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## Missouri Public Service Commission

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January 7, 2002

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ROBERT SCHALLENBERG  
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DONNA M. PRENGER  
Director, Administration  
DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

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

JAN 07 2002

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. EM-2002-297 – In the Matter of the Application of UtiliCorp United, Inc., a Delaware Corporation, for Authority to Merge to Effect a Name Change.**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF NOTICE, MOTION FOR CLARIFICATION AND REQUEST THAT UTILICORP BE DIRECTED TO COMPLY WITH 4 CSR240-2.080(17)(B) AND (C).**

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)

Enclosure  
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
JAN 07 2002

Missouri Public  
Service Commission

In the Matter of the Application of )  
UtiliCorp United, Inc., a Delaware )  
Corporation, for Authority to Merge to )  
Effect a Name Change. )

Case No. EM-2002-297

**STAFF NOTICE, MOTION FOR CLARIFICATION AND REQUEST THAT UTILICORP  
BE DIRECTED TO COMPLY WITH 4 CSR 240-2.080(17)(B) AND (C)**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") in response to the January 3, 2002 Order Directing Filing of the Missouri Public Service Commission ("Commission"). On December 21, 2001, UtiliCorp filed an Application seeking approval from the Commission of the merger between UtiliCorp Renaming Corporation ("URC") and UtiliCorp United, Inc. ("UtiliCorp") by January 31, 2002. The Commission in its January 3, 2002 Order directed the Staff to file a pleading by January 7, 2002 stating whether it will be able to complete its investigation of the proposed transaction and be able to file its recommendation to the Commission by January 18, 2002. The Staff hereby notifies the Commission and other parties that it may require time beyond January 18, 2002 to complete its investigation of the transaction proposed by UtiliCorp; and further moves that the Commission clarify its January 3, 2002 Order to indicate whether, by directing it to investigate the "proposed transaction," it meant the merger between URC and UtiliCorp, or if it also intended that the Staff proceed to investigate the terms of the UtiliCorp-Aquila, Inc. exchange offer and acquisition.

1. The Staff would first note that regarding UtiliCorp's request for an Order of the Commission approving its Application by no later than January 31, 2002, bearing an effective date of February 12, 2002, UtiliCorp only provides the information regarding its request that it hopes to undertake the merger by as early as the end of February 2002, and nothing more:

17. UtiliCorp hopes to undertake the merger described above by as early as the end of February 2002. Consequently, UtiliCorp requests that the Commission issue an order approving this application by no later than January 31, 2002, bearing an effective date of February 12, 2002.

UtiliCorp has not requested expedited treatment, and Section 4 CSR 240-2.080(17) of the Commission's rules provides that any entity requesting expedited treatment must provide certain information. The Staff would first suggest that the Commission direct UtiliCorp to comply with 4 CSR 240-2.080(17)(B) and (C) which states as follows:

(17) Any party seeking expedited treatment in any case shall include in the title of the pleading the words "Motion for Expedited Treatment." The pleading shall also set out with particularity the following:

- (A) The date by which the party desires the commission to act;
- (B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and
- (C) That the pleading was filed as soon as it could have been or an explanation why it was not.

Although UtiliCorp did not make its filing with this Commission until December 21, 2001, UtiliCorp in a Form S-4 filing with the United States Securities And Exchange Commission (SEC) on December 3, 2001 advised the SEC that during the week of November 12, 2001 UtiliCorp filed applications with the Federal Energy Regulatory Commission (FERC) to obtain authorization to issue UtiliCorp shares of common stock and acquire with these shares, through a special acquisition subsidiary ("SAS"), 50% of the outstanding publicly held Class A common shares of Aquila. Since UtiliCorp already held approximately 80% of the Class A common shares of Aquila, UtiliCorp plans, once it holds 90% of the Class A common shares of Aquila, to merge Aquila and SAS in a short-form merger and thereby own 100% of Aquila's Class A common shares. Once this short-form merger is

accomplished, UtiliCorp intends to undertake a statutory merger, the sole purpose of which is to change the UtiliCorp name.

