, 2000
Rebuttal Testimony and Schedules – All parties	October 19, 2000
Surrebuttal Testimony and Schedules – All parties	November 2, 2000
List Of Issues	November 6, 2000
Statement Of Positions	November 8, 2000
Evidentiary Hearing	November 15-16, 2000

Should the Commission consider establishing such a case the Staff would suggest that the Commission grant intervenor status in the in-service criteria case to any party to the instant merger case.

9. Respecting the other rate case issues sought by EDE – UtiliCorp to be decided by the Commission in the instant merger case, if the Commission were to strike the pre-moratorium rate case testimony in this case, the rate case issues should be presented for determination in the EDE rate case that will be filed.

Wherefore the Staff requests that the Commission (1) strike those portions of the testimony and schedules of Robert B. Fancher and Virgil E. Brill specified above, addressing issues relating to the EDE pre-moratorium rate case, (2) establish an in-service criteria case with the procedural dates indicated above, or (3) in the alternative grant leave to the Staff to file and substitute the replacement pages to the rebuttal testimony of David W. Elliott on the in-service criteria issue.

Respectfully submitted,

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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 8th day of September, 2000.



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