

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 456

JEFFERSON CITY, MISSOURI 65102-0456

TELEPHONE (573) 635-7166

FACSIMILE (573) 635-0427

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

DEAN L. COOPER
MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
RACHEL M. CRAIG
BRIAN T. MCCARTNEY
DALE T. SMITH

OF COUNSEL
RICHARD T. CIOTTONI

June 21, 2000

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

Re: Case Number EM-2000-369

FILED²
JUN 21 2000
Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above referenced case on behalf of UtiliCorp United Inc. and The Empire District Electric Company, please find an original and eight copies of a Response of UtiliCorp and Empire to Application to Intervene.

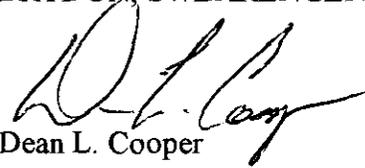
Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/lar

Enclosure

cc: All Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²

JUN 21 2000

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

**RESPONSE OF UTILICORP AND EMPIRE TO
APPLICATION TO INTERVENE**

COME NOW UtiliCorp United Inc. ("UtiliCorp") and The Empire District Electric Company ("Empire") and, for their response to the Application to Intervene filed by Albert Fuchs, George Dorsey, Jack DeGraffenreid, Richard V. Vanwinkle, Jack Wilson, Vernon Corkle, Verl Alumbaugh, Donald Crayne, Bill Athey and Glenn D. Rhoads ("Applicants"), state as follows to the Missouri Public Service Commission ("Commission"):

TIMING

1. On or about June 16, 2000, Applicants filed their Application to Intervene in the above-captioned matter.
2. Commission Rule 4 CSR 240-2.075(1) states that "an application to intervene shall comply with these rules and shall be filed within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission."
3. UtiliCorp and Empire filed their Joint Application in this case on December 15, 1999. On December 16, 1999, the Commission issued its Order and Notice which, among other things, ordered that notice be provided to the mayors of all municipalities and county commissions located within the companies' service areas, members of the General Assembly who represent each county located within the service areas of the companies and the newspapers that serve each county within the

service area of the companies. The Order and Notice further directed that "any interested persons wishing to intervene in the case file an application on or before January 14, 2000."

4. The Applicants admit that they had actual knowledge of the proposed merger. They, however, allege, that (a) "they were unaware of the effect of the Agreement and Plan of Merger on them as Empire employees", (b) "Requests to Empire for advice on the effect of the merger on retirement benefits yielded little useful information", and (c) "Applicants had no knowledge of the true effectuntil recently."

5. This is simply not the case. Attached hereto, marked Appendix 1 and made a part hereof for all purposes is a copy of a letter dated May 21, 1999 from Myron McKinney, President of Empire, to all retirees. The fifth paragraph of this letter describes the potential increase in health care premiums that could result from the proposed merger. Attached hereto, marked Appendix 2 and made a part hereof for all purposes is a letter dated July 9, 1999 from an attorney in Kansas City representing certain Empire retirees. This letter inquires as to what might happen to health care benefits as a result of the proposed merger. Attached hereto, marked Appendix 3 and made a part hereof for all purposes is a response to the retirees' attorney dated July 23, 1999. The potential impact of the proposed merger on health care premium is clearly discussed in this letter. Lastly, Mr. McKinney met personally with representatives of the Empire retirees on July 9, 1999 and August 3, 1999 to discuss the proposed merger. On August 11, 1999, Mr. McKinney met personally with a larger group of retirees for the same purpose. Attached hereto, marked Appendix 4 and made a part hereof for all purposes is a memorandum used by Mr. McKinney to answer follow-up questions associated with this meeting.

6. Additionally, the majority of the Applicants are shareholders of Empire and have personally received notice of the merger events as a result of that status and had the opportunity to vote on the proposed merger in that role.

