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August 23, 2000

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

FILED²
AUG 23 2000
Missouri Public
Service Commission

RE: Case No. EM-2000-369 – 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.

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **CROSS-SURREBUTTAL TESTIMONY OF MICHAEL S. PROCTOR** and **STAFF'S STATEMENT OF POSITIONS**.

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,

Steven Dottheim
Deputy General Counsel
(573) 751-7489
(573) 751-9285 (Fax)

Enclosure
cc: Counsel of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

AUG 23 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.)

Case No. EM-2000-369

STAFF'S STATEMENT OF POSITIONS

A number of issues raised by the Staff in the St. Joseph Light & Power Company (SJLP) – UtiliCorp United Inc. (UtiliCorp) merger case, which were settled by the Staff and SJLP – UtiliCorp in that case, are common to the Empire District Electric Company (EDE) – UtiliCorp merger case. It is believed that the Staff and EDE – UtiliCorp likely will be able to settle these common issues in the instant case. Since that has not occurred as yet, the Staff is showing those items as issues in this document.

In the following pages, the Staff has endeavored to identify the pages of each Staff witness' rebuttal and cross-surrebuttal testimony (only Staff witness Michael S. Proctor has filed cross-surrebuttal testimony) that are relevant to each issue set out in this document and the List Of Issues filed on July 31, 2000. It is the Staff's understanding that other parties with testimony filed will be providing similar lists. Such listings are for the convenience of the Commissioners, Regulatory Law Judge and parties. An oversight resulting in an incomplete listing of the pages of testimony of a particular witness on a particular issue is not intended to, nor should it result in the exclusion from consideration of the pages of testimony inadvertently not listed.

The Staff also would note that in the first several pages of most Staff witnesses' rebuttal testimony, there is a question and answer respecting how that witness' rebuttal testimony in the EDE – UtiliCorp merger case compares to the witness' rebuttal testimony in the SJLP – UtiliCorp merger case. In at least one Staff witness' rebuttal testimony, this information is further back, but still within the first ten pages of the rebuttal testimony. In another Staff witness' rebuttal testimony, it is indicated in the index to the witness' rebuttal testimony what sections contain "new materials."

The Staff positions track the issues identified in the List Of Issues that was filed on July 31, 2000. The Staff has endeavored to answer the questions posed in said List Of Issues with a one-word response and then provide a one or two sentence explanation. The Staff has attempted to be non-argumentative and at the same time provide information that will help frame the issue. The List Of Issues filed on July 31, 2000 stated that the descriptions of the issues contained therein were provided for the convenience of the Commission and no party was necessarily bound by said descriptions, which were not intended to constitute evidence. The List Of Issues further stated that all parties submitting that document agreed that said document delineated all areas of disagreement which existed among the parties as of the date of filing that document, which predated the filing of surrebuttal and cross-surrebuttal testimony and schedules. That is also true for this document, since surrebuttal and cross-surrebuttal testimony and schedules are required to be filed by today, August 23, 2000. Thus, it was related in the List Of Issues, which also identified the witnesses for each issue, that since parties may not have decided by July 31, 2000 whether they would file surrebuttal or cross-surrebuttal testimony respecting certain issues/conditions, the List Of Issues being submitted may not reflect a decision yet to be made whether to file or not to file surrebuttal or cross-surrebuttal testimony and who would be the parties' surrebuttal or

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cross-surrebuttal witnesses. As a consequence, all parties reserved the right to inquire into and establish a position concerning any issue which is pertinent to the proceedings and which arises during the course of the proceedings as a new issue based on matters which could not reasonably have been contemplated based on the filings and pleadings in Case No. EM-2000-369 as of July 31, 2000.

In addition, the List Of Issues stated as follows:

Although conditions are set out as separate categories below with their own lists of witnesses, it is the intention of the parties that the conditions will be presented to the Commission at the same time that the subject areas giving rise to the conditions will be presented to the Commission. Conditions under Roman numeral II. may constitute an issue without there being a corresponding subject area set out under Roman numeral I below.

The parties anticipate providing the Commission with revisions of this List of Issues, including revisions of the hearing schedule, at the earliest possible time, as further developments occur.

ISSUES

I. Does the proposed merger and related transactions and proposals satisfy the not detrimental to the public interest standard required for the approval of mergers by the Commission?

The Merger: Companies' Overview of the Transaction and Policy¹

COMPANIES

M. McKinney
Green

Merger Costs/Benefits

(1) Under reasonable assumptions, do estimated merger savings exceed estimated merger costs?

Staff Position: No, when appropriate adjustments are made to the Companies' estimates of merger savings and costs, estimated merger savings do not exceed estimated merger costs.

(2) If under reasonable merger assumptions, estimated merger savings do not exceed estimated merger costs should the merger be approved as being "not detrimental to the public interest"?

