



Commissioners  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
SHEILA LUMPE  
STEVE GAW  
BRYAN FORBIS

## Missouri Public Service Commission

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.state.mo.us>  
January 30, 2002

ROBERT J. QUINN, JR.  
Executive Director  
WESS A. HENDERSON  
Director, Utility Operations  
ROBERT SCHALLENBERG  
Director, Utility Services  
DONNA M. PRENGER  
Director, Administration  
DALE HARDY ROBERTS  
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

**FILED<sup>2</sup>**  
JAN 30 2002  
Missouri Public  
Service Commission

**RE: Case No. EM-2002-197-In the Matter of the Application of UtiliCorp United, Inc., a Delaware Corporation, for Authority to Merge to Effect a Name Change.**

Dear Mr. Roberts:

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

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,

David A. Meyer  
Associate General Counsel  
(573) 751- 8706  
[dmeyer@mail.state.mo.us](mailto:dmeyer@mail.state.mo.us)

Enclosure

cc: Counsel of Record

**FILED**<sup>2</sup>  
JAN 30 2002  
Missouri Public  
Service Commission

Case No. EM-2002-297

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”) and states:

2. In its January 7, 2002 filing Staff noted that UtiliCorp did not seek Commission authorization to (1) issue UtiliCorp shares of common stock and acquire with these shares, through a special acquisition subsidiary (“SAS”), 50% of the outstanding publicly held Class A common shares of Aquila; and (2) to merge Aquila and SAS in a short-form merger and thereby own 100% of Aquila’s Class A common shares. UtiliCorp only seeks Commission approval over the statutory merger between UtiliCorp and URC, the stated sole purpose of which is to change the UtiliCorp name.

3. Staff conducted discovery in this matter, and requested responses from UtiliCorp to address the inquiries referred to in Staff's January 7, 2002 pleading, and for the Commission's review, the information Staff has obtained is attached to this pleading as Exhibit A.


4. In its analysis, Staff has relied upon and continues to rely upon UtiliCorp's representation that through its Application in this matter, UtiliCorp does not seek any ratemaking determination by the Commission (*see* UtiliCorp's Motion for Reconsideration by the Commission, p. 7). Moreover, as the Commission is aware, the Stipulation and Agreement in Case Nos. ER-2001-672 and EC-2002-265 will be filed in the near future, and the Commission's approval of that Stipulation and Agreement will resolve the only currently open UtiliCorp ratemaking proceeding.

5. Staff is prepared to provide the Commission with a Recommendation on the merger between UtiliCorp and URC, should the Commission not order a hearing as requested by the Office of the Public Counsel. The Staff is also prepared to file testimony for any hearing that the Commission might order should the Commission order a hearing as requested by the Office of the Public Counsel.

**WHEREFORE**, Staff respectfully requests that the Commission take notice of its Status Report and proceed as it deems appropriate.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

  
\_\_\_\_\_  
David A. Meyer  
Associate General Counsel  
Mo. Bar. #46620

Steven Dottheim  
Chief Deputy General Counsel  
Mo. Bar #29149

Attorneys for the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8706 (Telephone)  
(573) 751-9285 (Fax)  
dmeyer@mail.state.mo.us

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 30th day of January, 2002.

  
\_\_\_\_\_

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**  
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

312 EAST CAPITOL AVENUE  
P.O. BOX 456  
JEFFERSON CITY, MISSOURI 65102-0456  
TELEPHONE (573) 635-7166  
FACSIMILE (573) 635-0427  
Email: PAULB@BRYDONLAW.COM

DEAN COOPER  
MARK G. ANDERSON  
TIMOTHY T. STEWART  
GREGORY C. MITCHELL  
BRIAN T. MCCARTNEY  
BRIAN K. BOGARD

OF COUNSEL  
RICHARD T. CIOTTONE

January 15, 2002

**VIA HAND DELIVERY**

Mr. David A. Meyer  
Associate General Counsel  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, MO 65102-0360

**Re: UtiliCorp United Inc.  
Case No. EM-2002-297**

Dear Mr. Meyer:

I have your letter dated January 7, 2002, submitting in the referenced matter Staff Data Request No. 1 containing subparts 1-3. I submit herewith UtiliCorp's objections and responses (in bold face type) thereto.

