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June 30, 2000

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Director, Utility Services

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

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

RE: Case No. EF-2000-764

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF RECOMMENDATION**.

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

Thank you for your attention to this matter.

Sincerely yours,

Bruce H. Bates
Assistant General Counsel
(573) 751-7434
(573) 751-9285 (Fax)

BB/df
Enclosure
cc: Counsel of Record

FILED²
JUN 30 2000
Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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)
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. EF-2000-764

FILED²
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Missouri Public
Service Commission

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its
Recommendation states:

In the attached *Memorandum*, which is labeled *Appendix A*, Staff recommends that the
Missouri Public Service Commission ("Commission") issue an order approving the *Application*
of The Empire District Electric Company ("Empire"), filed May 17, 2000, only if the
Commission conditions its approval of the Shareholders Rights Agreement as set out below and
in the attached *Memorandum*.

To address concerns raised by the *Application*, Staff would recommend to the
Commission two alternative conditions, either of which would be sufficient to support the
granting of Empire's request by the Commission. Firstly, the Commission could 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. This 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. It would also allow the Commission to be able to determine if the second bidder's offer provides additional benefits to the public, and would give the Commission the ability to ensure that the public is not denied a greater benefit and therefore be subject to a detriment.

The second alternative condition is to approve the Shareholders Rights Agreement for a period of no greater than ten years, or for a shorter period if the Commission issues an order terminating or rescinding its authorization. This 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 the Shareholders Rights Agreement would be a detriment to the public interest. If the Commission agreed, it could then issue an order and its authorization of the Shareholders Rights Agreement would then be rescinded or terminated.

Commission approval of the *Application* would be pursuant to Section 393.210, RSMo (1994) and 4 CSR 240-2.060(11). Section 393.210, RSMo (1994) provides in relevant part that "[n]o...electrical corporation...governed by this chapter shall declare any stock, bond or scrip dividend or divide the proceeds of the sale of any stock, bond or scrip among its stockholders unless authorized by the commission to do so." It is this statute under which Empire itself comes to the Commission for relief.

Respectfully submitted,

DANA K. JOYCE
General Counsel

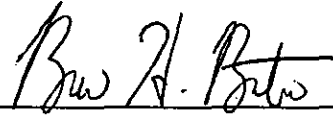
A handwritten signature in cursive script, appearing to read "Bruce H. Bates", written over a horizontal line.

Bruce H. Bates
Assistant General Counsel
Missouri Bar No. 35442

Attorney for the Staff of the
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel or parties of record as shown on the attached service list this 30th day of June, 2000.

A handwritten signature in cursive script, appearing to read "Bruce H. Bates", written over a horizontal line.

Bruce H. Bates

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EF-2000-764, The Empire District Electric Company

FROM: Ronald L. Bible
Financial Analysis Department

Ronald L. Bible 6/30/2000
Project Coordinator / Date

Stuart Dotz 6/30/2000
General Counsel's Office / Date

SUBJECT: Staff's Recommendation regarding the Application of The Empire District Electric Company for Authority to Adopt its Shareholder Rights Plan.

DATE: June 30, 2000

The Empire District Electric Company

On May 17, 2000, The Empire District Electric Company (Empire or Company) filed an Application requesting authority to adopt its Shareholder 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. On May 19, 2000, Empire filed a Motion for Expedited Consideration, asking that the Commission issue an order approving its Application no later than June 30, 2000, so as to ensure continuity with the existing Shareholder Rights Agreement which expires July 25, 2000.

On May 22, the Commission ordered Staff to respond to Empire's Motion for Expedited Treatment. In its response on May 25, Staff objected to Empire's request that its Application be considered and approved by June 30. Staff pointed out that Empire had known for years that its current Shareholder Rights Agreement would expire on July 25. Staff also stated it would need to closely examine Empire's Application in light of Empire's pending application to merge with UtiliCorp United, Inc. (UtiliCorp). The Staff filed its rebuttal testimony in the merger case, Case No. EM-2000-369, on June 21, 2000 recommending that the Commission not approve the merger. On June 2, Empire filed its reply to Staff's response, stating that it filed its Application promptly after it became aware it would not receive approval of its proposed merger with UtiliCorp as early as hoped. Empire went on to explain that it considered its filing in this case was a routine matter, and would not require extensive review by Staff.