¹ As a courtesy, the Companies have request that Mr. Green, who is available only on Tuesday, September 12, 2000, stand cross-examination on all of his direct and surrebuttal testimony on Tuesday, September 12, 2000. Also as a courtesy, the Companies have requested that Myron McKinney stand cross-examination on all of his direct testimony at the commencement of the evidentiary hearings on Monday, September 11, 2000. Messrs. Green and Myron McKinney have submitted direct testimony respecting various issues listed below. Witnesses who have filed rebuttal testimony to Messrs. Green and Myron McKinney will stand cross-examination when those discrete issue areas are heard as indicated below. Mr. McKinney may submit surrebuttal testimony addressing discrete issues raised in the rebuttal testimony of certain parties. Should Mr. McKinney file such surrebuttal testimony, the Companies propose that he take the witness stand for cross-examination at the time each of the discrete issues is heard by the Commission. Should there be agreement by the parties to (1) permit Mr. Green to testify at one time on the entirety of his direct and surrebuttal testimony and to (2) permit Mr. McKinney to testify at one time on the entirety of his direct testimony, and not at the time that witnesses that have filed responsive testimony testify, such agreement should not be viewed as anything other than as a courtesy extended by the other parties to the Companies.

Staff Position: No. Mergers should not be approved when there is no reasonable expectation that merger savings will exceed merger costs, as is the case with this proposed merger.

| <u>COMPANIES</u> | <u>Staff</u> |
|------------------|---|
| J. McKinney | Oligschlaeger (3-6, 48-51, 69-70) Traxler (2-9, 61-70) |

Regulatory Plan - Overall:

- (1) Should the Companies' proposed regulatory plan for treating merger related savings and costs in rates be adopted in total as not detrimental to the public interest?

Staff's Position: No. Adoption of the Companies' proposed regulatory plan would be detrimental to the public interest.

- (2) Should The Empire Electric District Company (EDE/Empire) be placed under a rate "moratorium" for five years following the "pre-moratorium rate proceeding"?

Staff Position: No. The proposed moratorium is part of the Companies' overall regulatory plan, which should be rejected.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> | <u>PRAX</u> |
|------------------|--|-------------------------------------|-------------|
| J. McKinney | Oligschlaeger (11-17, 28-32, 37-44, 48, 52-56, 58-67) Featherstone (19-22, 31-38, 111-115) Traxler (9-21) Proctor (45-58, 64-66) Williams (all) McKiddy (3-8, 9-29) | Trippensee Burdette Robertson | Meade |

Acquisition Adjustment:

- (1) Should the amortization of one-half of the acquisition adjustment and the return on the unamortized portion of one-half of the acquisition adjustment be treated above-the-line for rate purposes in Years 6-10 following the pre-moratorium rate proceeding as the Companies propose?

Staff Position: No. The proposed recovery of one-half of the acquisition adjustment directly from ratepayers (also referred to as above-the-line treatment) is part of the Companies' overall regulatory plan, which should be rejected in entirety.

- (2) Should the amortization of the acquisition adjustment begin at the closing of the merger between EDE and UtiliCorp United Inc. (UCU)?

Staff Position: Yes, and the amortization should be booked below-the-line so that none of the acquisition adjustment is directly recovered from ratepayers.

- (3) Should any portion of the acquisition adjustment ever be included in rates for (a) "recovery of" the acquisition adjustment (amortization of the acquisition adjustment) and (b) "return on" the acquisition adjustment (rate base component of the unamortized balance of the acquisition adjustment)?

Staff's Position: No. Any direct recovery of acquisition adjustments from ratepayers is detrimental to the public interest.

| COMPANIES | STAFF | OPC | PRAX |
|-------------|---|-------------------|-------|
| J. McKinney | Oligschlaeger (17-28) Featherstone (24-31, 38-72, 101, 106) Hyneman (3-38, 42-90) Fischer (72-93) Broadwater(18-29) Proctor (3-22) | Robertson Kind | Meade |

Estimated Merger Savings:

- (1) Should the Companies' estimate of merger savings and merger costs be relied upon by the Commission in its findings regarding the Merger Application?

Staff Position: No, merger savings and merger cost estimates are inherently speculative and subject to error, as is true for the Companies' estimate of merger savings and merger costs.

- (2) Does the Companies' estimate of generation/joint dispatch savings reflect only impacts directly attributable to the merger?

Staff Position: No. The Company restricted off-system sales opportunities in its estimate of pre-merger energy costs and profits from off-system sales. This restriction resulted in an overly optimistic estimate of savings for the jointly dispatched systems.

- (3) Does the Companies' estimate of merger savings reflect the expected operation of the UCU and EDE pension plans following closing of the merger?

Staff Position: No. As a result, the Companies' estimated net merger savings in the pension/benefits area are overstated.

| COMPANIES | STAFF | OPC |
|-----------|------------------------|----------|
| Siemek | Fischer (5-31) | Roberson |
| DeBacker | Harris (all) | Kind |
| Heider | Traxler (28-70) | |
| Browning | Lin (3-12, 13) | |
| Kreul | Proctor (34-36, 40-42) | |

Savings Tracking/Benchmark

- (1) Should the Companies' proposal for utilizing a savings tracking system for identifying and quantifying merger related savings in Years 6-10, after the pre-moratorium rate proceeding, be adopted?

Staff Position: No. Tracking merger savings is not practical or practicable.

- (2) If the Commission finds that establishing a merger savings tracking system is necessary, should this tracking system be in place for Years 1-5, as well as for Years 6-10, after the pre-moratorium rate proceeding?

Staff Position: Yes.

