

**FINNEGAN, CONRAD & PETERSON, L.C.**

ATTORNEYS AND COUNSELORS AT LAW

1209 PENNTOWER OFFICE CENTER  
3100 BROADWAY  
KANSAS CITY, MISSOURI 64111

(816) 758-1122  
TELECOPIER (816) 758-0373

JEREMIAH FINNEGAN, P.C.  
STUART W. CONRAD  
C. EDWARD PETERSON\*

\*ALSO ADMITTED IN  
KANSAS AND MASSACHUSETTS

January 12, 2000

**FILED<sup>2</sup>**

JAN 13 2000

Missouri Public  
Service Commission

FEDERAL EXPRESS

Mr. Dale H. Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
301 West High R530  
Jefferson City, Missouri 65102

Re: UtiliCorp United Inc. and Empire District Electric  
Company, Joint Applicants for Merger  
Missouri PSC Case No. EM-2000-369

Dear Mr. Roberts:

Enclosed are the original and fourteen (14) conformed copies of **Application to Intervene of Praxair Inc.**, which please file in the above matter and call to the attention of the Commission.

An additional copy of the **INITIAL PAGE** of the material to be filed is enclosed, which kindly mark as received and return to me in the enclosed envelope as proof of filing.

Thank you for your attention to this important matter. If you have any questions, please call.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 

Stuart W. Conrad

SWC:s  
Enclosures  
cc: All Parties

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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

JAN 13 2000

Missouri Public  
Service Commission

In the matter of the Joint Applica- )  
tion of UtiliCorp United Inc. and )  
The Empire District Electric Compa- )  
ny for authority to merge The Em- )  
pire District Electric Company with )  
and into UtiliCorp United Inc. and, )  
in connection therewith, certain )  
other related transactions. )

EM-2000-369

APPLICATION TO INTERVENE

COMES NOW PRAXAIR, INC. ("Praxair") pursuant to 4  
C.S.R. 240-2.075 and applies to intervene herein and become a  
party hereto for all purposes in respect to the filing made  
herein by Empire District Electric Company ("Empire") and  
UtiliCorp United Inc. ("UCU") on or about December 15, 1999. In  
support thereof, Praxair respectfully states:

1. Praxair is a large industrial electric customer of  
Empire. Praxair operates a major air liquifaction and constitu-  
ent gas production facility near Neosho, Missouri. Praxair is  
the successor in interest to the Linde Division of Union Carbide  
Coroporation.

2. Through Praxair's own prior interventions and  
those of its predecessor, Praxair's interests in proceedings  
affecting the rates, terms and conditions of electric service  
from Empire have been previously recognized by the Missouri  
Public Service Commission in permitting its intervention in  
numerous rate design and electric rate proceedings concerning

Empire, including without limitation the last series of Empire rate increase cases, Case Nos. ER-94-174, ER-95-279 and ER-97-81/82.

3. Correspondence or communications regarding this application, including service of all notices and orders of this Commission, should be addressed to:

Stuart W. Conrad, Esq.  
FINNEGAN, CONRAD & PETERSON, L.C.  
1209 Penntower Office Center  
3100 Broadway  
Kansas City, Missouri 64111  
Voice: (816) 753-1122  
Fax: (816) 756-0373  
E-mail: stucon@fcplaw.com

4. On December 15, 1999, UCU and Empire filed a joint application with this Commission requesting approval of the two companies' plans to merge. The transaction is stated to be valued at roughly \$850 million. The companies further are reported to have stated that the proposed merger will advance the public interest by creating a stronger Missouri-based utility. The application further states that, although savings are claimed to result from the proposed merger, such savings will be retained by the combined companies during a period of a proposed moratorium on rate filings by Empire, subsequent, however, to a proposed "pre-moratorium rate increase."

5. Praxair is vitally interested in this proposed merger, in its terms and conditions, its impact on ratepayers generally and upon Praxair specifically. As a major

interruptible electric customer of Empire, Praxair is in a position to be directly affected by the proposed merger and the proposed "regulatory plan" and may be bound or adversely affected by any Commission order issued in this proceeding. Because Empire provides electricity to Praxair on an interruptible basis under separate contracts and rate schedules and because of Praxair's size and load factor, Praxair is in the special and unique position of representing an interest which will not and cannot be represented adequately by any other party and which interest is direct and immediate and differs from that of the general public. Therefore, it will aid the Commission and protect and advance the public interest that Praxair be permitted to intervene in this proceeding so as to protect its interest which no other party is in a position properly to protect and adequately represent.

6. Further, with regard to the proposed regulatory plan and "pre-moratorium rate increase," Praxair is vitally interested in issues that are or may be raised by this filing with respect to any increase in Empire's rates and revenues, including, without limitation, (1) the revenues which will or may be realized under such rates and the increase over revenues resulting from former rates in effect before the current filing, (2) expenses and revenues to be charged to the appropriate test period, and (3) the design and structure of rates to raise the necessary revenues to meet Empire's proper class cost of service.

