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June 27, 2000

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

RE: EM-2000-369

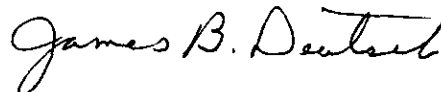
Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the Reply of Applicant/Intervenors to Response of Utilicorp and Empire in Opposition to Application to Intervene.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely,



James B. Deutsch

JBD:krw

Enclosures

cc: Counsel of Record

FILED²
JUN 27 2000
Missouri Public
Service Commission

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

FILED²

JUN 27 2000

Missouri Public
Service Commission

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.)

EM-2000-369

**REPLY OF APPLICANT/INTERVENORS TO RESPONSE
OF UTILICORP AND EMPIRE IN OPPOSITION
TO APPLICATION TO INTERVENE**

COME NOW Albert Fuchs, George Dorsey, Jack De Graffenreid, Richard Vanwinkle, Jack Wilson, Vernon Corkle, Verl Alumbaugh, Donald Crayne, Bill Athey and Glenn D. Rhoads (Applicant/Intervenors), and make the following reply to the Response of Utilicorp and Empire in Opposition to Intervenors' Application to Intervene.

These proceedings have not progressed to a point where intervention by these retired employees of Empire will delay the proceedings, prejudice any of the parties or inconvenience the Commission. Applicants clearly meet the requirements of 4 CSR 240-2.075(4) for intervention. The Companies appear to acknowledge this by relying solely upon whether or not there was notice to the retiree group as the basis for denying intervention. The Companies' arguments are without factual basis or legal foundation and do not change the showing of good cause made on behalf of Applicant/Intervenors to be allowed to intervene. The Commission should grant intervention.

TIMING

Utilicorp and Empire (the Companies) oppose intervention by the Empire retiree applicants as untimely. Applicant/Intervenors agree that intervention is routinely permitted within thirty days

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after the Commission gives its notice in the case, and also agree that such notice was sent to various "interested persons" named in the Companies' Response, but believe such notice is irrelevant to these retired employees who were not given such notice and are not listed as recipients of the Commission's notice. The Companies' Response indicates agreement with the fact that retirees were not intended to receive and did not receive notice from this Commission. However, Intervenor Retired Employees do not seek to intervene under the rules cited by the Companies which is geared to when notice is issued. Applicant/Intervenors rely for their Application upon this Commission's rule 4 CSR 240-2.075(5), which states:

- (5) Applications to intervene filed after the intervention date may be granted upon a showing of good cause.

Therefore, the Companies' reliance upon 4 CSR 240-2.075(1) as authority to exclude these Applicant/Intervenors is irrelevant.

The Companies dispute the level of awareness of retirees concerning the effect on them of the agreement and plan of merger. The Companies apparently also dispute Applicants' statement that requests to Empire for advice on the effect of the merger on retirement benefits yielded little useful information. (Response of Utilicorp and Empire to Application to Intervene, page 2-3, paragraphs 4-8.) The Companies have attached Appendices 1 through 4 which the Companies assert disputes these claims of Intervenors. However, a careful reading of the Appendices instead reveals the accuracy of the statements of retiree unawareness set forth.

Appendix 1 is a copy of a May 21, 1999 letter from Myron McKinney, President of Empire, to all retirees. It is a form letter. It is either carefully worded or perhaps carelessly worded to alert retirees, but not to alarm them. It contains in bold italicized print such comforting messages as

"retirees will have their pension benefits continued according to the provisions of Empire's pension plan." The Companies, however, point to the fifth paragraph of the letter as explaining the effect of the merger on health care benefits. This states that "Utilicorp has the right to increase the percentage of premiums that you pay 15% per year until the percentage you pay is equal to the percentage paid by Utilicorp retirees under the age of 65." This statement does not say what Utilicorp will do, but what it has the right to do. It is not stated what Utilicorp retirees currently or in the future pay for health insurance, nor is it clear what the 15% per year is of. Most importantly, it does not state that retirees will pay increases until they are paying 100% of their total health care insurance premiums. This letter is replete with corporate double speak and, at best, tells retirees that "change may be coming" as a result of the merger. It certainly does not state that retiree costs may increase 500% as proposed in the plan of merger.

