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September 7, 2000

**FILED<sup>3</sup>**

SEP 07 2000

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**RE: UtiliCorp United Inc. and The Empire District Electric Company  
Case No. EM-2000-369**

Dear Mr. Roberts:

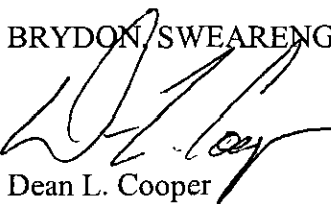
Enclosed for filing in the above-referenced proceeding please find an original and eight copies of Objections and Motion to Strike or, in the Alternative, Motion to File Supplemental Surrebuttal. Please stamp the enclosed extra copy "filed" and return same to me.

Thank you very much for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

DLC/rhg  
Enclosures

cc: Office of Public Counsel  
John Coffman  
Steve Dottheim  
Stuart Conrad  
James B. Deutsch

Shelley Woods  
William Niehoff  
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Jeffrey A. Keevil

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

**FILED<sup>3</sup>**

SEP 07 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

**OBJECTIONS AND MOTION TO STRIKE  
OR, IN THE ALTERNATIVE,  
MOTION TO FILE SUPPLEMENTAL SURREBUTTAL**

COME NOW UtiliCorp United Inc. ("UtiliCorp") and The Empire District Electric Company ("Empire"), and, as their Objection and Motion to Strike or, in the alternative, Motion to File Supplemental Surrebuttal, state the following to the Missouri Public Service Commission ("Commission"):

**INTRODUCTION**

1. In the following pleading, UtiliCorp and Empire first explain their objections and motion to strike the "Cross-Surrebuttal Testimony of Bill Courtney" and the "Surrebuttal Testimony of Albert Fuchs." While UtiliCorp and Empire believe this testimony violates Commission rules, it also believes that the prejudice that would otherwise result from acceptance of this testimony can be cured by allowing UtiliCorp and Empire to supplement their surrebuttal testimony. Accordingly, UtiliCorp and Empire have prepared and attached to this pleading the Supplemental Surrebuttal of Mr. Myron McKinney, Mr. Robert Browning and Mr. Steve Pella, which addresses the issues raised by Mr. Courtney and Mr. Fuchs. UtiliCorp and Empire move the Commission to order the Supplemental Surrebuttal filed in accordance with Commission Rule 4 CSR 240-2.130(8).

**BACKGROUND**

2. On February 10, 2000, the Commission issued its Order Denying Motion to

Consolidate and Establishing Procedural Schedule. This schedule called for direct testimony to be filed by the movants, rebuttal testimony to be filed by "all other parties" and surrebuttal testimony to be filed by all parties.

3. Empire and UtiliCorp filed their direct testimony in compliance with the Commission order. Several parties, to include the Commission Staff ("Staff"), the Office of the Public Counsel ("OPC"), certain Empire retirees, the City of Springfield and the Department of Natural Resources, filed rebuttal testimony. Thereafter, on August 23, 2000, Empire and UtiliCorp filed their Surrebuttal Testimony in response to the rebuttal testimony and Staff filed the "Cross-Surrebuttal Testimony of Michael S. Proctor."

4. Also on August 23, 2000, two other parties filed what purported to be surrebuttal testimony. Intervenor International Brotherhood of Electrical Workers ("IBEW") Local 1474 filed the "Cross-Surrebuttal Testimony of Bill Courtney" and Albert Fuchs filed the "Surrebuttal Testimony of Albert Fuchs."

### **OBJECTION**

5. Empire and UtiliCorp object to Mr. Courtney's "Cross-Surrebuttal" and Mr. Fuchs' "Surrebuttal" in that:

- a) Rebuttal testimony should have contained all testimony where the sponsoring parties' rejected, disagreed or proposed an alternative to the case presented by Empire and UtiliCorp (Commission Rule 4 CSR 240-2.130(7)(C)) and, therefore, this testimony improperly supplements rebuttal testimony (Commission Rule 4 CSR 240-2.130(8)); and,
- b) The subjects addressed in the testimony are not proper surrebuttal testimony in that they are not responsive to issues raised in another party's rebuttal (Commission Rule

4 CSR 240-2.130(7)(D)).

6. Additionally, Empire and UtiliCorp object to Exhibit AF-2 of Mr. Fuchs' testimony as hearsay and certain other aspects of his surrebuttal testimony as being contrary to a Commission Order in this case.

### **COMMISSION RULES**

7. Commission Rule 4 CSR 240-2.130(7)(C) states:

Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party, rejects, disagrees or proposes an alternative to the moving party's direct case.

8. Commission Rule 4 CSR 240-2.130(7)(D) states that "Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony."

9. Commission Rule 4 CSR 240-2.130(8) states:

No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer of the commission.

### **MOTION TO STRIKE**

10. In this case, the Commission ordered only UtiliCorp and Empire, the moving parties, to file direct testimony. Accordingly, Commission Rule 4 CSR 240-2.130(7)(C) required all other parties, to include the IBEW and Mr. Fuchs, to include in rebuttal testimony "all testimony which explains why a party, rejects, disagrees or proposes an alternative" to that testimony filed by UtiliCorp and Empire. The purpose of this rule is to allow the moving party the opportunity to respond to issues which are contrary to its proposal.