7. For purposes of 4 C.S.R. 240-2.075(2), Praxair states that it is opposed to the discriminatory pricing of electricity and related utility services. Further, Praxair states that it does not agree with the proposed methodology of "sharing" and based on the announced parameters of the proposed merger, Praxair will oppose mechanisms that fail to return to customers on a current basis any savings that actually occur from reductions in personnel, fictitious "filling" of employment vacancies, elimination of duplicative operations and other claims of synergies that merger applicants customarily assert as merger-related benefits, or that attempt to decide future rate increases in the context of a merger proceeding. Any such savings that result from this proposed merger should be returned on a current basis to the ratepayers of the affected utilities. Moreover, it is uncertain at this time whether the proposed combination may result in an undue and anti-competitive concentration of market power that may be in violation of applicable federal and state law regarding combinations intended to restrain trade or create or enhance monopoly power and detrimental to the public interest in any event.

8. Further, although in 1998 Empire settled an electric rate case before this Commission, such settlement concerned those cases only and did not establish that the resulting rates of Empire are not excessive. Accordingly, a proposal to freeze rates at unjust and unreasonably excessive levels **subsequent to a**

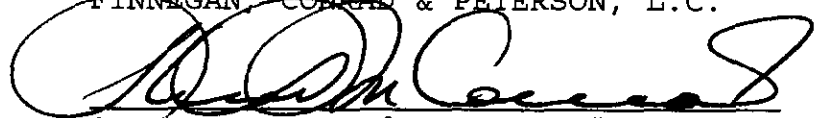
**further increase** and during periods in which regulatory-related costs are intended to decline does not and cannot be of benefit to Praxair and other ratepayers of Empire and may, in fact, be detrimental to their respective interests and the interests of the State of Missouri.

WHEREFORE, Praxair prays: (a) that the Joint Merger Filing of December 15, 1999 be subjected to a full and thorough investigation and analysis and that thereupon it not be approved or approved only with such conditions as will assure that ratepayers of Empire will be fully shielded from any possible detriment and will receive the full benefits of all savings claimed to result from the proposed merger; (b) that the proposed "pre-moratorium rate increase" be rejected; and (c) that Praxair be permitted to intervene herein and be made a party hereto with all rights to have notice of and participate in hearings to present evidence, cross-examine witnesses, file briefs and

participate in argument, should any be had; and (d) for all other needful and proper relief appropriate in the premises.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

A large, stylized handwritten signature in black ink, appearing to read 'Stuart W. Conrad', is written over the printed name and firm name.

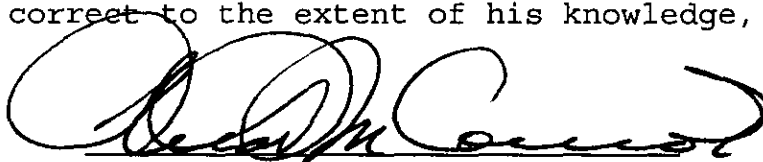
Stuart W. Conrad Mo. Bar #23966  
3100 Broadway, Suite 1209  
Kansas City, Missouri 64111  
(816) 753-1122  
Facsimile (816) 756-0373  
Internet: stucon@fcplaw.com

ATTORNEYS FOR PRAXAIR, INC.

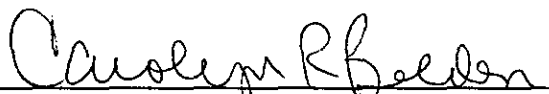
VERIFICATION

STATE OF MISSOURI     )  
                               ) ss.  
 COUNTY OF JACKSON    )

Comes now Stuart W. Conrad, and having been first duly sworn, states that he is counsel for the within applicant for intervention and has been duly authorized by appropriate authorities thereof to file this application; that he has read and is familiar with the contents thereof and that the statements therein made are true and correct to the extent of his knowledge, information and belief.

  
 Stuart W. Conrad

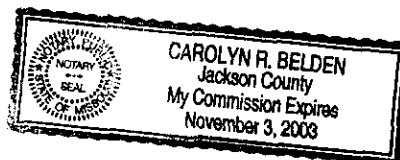
IN WITNESS WHEREOF, I have hereunto set my hand and my official seal at my office in Kansas City, Jackson County, Missouri on this 12th January, 2000.

  
 Notary Public Within and for  
 said County and State

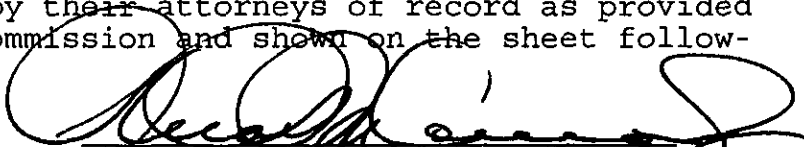
(SEAL)

My Commission Expires:

11-03-03

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application for Leave to Intervene by U.S. mail, postage prepaid addressed to all parties by their attorneys of record as provided by the Secretary of the Commission and shown on the sheet following.

  
 Stuart W. Conrad

Dated: January 12, 2000