

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
December 18, 2001**

**CASE NO: EO-2002-215**

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

**General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
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**James C. Swearingen  
Paul A. Boudreau  
Brydon, Swearingen & England P.C.  
P.O. box 456  
Jefferson City, MO 65102**

**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**

**Uncertified Copies:**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service  
Commission held at its office in  
Jefferson City on the 18th day of  
December, 2001.

In the Matter of the Application of UtiliCorp United Inc.,	)	
for Authority to Acquire the Shares of Avon Energy	)	
Partners Holdings and to Take All Other Actions	)	<b><u>Case No. EO-2002-215</u></b>
Reasonably Necessary to Effectuate Said Transaction	)	

**ORDER APPROVING APPLICATION**

**Syllabus:**

On October 30, 2001, UtiliCorp United Inc. (UtiliCorp) filed an application with the Commission requesting approval of a Share Purchase and Sale Agreement between UtiliCorp, as purchaser, and EI UK Holdings, Inc. (EI UK), as seller, providing for UtiliCorp to acquire all the outstanding shares of Avon Energy Partners Holdings (Avon) from EI UK. This order approves the application and authorizes UtiliCorp to complete the transaction acquiring Avon.

**Standard of Review:**

UtiliCorp requests approval of its application and proposed acquisition pursuant to Section 393.190, RSMo 2000, and 4 CSR 240-2.060(12). Section 393.190 requires an electrical corporation regulated by the Commission to obtain the Commission's approval to acquire the stock of any other corporation engaged in the same or similar business. Under the regulation UtiliCorp must provide the Commission with a copy of its agreement to acquire the stock of the public utility (Avon), a copy of the resolution of its board

authorizing the acquisition and show why the transaction is not detrimental to the public interest.

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no proper party is granted intervention and neither the Commission's Staff nor the Office of the Public Counsel requests a hearing, the Commission may determine that a hearing is not necessary and that the applicant may submit its evidence in support of the application by verified statement.<sup>1</sup>

No applications for intervention were filed. No party has requested a hearing.

Procedural History:

UtiliCorp filed its application on October 30, 2001, with supporting exhibits and schedules. On October 31, 2001, UtiliCorp filed a Motion for Protective Order. The Commission issued a protective order on November 8, 2001. The Commission also issued an order directing the filing of a Staff recommendation no later than November 30, 2001, and providing that the Office of the Public Counsel file its response to the application by November 30, 2001.

UtiliCorp supplemented its application on November 6, 2001, stating that it would list pending actions or unsatisfied judgments against it involving customer service or rates in a late-filed appendix. UtiliCorp filed this appendix on November 19, 2001. On November 13, 2001, UtiliCorp filed its Share Purchase and Sale Agreement that is the subject of the application. On November 19, 2001, UtiliCorp filed a certified copy of the resolution of its board authorizing the agreement and acquisition as adopted at a meeting

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<sup>1</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

held on October 11, 2001. UtiliCorp also filed additional financial and pro forma financial information in support of its application.

Staff filed its response and memorandum on November 29, 2001. The Public Counsel filed its response on November 30, 2001. Staff recommended approval of the application with certain conditions. The Public Counsel recommended approval of the application provided that the Commission incorporate the conditions proposed by Staff and the commitments offered by UtiliCorp. UtiliCorp has not objected to the responses and recommendations.

The Transaction and Its Impact:

UtiliCorp is a Delaware corporation with its principal place of business in Kansas City, Missouri. UtiliCorp is authorized to conduct business in Missouri and provides electrical, natural gas and industrial steam utility services through its Missouri Public Service (MPS) and St. Joseph Light & Power (SJLP) operating divisions in those areas in Missouri certificated to it by the Commission.

Avon owns and operates Midlands Electricity plc, which is a substantial electric utility distribution business and related businesses based in the United Kingdom. Midlands is one of twelve regional electricity companies in the UK that came into existence as a result of privatization of the UK electricity industry in 1990. Midlands provides regulated distribution of electricity to approximately 2.3 million industrial, commercial and residential customers in south-central England. Midlands also has unregulated businesses in electricity generation, electrical contracting, metering services and related businesses and through a subsidiary owns minority interests in several generating plants in the UK and overseas.

UtiliCorp proposes to pay \$362 million, subject to certain adjustments, to acquire 100% of the stock of Avon. UtiliCorp will also incur transaction costs. UtiliCorp states that it will obtain a 50% partner for its investment and acquisition of Avon. Staff's response indicated that closing costs could be approximately \$19 million and that UtiliCorp has presented that its total investment and costs would not exceed \$200 million because it will obtain an ownership and investment partner. UtiliCorp states that its acquisition of Avon and the Midlands business will provide it with a base to expand and diversify its operations in the UK and the rest of Europe.