11. IBEW did not file rebuttal testimony. Instead, it filed the "Cross-Surrebuttal" testimony of Mr. Courtney. Mr. Courtney discusses at least twelve new issues which are directly responsive to the Plan of Merger filed by UtiliCorp and Empire. Commission Rule 4 CSR 240-

2.130(7)(C) requires that these subjects be addressed in rebuttal testimony.

12. While Mr. Fuchs did file rebuttal testimony, he apparently found that he had more to say after his deadline for rebuttal passed. Mr. Fuchs has also brought up several new issues in his "Surrebuttal" which are directly responsive to the Plan of Merger filed by UtiliCorp and Empire. Commission Rule 4 CSR 240-2.130(7)(C) requires that these subjects be addressed in rebuttal testimony.

13. Because the subjects of Mr. Courtney's "Cross-Surrebuttal" and Mr. Fuchs' "Surrebuttal" bring up new issues and are responsive to the Plan of Merger filed by UtiliCorp and Empire rather than rebuttal testimony, this testimony violates Commission Rule 4 CSR 240-2.130(7)(D).

14. Because the subjects of Mr. Courtney's "Cross-Surrebuttal" and Mr. Fuchs' "Surrebuttal" are required by Commission Rule 4 CSR 240-2.130(7)(C) to be addressed in rebuttal testimony, the inclusion of these subjects in surrebuttal is an improper attempt to supplement rebuttal in violation of Commission Rule 4 CSR 240-2.130(8).

15. Additionally, Mr. Fuchs' testimony contains numerous "Questionarre [sic] of EDE Retirees" which are marked Exhibit AF-2. These are forms which purport to have been completed by other retirees. UtiliCorp and Empire object to this exhibit on the basis that the documents are not authenticated and are hearsay. The documents are not signed under oath before witnesses or a notary and, in fact, are not signed at all. Mr. Fuchs, while stating that he believes them to be true and correct, does not state that he saw each retiree complete the forms or that he has any personal knowledge of the information in the forms. Thus, if they are accepted by the Commission, not only would UtiliCorp and Empire not have the opportunity to cross-examine the persons that purportedly completed these questionarres, they also would be unable to derive any competent testimony from

Mr. Fuchs as to the contents of the documents.

16. Lastly, on page 6, line 16 of Mr. Fuchs' "Surrebuttal" he is asked whether the Empire retirees he represents have designated him as "primary spokesperson." This question and answer is contrary to the Commission's Order Granting Application to Intervene dated July 6, 2000. In that Order, the Commission granted Mr. Fuchs' application to intervene. However, in doing so, the Commission pointed out that the Empire Retirees had clarified that they were not attempting to bring any sort of "class action" on behalf of all retirees, but rather were "only speaking for themselves." Order at p. 3. It is inconsistent with the Commission's Order for Mr. Fuchs to now state that he is representing some sort of class of retirees in this action and such a representation should be stricken by the Commission.

17. Based upon the violations described above, UtiliCorp and Empire move that Mr. Fuchs "Surrebuttal" and Mr. Courtney's "Cross-Surrebuttal" be stricken.

**IN THE ALTERNATIVE, MOTION TO FILE SUPPLEMENTAL SURREBUTTAL**

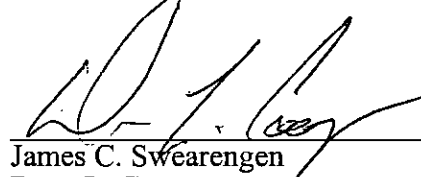
18. Because the Commission's rules are designed to provide the movants, in this case UtiliCorp and Empire, the opportunity to respond to such testimony, UtiliCorp and Empire have an proposal which they propose in the alternative to the striking of testimony.

19. Empire and UtiliCorp have prepared and attached hereto the Supplemental Surrebuttal testimony of Mr. Myron McKinney, Mr. Robert Browning, and Mr. Steve Pella in response to the subject testimony. Because the filing of this testimony would address the prejudice that would otherwise result from the acceptance of Mr. Fuchs' and Mr. Courtney's testimony, UtiliCorp and Empire move that such supplemental surrebuttal be ordered filed by the Commission in accordance with Commission Rule 4 CSR 240-2.130(8).

WHEREFORE, UtiliCorp and Empire respectfully request that Commission issue its order

striking the "Cross-Surrebuttal" testimony of Mr. Courtney and the "Surrebuttal" testimony of Mr. Fuchs or, in the alternative, ordering the Supplemental Surrebuttal attached hereto filed with the Commission.