Apparently, the only portion of these transactions for which UtiliCorp is seeking authorization from this Commission is the statutory merger whereby UtiliCorp will change its name. To accomplish the name change, URC has been incorporated by UtiliCorp in Delaware. UtiliCorp states in its Application that URC is not currently conducting any business in Missouri or elsewhere. URC will be merged with and into UtiliCorp, with the latter surviving the merger. UtiliCorp's Delaware Certificate of Incorporation will be amended to reflect its new name, but will not otherwise be changed.

2. The Commission noted in its January 3, 2002 Order the paucity of information provided by UtiliCorp relative to the UtiliCorp-Aquila, Inc. exchange offer and acquisition. UtiliCorp provides no information why this Commission has no jurisdiction pursuant to Section 393.190 RSMo 2000 over UtiliCorp's acquisition of 50% of the outstanding publicly held Class A common shares of Aquila and the merger of Aquila and SAS in a short-form merger, whereby UtiliCorp will own 100% of Aquila's Class A common shares. The Staff is submitting this date a Data Request (DR) to UtiliCorp, a copy of which is attached hereto, which asks, among other things, that UtiliCorp provide a response to this and several other inquiries referred to in this pleading, such as information regarding the suit brought in Delaware Chancery Court by some Aquila shareholders to stop or delay the exchange of shares.

The Saturday, January 5, 2002 edition of the *The Kansas City Star* reported that UtiliCorp had announced on Friday, January 4, 2002 that it had acquired the necessary outstanding shares of Aquila Class A common stock. The article states, in part, as follows:

UtiliCorp United Inc. said Friday that it had completed an exchange offer for the Aquila Inc. shares that it doesn't already own.

Shareholders tendered a majority of Aquila shares, approving the deal by the 4 p.m. Friday deadline. A total of 15,270,303 shares, or about 75 percent of the total, were tendered.

"It looks like it went through without much of a hitch," said Ethan Hirsh, a spokesman for UtiliCorp, a Kansas City-based utility holding company.

The offer proceeded only after the Delaware Chancery Court on Thursday denied a request by some shareholders to stop or delay the exchange.

A News Release dated January 4, 2002 on the UtiliCorp web site states that "[a]ccording to Robert K. Green, UtiliCorp president and chief executive officer, the company expects to complete a short-form merger of Aquila with a UtiliCorp subsidiary on January 7, which would be the last day that Aquila shares are publicly traded."

3. UtiliCorp asserts in its Application that the transaction for which it is seeking authorization from this Commission is not detrimental to the public interest:

14. Because URC has no business or assets, the Merger will not have any impact on the financial statements of UtiliCorp or the surviving corporation. . . .

15. The Merger will have no adverse effect on the Missouri customers of UtiliCorp and, consequently, is not detrimental to the public interest. UtiliCorp's Missouri customers will see no change in their day-to-day utility service or rates, and said customers will continue to be served effectively and efficiently without interruption. The Merger will not result in any change in the business, management or location of the principal executive offices, assets, liabilities or net worth of the surviving corporation.

Despite these statements UtiliCorp has indicated to the Staff that it expects the Staff to reflect in its true-up in the pending UtiliCorp/Missouri Public Service rate increase case, Case No. ER-2001-672, the impact of UtiliCorp's buy-back of the outstanding shares of Aquila and short-form merger of SAS and Aquila. UtiliCorp has related to the Staff that the impact of these transactions will increase MPS's revenue requirement by approximately \$7.0 million.

The parties to Case No. ER-2001-672 have agreed that among the items to be trued-up in that proceeding as of January 31, 2002 is the UtiliCorp capital structure. This item was addressed as indicated below in the parties' August 31, 2001 filing with the Commission identifying those items that would be trued-up as of January 31, 2002:

**CAPITAL STRUCTURE:**

- (1) Rate of return – embedded cost of long-term debt, short-term debt and preferred stock (excludes return-on-equity);
- (2) Capital structure.