UtiliCorp's transaction is a spin-off of a pending merger between two other companies. FirstEnergy Corp. is a diversified energy services holding company headquartered in Akron, Ohio. GPU, Inc., is an electric utility holding company that provides electric service to customers in New Jersey and Pennsylvania and also develops and owns electrical generation, transmission and distribution facilities. EI UK is a subsidiary of GPU, which in turn owns Avon. FirstEnergy and GPU are expected to merge prior to December 31, 2001. UtiliCorp made an offer to FirstEnergy to acquire 100% of Avon from EI UK after the closing of the FirstEnergy/GPU merger. The Share Purchase Agreement between UtiliCorp and EI UK presented for approval with the application documents the transaction proposed by UtiliCorp. Appendix 3 to the application shows the ownership structures of these companies prior to and after the transactions.

Following the acquisition Avon and its subsidiaries will maintain significant debt related to operations that will be no recourse to UtiliCorp, meaning that creditors cannot demand payment from UtiliCorp. UtiliCorp may, however, borrow monies to fund its share

of the acquisition of Avon. UtiliCorp expects eventually to structure its funding of the acquisition as 55% debt and 45% equity, but, initially it will be 100% debt.

Staff calculated and evaluated the impact of the acquisition on the financial position of UtiliCorp based upon the "most conservative" (worst case) scenario of 100% debt financing. Based upon Staff's review of current and pro forma financial data submitted by UtiliCorp, the company's capital structure as of June 30, 2001, consisted of 44.50% long-term debt, 2.70% short-term debt, 6.30% preferred stock, and 46.50% common equity. If the company incurs \$200 million of long-term debt to complete the acquisition its capital structure would consist of 46.40% long-term debt, 2.60% short-term debt, 6.10% preferred stock, and 44.90% common equity. The total debt of the company would increase 1.8% from 47.20% to 49.00% of total capital.

Staff stated that a 49% debt ratio would be consistent with UtiliCorp's current BBB rating for electric utilities assigned by Standard & Poors. Staff further stated that Standard & Poors reaffirmed UtiliCorp's BBB rating following the announcement of the proposed acquisition and stated the outlook for UtiliCorp was "stable." Standard & Poors *Utilities & Perspectives*, October 29, 2001.

Staff also reviewed the company's pro forma pre-tax interest coverage ratios showing that funds from operations compared to interest and to total debt were consistent with BBB rated utilities. Staff concluded that UtiliCorp would continue its ability to attract capital after the transaction.

#### UtiliCorp Commitments:

UtiliCorp represented in its application that it is committed to maintaining its investment grade credit rating. UtiliCorp stated that cost allocations to its Missouri

jurisdictional operations would not increase as a result of the transaction and that it will reduce allocations where appropriate to reflect the effect of the transaction. UtiliCorp stated that any acquisition premium paid by UtiliCorp will be treated below-the-line for ratemaking purposes and that no recovery of any acquisition premium would be sought in any future Missouri rate case. UtiliCorp stated that it would not seek an increase in its cost of capital or request a risk premium as a result of the acquisition. UtiliCorp stated that it would provide the Staff and the Public Counsel with post-closure information about the transaction if it is approved and current credit agency reports as available.

Staff Conditions:

Staff recommended approval of the application be subject to conditions as follows. That nothing in the Commission's order be considered a finding by the Commission of the value of this transaction for ratemaking purposes, and that the Commission reserves the right to consider the ratemaking treatment to be afforded these financing transactions in any subsequent proceeding.

That the Commission's order shall not be deemed to be precedent for any future financing even if the facts may be similar. That any adverse financial effects of this acquisition be borne by the shareholders of UtiliCorp United Inc., and not by ratepayers.

That all records pertaining to these transactions be maintained at UtiliCorp United Inc.'s headquarters and made available to the Commission's Staff, as Staff deems necessary. That UtiliCorp United Inc., provide documentation of proper cost allocations to nonregulated entities. That UtiliCorp United Inc., include any costs borne by Missouri Public Service related to the nonregulated subsidiaries in monthly surveillance reports sent to the Commission's Staff.

UtiliCorp's Financial Partnership:

UtiliCorp's application was submitted based upon having a financial partner with a 50% interest in the acquisition of Avon. The application did not identify a particular partner. On December 13, 2001, UtiliCorp filed a notice to the Commission and the parties that due to recent events its prospective partner could decide to withdraw from the transaction. UtiliCorp indicated that the recent financial "collapse of Enron Corp." could financially impact a subsidiary of Avon. If UtiliCorp proceeded without a partner, then the impact of the transaction and the risks associated with the transaction affecting UtiliCorp would be much different than the pro forma information submitted to the Commission. UtiliCorp suggested that the Commission specifically condition its approval upon the representations in the application that UtiliCorp have a financial partner.