Respectfully submitted,



James C. Swearingen MBE#21510  
Dean L. Cooper MBE#36592  
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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 7<sup>th</sup> day of September, 2000, to:

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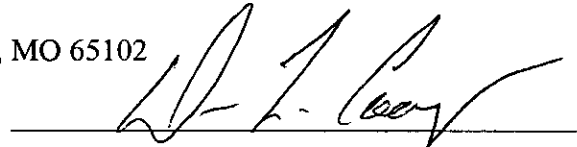


Exhibit No.:

Issue: Customer Service

Witness: Stephen L. Pella

Sponsoring Party: UtiliCorp United Inc.

Case No.: EM-2000-369

Date Prepared: September 6, 2000

MISSOURI PUBLIC SERVICE COMMISSION  
Case No. EM-2000-369

Supplemental Surrebuttal Testimony

of

Stephen L. Pella

Jefferson City, Missouri

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI  
SUPPLEMENTAL SURREBUTTAL TESTIMONY  
OF STEPHEN L. PELLA  
ON BEHALF OF UTILICORP UNITED INC.**

**CASE NO. EM-2000-369**

1 Q. Please state your name and business address.

2 A. My name is Stephen L. Pella and my business address is 20 W. 9<sup>th</sup> St., Kansas City, MO  
3 64105.

4 Q. Are you the same Stephen L. Pella that previously filed direct and surrebuttal testimony in  
5 this case?

6 A. Yes.

7 Q. What is the purpose of your supplemental surrebuttal testimony?

8 A. The purpose of my supplemental surrebuttal testimony is to respond to the cross-surrebuttal  
9 testimony of witness Bill Courtney for the International Brotherhood of Electrical Workers  
10 ("IBEW") Local 1474 concerning alleged adverse consequences of projected job reductions  
11 in connection with UtiliCorp United Inc.'s ("UtiliCorp") proposed merger with The Empire  
12 District Electric Company ("Empire").

13 Q. Beginning on page 7 of his cross-surrebuttal testimony, Mr. Courtney indicates that  
14 UtiliCorp has not conducted any studies leading to the projections of job reductions if the  
15 merger is approved. On what basis did UtiliCorp make its projections with respect to job  
16 reductions?

17 A. As stated in response to data requests, our intention is to operate Empire's assets consistent  
18 with UtiliCorp's current operations and business model if the merger is approved. We based

1 our projections and conclusions on our extensive history of successfully operating electric  
2 networks in the United States and internationally.

3 Q. How did UtiliCorp undertake its assessment of Empire's business to draw conclusions about  
4 how it will operate the company if the merger is approved?

5 A. UtiliCorp used several of its employees with many years of utility experience to conduct a  
6 detailed evaluation of Empire's business to validate that UtiliCorp's business model was  
7 applicable in Empire's environment. We traveled Empire's entire service territory and  
8 talked with front-line, supervisory and management employees, both union and non-union.  
9 We analyzed and evaluated Empire's operating information including budgets, network  
10 maps, and historical and projected customer growth. We compared UtiliCorp's historical  
11 and projected customer growth, employee to customer ratios, reliability information,  
12 customer density, and geography and safety statistics with Empire's. We shared our  
13 preliminary conclusions with a team of Empire employees to gain their insight and  
14 feedback. We conducted meetings at various locations and shared our views with Empire's  
15 employees. Finally, we continue to gather information and refine our projections and  
16 conclusions.

17 Q. Beginning on page 9 of his cross-surrebuttal testimony, Mr. Courtney begins to talk about  
18 the number of individuals assigned to a work crew and on page 10, line 5, Mr. Courtney  
19 alleges that Empire's work "cannot be performed without, at a minimum, an across-the-  
20 board reduction to two employee-crews." Is that true?

21 A. No. Mr. Courtney attempts to assert that UtiliCorp will allow only two individuals on a  
22 crew no matter the situation and that thereby safety will be compromised. That is not true.  
23 UtiliCorp provides the number of individuals required to do the work safely, efficiently and

1 effectively, whether a two-person crew or a ten-person crew. UtiliCorp currently uses three  
2 or more persons on a work crew as needed and depending on the nature of a project.  
3 However, our experience has shown that the majority of the work can be performed safely  
4 with a two-person crew.

5 Q. What is UtiliCorp's experience in utilizing two-person crews?

6 A. UtiliCorp's Missouri Public Service ("MPS") division began using two-person work crews  
7 in the mid 1980's because it had determined that 70 percent of the normal work could be  
8 completed safely with two people instead of three. UtiliCorp also utilizes primarily two-  
9 person crews in its West Plains Energy ("WPE") operating division in Kansas and Colorado.

10 Q. On page 10 of his cross-surrebuttal testimony, Mr. Courtney alludes that based on his  
11 experience a reduction in the numbers of employees or a reduction in crew size will  
12 adversely affect safety and throughout his testimony he alleges to the potential of employees  
13 taking shortcuts as a result of job reductions. Do you agree with his allegations?

14 A. No, I do not. UtiliCorp's policy is to provide additional help or resources if required in every  
15 instance when safety is an issue. UtiliCorp does not under any circumstance tolerate or  
16 encourage taking short cuts or ignoring safety rules. Monthly safety meetings will be held to  
17 help ensure that employees review safety procedures and job site "Tail Boards" are  
18 encouraged to identify possible hazards and implement plans to avoid them. It is the  
19 employee's responsibility to be familiar and comply with all safety rules and procedures. It  
20 is the joint responsibility of the front-line worker and supervisor to identify if additional  
21 resources are required to perform work safely and the supervisor's responsibility to ensure  
22 resources are provided.