- (3) Should the Companies' proposal for establishing a guaranteed merger revenue requirement benefit to EDE customers of at least \$3.0 million for each year of Years 6-10, following the pre-moratorium rate proceeding, be adopted?

Staff Position: No. The guaranteed merger revenue requirement benefit is dependent upon the ability to track merger savings, which the Staff does not believe is practical or practicable.

- (4) If "yes" to question 3 above, what period of time should be used as a "baseline" for the

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Case No. EM-2000-369
August 23, 2000**

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James Deutsch
Blitz, Bardgett, & Deutsch, LC
308 East High St.
Jefferson City, MO 65101

purpose of measuring future merger savings?

Staff Position: If the Commission's decision for question 3 above is "yes," the cost of service determination to be made by the Commission in the EDE pre-moratorium rate proceeding should be used as a baseline.

(5) Should actual or budgeted amounts be used for purposes of establishing a savings tracking "baseline"?

Staff Position: Actual amounts should be used as a baseline, if a savings tracking system is employed.

(6) If a baseline using actual amounts is adopted, what baseline and what adjustments to the "baseline" are appropriate for this purpose?

Staff Position: The actual cost of service determination to be made by the Commission in the EDE pre-moratorium rate proceeding should be used as a baseline, if a baseline using actual results is adopted by the Commission. This baseline would already reflect adjustments to remove the impact of non-recurring, abnormal and unusual expenses.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> |
|------------------|-----------------------|------------|
| Myers | Fischer (31-71) | Robertson |
| DeBacker | Oligschlaeger (32-36) | |
| Siemek | Featherstone (72-101) | |
| | Traxler (18-21) | |
| | Proctor (36-38) | |

Frozen Capital Structure:

(1) Should EDE divisional customer rates in Years 6-10, after the pre-moratorium rate proceeding, be calculated, as proposed by the Companies, using the stand-alone EDE capital structure ordered by the Commission in the pre-moratorium rate proceeding?

Staff Position: No. After merger closing, EDE divisional rates should reflect the prudent actual costs of financing the EDE division; i.e., UCU's actual capital structure, assuming it is prudent.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> |
|------------------|------------------------|------------|
| J. McKinney | Broadwater (3-18) | Burdette |
| | Featherstone (106-111) | |

Corporate Allocations:

(1) Does the Companies' allocation of escalated corporate overhead costs to the EDE division represent a reasonable assumption as to an escalation rate to be applied to these allocated costs?

Staff Position: No. The Companies are using a 2.5% inflation rate to escalate (a) savings from consolidation, (b) costs transferred from EDE to UCU and (c) UCU corporate overhead costs allocated back to EDE during the 10-year period following the closing of the merger. An escalation factor more in line with the MPS' recent experience with corporate overhead cost increases should be used to project EDE's future experience with corporate overhead costs.

(2) Following the closing of the merger, should Missouri Public Service (MPS) divisional customer rates be calculated using levels of UCU corporate overhead allocated costs that assume the non-inclusion of EDE in the UCU corporate structure?

Staff Position: No. After the merger closing, MPS divisional rates should reflect that portion

of actual corporate overhead allocated costs that are deemed necessary and beneficial to MPS customers. The allocation of corporate overhead costs should reflect the EDE merger and other UCU merger and acquisition transactions.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> |
|------------------|-----------------|------------|
| J. McKinney | Traxler (28-53) | Robertson |
| Siemek | | |

MPS Savings Assignment:

- (1) Should no or very little merger savings and costs be reflected in the MPS divisional customer rates after the closing of the merger, as proposed by the Companies?

Staff Position: No. MPS should receive a fair allocation of merger savings and prudent merger costs for ratemaking purposes after the merger closing.

| <u>COMPANIES</u> | <u>STAFF</u> |
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| J. McKinney | Oligschlaeger (44-47) |
| | Proctor (23-34, 40-44, 46-47) |

Electric Allocations Agreement:

- (1) How should the energy costs and profits from off-system sales associated with the joint dispatch of MPS and EDE power supply resources be allocated between these two post-merger UCU divisions?

Staff Position: The energy costs and profits from off-system sales should be allocated between EDE and MPS in proportion to the stand-alone energy costs and profits from off-system sales using the identical assumptions for power supply costs, availabilities and off-system purchase/sale opportunities as are used for the jointly dispatched systems.

- (2) Should the Electric Allocations Agreement include the specific calculations for estimating energy cost savings from joint dispatch and increased profits from off-system sales?

Staff Position: If the Commission approves a sharing of energy-cost related opportunities between shareholders and ratepayers for a limited period of time, then an attachment to the Electric Allocations Agreement should be included that indicates how these energy-cost related opportunities are to be calculated and allocated.

| <u>COMPANIES</u> | <u>STAFF</u> |
|------------------|------------------------|
| DeBacker | Proctor (23-34, 42-44) |

Transaction Costs:

- (1) Should the Companies recover in rates the transaction costs associated with the merger?

Staff Position: No. Transaction costs should be tracked for the sole purpose of being treated as part of the acquisition adjustment, and should be booked below-the-line.

- (2) If yes to question 1, over what period of time should these costs be amortized into cost of service?

