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*ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS

January 20, 2000

FEDERAL EXPRESS

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
301 West High R530
Jefferson City, Missouri 65102

Missouri Public
Service Commission

Re: UtiliCorp United and Empire District Proposed Merger
Missouri PSC Case No. EM-2000-369

Dear Mr. Roberts:

Enclosed are the original and fourteen (14) conformed copies of a pleading, which please file in the above matter and call to the attention of the Commission.

An additional copy of the **INITIAL PAGE** of the material to be filed is enclosed, which kindly mark as received and return to me in the enclosed envelope as proof of filing.

Thank you for your attention to this important matter. If you have any questions, please call.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 

Stuart W. Conrad

SWC:s
Enclosures
cc: All Parties

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FILED

JAN 21 2000

FILED

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

JAN ²¹~~24~~ 2000 *nh*

Missouri Public
Service Commission

In the matter of the Joint Applica-)
tion of UtiliCorp United Inc. and)
The Empire District Electric Compa-)
ny for authority to merge The Em-)
pire District Electric Company with)
and into UtiliCorp United Inc. and,)
in connection therewith, certain)
other related transactions.)

EM-2000-369

ICI EXPLOSIVES USA, INC AND PRAXAIR, INC.
RESPONSE TO PUBLIC COUNSEL MOTION TO CONSOLIDATE

ICI EXPLOSIVES USA, INC AND PRAXAIR, INC.
RESPONSE TO JOINT APPLICANTS'
MOTION TO ESTABLISH PROCEDURAL SCHEDULE

COME NOW Intervenors ICI EXPLOSIVES USA, INC. ("ICI")
and PRAXAIR INC. ("Praxair") and respond to Public Counsel's
Motion to Consolidate and to Joint Applicants' Proposed Procedur-
al Schedule as follows:

Motion to Consolidate

1. ICI and Praxair support Public Counsel's Motion to
Consolidate.

Proposed Procedural Schedule

2. The Joint Applicants' Proposed Procedural Schedule
is unreasonable and should not be approved. The following table
demonstrates the incongruity of Joint Applicants' proposal, as
well as its infeasability, when laid beside the Commission-
ordered schedule in EM-2000-292:

Date Ordered By Commission in EM-2000-292	Event	Date Proposed by Joint Applicants
October 19, 1999	Filing of Application/Direct Testi- mony	December 15, 1999
April 20, 2000	Rebuttal Testimony by Oth- er Parties	April 14, 2000
May 18, 2000	Prehearing Conference	May 30 - June 2, 2000
May 25, 2000	List of issues	[not proposed]
June 15, 2000	Joint Applicants surrebut- tal testimony	May 12, 2000
June 15, 2000	Other parties' surrebuttal testimony	[not proposed]
June 22, 2000	Statements of Position	June 9, 2000
July 10-14, 2000	Hearing	June 19-23, 2000
[not ordered]	Briefs	July, 2000

3. Joint Applicants' proposal would "leapfrog" this case ahead of cases already scheduled by this Commission and create an unworkable situation for these intervenors and presumably for other parties. Examination of the above table suggests that it might very well create problems for Joint Applicants themselves.

4. This merger proposal was announced in May, 1999. Commission approval was not sought until seven months later. After waiting seven months to make their filing, Joint Applicants cannot be heard to complain of commensurate time allotments so that other interested parties may review the effect of their proposed merger. If the filing is so complicated that it took seven months to put together, other parties should not be expected to analyze and respond to it in a significantly reduced time. If the Joint Applicants took seven months after announcing their

merger to do their "due diligence," inspection of their handiwork should not be forced into substantially less time. Typical claims by merger applicants that approvals must be "rushed" or "accelerated" are negated by Joint Applicants' own delays.