23 Q. How do UtiliCorp's safety statistics compare to Empire's?

A. The table below shows the incident rates for recordable accidents for both UtiliCorp and Empire based on a formula established by the Occupational Safety and Health Administration ("OSHA"). The OSHA formula is the number of accidents year-to-date times 100 workers working one year (= 200,000 hours) divided by actual hours worked year-to-date.

**Total Recordable Accidents – Incident Rate**

Year	1997	1998	1999
UCU	6.85	7.18	7.75
EDE	6.84	10.23	7.85
Industry	7.60	7.60	6.90
Avg.			

Q. Do you agree with Mr. Courtney's allegations on page 14 of his cross-surrebuttal testimony that employees will be under increased pressure to cut corners and work with a lesser regard to safety during major outages?

A. No, I do not agree. UtiliCorp supports and endorses a safe operating environment for all its employees. Consequently, UtiliCorp does not under any circumstance tolerate or encourage taking short cuts or ignoring safety rules whether during major outages or normal day to day work activities.

Q. Do you agree with Mr. Courtney's allegation that there will be adverse impacts during major outages due to the reduction in linemen and electrician jobs?

A. No, I do not. In the event of a major storm in which Empire resources need to be augmented to complete restoration efforts, craftsmen and supervisors from other

1 UtiliCorp operating areas i.e. MPS and WPE will be mobilized to provide assistance.  
2 Should the merger be approved, Empire will have access to many more resources than it  
3 does today due to the size of UtiliCorp's operations. These resources include materials  
4 and equipment as well as people. Moreover, UtiliCorp intends to implement additional  
5 technology to enable more rapid identification of the scope of large outages. Our  
6 automated mapping and facilities management system which, when coupled with our  
7 high volume call answering and outage management systems, will improve the  
8 prioritization of work and dispatching of personnel. These tools will enable us to restore  
9 service to larger groups of customers first while greatly enhancing outage-reporting  
10 information.

11 Q. Mr. Courtney states in his testimony that UtiliCorp's response to IBEW data requests  
12 included a footnote that the projected numbers of job eliminations are subject to further  
13 study and that no final determination has been made. He goes on to conclude that the  
14 actual number of eliminations may be higher. How do you respond?

15 A. The number of projected job eliminations is based on information that UtiliCorp has  
16 reviewed and evaluated and represents our best view to date. However, we continue to  
17 look at the business and review information, as it becomes known. The final numbers of  
18 eliminations may be less, the same or greater.

19 Q. If UtiliCorp continues to review and refine its conclusions, why did you conduct  
20 meetings with Empire's employees to present your findings?

21 A. UtiliCorp chose a philosophy of open communications with employees to keep them  
22 informed of how the merged company would operate if the merger were approved. The  
23 majority of Empire's employees will remain with the merged company and we have an

1 interest in engaging them to continue to serve our customers and maintain the system.  
2 Moreover, we wanted to give employees advanced notice with respect to potential job  
3 eliminations so as to provide them with as much time as we could to evaluate their  
4 options and make the best decision for themselves and their families. We believe that  
5 this is the best approach even though we can't answer all questions with certainty at this  
6 time.

7 Q. Does each job that may be eliminated represent an actual employee who will be laid off?

8 A. Generally, no. A number of employees may be eligible for and take retirement prior to or  
9 shortly after the merger closes. Empire has also experienced turnover in both union and  
10 non-union positions since the merger has been announced. Collectively, these potential  
11 vacancies would reduce the need to lay off employees. Finally, employees will be able to  
12 bid on open jobs at UtiliCorp if the merger is approved. The guidelines for obtaining  
13 union jobs within UtiliCorp are subject to the provisions of various collective bargaining  
14 agreements that cover UtiliCorp's union employees.

15 Q. On pages 19 and 20 of his testimony, Mr. Courtney indicates that there are no equivalent  
16 jobs in the area that Empire's displaced bargaining unit employees are qualified for.  
17 How do you respond?

18 A. Mr. Courtney does not cite his source of information so I can't respond specifically.  
19 Based on our assessment, Empire employees are highly skilled and trained in their craft.  
20 Empire management indicates that since the merger announcement, five union employees  
21 have taken new jobs in Carthage, Springfield, Marshfield and Neosho, Missouri.  
22 Moreover, we frequently receive comments from electric construction contractors who  
23 provide services across UtiliCorp's service territory that there is a shortage of qualified

1 employees. Overall, the economy across the country is strong and with flexibility,  
2 displaced individuals can take advantage of an employees market.

3 Q. How do you summarize your testimony?

4 A. If the merger is approved, UtiliCorp intends to operate Empire's business in a safe and  
5 reliable manner, consistent with UtiliCorp's current business model and proven by  
6 metrics and statistics. Our projections and conclusions are based on our vast experience  
7 successfully operating electric networks in the United States and internationally. We are  
8 committed to working with IBEW Local 1474 and all employees if the merger is  
9 approved to make a successful transition.

10 Q. Does this conclude your supplemental surrebuttal testimony at this time?

11 A. Yes.

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


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

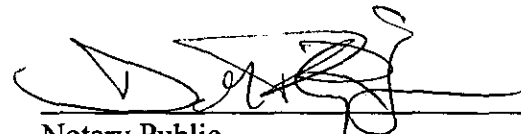
County of Jackson     )  
                                      )  
State of Missouri     )

**AFFIDAVIT OF STEPHEN L. PELLA**

Stephen L. Pella, **being first duly sworn**, deposes and says that he is the witness who sponsors the accompanying testimony entitled supplemental surrebuttal testimony; that said testimony was prepared by him and or under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Stephen L. Pella

Subscribed and sworn before me this 6<sup>th</sup> day of September, 2000.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

Deborah Riley Riggs  
Notary Public, State of Missouri  
County of Jackson  
My Commission Exp. 07/28/2001



Exhibit No.:  
Issue: Retiree Benefits, Health Trust Acct.  
Witness: Myron W. McKinney  
Sponsoring Party: The Empire District Electric Co.  
Case No.: EM-2000-369  
Date Prepared: September 6, 2000

MISSOURI PUBLIC SERVICE COMMISSION  
Case No. EM-2000-369

Supplemental Surrebuttal Testimony

of

Myron W. McKinney

Jefferson City, Missouri

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI  
SUPPLEMENTAL SURREBUTTAL TESTIMONY  
OF MYRON W. MCKINNEY  
ON BEHALF OF THE EMPIRE DISTRICT ELECTRIC COMPANY**

**CASE NO. EM-2000-369**

1 Q. Please state your name.

2 A. Myron W. McKinney.

3 Q. By whom are you employed and in what capacity?

4 A. The Empire District Electric Company ("Empire") as President and Chief Executive Officer.

5 Q. Are you the same Myron W. McKinney who caused to be prepared and filed in this  
6 proceeding certain direct and surrebuttal testimony on behalf of Empire in connection with  
7 its proposed merger with UtiliCorp United Inc. ("UtiliCorp")?

8 A. Yes.

9 Q. What is the purpose of this testimony?

10 A. The purpose of this testimony is to provide information in response to testimony filed by Mr.  
11 Albert Fuchs, which, while purporting to be surrebuttal testimony, introduces new and  
12 unfounded assertions regarding retiree pensions and benefits other than pensions.

13 Q. Beginning at Page 5, Line 21, Mr. Fuchs states, "To the best of my personal knowledge all of  
14 these benefits were derived from the collective bargaining process . . ." Was Mr. Fuchs ever  
15 directly involved in the Collective Bargaining Process at Empire?

16 A. No. Mr. Fuchs, while employed by Empire, was never involved in any of the many  
17 negotiating sessions between Empire and Local 1474 and, therefore, has no direct personal  
18 knowledge of what may or may not have been included as part of those negotiating sessions.

19 Q. On Page 4, Lines 5-8, Mr. Fuchs states that the pension fund was funded by ratepayers and  
20 by contributions of employees. How do you respond?

1 A. Mr. Fuchs has mischaracterized the source of the Empire Pension Fund. The Empire Pension  
2 Plan is, and has been since its inception, a defined benefit non-contributory plan. Non-  
3 contributory means just that. The employees of Empire, Mr. Fuchs included, have never  
4 contributed one penny to the Empire Pension Plan. Contributions to the Plan have been made  
5 entirely by Empire.

6 Q. Beginning at Page 6, Line 1, Mr. Fuchs states: "All union members obtained their retirement  
7 benefits, and expectations for retirement benefits, including health care benefits, from the  
8 various union contracts negotiated with the company . . ." [emphasis added]. How do you  
9 respond?

10 A. He is incorrect. Contracts between Empire and Local 1474 apply, and have always applied,  
11 to employees of Empire (See M.W. McKinney Surrebuttal Testimony at Page 2, Lines 12-23  
12 and Page 3, Lines 1-7.) Further, only certain fiscal issues related to employee health care  
13 plan benefits have been the subject of negotiations and agreements between Empire and  
14 Local 1474. This would include such items as health care premium subsidy, co-payments,  
15 prescription drug coverage, and deductible limits. Also, from time to time, the parties agreed  
16 to adjust certain pension-related factors that are used to calculate a pension benefit. The  
17 parties to the Collective Bargaining Agreement ("CBA") have never adopted an agreement  
18 that contains any health care-related issue, plans, benefits or premiums for retired employees  
19 or their spouses. Furthermore, while Mr. Fuchs attempts to link benefits for union and non-  
20 union employees together, it is simply untrue that the Collective Bargaining Process has  
21 determined the benefits provided for non-union employees. Although Empire has attempted  
22 to keep benefits as uniform as possible, many benefits have been established by Empire,  
23 which are not in any way related to union negotiations.