Staff Position: If the Companies are permitted to recover in rates the transaction costs associated with the merger (yes to question 1), these costs should be amortized into cost of service over 40 years, the same period as the Companies propose that the acquisition adjustment should be amortized.

- (3) If yes to question 1, what portion of transaction costs should be assigned to nonregulated

operations?

Staff Position: If the Companies are permitted to recover in rates the transaction costs associated with the merger (yes to question 1), half of the transaction costs should be assigned to non-regulated operations, in the absence of adequate information from the Companies as to perceived non-regulated benefits of the merger.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> |
|------------------|--------------------------------|------------|
| Siemek | Russo (2-9) Hyneman (38-42) | Robertson |

Costs to Achieve:

(1) Should the Companies recover in rates the "costs to achieve" associated with executive severance payments?

Staff Position: No.

(2) Should the Companies recover in rates the costs of the "paid advisory board"?

Staff Position: No.

(3) Should the Companies recover in rates FAS 106 curtailment costs through a ten-year amortization?

Staff Position: No.

(4) For those "costs to achieve" that are deemed eligible for rate recovery, how should they be accounted for pending consideration in a future general rate proceeding?

Staff Position: These costs should be charged to expense as incurred.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> |
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| Siemek | Russo (9-16) | Robertson |
| J. McKinney | Hyneman (38-42) Traxler (21-28) | |

Pre-Moratorium Rate Proceeding

(1) Should various determinations concerning the test year, update and true-up periods, capital structure, ratemaking treatment of merger savings and costs, and other items related to EDE's planned pre-moratorium rate proceeding be made by the Commission in this proceeding?

Staff Position: No. These determinations should be made in the context of EDE's planned pre-moratorium rate proceeding.

(2) Should the in-service criteria applicable to EDE's planned State Line Combined Cycle Unit be determined by the Commission in this proceeding?

Staff Position: No. In-service criteria determinations should be made in the context of EDE's planned pre-moratorium rate proceeding.

(3) If the answer is "yes" to question (2), what in-service criteria should be adopted?

Staff Position: If the Commission makes a determination regarding in-service criteria in the context of the instant merger application proceeding, the criteria sponsored by Staff witness David W. Elliott in his prepared rebuttal testimony should be adopted by the Commission.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> | <u>PRAX</u> |
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| Fancher | Oligschlaeger(56-58) | Burdette | Meade |

Market Power

(1) Will a post-merger UCU possess more horizontal, vertical, or retail market power?

Staff Position: The post-merger UCU will possess more vertical market power through the control of the joint transmission systems (either MPS-EDE or MPS-SJLP-EDE). The horizontal market power with respect to transmission constraints that could potentially isolate portions of the merged entities' system from the competitive supply of power is yet to be determined.

(2) If the answer to Question 1 is yes, will the additional vertical or retail market power possessed by a post-merger UCU be detrimental to the public interest and will the risk of additional horizontal market power possessed by a post-merger UCU be detrimental to the public interest?

Staff Position: Additional vertical market power should be mitigated by requiring the merged entity (either MPS-EDE or MPS-SJLP-EDE) to turn over the control of its transmission system to a FERC approved Regional Transmission Organization (RTO).

(3) Will the merger allow the Companies to take valuable, limited transmission capacity necessary for other Missouri utilities to maintain deliveries under their purchased power contracts?

Staff Position: This needs to be determined through a study to be performed by the Southwest Power Pool (SPP) that includes the assumptions for connecting MPS, SJLP and EDE.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> | <u>SPF</u> |
|------------------|-----------------|------------|------------|
| J. McKinney | Proctor (58-64) | Kind | Russell |

Transmission Access and Reliability

(1) Have the Companies conducted and provided adequate studies of the impact of the proposed merger upon transmission facilities within, and interconnecting with, the State of Missouri, and upon all providers of electric service in the State, to prove that the proposed merger is not detrimental to the public interest?

Staff Position: No.

(2) Will the proposed merger provide the Companies the ability to gain unduly preferential priority of access to limited transmission facilities and/or exercise their post-merger transmission access anti-competitively, to the detriment of other customers in the State and therefore to the detriment of the public?

Staff Position: Staff takes no position.

(3) Could a post-merger UCU refunctionalize its transmission facilities in anti-competitive ways to the detriment of the public?

Staff Position: Staff takes no position.

(4) Do the Companies being merged adhere to a single, consistent set of standards for designing and operating their transmission facilities and, if not, would not adhering to a single, consistent set of standards for designing and operating their transmission facilities be detrimental if the merger is approved?

Staff Position: Staff takes no position.

| <u>COMPANIES</u> | <u>SPF</u> | <u>STAFF</u> |
|------------------|------------|---|
| Kreul | Russell | Proctor (cross-surr. – all) Ketter (3-4) |

Stranded Costs

- (1) Would ratepayers be harmed if UCU were allowed to include any portion of the acquisition adjustment in its future calculation of stranded costs?

Staff Position: Yes. No part of the acquisition adjustment should be considered to be “stranded” in the future for any reason.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> |
|------------------|-----------------------|------------|
| J. McKinney | Oligschlaeger (67-69) | Robertson |

Synergies In Unregulated Operations

- (1) Are some of the synergies (e.g., generation) included in the 10-year merger synergy calculations likely to accrue primarily to shareholders if electric restructuring occurs in Missouri prior to the end of the 10-year period used to calculate the merger synergies?