With respect to Data Request No. 1, UtiliCorp objects to subparts 1(a) – (f) and 3 on the grounds that the information sought is not relevant, nor are the questions calculated to lead to the discovery of relevant information. Specifically, questions concerning the Aquila exchange offer and related litigation are not matters for which approval or review is sought by virtue of the Application in this case. Without in any way waiving the foregoing objection, I am advised and respond as follows:

1. For each transaction identified by UtiliCorp in its Application in Case No. EM-2002-297, please indicate the following:

(a) The specific transaction for which authorization is being sought or was obtained from the Federal Energy Regulatory Commission (FERC) and the FERC docket in which such authorization is being sought or was obtained;

**Exhibit A**

- (b) The specific federal statutory section and subsection requiring FERC authorization of the transaction identified;

**Exchange Offer: Repurchase of Publicly-Held Aquila Shares.** On November 13, 2001, UtiliCorp filed an application pursuant to section 203 of the Federal Power Act (FPA) requesting FERC authorization for the repurchase of the approximately 20 percent of Aquila stock then held by the public. The FERC docket number is EC02-22-000. The FERC's order authorizing the repurchase was received on December 17, 2001, and the repurchase was successfully completed on January 4, 2002.

**Exchange Offer: Issuance of UtiliCorp Stock.** On November 15, 2001, UtiliCorp filed an application pursuant to section 204 of the FPA requesting FERC authorization to issue up to 20 million shares of UtiliCorp common stock as required to complete the exchange offer, short-form merger and meet UtiliCorp's obligations under Aquila stock options that will be converted into UtiliCorp stock options. The FERC docket numbers are ES02-10-000 and ES02-10-001. The FERC's order authorizing the issuance of UtiliCorp stock was received on December 27, 2001, and the share issuance was successfully completed on January 4, 2002.

**Renaming Merger.** No FERC authorization is required or sought for this transaction.

- (c) The specific transaction for which authorization is being sought or was obtained from the Securities and Exchange Commission (SEC) and the SEC docket in which such authorization is being sought or was been obtained;

- (d) The specific federal statutory section and subsection requiring SEC authorization of the transaction identified;

**Exchange Offer.** No approval, per se, was required or sought from the SEC in connection with the exchange offer. However, in compliance with the laws and regulations under the Securities Act of 1933, UtiliCorp filed its registration statement on Form S-4 with the SEC on December 3, 2001. The Form S-4 registration number is 333-74362. The exchange offer was successfully completed on January 4, 2002.

**Renaming Merger.** No SEC authorization is required or sought for this transaction.

- (e) The specific transaction for which authorization is being sought or was obtained from any Delaware government department and/or agency and the Delaware proceeding in which such authorization is being sought or was obtained;

- (f) The specific Delaware statutory section and subsection requiring Delaware government department and/or agency authorization of the transaction identified;

**Exchange Offer: Short-Form Merger.** After UtiliCorp completed the exchange offer for the publicly-held Aquila shares, UtiliCorp held greater than 90 percent but not all of Aquila's stock. Under Section 253 of the Delaware General Corporation Law (DGCL), UtiliCorp acquired all of the remaining shares through a merger between Aquila, Inc. and UtiliCorp's wholly-owned subsidiary Aquila Acquisition Corporation. The Section 253 "short-form" merger was successfully completed on January 7, 2002. No authorization was required or sought from any Delaware government department or agency for this transaction.

**Renaming Merger: Short-Form Merger.** Upon receipt of all regulatory approvals (including the approval of the Commission), UtiliCorp will undertake a "short-form" merger under Section 253 of the DGCL. Section 253(b) authorizes the surviving company to change its name, effective upon consummation of the merger. No authorization is required or sought from any Delaware government department or agency for this transaction.