24 Q. Are there any examples of benefits which are not related to union negotiations?

25 A. Yes. These would include Empire's Incentive Pay Plan, the 401(k) Plan, Employee Stock  
26 Ownership Plan, and Employee Financing Plan. At one time, Empire maintained two health

1 care plans, one union and one non-union. In the matter of the Health Care Plan, Empire has  
2 maintained flexibility to make changes to the Plan regarding plan design, administration, and  
3 health care providers. Empire has, from time to time, adjusted the pension benefits which  
4 retirees receive. These adjustments are made unilaterally and have not resulted from  
5 collective bargaining. To assert that the Collective Bargaining Process drives the  
6 determination of employee benefits at Empire reflects a lack of understanding regarding the  
7 relationship between Empire and its employees.

8 Q. Mr. Fuchs, on Page 6, Lines 8-10, states that Exhibit AF-1, a copy of the Health and Welfare  
9 Trust Agreement, was derived from Collective Bargaining. How do you respond?

10 A. It is an inaccurate statement. The Trust Agreement was established as a result of Empire's  
11 adoption of FASB 106 in Case No. ER-94-174 and Case No. ER-91-74, which became  
12 effective for services on and after January 1, 1995. In the stipulation, which was the basis for  
13 settlement of the cases, Empire agreed to fund its obligation for pensions and other post  
14 retirement employee benefits (OPEBs). Two health care trusts were established to facilitate  
15 this funding for employee health care, one for union employees and one for non-union. The  
16 only reason for the establishment of the union trust was the deductibility of contributions.  
17 While the non-union trust has certain limiters regarding deductibility for federal tax  
18 purposes, the union trust contributions are deductible in their entirety. Empire believed, and  
19 continues to believe, that it is in the best interest of its ratepayers to capture all available tax  
20 deductions and, by establishing the separate trusts, has fulfilled that objective. The union  
21 trust was not established as a result of negotiations, but as a unilateral action of Empire. No  
22 reference to it exists in any of the documents that make up the agreement between Empire  
23 and Local 1474.

24 Q. Does this conclude your testimony?

25 A. Yes.

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

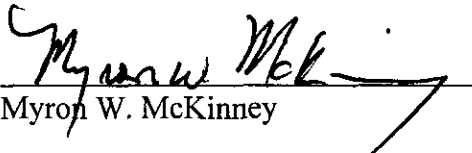
In the Matter of the Joint Application of     )  
UtiliCorp United Inc. and The Empire     )  
District Electric Company for Authority to     )  
Merge The Empire District Electric     )  
Company with and into UtiliCorp United     )  
Inc., and, in Connection Therewith, Certain     )  
Other Related Transactions.     )

Case No. EM-2000-369


County of Jasper     )  
                                      )  
State of Missouri     )

**AFFIDAVIT OF MYRON W. MCKINNEY**

Myron W. McKinney, **being first duly sworn**, deposes and says that he is the witness who sponsors the accompanying testimony entitled supplemental surrebuttal testimony; that said testimony was prepared by him and or under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information, and belief.

  
Myron W. McKinney

Subscribed and sworn before me this 6th day of September, 2000.

  
Notary Public

My Commission Expires:

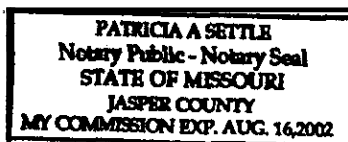


Exhibit No.:

Issue: Retiree Benefits, Health Trust Acct.,  
Labor Protective Provisions

Witness: Robert B. Browning

Sponsoring Party: UtiliCorp United Inc.

Case No.: EM-2000-369

Date Prepared: September 6, 2000

MISSOURI PUBLIC SERVICE COMMISSION  
Case No. EM-2000-369

Supplemental Surrebuttal Testimony

of

Robert B. Browning

Jefferson City, Missouri

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI  
SUPPLEMENTAL SURREBUTTAL TESTIMONY  
OF ROBERT B. BROWNING  
ON BEHALF OF UTILICORP UNITED INC.**

**CASE NO. EM-2000-369**

1 Q. Please state your name, position, and business address.

2 A. My name is Bob Browning. I am employed by UtiliCorp United Inc. ("UtiliCorp"),  
3 within the Enterprise Support Functions division, as Vice President of Human Resources.

4 Q. Are you the same Bob Browning that previously filed Direct and Surrebuttal Testimony  
5 in this case?

6 A. Yes.

7 Q. What is the purpose of your Supplemental Surrebuttal Testimony?

8 A. The purpose of my Supplemental Surrebuttal Testimony is to respond to the Cross-  
9 Surrebuttal Testimony filed by Bill Courtney on behalf of the International Brotherhood  
10 of Electrical Workers (IBEW) Local 1474 and the Surrebuttal Testimony filed by Albert  
11 Fuchs on behalf of the Empire District Electric Company Retired Employees.

12 Q. Mr. Courtney, on page 16 of his testimony, indicates that he has not received any  
13 assurances from UtiliCorp that the terms of the collective bargaining agreement that are  
14 currently in effect will remain in effect following the expiration of the contract. Is this  
15 true?

