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June 2, 2000

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

**Re: Case No. EA-2000-764**

Dear Mr. Roberts:

Enclosed for filing in the referenced case on behalf of The Empire District Electric Company, please find an original and eight (8) copies of a Reply of The Empire District Electric Company to Response of Staff to Motion for Expedited Consideration.

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: 

Paul A. Boudreau

PAB/lar

Enclosure

cc: Bruce Bates, Assistant General Counsel  
Office of the Public Counsel

**FILED<sup>2</sup>**  
JUN 2 2000  
Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

JUN 2 2000

Missouri Public  
Service Commission

In the Matter of the Application of The )  
Empire District Electric Company for )  
an Order authorizing it to Renew its )  
Shareholders Rights Plan by Making a )  
Dividend Distribution to All Holders of )  
its Common Stock of Certain Rights, )  
including, among other things, the Right )  
to Purchase Additional Shares of )  
Preference and Common Stock of the )  
Company, to issue and sell such Additional )  
Shares of Stock as may be required by the )  
Exercise of such Rights. )

Case No. EA-2000-764

**REPLY OF THE EMPIRE DISTRICT ELECTRIC COMPANY**  
**TO RESPONSE OF STAFF TO MOTION**  
**FOR EXPEDITED CONSIDERATION**

Pursuant to the Order of the Missouri Public Service Commission ("Commission"), the Commission Staff ("Staff") filed its Response to Order Establishing Time in Which to Respond to Motion for Expedited Consideration ("Response") in the referenced case on May 25, 2000. A number of statements made by the Staff in that Response require a reply or explanation by The Empire District Electric Company ("Empire").

1. With respect to the timing of the filing, Empire's current shareholder rights plan expires July 25, 2000. When it had become apparent that the pending merger between Empire and UtiliCorp United Inc. ("UtiliCorp") would not close by the June 1, 2000 initial termination date provided for in the Agreement and Plan of Merger, Empire's Board of Directors, at its April 27, 2000 meeting, voted to approve an extension of the Rights Agreement. As a consequence, the Rights Plan is dated as of April 27, 2000, and was available for filing with the Commission shortly thereafter.

2. While it is true that many utilities do meet with representatives of the Staff and the Office of the Public Counsel ("OPC") prior to the filing of certain novel, complicated or urgent matters, and Empire has done this in the past, it certainly has not been the customary practice with

respect to routine or ministerial filings. Given that Empire's proposal in this case is simply an extension of the existing shareholder rights plan, and similar to plans approved by the Commission for Laclede Gas Company (GF-86-131 and GF-96-309), St. Joseph Light & Power Company (EF-87-56 and EF-97-114) and UtiliCorp (EF-97-202), Empire considered its request to be routine. Nonetheless, Empire appreciates the Staff's courtesy and willingness to meet on this routine matter and Empire is prepared to meet with the Staff and OPC on short notice, answer questions and provide information to assist in an expedited review process. As a result, the Staff and OPC will find that the Rights Agreement, which is the subject of this *Application*, is substantially the same as Empire's existing shareholder rights plan previously approved by the Commission, modified only as necessary to comply with intervening changes in the law and circumstance.

3. The Staff states it is "concerned that immediate approval of Empire's Application will . . . fail to include all necessary conditions to prevent public detriment." Empire fails to see how this can be a legitimate issue in light of the fact that a nearly identical Empire Rights Agreement was approved by the Commission in its Case No. EF-91-21. That plan is currently in effect and Empire is unaware of any detriment resulting to the public during the time that it has been in place.

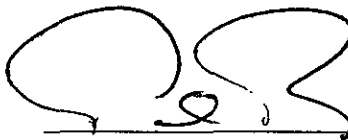
4. Finally, the Staff states that it is concerned that the shareholder rights plan will "preclude another company from acquiring Empire on more favorable terms to the public than proposed by UtiliCorp." This statement misinterprets Empire's goal in renewing the shareholder rights plan through the proposed Rights Agreement. The goal of the Rights Plan is to provide Empire's Board of Directors a tool that gives it the time and the means to ensure that a potential acquirer (particularly a hostile acquirer) offers the best terms for shareholders and other affected interests. The effectiveness of such an agreement is demonstrated by the fact that the protective

provisions of very few such plans have ever been implemented because they have worked, that is, any acquiring entity has been compelled to work with the company's Board of Directors. It is this fact that provides the basis for Empire's statement that "It is not currently expected (or likely) that the Rights will ever be exercised." This does not mean, however, that the plan is not necessary. In fact, just the opposite is indicated. The Staff's statement also reflects a misunderstanding of the standard applied in merger proceedings. That standard is whether or not the merger will be detrimental to the public; a public benefit does not have to result.

5. Empire has other concerns about the Staff's Response and reserves the right to address them in a reply to the Staff's Recommendation concerning the merits of the *Application*. The Staff states that it can file its Recommendation by July 14, 2000. If Empire deems it necessary to reply, however, this date will not allow Empire a fair or reasonable opportunity to do so, nor will it give the Commission sufficient time to prepare and issue an Order with respect to the *Application* prior to the expiration of Empire's current Rights Agreement on July 25, 2000. Consequently, Empire believes that an earlier Staff filing, perhaps by June 30, 2000, is appropriate in light of the routine nature of Empire's request and the fact that there are no material differences between the shareholder rights plan that Empire currently has in effect and the Rights Agreement which is the subject of this *Application*. To facilitate this filing date, Empire will meet with the Staff and will provide expeditious responses to any Staff data requests.

WHEREFORE, having replied to the Staff's Response to Empire's Motion for Expedited Consideration, Empire reserves the right to file a response to the Staff's Recommendation in this case and requests the Commission to direct the filing of that Recommendation by June 30, 2000.

Respectfully submitted,



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Attorneys for 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 2nd day of June, 2000, to:

Missouri Public Service Commission  
General Counsel's Office  
Truman State Office Building  
Room 530  
P.O. Box 360  
Jefferson City, MO 65102

Office of the Public Counsel  
Truman State Office Building  
Room 250  
P.O. Box 7800  
Jefferson City, MO 65102-7800