Staff Position: Staff supports OPC’s position, and believes that Staff addresses this item in its position respecting the acquisition adjustment.

- (2) Will UCU receive additional benefits from the proposed merger that are not reflected in the 10-year merger synergy calculations?

Staff Position: Staff supports OPC’s position, and believes that Staff addresses this item in its position respecting the acquisition adjustment.

OPC
Kind

Affiliate Transactions

- (1) Will UCU’s affiliate transactions, as a result of the proposed merger, increase in size and scope and thus become more complex and difficult to monitor, while at the same time it will become more important to monitor such transactions to ensure compliance with standards?

Staff Position: Staff supports OPC’s position.

OPC
Kind

Energy Efficiency

- (1) Will the proposed merger have a detrimental impact on low-income weatherization and therefore on the public?

Staff Position: Staff takes no position.

- (2) Will the proposed merger have a detrimental impact on other energy efficiency assistance and therefore on the public?

Staff Position: Staff takes no position.

- (3) Will the proposed merger have a detrimental impact on the use of renewable energy resources and therefore the public?

Staff Position: Staff takes no position.

| <u>COMPANIES</u> | <u>DNR</u> |
|------------------|--|
| Pella | Randolph Colton Jackson Lehr Kushler |

EDE Retiree Benefits

- (1) If the Commission approves the Companies', OPC's or any regulatory plan, should the plan be modified to include provision for continuation and funding of EDE Retiree health, life and accidental death/dismemberment insurance, and surviving spouse benefits, in order for it to comply with law and otherwise satisfy the not detrimental to the public interest standard for approval of the merger?

Staff Position: Staff takes no position.

- (2) Should the calculation of merger costs/benefits include the treatment accorded EDE Retiree health, life and accidental death/dismemberment insurance, and surviving spouse benefits?

Staff Position: Staff takes no position.

| <u>COMPANIES</u> | <u>RET</u> |
|------------------|--|
| | Alumbaugh Athey Corkle Crayne Dorsey Fuchs De Graffenreid Rhoads Vanwinkle Wilson |

EDE Health Insurance Trust Account Assets

- (1) Does the proposed merger's treatment or disposition of the EDE health insurance trust account assets comply with law and otherwise satisfy the not detrimental to the public interest standard?

Staff Position: Staff takes no position.

| <u>COMPANIES</u> | <u>RET</u> |
|------------------|--|
| | Alumbaugh Athey Corkle Crayne Dorsey Fuchs De Graffenreid Rhoads Vanwinkle Wilson |

Labor Protective Provisions

- (1) If the Commission approves the Companies', OPC's or any regulatory plan, should the plan be modified to include "Labor Protective Provisions" protecting current employees of EDE from adverse employment consequences, including termination and loss of employment, in order for it to comply with law and otherwise satisfy the not detrimental to the public interest standard for approval of the merger?

Staff Position: Staff takes no position.

- (2) Should the calculation of merger costs/benefits include the treatment accorded "Labor Protective Provisions" protecting current employees of EDE from adverse employment consequences, including termination and loss of employment?

Staff Position: Staff takes no position.

COMPANIES IBEW

II. If the adoption of conditions by the Commission cannot in the view of particular parties eliminate in total the situation that the proposed merger is detrimental to the public interest, but regardless of this view of particular parties, the Commission decides to approve the proposed merger, should the Commission adopt any or all of the following conditions, as part of its approval of the Companies' merger?

Stranded Costs Condition

- (1) Should the Staff's proposed condition regarding elimination of the acquisition adjustment from future stranded cost calculations be adopted?

Staff Position: Yes.

COMPANIES STAFF
J. McKinney Oligschlaeger (67-69)

Pension Funds Condition

- (1) Should the Staff's proposed condition requiring maintaining the pre-merger funded status of EDE's pension fund for calculating FAS 87 pension cost be adopted?

Staff Position: Yes. The Companies must agree to maintain EDE's pre-merger funded status for FAS 87 pension cost calculations or they must reduce their estimated savings from benefits conversion by \$8.3 million in order to reflect their intended use of a "combined" pension fund asset assumption after the merger. Staff also addresses this item in item "3" under the issue "Estimated Merger Savings."

COMPANIES STAFF
Browning Traxler (53-61)

Access to Book and Records Condition

- (1) Should the OPC's condition that the merged entity be required to allow OPC and the Staff access to its books, records, employees and officers and those of its wholly owned subsidiaries be adopted?

Staff Position: Staff supports OPC.

COMPANIES OPC
J. McKinney Kind

Affiliate Transactions Condition

- (1) Should the OPC's condition that the merged entity be required to agree to comply with the Commission's affiliate transaction rules be adopted?

Staff Position: Staff supports OPC.

| <u>COMPANIES</u> | <u>OPC</u> |
|------------------|------------|
| J. McKinney | Kind |

Income Taxes Condition

- (1) Should the Staff's proposed condition regarding customer protections in the event the merger is treated as a "taxable" transaction be adopted?