The Companies also refer to what is attached to their Response as Appendix 2, a July 9, 1999 letter from an attorney in Kansas requesting information on behalf of unnamed clients about the merger. The letter does inquire about health care benefits after the merger and, interestingly, states the reason for these interested parties to inquire through an attorney - - because "they have been unable to receive concrete, meaningful information from the people they have asked" at the Companies. Undersigned counsel for the Intervenors has never seen this document prior to receipt of the Companies' Response to Intervenors' Application. These Applicant/Intervenors are unaware of being represented by Alvin D. Shapiro, P.C. of Overland Park, Kansas. Such letters provided no notice to these Applicant/Intervenors. Moreover, upon review of the letter of Linda K. Tiller on behalf of Utilicorp to Mr. Shapiro, it is clear that no further information beyond that previously and subsequently given by the Companies is set forth. Page 2 of the response unsurprisingly states only

the "rights" of Utilicorp and Empire, without any information as to what will be done with health care premiums and with no dollar amounts by which retirees might gain perspective on the harm which Utilicorp intends to inflict. In essence, even if Mr. Shapiro had circulated these documents to any retirees (the Companies do not show or allege such circulation) the effected retirees would not know one more fact than was related in the Companies' Appendix 1. Contrary to the bald assertions of the Companies, Appendices 1, 2 and 3 constitute simply more evidence of these retirees' lack of information about the effects of the merger; and reinforces their assertion of the difficulty they have had in getting useful information with which to plan their lives. Applicants even more firmly now believe the Commission must inquire (and allow Intervenors to inquire) as to the handling by Empire of a large health care trust fund held for the benefit of these retired employees, mentioned in Mr. Shapiro's letter but not addressed by the Response.

Next, the Companies' claim that Mr. McKinney, Empire's CEO, met personally with "representatives of the Empire retirees" in July and August, 1999 to discuss the proposed merger. As noted in the Rebuttal Testimony filed in this matter by Applicant/Intervenors, one such meeting was known to have occurred, among a select few retirees, but Mr. McKinney requested that the information imparted to those few employees by him be kept confidential and not disseminated to any others. It would therefore be difficult for McKinney to classify that meeting as having been held by him with "representatives" of the retired employees. The Companies also offer Appendix 4, which purports to be answers to questions from a retirees' meeting August 11, 1999, but only three questions are answered and none relate to the health care plan benefits for retirees which are

at issue in this proceeding.¹ The fact that Mr. McKinney has been available to discuss other, different issues than the effect of the merger on health care benefits is irrelevant to the merits of the Application of these Intervenor's requesting to be heard on issues McKinney failed or refused to address.

Further, the Companies assert that the "majority" of the Applicants are shareholders of Empire and have received notice of the merger and had an opportunity to vote on the proposed merger. Intervenor/Applicants respectfully suggest that even if all retirees had voted against the plan (because of lack of adequate information, many did not vote against the plan) it would have made no difference in shareholder approval. Retirees exercise no voting control. More important, however, such shareholder approval has no effect on this Commission's jurisdiction to disapprove the merger as not being in the public interest. Retirees do not cease being members of the public by virtue of being shareholders. Again, this argument of the Companies seeks to divert the inquiry by blaming the victims for not realizing soon enough the poor quality of corporate citizens they were dealing with. This is not a relevant issue under PSC rules for intervention.

The Companies' Response presents absolutely nothing which should cause this Commission to determine that the failure of retirees to intervene at an earlier time was their own fault or that such failure was not due to good cause. The Application to Intervene, Pre-Filed Rebuttal Testimony, and even the documents attached to the Companies' Response in Opposition to Intervention demonstrate

¹ Additionally, the Companies' Appendix 4 is addressed to an individual whose name does not appear among the approximately 200 retired employees of Empire District Electric Company, attached as Appendix A to the Application to Intervene filed by Applicant/Intervenors. Such document (Appendix 4) gave no notice whatsoever to Applicant/Intervenors. The identity of the recipient of this information is not known to Intervenor's counsel.

abundant good cause for late intervention because of the failure and refusal of the Company to explain the actual effect (rather than just the vague mechanics) of its merger agreement on retiree health care premiums. Although the Companies may feel it is "misleading" for Applicants to allege that there has been an attempt to "conceal" facts from the Applicants (Response, paragraph 7), the current state of the record certainly demonstrates a lack of candor bordering on "stonewalling" by these Companies. Applicants plainly did not receive full and timely disclosure of information on the effect of the merger from the Companies and did not become aware until recently of the massive increase in health costs proposed by the merger plan. Neither the Commission's rules nor the interests of justice would be the least bit compromised by permitting intervention to Applicants in this case. To the contrary, only by allowing intervention will the interests of justice be served.