The Staff filed its response to this late information on December 17, 2001. Staff stated that its recommendation was based upon the information and representations in the application, including the projected financial implications to UtiliCorp and the requirement for a financial partner. If the basis of the transaction should change, Staff believed that UtiliCorp should submit a new application. Staff agreed that the Commission's approval should be conditional on a financial partnership as presented in the application.

Decision:

UtiliCorp has provided the Commission with a copy of its agreement to acquire the stock of a public utility (Avon) and a copy of the resolution of its board authorizing the acquisition. UtiliCorp's application and supplemental information and the responses filed by the Staff and the Public Counsel demonstrate that the transaction is not detrimental to the public interest and offer conditions that protect the public interest. Thus, the



application satisfies all the requirements of Section 393.190, RSMo 2000, and 4 CSR 240-2.060(12).

The acquisition will permit UtiliCorp to expand and diversify its operations by extending and expanding its operations in the UK and the rest of Europe. The investment and any related debt will not adversely affect UtiliCorp's investment grade credit rating or its ability to attract capital to fund its operations. Therefore, approval of the application will benefit UtiliCorp with no detriment to the public interest.

In addition, the commitments offered by UtiliCorp and Staff's conditions, including the requirement that UtiliCorp have a financial partner, provide further assurance that there will be no detriment to the public interest by the Commission's approval of the application.

The Commission finds that the transactions presented in UtiliCorp's application are not detrimental to the public interest and may be approved subject to the commitments offered by UtiliCorp and the specific conditions recommended by Staff.

**IT IS THEREFORE ORDERED:**

1. That the application of UtiliCorp United Inc., requesting the Commission to authorize UtiliCorp's acquisition of the outstanding shares of Avon Energy Partners Holdings as provided in the Share Purchase and Sale Agreement between UtiliCorp and EI UK Holdings, Inc., is hereby approved.

2. That UtiliCorp United Inc., may take the actions necessary and as authorized in this proceeding to carry out the transactions as described in the application.

3. That the authority granted in this order is conditioned on the participation of a financial partner and the representations described in the application, particularly

paragraphs 8 and 12. If UtiliCorp United Inc., determines to proceed differently UtiliCorp shall file a new application.

4. That nothing in this order shall be considered a finding by the Commission of the value of this transaction for ratemaking purposes, and that the Commission reserves the right to consider the ratemaking treatment to be afforded these financing transactions in any subsequent proceeding.

5. That the Commission's order shall not be deemed to be precedent for any future financing even if the facts may be similar.

6. That any adverse financial effects of this acquisition are borne by the shareholders of UtiliCorp United Inc.

7. That all records pertaining to these transactions be maintained at UtiliCorp United Inc.'s headquarters and made available to the Commission's Staff, as Staff deems necessary.

8. That UtiliCorp United Inc., provide documentation of proper cost allocations to nonregulated entities.

9. That UtiliCorp United Inc., include any costs borne by Missouri Public Service related to the nonregulated subsidiaries in monthly surveillance reports sent to the Commission's Staff.

10. That UtiliCorp United Inc., exercise reasonable diligence and prudence to maintain its investment grade credit rating.

11. That UtiliCorp United Inc.'s cost allocations to its Missouri jurisdictional operations not increase as a result of the transaction and that UtiliCorp United Inc., will reduce allocations where appropriate to reflect the effect of the transaction.

12. That UtiliCorp United Inc., treat any acquisition premium below-the-line for ratemaking purposes and that it shall not seek recovery of any acquisition premium resulting from the transaction in any future Missouri rate case.

13. That UtiliCorp United Inc., shall not seek an increase in its cost of capital or request a risk premium as a result of the acquisition.

14. UtiliCorp United Inc., shall provide the Commission's Staff and the Office of the Public Counsel with post-closure information concerning the transaction 30 days after closing and shall provide current credit agency reports as available.

15. That UtiliCorp United Inc., file status reports in this proceeding beginning 60 days from the date of this order and each 30 days thereafter advising of the status of the transaction so that the Commission may be apprised of the status of the transactions presented in this case and when this case may be closed.

16. That this order shall become effective on December 28, 2001.

**BY THE COMMISSION**



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

( S E A L )

Simmons, Ch., Murray, Lumpe, Gaw and Forbis, CC., concur

Thornburg, Regulatory Law Judge

AL/Secretary: Thornburg/Boyle  
12-11  
Date Circulated ES-2002-215  
CASE NO.  
KS  
Simmons, Chair am  
Murray, Commissioner ds  
Lumpe, Commissioner 7/11/18  
Gaw, Commissioner 12/18  
Forbis, Commissioner  
Agenda Date 12-18  
Action taken: 5-0 14A  
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 18<sup>th</sup> day of Dec. 2001.

Dale Hardy Roberts

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