5. Moreover, the issue of market power has not been addressed in this docket. Following a proper filing by Joint Applicants that discusses market power aspects of this filing, time should be provided for analysis and response thereof.^{1/} Joint Applicants are not making this filing in order to weaken their consolidated **retail** market power and no argument can be made that two potential competitors can be reduced to one with no effect on the market power of the consolidated entity. The Commission seems fearful that it will "get out in front" of the legislature on competitive issues. Preservation of the status quo, however, requires preservation of **both sides** of the status quo. The surest way to lose control of a situation is to ignore its development and ignoring this issue does not make the issue disappear. It is a certainty that the approval of this merger will make one potential retail competitor disappear. The guard-

^{1/}ICI and Praxair are aware that the Commission has determined in the EM-2000-292 docket not to require the Joint Applicants to submit a market power study. The result of that decision may result in further delays in that case as Joint Applicants will likely file their market power study in response to the direct cases of other parties, which will then necessitate further delays in the procedural schedule for analysis of a position that should have been filed in the beginning.

ians of the chickens fret about the best way to defend the coop while the fox enjoys chicken dinners.

6. Accordingly, we would propose the following schedule for the *consolidated* cases:

Event	Proposed [or actual] Date
Joint Application and Joint Applicants' Direct Testimony	December 15, 1999
Supplemental Market Power Filing by Joint Applicants	February 15, 2000
Rebuttal Testimony from Intervenors, Staff Public Counsel	June 20, 2000
Surrebuttal from Joint Applicants; Cross-Rebuttal from other parties on issues raised initially in their rebuttal (if any)	July 20, 2000
Prehearing Conference	July 31 - August 4, 2000
List of Issues [Staff]	July 31, 2000
Surrebuttal from other parties on issues addressed in Cross-Rebuttal	August 15, 2000
Statements of Position	August 30, 2000
Hearings	[scheduled by Commission, but not prior to September 5, 2000]

7. It should also not be forgotten that this filing contains a "hidden" rate increase case in which the Commission is asked to pre-approve a rate increase for Empire District *in advance* of any "moratorium." These intervenors oppose this attempt as not only an incorrect procedure but as a filing that properly should not be part of a merger case at all. Statutory methods and Commission procedures are provided for handling of rate increase proposals. They should not be accomplished through merger proposals. Moreover, UtiliCorp's decision to acquire Empire District must have withstood scrutiny as a business

decision *on existing rate revenues*, not on an expectancy. Attempting to establish future rate levels, or permitting portions of a rate case to be considered but excluding consideration of others would be unlawful. In any event, the presence of this proposal will almost certainly *delay* consideration of Joint Applicant's proposal and will significantly complicate the handling of this case. For that reason, the above suggested procedural schedule *does not take into account any additional time that may result from the complexity of attempting to handle a "hidden rate case" within the context of a merger proceeding*. If that part of the proposal is maintained, then a more traditional rate case schedule should be adopted, but in neither event should Joint Applicants' proposal be adopted.

WHEREFORE, ICI and Praxair pray: (a) that Public Counsel's Motion to Consolidate be approved; (b) that Joint Applicants' Proposed Procedural Schedule be rejected; and (c)

that the above procedural schedule be approved, **subject to**
removal of the "hidden rate case" from the merger filing.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

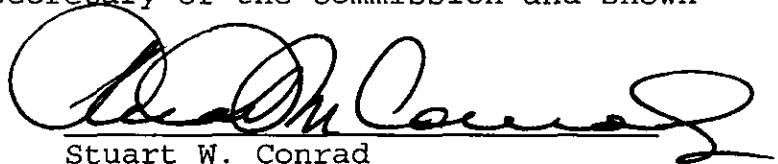


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ATTORNEYS FOR ICI EXPLOSIVES USA,
INC and PRAXAIR INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the
foregoing Application for Leave to Intervene by U.S. mail,
postage prepaid addressed to all parties by their attorneys of
record as provided by the Secretary of the Commission and shown
on the sheet following.



Stuart W. Conrad

Dated: January 21, 2000

Service Listing for EM-2000-369

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