Staff Position: Yes.

| <u>COMPANIES</u> | <u>STAFF</u> |
|------------------|-----------------|
| Karlin | Hyneman (90-92) |

Surveillance Condition

- (1) Should the Staff's proposed conditions regarding continued submission of separate "surveillance" reports for UCU and EDE, following closing of the merger, be adopted?

Staff Position: Yes. UCU should be required to continue providing "surveillance" reports for UCU on a total company basis and surveillance reports should be required to be provided for MPS and EDE on a stand-alone division basis.

| <u>COMPANIES</u> | <u>STAFF</u> |
|------------------|----------------------|
| J. McKinney | McKiddy (8-9, 29-32) |

Customer Service Indicators Condition

- (1) Should the Staff's proposed conditions regarding measurement, reporting and potential imposition of remedial action concerning certain customer service indicators be adopted?

Staff Position: Yes, so as to help ensure that the customers of EDE and MPS do not experience deterioration in service as a result of the merger.

| <u>COMPANIES</u> | <u>STAFF</u> |
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| Pella | Kremer (all) Kiebel (all) Ketter (all) |

Market Power Conditions

- (1) Respecting vertical market power, should the Staff's condition that the Companies be required to commit to join a single regional transmission entity, before the October 15, 2000 deadline of FERC Order No. 2000, be adopted?

Staff Position: Yes.

- (2) Respecting horizontal market power, should the Staff's condition that at the time retail competition becomes lawful in Missouri the Companies be required to agree to submit a study showing what percentage of load throughout their merged service territory can be served from competitive generation sources be adopted?

Staff Position: Yes.

- (3) Respecting horizontal market power, should OPC's condition that, the Companies be required to agree that they will be subject to the same Horizontal Market Power

Provisions that were approved by the Commission in Case No. EM-97-515 be adopted?
Staff Position: Yes.

- (4) Respecting vertical market power, should OPC's condition that the Companies be required to agree to join a Regional Transmission Organization (RTO) under the same Vertical Market Power Provisions that were approved by the Commission in Case No. EM-97-515 be adopted?

Staff Position: Yes. Specifically, the merged entity (either MPS-EDE or MPS-SJLP-EDE) should be required to determine the potential horizontal market power from transmission constraints that could potentially isolate portions of the merged entity's system from the competitive supply of generation (i.e., Case No. EM-97-515 Market Power Condition 13.a.iv.).

- (5) Respecting retail market power, should OPC's condition that the Companies be required to agree that they will be subject to the same Retail Market Power Provisions that were approved by the Commission in Case No. EM-97-515 be adopted?

Staff Position: Yes. Staff supports OPC.

- (6) Respecting horizontal, vertical, and retail market power, should OPC's condition that the Companies be required to agree that they will be subject to the same Market Power Legislation Provisions that were approved by the Commission in Case No. EM-97-515 be adopted?

Staff Position: Staff takes no position.

- (7) Respecting transmission capacity, should Springfield's proposed conditions regarding Transmission Access and Reliability (which are set forth in detail herein under the heading "Transmission Access and Reliability Conditions") be adopted?

Staff Position: See "Staff Positions" below.

| <u>COMPANIES</u> | <u>STAFF</u> | <u>OPC</u> | <u>SPF</u> |
|------------------|-----------------|------------|------------|
| J. McKinney | Proctor (58-64) | Kind | Russell |

Transmission Access and Reliability Conditions

- (1) (a) Should the Commission order the Joint Applicants to conduct production cost, load flow and stability studies of the impact of the proposed merger upon transmission facilities within, and interconnecting with, the State of Missouri, and upon all providers of electric service in the State, prior to approval of the merger and if so, what should such studies contain? (b) Should the Joint Applicants be ordered to provide these studies in hard copy and electronic form to the other parties, and should the Commission keep this case open until such time as the studies have been completed and all parties have been allowed sufficient time to review/analyze and file comments in this case on such studies? (c) Should the Joint Applicants be required to construct and/or upgrade, at their expense, transmission facilities necessary to insure that their integrated operation will not adversely impact others? (d) If the answer to (c) is yes, what transmission facilities?

Staff Position: (a) The Commission should order the Joint Applicants to have the SPP perform a study of its proposals to connect the MPS, SJLP and EDE systems. This load-flow study should assume the joint dispatch of MPS, SJLP and EDE power supply resources and should determine detrimental impacts to the regional transmission system. (b) Yes. (c) Yes, but the costs of these upgrades placed on the Joint Applicants should not require it to pay for benefits to other users of the transmission system that result from the upgrades. (d) The facilities to be upgraded would be determined by the results of the SPP study.