16 A. UtiliCorp has consistently stated that it would recognize the IBEW as the representative  
17 of the bargaining unit at Empire District Electric Company (EDE). In addition, in several  
18 meetings with bargaining unit employees during the week of April 24, 2000, I told  
19 employees that UtiliCorp recognizes they are covered by a collective bargaining

1 agreement and that any changes to their working conditions, benefits or wages that have  
2 traditionally been negotiated in the past would be negotiated when the contract expires.

3 At no time did I lead anyone to believe that UtiliCorp could or would unilaterally  
4 eliminate any provisions that is a mandatory subject of bargaining of the labor contract  
5 that is currently in effect. It is common knowledge that any such provisions in a labor  
6 agreement must be negotiated and that neither party has the right to unilaterally make  
7 such changes.

8 Q. Mr. Courtney also states on page 16 of his testimony that UtiliCorp intends to provide  
9 benefits to the bargaining unit "only for the length of that agreement." Is this UtiliCorp's  
10 intent?

11 A. While Mr. Courtney's statement is technically true, UtiliCorp certainly intends to  
12 negotiate levels of participation in the health and welfare plans, just as EDE has in the  
13 past. During the employee meetings referenced earlier, I clearly stated that there would  
14 be no material changes to the bargaining unit's current benefits except as negotiated with  
15 the union's representatives when their contract expires.

16 Q. Mr. Courtney states on page 18 of his testimony that UtiliCorp will be free to seek  
17 changes in the current labor agreement and that the current severance provision, which is  
18 in effect through 18 months following the close of the merger, may not survive following  
19 that period. Is that true?

20 A. Technically that is true. It is also the purpose of labor negotiations. The IBEW will also  
21 be free to seek changes in the current labor agreement. However, if the IBEW feels  
22 strongly their members should enjoy such a provision following this 18-month window

1 period following the close of the merger, UtiliCorp is certainly willing to discuss it, just  
2 as we would any other matter that is a mandatory subject of bargaining. UtiliCorp has  
3 included severance provisions in several other labor agreements that we have negotiated.

4 Q. On page 21 of Mr. Courtney's testimony, he asks that the Commission impose Labor  
5 Protective Provisions, in order to protect the interests of bargaining unit employees, as a  
6 condition of the merger. Do you support Mr. Courtney's position?

7 A. No. Although I delineated my position with respect to Labor Protective Provisions in my  
8 Surrebuttel Testimony already filed, I would like to reiterate that all of the issues Mr.  
9 Courtney identifies that should be covered under such a Provision are mandatory subjects  
10 of bargaining under the National Labor Relations Act. Furthermore, it is my  
11 understanding the Commission is not authorized by Missouri law to change the terms of a  
12 collective bargaining agreement. Therefore, it is my belief that current federal law would  
13 at the least preclude the need for such Provisions and potentially usurps the  
14 Commission's authority to institute such provisions.

15 Q. Mr. Albert Fuchs, on behalf of the EDE retirees, states on page 3 of his testimony that the  
16 health insurance trust fund for retirees is a "funded account," which is sought to be  
17 acquired by UCU. Is this true?

18 A. No. In fact, in Schedule RBB-6, which was filed with my original testimony, it is clear  
19 that the future estimated benefit obligation is \$17,100,350, while the fair value of the  
20 assets is only \$6,154, 238. Therefore, the funded status is negative \$10,946,112.

21 Q. Mr. Fuchs has stated in pages 4 and 5 of his testimony that EDE has set aside funds in  
22 "trust amounts to pay for health care insurance premiums, life insurance, surviving

1 spouse health care benefits and insurance for disabled workers.” He goes on to state that  
2 to the extent that these funds might be in excess of legal obligations they will likely inure  
3 to the benefit of UCU shareholders. From this he concludes that such excess funds would  
4 be considered by UCU to be “excess assets” and that UCU can take these “excess assets”  
5 as “merger savings.” Is this true?

6 A. No. Not only is Mr. Fuchs’ logic flawed, his conclusions are based on erroneous facts.  
7 First of all, it is not clear to me in Mr. Fuchs’ testimony on page 4 whether he is referring  
8 to the health care plans for active or retired employees, but I must assume he is referring  
9 to retirees, since they are whom he states he represents. Had Mr. Fuchs reviewed the  
10 Schedules submitted by me in my original testimony and referred to in Mr. Traxler’s  
11 rebuttal testimony, he would have seen that FAS 106 benefit obligations greatly exceed  
12 the funded status by over \$1 million. EDE is projected to be expensing over \$2 million  
13 per year for the next 10 years for FAS 106 obligations. Therefore, it is clear that merger  
14 savings from retiree health insurance funding has not been overestimated, as Mr. Fuchs  
15 has claimed and that there are no excess assets in the fund.

16 Q. On page 5 of his testimony, Mr. Fuchs offers a condition of the merger relative to retiree  
17 health care, which includes that the entire fund held for health care be separately  
18 maintained, funded, and devoted to maintenance of current health plan benefits applicable  
19 to retirees and that the excess assets in the pension fund be used to pay for any  
20 insufficient funding in the retiree health care trust. Do you support Mr. Fuchs’ proposal?