By indicating those items which are subject to true-up, the Staff did not intend to indicate that any event within the true-up period would be an appropriate item to reflect in rates.

4. In its January 3, 2001 Order, the Commission summarized UtiliCorp's request that the Commission find "the *proposed transaction* is not detrimental to the public interest" and authorize "UtiliCorp and Renaming to perform in accordance with the terms of the *acquisition* and to take any action reasonably necessary." (Emphasis added). The italicized terms may imply that the Commission perceives UtiliCorp's Application as a request for the Commission's approval over the UtiliCorp-Aquila, Inc. exchange offer and acquisition, rather than the merger between UtiliCorp and URC. This merger is the end result of a series of transactions, according to UtiliCorp, where UtiliCorp will acquire the outstanding shares of Aquila, Inc. However, the merger between URC and UtiliCorp appears to be a separate, independent transaction from UtiliCorp's acquisition of Aquila, Inc.'s shares. Accordingly, Staff seeks clarification from the Commission that the subject of its review, and the subject of UtiliCorp's Application, is limited to the merger between UtiliCorp and URC; or if it also encompasses a review of the UtiliCorp-Aquila, Inc. exchange offer and acquisition. If the latter, Staff seeks clarification of the aspects of the exchange offer and acquisition that the Commission wishes the Staff to investigate in this

proceeding. The Commission should be mindful that the Staff will evaluate the ratemaking effects of this transaction during the pending Missouri Public Service division rate case, ER-2001-672.

5. In paragraph 9 of its Application, UtiliCorp defines the "Merger" to be the "short-form merger whereby URC will be merged with and into UtiliCorp, the latter surviving." In its request for relief on page 5 of the Application, UtiliCorp requests the Commission to review that "Merger" and makes no reference to the Aquila-UtiliCorp exchange offer and acquisition. In light of this language, Staff believes UtiliCorp seeks Commission approval of solely the UtiliCorp-URC merger.

6. As previously noted, as part of its investigation, Staff is submitting at least one multi-part DR to UtiliCorp, and is sending this DR to UtiliCorp this date. However, Staff notes that 4 CSR 240-2.090 provides that a party may have twenty days to respond. Staff has discussed response times with UtiliCorp, but, as of the time of this filing, UtiliCorp has not had sufficient time to determine a response framework. It is likely that the Staff will not receive responses with enough time to complete a recommendation by January 18, 2002. Accordingly, at this time, subject to other direction from the Commission, the Staff can only commit to filing a recommendation fourteen days after it receives the DR responses.

**WHEREFORE**, Staff respectfully requests that the Commission clarify its January 3, 2002 Order regarding Staff's review of the UtiliCorp-URC merger transaction; direct UtiliCorp to comply with the provisions of 4 CSR 240-2.080(17)(B) and (C) to obtain expedited treatment by providing information supporting the urgency of its request; and permit Staff to file its Recommendation fourteen days after Staff receives a complete response to the attached Data Request.

Respectfully submitted,

DANA K. JOYCE  
General Counsel



David A. Meyer  
Associate General Counsel  
Mo. Bar. #46620

Steven Dottheim  
Chief Deputy General Counsel  
Mo. Bar #29149

Attorneys for the  
Missouri Public Service Commission  
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dmeyer@mail.state.mo.us

### **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 7th day of January, 2002.



**Service List for**  
**Case No. EM-2002-297**  
**Verified: January 7, 2002 (rr)**

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

**Paul A Boudreau**  
**Brydon, Swearengen & England P.C.**  
P.O. Box 456  
Jefferson City, MO 65102-0456

## **Certain Legal Matters and Regulatory Approvals**

### *General*

Except as we have described in this prospectus, we are not aware of any license or regulatory permit material to the business of Aquila and its subsidiaries, on a consolidated basis, that may be materially adversely affected by our acquisition of Aquila's Class A shares, or any filing or approval that would be required for our acquisition of Aquila's Class A shares. We intend to make all required filings under the Securities Act and the Exchange Act.

### *Approval of the Federal Energy Regulatory Commission*

In order for us to acquire the Class A common shares of Aquila and issue our shares of common stock pursuant to the offer and the subsequent merger, we must obtain authorization from the Federal Energy Regulatory Commission, or the FERC, under the Federal Power Act. We filed applications to obtain this authorization from the FERC during the week of November 12, 2001. Although we cannot be certain, we expect that we will obtain authorization from the FERC by the middle of December 2001.

### *State Takeover Laws*

A number of states have adopted takeover laws and regulations which purport, to varying degrees, to be applicable to attempts to acquire securities of corporations which have substantial assets, stockholders, principal executive offices or principal places of business in those states. We have not attempted to comply with any state takeover statutes in connection with the offer, since we do not believe that any of these apply. However, we reserve the right to challenge the validity or applicability of any state law allegedly applicable to the offer, and nothing in this prospectus nor any action taken in connection herewith is intended as a waiver of that right. If one or more takeover statutes applies to the offer and is not found to be invalid, we may be required to file documents with, or receive approvals from, relevant state authorities and we may also be unable to accept for exchange shares tendered into the offer or may delay the offer. See "—Conditions of the Offer" beginning on page 45.

### *Non-U.S. Approvals*

We are unaware of any requirement for the filing of information with, or the obtaining of the approval of, governmental authorities in any non-U.S. jurisdiction that is applicable to the offer or the merger.

DATA INFORMATION REQUEST  
UTILICORP UNITED INC.  
CASE NUMBER EM-2002-297

Requested From: Paul Boudreau, Esq.

Date Requested: January 7, 2002

Information Requested: See Attached.

Requested By: Steven Dottheim, Esq.

Information Provided: \_\_\_\_\_

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The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. EM-2002-297 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in Utilicorp United, Inc.'s Kansas City, Missouri office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to Utilicorp United, Inc. and its employees, contractors, agents or others employed by or acting in its behalf.

Signed by: \_\_\_\_\_

Date Response Received: \_\_\_\_\_

Prepared by: \_\_\_\_\_

1. For each transaction identified by UtiliCorp in its Application in Case No. EM-2002-297, please indicate the following:
  - (a) The specific transaction for which authorization is being sought or was obtained from the Federal Energy Regulatory Commission (FERC) and the FERC docket in which such authorization is being sought or was obtained;
  - (b) The specific federal statutory section and subsection requiring FERC authorization of the transaction identified;
  - (c) The specific transaction for which authorization is being sought or was obtained from the Securities And Exchange Commission (SEC) and the SEC docket in which such authorization is being sought or was been obtained;
  - (d) The specific federal statutory section and subsection requiring SEC authorization of the transaction identified;
  - (e) The specific transaction for which authorization is being sought or was obtained from any Delaware government department and/or agency and the Delaware proceeding in which such authorization is being sought or was obtained;
  - (f) The specific Delaware statutory section and subsection requiring Delaware government department and/or agency authorization of the transaction identified;
  - (g) The specific transaction for which authorization is being sought from the Missouri Public Service Commission in Case No. EM-2002-297; and
  - (h) The specific Missouri, federal and/or Delaware statutory section and subsection requiring Missouri Public Service Commission authorization of the transaction identified.
2. For each transaction for which UtiliCorp has obtained or is seeking FERC, SEC and/or Delaware government department and/or agency authorization, but is not seeking Commission authorization, please identify why Section 393.190 RSMo 2000 does not apply.
3. Provide a description of the litigation referred to in the Saturday, January 5, 2002 *Kansas City Star* as resulting in a decision of the Delaware Chancery Court, on Thursday, January 3, 2002, denying a request by some shareholders to stop or delay the exchange of UtiliCorp and Aquila shares. Also provide a copy of the pleading initiating the proceeding in Delaware Chancery Court and the decision of the Delaware Chancery Court on Thursday, January 3, 2002.