7. It is misleading for the Applicants to allege that there has been an attempt to “conceal” facts from the Applicants.

8. In spite of their rather detailed knowledge of the proposed merger and Joint Application, the Applicants have waited and only seen fit to file their Application to Intervene on the eve of the filing of rebuttal testimony, a full 154 days after the close of the intervention period in this case. No good cause has been specified by Applicants for this delay other than to say that they had no knowledge of the true effect of the merger on retiree health insurance premiums until recently. This is not correct. To grant intervention in this circumstance, would completely ignore the Commission’s own rule and order and render this portion of the Commission’s procedure meaningless.

PARTIES INTERVENING

9. The Applicants state that in addition to themselves they also “represent the interests of approximately two hundred (200) similarly situated retired former employees of Empire (as set forth in Appendix A [to the Application to Intervene]) whose retirement benefits will also be directly and adversely effected by the merger proposed”

10. The nature of this “representation” is unclear from the Application. The Applicants do not state that these 200 hundred people have given their permission for the Applicants to represent them, nor does Applicants’ attorney state that he represents these 200 people. Apparently, Applicants have taken it upon themselves to represent the interests of the named persons.

11. Nowhere in the Commission statutes or regulations is there a provision authorizing the type of “class action” proposed by the Applicants. In fact, Commission Rule 4 CSR 240-2.040(5), “Practice by Nonattorneys,” states that “A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.” Thus, Commission regulations expressly prohibit the

Applicants' representation of the interests of the named persons.

FACTUAL CLARIFICATION

12. In paragraph 7 of their Application, the Applicants allege that retirees will be entirely responsible for their own health insurance premiums. This requires clarification. The merger agreement sets out that premiums may increase over a period of time until they are equal to the level of UtiliCorp retiree premiums. This increase will only begin at the end of an 18-month window and will take several years before the premiums are equal. Because premiums for Empire retirees currently are based on age and years of service, the exact effect of this increase will be different for each retiree. However, for most existing retirees, the ramping of the increase will be such that they will be near age 65 when the increase has been completed. At age 65, Medicare is currently the primary coverage vehicle for Empire retirees. This will not change under the proposed merger. Medicare will continue to be the primary coverage, but after the phase-in period retirees will be expected to pay the full premium coverage which is in addition to Medicare.

13. Another point which needs to be clarified can be found in paragraph 10 of the Application. The Applicants further allege the potential increase in premiums "pose[s] a substantial risk of transferring current company obligations to the taxpayers of the State of Missouri." It is unclear how this might be possible. Empire and UtiliCorp are not aware of any mechanism that can cause the taxpayers of Missouri to shoulder this health care burden.

GROUNDS FOR INTERVENTION

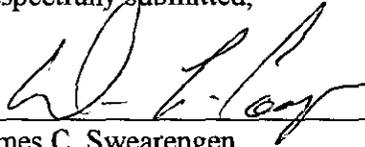
14. Applicants allege that they should be permitted entry because of the "the absence of any other relief, remedy or course of action available to Applicants for protection of their financial interests." This is an absurd position. If the Applicants indeed have a legal right to the identified benefits, as they claim, there are many avenues of "relief, remedy or course of action" available to them.

Most, if not all, of these avenues would be much more direct and effective than intervention in a merger application at the Commission.

15. The Commission has no jurisdiction to address whether or not the Applicants have a legal right to the benefits they identify. Accordingly, the Applicants' rights to these benefits will not be affected by an order of the Commission in this case, adversely or otherwise, and the granting of intervention would not serve the public interest.

WHEREFORE, UtiliCorp and Empire respectfully request the Commission to issue its order denying the Application to Intervene filed by Albert Fuchs, George Dorsey, Jack DeGraffenreid, Richard W. Vanwinkle, Jack Wilson, Vernon Corkle, Verl Alumbaugh, Donald Crayne, Bill Athey and Glenn D. Rhoads, and granting such further relief as is reasonable in the circumstances.