PARTIES INTERVENING

The Companies appear to object to the Applicants' suggestion that there are approximately 200 similarly situated retired former employees of Empire who will be effected by the merger as proposed. The Company apparently does not disagree that all of these retirees will be similarly adversely affected, but poses the subject as one of whether Applicants are seeking to bring a "class action" by mentioning these facts. To the best of Intervenor/Applicants' knowledge and belief, their position in opposition to the merger on the grounds stated in the Application to Intervene is shared by all effected retirees, and it is not disputed that the adverse effect will be proportionally the same for all retirees. Applicant/Intervenors request no "class action," as there would be no particular advantage to claiming any such status. However, if "the public interest" is any measure of the purpose of these proceedings, it is respectfully suggested that the risk of allowing these Companies to effectuate a merger which may financially harm such a large number of this state's most

vulnerable citizens - - citizens who are least able to deal with that harm - - warrants the Commission ignoring the Companies' attempts to turn this into a question of civil procedure rather than of substance. The "class action" argument is a red herring invented by the Companies and is not a serious contention. Further, Applicant/Intervenors have, pursuant to 4 CSR 240-2.075(3), identified sufficiently an association of retired employees on behalf of whom an Application to Intervene has been filed and has listed all of its members. There simply is no procedural irregularity of the sort suggested by the Companies to be addressed.

GROUND FOR INTERVENTION

Following some remaining observations,² the Companies suggest that intervention be denied because there are other remedies or courses of action available to Applicants for protection of their interests. Applicants have not (and need not) assert any "legal right" to identified benefits as characterized by the Companies. They have sought to intervene in order to present their claims and interests for the Commission's consideration in its role of protecting the public interest. Whether or not Applicants have "a legal right" to assert in some other jurisdiction, proceeding or tribunal (not identified by the Companies), such question is not relevant to the PSC rules allowing for intervention. The only issues on Applicants' Application to Intervene are those noted in 4 CSR 240-2.075(4):

² On page 4 of their Response (paragraphs 12-13) the Companies seek to make "factual clarifications" by stating that Applicants' allegation that after the merger "the retirees will be entirely responsible for their own health insurance premiums" is not correct, outlining a slightly more detailed scheme of what "might" happen, and then curiously ending its "clarification" by stating "but after the phase in period retirees will be expected to pay the full premium coverage which is in addition to Medicare." How this defers from the retirees' allegation that they will be responsible for their own health insurance premiums is an explanation not attempted in the Response and therefore not addressed herein.

(4) The commission may on application permit any person to intervene on a showing that -

(A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

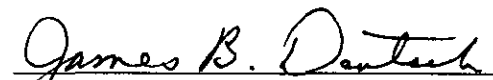
(Emphasis supplied). Intervenors respectfully submit, in response to the Companies' opposition to intervention, that these retired employees of Empire District Electric Company qualify for intervention under both subparts (A) and (B) of this rule. The Companies' attempt (at paragraph 15 and throughout their Response in Opposition) to change the purpose and intent of Applicants' intervention to create issues outside of this Commission's authority and rules which Intervenors do not raise should be ignored. What other and additional legal actions are appropriate is not a question which is the least bit germane to this Application.

WHEREFORE, Intervenor/Applicants Retired Employees of Empire District Electric Company respectfully request that this Commission issue its Order granting intervention to Applicants in this proceeding.

Respectfully submitted,

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By:



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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the above and foregoing document were sent U.S. Mail, postage prepaid, to the following parties of record on this 27th day of June, 2000:

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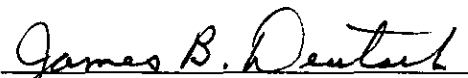
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