21 A. No, I do not. UCU currently maintains separate VEBA accounts for several prior merged  
22 plans and breaks out expenses by retiree, active, union and non-union categories. UCU

1 plans to continue the VEBA Trusts for current retirees and active employees consistent  
2 with past procedures. To require such accounting as a condition of the merger is  
3 unnecessary. In addition, the excess assets of the pension trust are there as a result of  
4 favorable market returns on the invested assets. The market could just as easily be less  
5 favorable in the future and the pension trust will need this excess capacity to ensure  
6 funding exists for the company's pension obligations. To use these excess assets in the  
7 pension fund for health care coverage for retirees would be "robbing Peter to pay Paul."

8 Q. Mr. Fuchs, on page 7 of his testimony, states that funds for retiree health benefits, which  
9 were paid in and accumulated through rates paid and to be paid by EDE retirees will be  
10 diverted from the intended use and to the use of UCU through the proposed merger. Is  
11 this true?

12 A. No. Mr. Fuchs states that Mr. Traxler's testimony with respect to diversion of excess  
13 pension assets does not go far enough as Mr. Traxler does not make the same objection  
14 with regard to EDE health benefits. There is a reason Mr. Traxler does not go this far.  
15 There are no excess assets to divert. Referring to Schedule RBB-6 and on page 7, line 5  
16 of my original testimony relative to this merger, I stated, "The non-bargaining unit plan is  
17 expected to generate approximately \$222,048 in incremental expense in the first 6 months  
18 following the close and \$2,309,586 in the final year prior to EDE moving onto UCU's  
19 plan as a result of a greater than normal number of early retirees." In addition, the Trust  
20 Agreement for the EDE Employee Benefit Fund, in Article VII, states, "In the event of  
21 termination of the trust, the Trustees shall apply the Trust Fund to pay or to provide for  
22 the payment of any and all obligations of the Trust Fund and distribute in accordance

1 with the Health and Welfare Plans until the Fund is exhausted; provided however, that no  
2 part of the corpus or income of said Trust Fund shall be paid to the Employer, nor shall  
3 any part of the corpus or income of said Trust Fund be used for or diverted to purposes  
4 other than the exclusive benefit of employees or the administrative expenses of the Trust  
5 Fund...". Based on these two facts, I believe Mr. Fuchs' allegations that the retiree  
6 health benefit funds will be diverted from the intended use to be erroneous and mis-  
7 informed.

8 Q. On page 6 of Mr. Fuchs' testimony, he states that the collective bargaining agreement  
9 will reveal that the retirement health care, life insurance, death and disability insurance  
10 and surviving spouse benefits are the subject of collective bargaining agreement. Is this  
11 true?

12 A. No. Evidently, Mr. Fuchs made this statement prior to reviewing the current EDE  
13 collective bargaining agreement because there are no references whatsoever to health care  
14 benefits for retirees. In addition, Mr. Myron McKinney, in his surrebuttal testimony, has  
15 stated that the collective bargaining agreement contains no language relative to health  
16 care benefits for retirees. He goes on to explain that the union has attempted, in the past,  
17 to negotiate health care benefits for retired employees. However, at no time have the  
18 parties adopted a collective bargaining agreement that contains any health care-related  
19 issues, plans, benefits or premiums for retired employees or their spouses.

20 Q. Does this conclude your Supplemental Surrebuttal Testimony at this time?

21 A. Yes, it does.

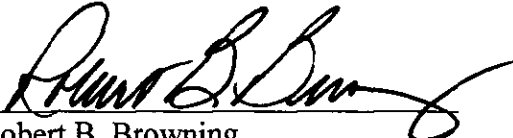
**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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     )     Case No. EM-2000-369  
Company with and into UtiliCorp United     )  
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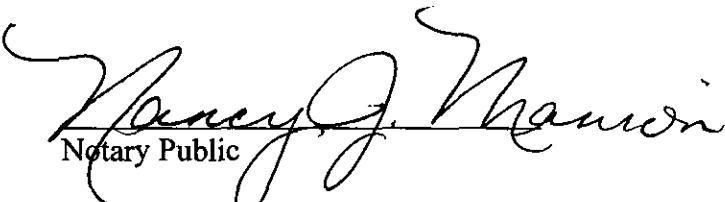
County of Jackson     )  
State of Missouri     )

**AFFIDAVIT OF ROBERT B. BROWNING**

Robert B. Browning, **being first duly sworn**, deposes and says that he is the witness who sponsors the accompanying testimony entitled supplemental surrebuttal testimony; that said testimony was prepared by him and or under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information, and belief.

  
Robert B. Browning

Subscribed and sworn before me this 6<sup>th</sup> day of September, 2000.

  
Notary Public

My Commission Expires:

**NANCY J. MANION  
NOTARY PUBLIC STATE OF MISSOURI  
JACKSON COUNTY  
MY COMMISSION EXPIRES 7/31/2001**