Respectfully submitted,



James C. Swearngen MBE#21510
Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
573/635-7166 (phone)
573/635-0427 (facsimile)

ATTORNEYS FOR UTILICORP UNITED INC. AND
THE EMPIRE DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 21st day of June, 2000, to:

Shelley Woods
Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102

William Niehoff
Ameren UE
1901 Chouteau Avenue
P.O. Box 66149
St. Louis, MO 63166-6149

William A. Jolley
Jolley Walsh Hurley & Raisher
204 W. Linwood Blvd.
Kansas City, MO 64111

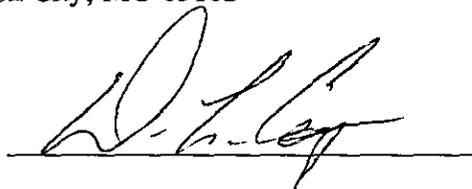
Jeffrey A. Keevil
Stewart & Keevil
1001 Cherry Street, Suite 302
Columbia, MO 65201-7931

Stuart Conrad
Finnegan, Conrad & Peterson
3100 Broadway, Suite 1209
Kansas City, MO 64111

James B. Deutsch
308 East High Street
Suite 301
Jefferson City, MO 65101

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

Steve Dottheim
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102



Date: May 21, 1999

To: Empire Retirees and Surviving Spouses

From: Human Resources

Re: Benefit Plan Questions

We know that you have some concerns regarding the benefits you will receive once the merger with UtiliCorp United Inc. is completed. This issue is specifically addressed in the merger agreement. We would like to take this opportunity to communicate how it is addressed.

In the merger agreement, it was agreed that UtiliCorp would continue Empire's health, life and accidental death and dismemberment benefits for the first 18 months after the merger closing. The closing date is dependent, among other things, upon shareholder and regulatory approval but may take twelve months or longer.

Retirees will have their pension benefits continued according to the provisions of Empire's pension plan.

Beginning eighteen months after the merger closing, UtiliCorp will provide Empire retirees health and life benefits (but not accidental death and dismemberment) that are, in the aggregate, at least comparable to those provided to similarly situated active or retired UtiliCorp employees.

As you know, you and Empire share in the cost of the total premiums for the life and health plans. Beginning eighteen months after the closing date, UtiliCorp has the right to increase the percentage of premiums that you pay 15% per year until the percentage you pay is equal to the percentage paid by UtiliCorp retirees under the age of 65. You will be provided the opportunity to purchase UtiliCorp dental and vision coverage at premiums equal to those paid by retired and active UtiliCorp employees.

UtiliCorp Human Resources will work with Empire Human Resources to determine the timing and approach to integrate our benefit plans that is in the best interest of our newly merged companies' cost structure, while providing a comprehensive benefit package to retirees.

We would like to emphasize that with respect to any interpretation of these benefits, the merger agreement and the respective Plan documents are the final authority. We hope this helps to answer any concern you might have. As more information is received, we will keep you informed.

LAW OFFICES
SHAPIRO, MANSON & KARBANK

AN ASSOCIATION OF PROFESSIONAL CORPORATION

9401 INDIAN CREEK PARKWAY
BLDG. 40, SUITE B20
OVERLAND PARK, KANSAS 66210-2007
TEL (913) 498-8080
FAX (913) 498-8078
e-mail: bmanson@ldlr.net
e-mail: tshapiro@ldlr.net
e-mail: ads@ldlr.net

KANSAS CITY OFFICE
1200 MAIN STREET, 30TH FLOOR
KANSAS CITY, MISSOURI 64105-2100

ASPEN COLORADO OFFICE
917 WEST MAIN
ASPEN, COLORADO 81611-1819

ALVIN D. SHAPIRO, P.C.
T. BRADLEY MANSON, P.A.
NEIL D. KARBANK, P.C.
TONY SHAPIRO

ADMITTED IN MISSOURI
ADMITTED IN KANSAS
ADMITTED IN COLORADO,
MISSOURI AND NEW YORK
ADMITTED IN MISSOURI
AND KANSAS

July 9, 1999

VIA TELEFAX 983-8080

Ralph G. Wrobley, Esq.
Blackwell, Sanders
2300 Main Street, Suite 1000
P. O. Box 419777
Kansas City, MO 64141-6777

Re: Utilicorp/Empire District merger or acquisition

Dear Ralph:

I write to you, as counsel for Utilicorp, in an attempt to ascertain information and perhaps to avoid thereby any protracted disputes.