On June 7, 2000, Staff filed a response to Empire's June 2 pleading asserting that Empire knew before its April 27, 2000 Board of Director's meeting that the UtiliCorp merger would not close by June 1, 2000. On February 10, 2000, the Commission issued its procedural schedule for the merger case. This procedural schedule set evidentiary hearings for September 2000. Empire waited nearly three weeks after the April 27, 2000 meeting of its Board of Directors before filing its instant Application with the Commission. Staff further asserted that the facts and circumstances have changed since the original Shareholder Rights Agreement was approved. In 1990, when the original Shareholder Rights Agreement was approved, Empire was not for sale or "in play", and had not negotiated a merger agreement with UtiliCorp, that the Staff had recommended not to be approved by the Commission. Therefore, the situation then and the current situation are not identical.

On June 8, 2000, the Commission issued its Order Denying Motion For Expedited Consideration. In this order the Commission directed the Staff to file its recommendation by June 30, 2000, and conduct a face-to-face meeting with the Company to discuss its Application.

On June 12, 2000, Staff met with the Company to discuss its Application. As the Company indicated in its Application, the purpose of the Shareholder Rights Agreement is to prevent any proposed takeover that is unfair to its stockholders from being consummated. An entity considering acquiring the Company could face the possibility of substantial dilution if it attempts to acquire a substantial block of Empire's stock without first convincing the Company's Board of Directors that the offer is fair to all of Empire's stockholders and that the rights should be redeemed. The Company also explained the changes from its 1990 filing compared to its current filing, as referenced in its Application. The changes include the definition of "Substantial Block", the exclusion of UtiliCorp from the definition of "Acquiring Person" under the new Shareholder Rights Agreement and language addressing the Delaware court decision invalidating a "dead hand" provision similar to the one currently in place in Empire's 1990 Shareholder Rights Agreement.

Staff's concern is that an entity may make an offer to acquire the Company that is equal in all respects to an existing offer with the exception that the second offer could provide additional benefit to the public interest. The Company's Board of Directors, with its stockholder focus, may reject the second offer on the grounds it offers nothing more to the stockholders over the existing offer. The entity making the offer may wish to pursue the transaction, but will be deterred by the fact the Shareholder Rights Agreement will be exercised. The consummation of the first transaction and the denial to the public of the additional benefit of the second offer would create a detriment to the public interest.

To address its concerns, Staff has developed two alternative conditions. Staff recommends that the Commission approve the Company's Application with either of these conditions. The first alternative condition is for the Commission to approve the Application with the modification that the Company cannot exercise the Shareholder Rights Agreement without first going before the Commission and obtaining Commission approval. This will allow the Commission an opportunity to evaluate a transaction it might otherwise never be made aware of because the bidder will be deterred by the new Shareholder Rights Agreement. It will also allow the Commission to be able to

determine if the second bidder's offer does provide additional benefit to the public. This modification would give the Commission the ability to ensure that the public is not denied a greater benefit and not subject to a detriment. The second alternative condition is for the Commission to approve the Shareholder Rights Agreement for a period of no greater than ten years, or for a shorter period if the Commission issues an order terminating or rescinding its authorization. This will allow the Commission the opportunity to eliminate a situation that would deter a bidder with an offer that provides greater potential benefit to the public. The bidder can petition the Commission to rescind or terminate the Empire Shareholder Rights Agreement because its continuation is a detriment to the public interest. If the Commission agrees, then it can issue an order and the Commission's authorization of the Shareholder Rights Agreement will be rescinded or terminated.

Without either of these conditions, Staff believes the Commission's approval of the Application, in effect, delegates the Commission's responsibility to protect the public to the Company's Board of Directors with its stockholder focus. Staff's recommendation in the Empire -- UtiliCorp merger case that the Commission not approve the merger, even if the regulatory plan including the acquisition adjustment were eliminated, is an example of a proposed merger where Staff believes that the Empire Board of Directors entered into an agreement that is detrimental to the public interest. Staff filed extensive testimony on June 21, 2000 that the proposed Empire -- UtiliCorp merger is detrimental to the public interest. The Company's Board of Directors cannot be reasonably expected to enter into agreements beyond those that favor its shareholders and management.

Therefore, Staff recommends that the Commission approve the Company's Application in this case, but do so subject to one of the alternative conditions cited above.

Service List for
Case No. EF-2000-764
June 30, 2000

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