(2) Should the Commission impose conditions on the merger such that:

- The Joint Applicants be required by the Commission to commit that with respect to any and all generating resources associated with any one of their existing four control areas (including purchased generating resources) serving load in any other control area of the merging companies, the merging companies should waive or not assert: (i) native load priority on scheduling and curtailing non-firm network transmission service; (ii) the native load preference arguably accorded to bundled retail loads over wholesale loads under the decision in Northern States Power Co. v. FERC, 176 F.3d 1090 (8th Cir. 1999); and (iii) use of any native load priority that will enable any one of the merging companies to import power through constrained interfaces so as to free up its local generating resources for off-system sales?
- The Joint Applicants not be allowed to combine any or all of their existing control areas without first submitting their plans for such combinations to peer group review and approval by the SPP ISO/RTO and the affected regional reliability councils?
- The merged companies be required to schedule all power flows and/or reserve transmission capacity on the relevant OASIS for purposes of carrying out any internal dispatch between what are now four geographically isolated pockets of load and generation in four separate control areas of the merging companies, to implement real-time monitoring of intra-company flows associated with internal dispatch, to report continuously the amount of such flows on its OASIS and to make all reasonable efforts to limit internal dispatch to levels at or below the transmission capacity reserved for purposes of carrying it out?
- If the burdens on Springfield attributable to internal dispatch of the Joint Applicants turn out to be substantial (i.e., a substantial increase in curtailments of Springfield's firm schedules from Montrose), the merged company be required to reimburse Springfield for the incremental costs to Springfield of re-dispatching Springfield's generating resources that are attributable to the post-merger integrated operations of the Joint Applicants' separate systems?
- The merged company be required to put all of its transmission facilities in Missouri and Kansas under the control of the SPP ISO/RTO in a single zone under the SPP transmission tariff and that the merged company join - and maintain membership in - the SPP ISO/RTO and be required to file an integrated open access transmission tariff ("OATT") and an integrated transmission rate for their four control areas in Missouri and Kansas?
- UCU be required to (i) not set aside transmission capacity for Capacity Benefit Margins (CBM) and Transmission Reserve Margins (TRM) and (ii) to waive any future claims for CBM and TRM?

Staff Position: Staff takes no position.

(3) Should UCU be required to not seek refunctionalization of any currently categorized transmission lines of the merging companies that operate at or above 69 kV?

Staff Position: Staff takes no position.

(4) Should the Joint Applicants be required (i) to establish and implement a single standard for transmission system design and operation for the entirety of the merged company and (ii) to comply with the Southwest Power Pool Criteria?

Staff Position: (i) Yes. (ii) Yes.

| <u>COMPANIES</u> | <u>SPF</u> | <u>STAFF</u> |
|------------------|------------|-----------------------------|
| Kreul | Russell | Proctor (cross-surr. – all) |

Load Research Condition

- (1) Should the Staff's proposed conditions regarding production of load research data, following closing of the merger, be adopted?

Staff Position: Yes.

| <u>COMPANIES</u> | <u>STAFF</u> |
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| Pella | Mantle (all) |

Fuel Energy Cost Information Condition

- (1) Should the Staff's proposed condition regarding the continued provision of separate MPS and EDE fuel and energy cost information following closing of the merger be adopted?

Staff Position: Yes, pursuant to 4 CSR 240-20.080.

STAFF
Lin (12-13)

Energy Conditions

- (1) Should the Commission approve DNR's proposed condition that UCU must enter into a partnership with MDNR and other interested parties to market and leverage funds for the development of energy efficiency programs?

Staff Position: Staff takes no position.

- (2) Should the Commission approve DNR's proposed condition that UCU must develop or retain low-income service packages to meet customer needs, reduce energy costs and provide a return to UCU?

Staff Position: Staff takes no position.

- (3) Should the Commission approve DNR's proposed condition that UCU join with the DNR and a broad range of stakeholders to assess the state's renewable and alternative resources and develop demonstration projects, review and implement policy and market options (including net metering and interconnection policies) and put the questions to customers in a Deliberative Poll?

Staff Position: Staff takes no position.

- (4) Should the Commission approve DNR's proposed condition that UCU must target outreach to customers that are income eligible and encourage them to take advantage of the opportunity to reduce energy consumption and to improve home affordability?

Staff Position: Staff takes no position.

- (5) Should the Commission approve DNR's proposed condition that UCU must amend the cooperative agreement between UCU and Kansas City, Missouri to permit averaging unit cost within the agreement to maximize the opportunity to assist customers?

Staff Position: Staff takes no position.

- (6) Should the Commission approve DNR's proposed condition that UCU must eliminate tying the dollar amount to specific measures to maximize the energy conservation measures

installed in each home? Should the Commission approve DNR's proposed condition that any energy efficient measure that is deemed cost-effective as a result of computer analysis, as stated in the agreement between UtiliCorp and Kansas City, Missouri, shall be permitted?

Staff Position: Staff takes no position.

- (7) Should the Commission approve DNR's proposed condition that UCU must permit energy-efficiency assistance to all eligible households? Should the Commission approve DNR's proposed condition that UCU must allow funds to be spent on non-electric appliances?

Staff Position: Staff takes no position.

- (8) Should the Commission approve DNR's proposed condition that UCU must implement a 25-site Benefit Outreach and Screening Software (BOSS) pilot project, and must expand the program, as appropriate, if found to successfully deliver benefits to low-income customers?

Staff Position: Staff takes no position.

- (9) Should the Commission approve DNR's proposed condition that UCU must implement a base load and space heating electric energy efficiency program directed toward high use payment-troubled low-income customers?

- (10) Should the Commission approve DNR's proposed condition that UCU must implement a pilot solar energy program directed toward high use low-income customers?

Staff Position: Staff takes no position.

- (11) Should the Commission approve DNR's proposed condition that UCU must implement a periodic survey process through which the merged company will take pro-active efforts to identify which of its payment-troubled customers represent low-income households?

Staff Position: Staff takes no position.

- (12) Should the Commission approve DNR's proposed condition that UCU must implement an Outcome-based Performance Reporting System (OPRS) through which the customer service outcomes to low-income customers can be systematically tracked over time?

Staff Position: Staff takes no position.

| <u>COMPANIES</u> | <u>DNR</u> |
|------------------|------------|
| Pella | Randolph |
| | Colton |
| | Jackson |
| | Lehr |
| | Kushler |

OPC Regulatory Plan Condition

- (1) If the Commission approves the proposed merger, should OPC's regulatory plan be approved?

Staff Position: Staff takes no position.

| <u>COMPANIES</u> | <u>OPC</u> |
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J. McKinney

Kind
Trippensee

EDE Retiree Benefits Condition

- (1) Should the retirement health, life and other insurance benefits, and surviving spouse benefits, currently applicable to EDE Retirees be "grandfathered" in as a condition of approval of the merger?

Staff Position: Staff takes no position.

| <u>COMPANIES</u> | <u>RET</u> | <u>OPC</u> |
|------------------|----------------|------------|
| | Alumbaugh | Kind |
| | Athey | |
| | Corkle | |
| | Crayne | |
| | Dorsey | |
| | Fuchs | |
| | De Graffenreid | |
| | Rhoads | |
| | Vanwinkle | |
| | Wilson | |

Labor Protective Provisions Condition

- (1) Should the Commission require, as a condition of approval of the merger, the imposition of "Labor Protective Provisions" protecting current employees of EDE from adverse employment consequences, including termination and loss of employment, as a result of the merger?

Staff Position: Staff takes no position.

| <u>COMPANIES</u> | <u>IBEW</u> |
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|------------------|-------------|

Tariff Condition

- (1) Should changes to EDE's current tariffs, following closing of the merger, be adopted by EDE?

| <u>COMPANIES</u> | <u>STAFF</u> |
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ORDER OF CROSS-EXAMINATION

Witness:

| <u>UCU</u> | <u>EDE</u> | <u>Staff</u> | <u>OPC</u> | <u>PRAX</u> | <u>SPF</u> | <u>DNR</u> | <u>RET</u> |
|------------|------------|--------------|------------|-------------|------------|------------|------------|
|------------|------------|--------------|------------|-------------|------------|------------|------------|

Cross:

| | | | | | | | |
|------|------|------|------|------|------|------|------|
| EDE | UCU | DNR | DNR | DNR | DNR | IBEW | IBEW |
| UE | UE | IBEW | IBEW | IBEW | IBEW | RET | OPC |
| IBEW | IBEW | RET | RET | RET | RET | PRAX | PRAX |

| | | | | | | | |
|-------|-------|------|-------|-------|-------|-------|-------|
| RET | RET | PRAX | PRAX | SPF | PRAX | SPF | DNR |
| DNR | DNR | SPF | SPF | OPC | OPC | OPC | SPF |
| PRAX | PRAX | OPC | Staff | Staff | Staff | Staff | Staff |
| SPF | SPF | UE | UE | UE | UE | UE | UE |
| OPC | OPC | UCU | UCU | UCU | UCU | UCU | UCU |
| Staff | Staff | EDE | EDE | EDE | EDE | EDE | EDE |

In the event that "friendly" cross-examination is allowed, UtiliCorp and Empire have requested that each be shown as a separate party for purposes of cross-examination. UtiliCorp and Empire readily acknowledge that no party has agreed or acquiesced to UtiliCorp's and Empire's request.

Schedule Of Issues

Monday, September 11, 2000

Companies' Overview and Policy – M. McKinney
 Merger Costs/Benefits
 Regulatory Plan – Overall
 OPC Regulatory Plan Condition
 Acquisition Adjustment
 Frozen Capital Structure

Tuesday, September 12, 2000

Companies' Overview and Policy (continued) – Green
 Stranded Costs
 Synergies In Unregulated Operations
 Affiliated Transactions
 Energy Efficiency
 Corporate Allocations
 Customer Service

Wednesday, September 13, 2000

MPS Savings Assignment
 Electric Allocations Agreement
 Estimated Merger Savings
 Load Research
 Costs To Achieve
 Transaction Costs
 Savings Tracking/Benchmark

Thursday, September 14, 2000

EDE Health Insurance Trust Account Assets
 EDE Retiree Benefits
 Labor Protective Provision
 Pre-Moratorium Rate Proceeding
 Access To Books and Records
 Surveillance

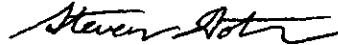
Friday, September 15, 2000

Fuel Energy Cost Information

Income Taxes Condition
Tariff Language
Transmission Access and Reliability²
Market Power³

Respectfully submitted,

DANA K. JOYCE
General Counsel



Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

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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 23rd day of August, 2000.



² Staff witness Michael S. Proctor is not available to testify the week of September 11-15, 2000. The Staff has notified the parties and is engaged in discussions as to how this circumstance might be addressed.

³ See footnote 2 above.

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Case No. EM-2000-369
July 31, 2000**

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