We have received inquiries from several retirees of Empire District concerning the manner in which their post-retirement health care benefits will be handled, should the impending merger and/or acquisition by Utilicorp be approved by the stockholders, boards of directors, regulatory bodies, etc. They have been unable to receive concrete, meaningful information from the people they have asked. I request that you please supply such information to me for transmission to them.

Specifically, the retirees are concerned in respect to the 1994 proceedings before the Missouri Public Service Commission (Nos. ER-94-174 and EQ-91-74) which, it is my understanding, required Empire District to set aside some \$16 million from the rate increases granted to Empire at that time so as to fund post-retirement benefits. How is this being handled? What provision is being made, they ask, for the post-retirement health care benefits that will be afforded to them by the resulting merged entity? Will the rate increases received by reason of such PSC proceedings be used to fund their health care premiums after any merger? They are fearful of greatly increased premiums, but have been unable to receive meaningful information.

Ralph, I write to you because you have always been up-front and square with me. I know you will provide the information requested. I look forward to hearing from you.

Best personal wishes.

Very truly yours,

SHAPIRO, MANSON & KARBANK



Alvin D. Shapiro, P.C.

ADS/pdk

LAW FIRM

BLACKWELL SANDERS PEPPER MARTIN
LLP

2300 MAIN STREET SUITE 1000 KANSAS CITY, MO 64108
P.O. BOX 419777 KANSAS CITY, MO 64141-6777
TEL: (816) 983-8000 FAX: (816) 983-8080
WEBSITE: www.bsplaw.com

LINDA K. TILLER
DIRECT: (816) 983-8223

DIRECT FAX: (816) 983-9223
E-MAIL: ltiller@bsplaw.com

July 23, 1999

Alvin D. Shapiro, P.C.
Shapiro, Manson & Karbank
9401 Indian Creek Parkway
Building 40, Suite 820
Overland Park, Kansas 66210-2007

Re: Empire District Electric Retirees

Dear Alvin:

As we discussed on the telephone last week, Ralph Wrobley asked me to respond to your letter dated July 9, 1999. I hope the following information addresses the questions posed in your letter.

You indicated that you were not familiar with the specific terms of the order issued by the Missouri Public Service Commission ("MPSC") in the 1994 proceedings (Nos. ER-94-174 and EO-91-74) referred to in your letter (the "Order"). For your convenience, I have included a copy of the Order with this letter, but it might be helpful to also summarize the relevant contents of the Order. In that order, the MPSC adopted and approved a Stipulation and Agreement which provided in part that the rates resulting from the Stipulation and Agreement reflect the adoption by The Empire District Electric Company ("Empire") of Financial Accounting Standards Board Statements (FAS) 87 and 106 and that Empire was authorized to adopt FAS 87 and FAS 106 for ratemaking purposes. The Stipulation and Agreement also provided that Empire would fund its obligations in accordance with the provisions of section 386.315 of House Bill No. 1405.

As a result of the Order, Empire established trusts to fund employee benefits, including post-retirement benefits, and has made contributions to those trusts each year. However, in the Stipulation and Agreement adopted by the MPSC in the Order, the parties reserved the right to propose "ratemaking adjustments relating to the actuarial assumptions or external funding mechanism used", and in fact the calculation of amounts contributed to the trusts has changed several times and may change again in future rate proceedings.

