

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. CIOTTONE

January 21, 2000

FILED³

JAN 21 2000

Missouri Public
Service Commission

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

Re: Case No. EM-2000-369

Dear Mr. Roberts:

Enclosed for filing in the referenced case on behalf of UtiliCorp United Inc. and The Empire District Electric Company, please find an original and fourteen copies of Response of UtiliCorp and Empire to Motion to Consolidate.

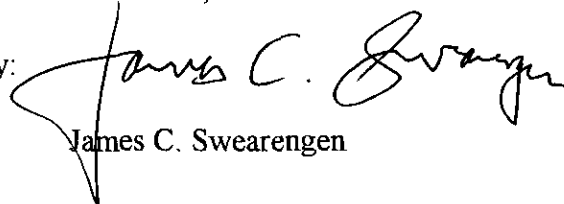
Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

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

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



James C. Swearngen

JCS/lar

Enclosure

cc: All Parties of Record

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

FILED³
JAN 21 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

Missouri Public
Service Commission

**RESPONSE OF UTILICORP AND EMPIRE
TO MOTION TO CONSOLIDATE**

COME NOW UtiliCorp United Inc. ("UtiliCorp") and The Empire District Electric Company ("Empire"), by counsel, and for their response to the Motion to Consolidate filed by the Office of the Public Counsel ("OPC") respectfully state as follows to the Missouri Public Service Commission ("Commission"):

1. UtiliCorp and Empire are sympathetic to the concerns expressed by the OPC in its Motion to Consolidate. UtiliCorp and Empire also desire to avoid a waste of resources in connection with the processing of the involved applications. UtiliCorp and Empire submit, however, that consolidation of these cases, as proposed by the OPC, would not achieve this result, but rather would serve to confuse and complicate these matters.

2. UtiliCorp and Empire oppose the Motion to Consolidate for several reasons. First, the UtiliCorp/Empire merger and the UtiliCorp/St. Joseph Light & Power Company ("SJLP") merger are two separate and distinct transactions. Each is the subject of a separate and distinct merger agreement with different timetables¹. Each has its own unique facets. Each should be decided on its own merits by a separate and distinct Commission order based on record evidence pertaining

¹The Termination Date of the Agreement and Plan of Merger between Empire and UtiliCorp is December 31, 2000. The transaction must be closed on or before that date. UtiliCorp and Empire initially proposed a procedural schedule which called for hearings in June 2000. Subsequently, the Commission set hearings in the UtiliCorp/SJLP transaction for July 10-14, 2000, which suggests that hearings in the UtiliCorp/Empire case may be later. In any event, UtiliCorp/Empire desire a schedule which will permit a Commission order by year-end.

20

to that transaction. Either, neither or both may be consummated and therefore each proposed merger should be dealt with accordingly. To "consolidate" and thereby "join together into one whole" these two separate transactions would not only create confusion and processing inefficiencies, but would also deny UtiliCorp and Empire the opportunity to have their application and merger agreement considered and decided on its own merits based on the record evidence by a separate Commission order and consequently a consolidation of these applications would violate their due process rights.

3. In addition, rather than simplifying the processing of these matters, the consolidation of these two distinct and different cases will produce just the opposite result for the following reasons:

- The two transactions are each based on separate and distinct merger agreements, resulting from different processes, the terms of which are in no way identical. One of the agreements (SJLP) was the result of a bid process. The other (Empire) was the result of a negotiation process. The Commission should consider each agreement and the process which led to it independent of the other.
- The "regulatory plans" for the two transactions are significantly different. For example, the UtiliCorp/Empire regulatory plan, for which approval is sought in the merger docket, includes certain details concerning what is described as "the Pre-Moratorium Rate Case" which Empire will file in the second half of 2000. No such issues are present in the UtiliCorp/SJLP case. To consolidate these cases and consider in one proceeding these separate and distinct regulatory plans will unnecessarily confuse and complicate these proceedings and result in a waste of

resources.

- SJLP's and Empire's service territories are uniquely different in that SJLP serves retail customers in Missouri only, while Empire serves retail customers in three other states.
- Given the differences in the transactions, consolidating the cases with a single set of witness testimony for both matters, a single statement of issues and a joint hearing with all witnesses from both cases taking the stand will be inefficient and cumbersome. In fact, it will be difficult and burdensome for UtiliCorp and other witnesses to undergo cross examination on both transactions at the same time. Shifting back and forth between the two cases with respect to the various issues will be confusing for the witnesses, as well as the Commission and the other parties, and will likely produce an unclear record.
- The parties to the two cases are not the same. AG Processing, Inc. is in the UtiliCorp/SJLP case but not UtiliCorp/Empire. IBEW Local 1474, Praxair, Inc. and ICI Explosives USA, Inc. are in the UtiliCorp/Empire case, but not UtiliCorp/SJLP. Consequently, some parties will be entitled to file testimony and cross examine with respect to one case, but not the other. Dealing with this situation in a consolidated hearing format will create more issues and inefficiencies than it will resolve.

4. Notwithstanding the foregoing, should UtiliCorp and Empire later determine that joint processing in certain area(s) could be beneficial and would not jeopardize their due process rights, UtiliCorp and Empire will bring this to the attention of the other parties and the Commission. For

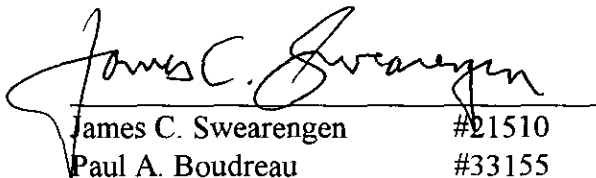
example, UtiliCorp and Empire believe that it may be useful if the discovery in their case is utilized, where appropriate, in the UtiliCorp/SJLP case so long as said utilization is in accordance with the Commission's orders and is otherwise lawful and reasonable.

5. Processing each case independently and on its own separate schedule will preserve the due process rights of UtiliCorp and Empire while affording the Commission the opportunity to examine the two transactions and the issues in the same general timeframe and with the assumption that either or both mergers may be consummated.

6. In view of the foregoing, the Motion to Consolidate should be denied and the UtiliCorp/Empire case should be processed in accordance with a schedule which will permit a closing of the transaction by December 31, 2000, the Termination Date of the Agreement and Plan of Merger between Empire and UtiliCorp.

WHEREFORE, UtiliCorp and Empire respectfully urge the Commission to issue its order denying the Motion to Consolidate.

Respectfully submitted,



James C. Swearingen #21510

Paul A. Boudreau #33155

Brydon, Swearingen & England P.C.

P.O. Box 456

Jefferson City, MO 65102-0456

Telephone (573) 635-7166

Facsimile (573) 635-0427

E-Mail PBoudreau@mail.ultraweb.net

Attorneys for UtiliCorp United Inc./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 JANUARY, 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

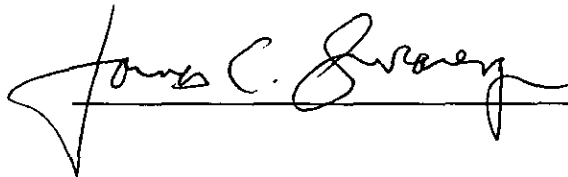
William A. Jolley
Jolley Walsh Hurley & Raisher
204 W. Linwood Blvd.
Kansas City, MO 64111

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

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

A handwritten signature in black ink, reading "James C. Sweeney", is written over a horizontal line.