

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
July 6, 2000**

CASE NO: EM-2000-369

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

James C. Swearngen/Paul A. Boudreau
Brydon, Swearngen & England, P. C.
P. O. Box 456
Jefferson City, MO 65102-0456

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

Jeffrey A. Keevil
Stewart & Keevil Law Offices
1001 Cherry St., Suite 302
Columbia, MO 65201

James B. Deutsch
Blitz, Bardgett & Deutsch, L.C.
908 East High Street, Suite 301
Jefferson City, MO 65101

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102


Shelley A. Woods
Assistant Attorney General
P. O. Box 176
Jefferson City, MO 65102

William J. Niehoff
Union Electric Company d/b/a AmerenUE
P. O. Box 66149 (MC 1310)
St. Louis, MO 63166

Stuart W. Conrad
Finnegan, Conrad & Peterson
3100 Broadway, 1209 Penntower Office
Kansas City, MO 64111

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 6th
day of July, 2000.

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

ORDER GRANTING APPLICATION TO INTERVENE

On June 16, 2000, Albert Fuchs, George Dorsey, Jack De Graffenreid, Richard V. Vanwinkle, Jack Wilson, Vernon Corkle, Verl Alumbaugh, Donald Crayne, Bill Athey and Glenn D. Rhoads (collectively referred to as the Empire Retirees) filed an application requesting that the Commission grant them leave to intervene as parties in this matter. The Empire Retirees state that they are all retired former employees of The Empire District Electric Company (Empire). They allege that Empire's proposed merger with UtiliCorp United Inc. (UtiliCorp) would directly and adversely affect the benefits they receive as retired former employees of Empire. Specifically, the Empire Retirees allege that after the merger, UtiliCorp will increase the portion of the health insurance premiums paid by the retirees until they are paying 100% of their health insurance premiums. The Empire Retirees also allege that allowing them to intervene will be in the public interest in that it will allow them

56

to protect their own interests and the interests of similarly situated retirees whom no other party is in a position to represent and protect.

The Empire Retirees acknowledge that the Commission imposed deadline for submission of requests to intervene expired on January 14, 2000. However, they state that they did not become aware of the effect of the merger on their retirement benefits until more recently. The Empire Retirees state that they will comply with the procedural schedule already established in this case. In fact, the Empire Retirees filed rebuttal testimony on June 21, in accordance with the established procedural schedule.

UtiliCorp and Empire filed a response to the Empire Retirees' Application to Intervene on June 21. They oppose the application to intervene because it was filed late and because they allege that the Empire Retirees had notice of the effects of the proposed merger on their retirement benefits in plenty of time to have filed a timely motion to intervene. UtiliCorp and Empire also allege that the Empire Retirees cannot appropriately represent the class of all persons retired from Empire because the Commission's procedures do not authorize a "class action." Finally, UtiliCorp and Empire allege that the Commission has no jurisdiction to address whether or not the Empire Retirees have a legal right to the benefits they identify. Accordingly, UtiliCorp and Empire assert that the Empire Retirees' right to those benefits will not be affected by an order of the Commission in this case and therefore the granting of intervention would not serve the public interest.

On June 27, ICI Explosives USA, Inc. and Praxair, Inc. filed a response in support of the Empire Retirees' application to intervene. The Office of the Public Counsel also filed a response in support of the application to intervene on June 27. The Empire Retirees filed their reply to the response of UtiliCorp and Empire on June 27. The Empire Retirees point out that 4 CSR 240-2.075(5) permits intervention after the intervention date upon a showing of good cause. They allege that the question of whether or not the Empire Retirees had early notice of all the effects of the merger is irrelevant. The Empire Retirees also deny that they are attempting to bring any sort of "class action." They state that they are only speaking for themselves but point out that other retired former employees are similarly situated.

The Commission has reviewed the application to intervene and finds that it is in compliance with Commission rule 4 CSR 240-2.075. The Empire Retirees clearly have an interest in this matter that is different from that of the general public and which may be adversely affected by a final order arising from the case. They are interested in the retirement benefits that they believe to be at risk. Certainly, the general public does not share the Empire Retirees' level of concern about those benefits and, as Public Counsel points out, the interests of the Empire Retirees cannot be adequately represented by Public Counsel, or any other party to the case.

Similarly, allowing the Empire Retirees to intervene in this matter would serve the public interest. The Commission exists to regulate Missouri utilities on behalf of the citizens of this state. The

Commission is best able to fulfill its role when it is able to hear the views of those citizens. The Empire Retirees are able to represent a view that might not otherwise be brought before the Commission. Therefore, the public interest will best be served if the Empire Retirees are allowed to intervene.

Because the Empire Retirees' application to intervene was not timely filed, 4 CSR 240-2.075(5) provides that the Commission may grant the application upon a showing of good cause. The Empire Retirees have shown that they were not fully aware of the possible effect of the merger on their retirement benefits until after the intervention deadline. Therefore, their failure to seek intervention before the intervention deadline can be excused. Furthermore, the Empire Retirees have sought intervention at a time when allowing them to enter the case will not cause a disruption of the procedural schedule. The Empire Retirees have already filed rebuttal testimony and their entry into the case will not cause any delay in the resolution of the case. The Empire Retirees have shown good cause for allowing them to intervene.

The Commission concludes that the application for intervention should be granted.

IT IS THEREFORE ORDERED:

1. That the Application to Intervene of Albert Fuchs, George Dorsey, Jack De Graffenreid, Richard V. Vanwinkle, Jack Wilson, Vernon Corkle, Verl Alumbaugh, Donald Crayne, Bill Athey and Glenn D. Rhoads is granted.

2. That this order shall become effective on July 18, 2000.

BY THE COMMISSION

A handwritten signature in dark ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Schemenauer,
and Simmons, CC., concur
Murray, C., dissents

Woodruff, Regulatory Law Judge

FYI: To Be Issued By Delegation

AL/Sec'y: Woodruff/Boyce

6-28

Date Circulated

7-3

Return by 3 p.m.

10 am

EM-2000-369

CASE NO.

SL

Lumpe, Chair

MD

DR

Drainer, Vice Chair

MD

CM

Murray, Commissioner

DS

Schemenauer, Commissioner

KS

Simmons, Commissioner

agenda date 7/6

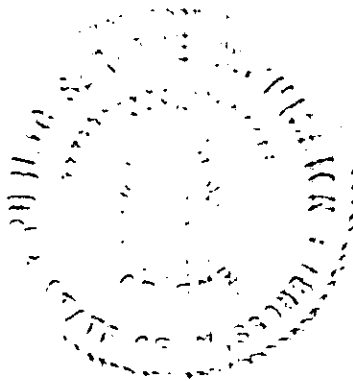
action taken 4-1 AS

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 6th day of July 2000.



Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge