

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
July 13, 2000**

CASE NO: EF-2000-764

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312 E. Capitol Avenue, PO Box 456
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**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 13th
day of July, 2000.

In the Matter of the Application of)	
The Empire District Electric Company for)	
an Order Authorizing it to Adopt 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)	<u>Case No. EF-2000-764</u>
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)	

ORDER GRANTING APPLICATION

The Empire District Electric Company (Empire) filed an Application on May 17, 2000, for a Commission order authorizing it to adopt a new shareholder rights plan and to implement that plan by making a dividend distribution to all holders of its common stock. Empire's existing shareholder rights plan expires on July 25, 2000. On May 19, Empire filed a Motion for Expedited Consideration, asking that the Commission issue an order approving its application no later than June 30, so as to ensure continuity with the existing shareholder rights plan. The Commission issued an order on May 22, directing the Staff of the Public Service Commission (Staff) to file a response to Empire's Motion for Expedited Consideration on or before May 25. Staff filed its response on May 25, objecting to Empire's request that its Application be

considered and approved before June 30. Empire filed a Reply to Staff's Response on June 2. On June 7, Staff filed a response to Empire's reply.

On June 8, the Commission issued an order that denied Empire's motion for expedited treatment but directed Staff to file its recommendations regarding Empire's Application by June 30. Staff filed its Recommendation and Memorandum on June 30. Staff recommended that the Commission approve the application but only if it imposed one of two conditions. Empire filed a response to Staff's Recommendation on July 7. Empire opposed the imposition of either condition recommended by Staff.

Staff recommends that the Commission approve the Application with the modification that Empire cannot exercise the Shareholders Rights Agreement without first coming before the Commission and obtaining the Commission's approval to invoke the Shareholders Rights Agreement. Staff indicates that this condition would allow the Commission the opportunity to evaluate a transaction it might otherwise never be made aware of because the bidder would be deterred by the new Shareholders Rights Agreement.

As an alternative, Staff recommends that the Commission approve the Application for a limited period but provide that it would be terminated sooner if the Commission issues an order terminating or rescinding its authorization. Staff indicates that this condition would allow the Commission the opportunity to eliminate a situation that would deter a bidder with an offer that would provide a greater benefit to the public. The bidder could petition the Commission to rescind or terminate the Commission's authorization of the Shareholders Rights Agreement because

the operation of that agreement would be a detriment to the public interest.

Empire's response to Staff's recommendations indicates that it is vehemently opposed to the imposition of either condition recommended by Staff. Empire points out that the imposition of either condition would render the approval meaningless, destroying the rights agreement as an effective tool for providing protection to the shareholders and other constituents. Empire also argues that there is no statutory basis to allow the Commission to impose the recommended conditions. Empire asserts that either condition would impose the Commission deeply into the corporate affairs of Empire by involving the Commission in the decision about whether or not Empire should enter into an agreement of merger with one particular bidder as opposed to another.

The Commission finds Empire's arguments to be persuasive. The Commission does not wish to attempt to impose itself into determinations appropriately made by Empire's board of directors. The Commission's proper role is to examine any proposed merger to determine whether or not it is detrimental to the public. The Commission takes that role seriously and is currently fulfilling that role in its examination of the proposed merger of Empire with and into UtiliCorp United Inc. The Commission does not have, and does not desire, the authority to sift through various possible bids for Empire to try to substitute its judgment for that of Empire's board of directors.

IT IS THEREFORE ORDERED:

1. That the Application filed by The Empire District Electric Company for an order authorizing it to adopt a shareholder rights plan, to make a dividend distribution of certain rights to holders of common stock and to issue shares of its preference stock, common stock, other securities, cash or assets upon the exercise or exchange of such rights is granted.

2. That this order shall become effective on July 25, 2000.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Lumpe, Ch., Drainer, Murray, and Simmons, CC., concur
Schemenauer, C., not participating

Woodruff, Regulatory Law Judge

Att/Sec'y: Woodruff/Boyce

Date Circulated 7-11 CASE NO. EF-2000-764

JS
Lumpke, Chair

add
Draimer, Vice Chair

am
Murray, Commissioner

RS NP
Schemenauer, Commissioner

LS
Simmons, Commissioner

Agenda Date 7-13

Action taken: 4-0 AS

Must Vote Not Later Than _____

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 13th day of July 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