Pursuant to the terms of the trusts set up by Empire and the laws applicable to such trusts, the funds held in the trusts must be used to provide welfare benefits to employees and former employees. However, the trust agreements provide that "[n]othing in this Trust Agreement shall be construed to give an employee, former employee, dependent, former dependent or any other individual a right to receive benefits. Any individual's entitlement to benefits shall be determined under the terms of the Health and

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BLACKWELL SANDERS PEPPER MARTIN
LLP

Alvin D. Shapiro, P.C.

July 23, 1999

Page 2

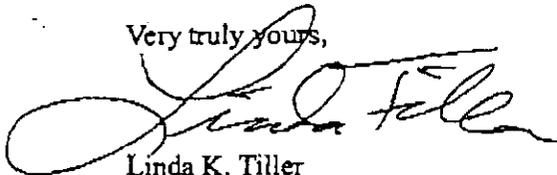
Welfare Plans." Therefore, there is no particular sum of money that is held to provide medical benefits for specific retirees. Their benefits are determined solely by reference to the health and welfare plans in effect for such retirees.

You indicated that you have a copy of the Agreement of Merger between Empire and UtiliCorp. The following generally summarizes the relevant provisions, but is qualified in its entirety to the specific terms of the merger agreement. In the merger agreement, UtiliCorp agreed to continue benefits comparable to existing benefits for employees and former employees for not less than 18 months after closing. Following that period, the merger agreement provides that UtiliCorp (i) will provide retiree medical benefits no less favorable than those provided to similarly situated retirees of UtiliCorp to existing retirees of Empire on the closing date and anyone who retires within 18 months after the closing (and who meets the requirements of Empire's retiree health plan), and (ii) is entitled to raise the share of the premium paid by Empire retirees by 15% per year to the same share as paid by similarly situated UtiliCorp retirees in addition to increases in premiums consistent with Empire's past practice.

The merger transaction is expected to close in mid to late 2000, but is subject to a number of approvals. UtiliCorp and Empire are in the very early stages of planning for the transition of employee benefits. Therefore it is impossible to provide concrete information as to what will happen beyond what is in the merger agreement. However, based on the information that we reviewed and our discussions with Empire, we believe that Empire is in compliance with the 1994 MPSC Order and Empire has confirmed that it will continue to comply with the Order. Furthermore, UtiliCorp intends to comply with all provisions of the merger agreement, including the provisions dealing with retiree benefits.

I hope the foregoing summary of the Order and the merger agreement is helpful. As UtiliCorp and Empire work through the difficult issues involved in the transition, Empire's employees and retirees will receive information regarding the issues affecting them. In the meantime, if you have additional questions, please feel free to contact me.

Very truly yours,



Linda K. Tiller

cc: Jim Miller (UtiliCorp United Inc.)
Myron McKinney (The Empire District Electric Company)
Ralph Wrobley, Esq.



Myron W. McKinney
President and Chief Executive Officer

August 18, 1999

Mr. Gene Delano
2153 North Loma Linda Drive
Joplin MO 64804

Dear Gene:

Please find attached answers for the questions from the Retirees' meeting last Wednesday. If I missed any, or if you have any other questions, I will be happy to try to find the answers.

Sincerely,

and

Enclosure

Questions from Retiree's Meeting
August 11, 1999

1. Q. Can stock held in separate accounts such as an IRA, select cash—while another account might select to take stock?

A. It is our understanding that each account will have an opportunity to state preferences to receive stock or cash independently.

2. Q. What is the amount of co-pay for the Utilicorp Prescriptions Plan?

A. The Utilicorp Prescription Plan is the same for both active employees and retirees. For retail outlets, the employee pays the greater of \$5.00 or 20% for up to a 34-day supply. Mail order prescriptions up to a 90-day supply will also fall under the \$5.00 or 20% provision.

3. Q. If a retiree has selected a surviving spouse option, will that option be honored?

A. Yes, the surviving spouse is guaranteed to receive the selected option under ERISA.