- (g) The specific transaction for which authorization is being sought from the Missouri Public Service Commission in Case No. EM-2002-297; and

**Renaming Merger.** In Case No. EM-2002-297, UtiliCorp seeks approval of a merger (to be undertaken in accordance with Section 253 of the DGCL) between UtiliCorp and UtiliCorp Renaming Corporation for the purpose of effecting a name change for UtiliCorp.

- (h) The specific Missouri, federal and/or Delaware statutory section and subsection requiring Missouri Public Service Commission authorization of the transaction identified.

**Renaming Merger.** Missouri: Section 393.190 RSMo;  
Federal: None; and  
Delaware: None.

2. For each transaction for which UtiliCorp has obtained or is seeking FERC, SEC and/or Delaware government department and/or agency authorization; but is not seeking Commission authorization, please identify why Section 393.190 RSMo 2000 does not apply.

**Exchange Offer.** In the transactions incident to the exchange offer (i.e., repurchase of publicly-held Aquila shares, issuance of UtiliCorp stock, and Aquila Acquisition Corporation short-form merger with Aquila, Inc.), UtiliCorp does not merge, sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works or system,

**necessary or useful in the performance of its duties to the public. Accordingly, Section 393.190 RSMo 2000 does not apply to those transactions.**

3. Provide a description of the litigation referred to in the Saturday, January 5, 2002 *Kansas City Star* as resulting in decision of the Delaware Chancery Court, on Thursday, January 3, 2002, denying a request by some shareholders to stop or delay the exchange of UtiliCorp and Aquila shares. Also provide a copy of the pleading initiating the proceeding in Delaware Chancery Court and the decision of the Delaware Chancery Court on Thursday, January 3, 2002.

Shortly after UtiliCorp announced the exchange offer and subsequent merger on November 7, 2001, individual stockholders of Aquila filed nine separate class action complaints in the Delaware Court of Chancery and one class action complaint in Circuit Court of Jackson County, Missouri against UtiliCorp, Aquila, and the three members of Aquila's board of directors. Each of the actions was brought as a class action on behalf of all holders of Aquila's shares, other than the defendants and persons related to or affiliated with the defendants. The actions generally allege that: (1) UtiliCorp, Aquila, and the other defendants breached their fiduciary duties in connection with the offer and subsequent merger; (2) the consideration being offered in the offer and in the subsequent merger is inadequate; and (3) UtiliCorp took this action to further its own interests at the expense of Aquila's minority shareholders.

On January 3, 2002, the Delaware Chancery Court in Castle County denied the plaintiffs' motion for a preliminary injunction with respect to UtiliCorp's exchange offer for Aquila's Class A shares. The exchange offer was successfully completed on January 4, 2002.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:



Paul A. Boudreau

PAB/aw



Staff DR No. 2

Please explain why the provisions of Section 393.200 RSMo. (2000) do not apply to UtiliCorp's issuance of UtiliCorp stock completed on January 4, 2002, related to the exchange offer, short-form merger with Aquila.

**ANSWER:** UtiliCorp objects to Staff Data Request No. 2 on the grounds that it calls for a legal conclusion. Also, the question is not relevant and is not likely to lead to the discovery of relevant information because the Aquila exchange offer is not a matter for which approval or review is being sought in Case No. EM-2002-297.

Without in any way waiving the foregoing objections, and assuming that the short-form merger referred to is that of Aquila, Inc. and UtiliCorp's subsidiary Aquila Acquisition Corporation, completed on January 7, 2002, UtiliCorp states that the provisions of Section 393.200 RSMo. 2000 do not apply to UtiliCorp's common stock issuance related to the exchange offer completed on January 4, 2002, because UtiliCorp is chartered in the State of Delaware and is not, therefore, organized or existing or incorporated under or by virtue of the laws of the State of Missouri.

**Service List for**  
**Case No. EM-2002-297**  
**Verified: January 7, 2002 (rr)**

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

**Paul A Boudreau**  
**Brydon, Swearngen & England P.C.**  
P.O. Box 456  
Jefferson City, MO 65102-0456