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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>

June 7, 2000

BRIAN D. KINKADE
Executive Director

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Director, Research and Public Affairs

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Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
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

RE: Case No. EA-2000-764

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF'S RESPONSE TO NOTICE TO STAFF REGARDING TIME IN WHICH TO RESPOND TO REPLY OF EMPIRE DISTRICT.**

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

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

FILED²

JUN 07 2000

Missouri Public
Service Commission

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. EA-2000-764

**STAFF'S RESPONSE TO NOTICE TO STAFF REGARDING
TIME IN WHICH TO RESPOND TO REPLY OF EMPIRE DISTRICT**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its
Response to Notice to Staff Regarding Time in Which to Respond to Reply of Empire District
respectfully states to the Missouri Public Service Commission ("Commission") as follows:

1. In its *Reply of The Empire District Electric Company to Response of Staff to Motion for Expedited Consideration* ("Empire's Reply") The Empire District Electric Company ("Empire" or "Company") stated, "a nearly identical Empire Rights Agreement was approved by the Commission in its Case No. EF-91-21." Staff asserts that the facts and circumstances have changed from the time the initial shareholder rights agreement was approved. In 1991, Empire had not negotiated a merger agreement with UtiliCorp United Inc. (UtiliCorp) or another entity, nor was the Company seeking approval of the initial shareholder rights agreement in the context of a related merger proceeding. In 1991, Empire was not up for sale or "in play" as it is now. Therefore, the 1991 situation and the current situation cannot be considered identical. A

shareholder rights plan that might not have been detrimental to the public interest in 1991 could be detrimental to the public interest when applied to the current merger environment.

2. Empire further states in its *Reply* that “the Rights Agreement, which is the subject of this *Application*, is substantially the same as Empire’s existing shareholder rights plan previously approved by the Commission, modified only as necessary to comply with intervening changes in the law and circumstance.” The Staff is in the process of attempting to determine the exact changes that the Company has made to the initial shareholder rights agreement. Empire should explain the specific “intervening changes in the law and circumstance” that each modification of the current shareholder rights plan addresses, as well as how the modification addresses issues raised by these “intervening changes in the law and circumstance.” This information is not provided in the material the Company filed and is not currently available to the Staff without the use of discovery. The Commission’s rules allow twenty days before the information must be provided to the Staff. In that the Company is seeking expedited treatment from the Commission, the Company should have provided this information as part of its filing. The Company’s pursuit of an expedited schedule without the provision of information that would assist the Staff in expediting this case does not assist the Staff in conducting the review warranted by the Company’s filing.

3. Empire asserts that the Commission must issue an Order with respect to its *Application* prior to the expiration of Empire’s current shareholders rights plan on July 25, 2000. The Company has failed to state what detriment will occur to it if the current shareholder rights plan expires on July 25, 2000. The Company continues to refer to its *Application* as a routine or ministerial filing. The Staff is concerned that Empire is seeking to obtain Commission authorization of its *Application* without providing the Commission and the Commission Staff

adequate review time and the necessary information to adequately process the Company's *Application*. This filing must permit adequate review to ensure that the *Application* will not create public detriment in the context of current conditions, which include the pending UtiliCorp merger. The Staff needs more information than what the Company chose to provide in the filing of its *Application* so that the Staff can make an informed recommendation to the Commission and the Commission can make an informed decision respecting the *Application*.

4. This *Application* would have been processed before July 25, 2000 if the Company had made a timely request. Empire knew before April 27, 2000 that the UtiliCorp merger would not close by June 1, 2000. It was apparent to Empire on December 15, 1999 when it filed its merger application with UtiliCorp that the proposed merger would not close by June 1, 2000. On this date Empire and UtiliCorp filed a proposed procedural schedule. The proposed procedural schedule filed by Empire and UtiliCorp on December 15, 1999 requested that evidentiary hearings be scheduled to occur on June 19 through 23, 2000 with briefs to be filed in July 2000. Empire was aware that its request in the merger case to recover the acquisition adjustment from its customers would result in a proceeding that would go to hearing. 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 to file its instant *Application* with the Commission.

5. The Staff does not intend to be presumptuous of what action the Commission might take, but Empire must have realized that unless the Staff recommends approval of the Shareholders Rights Agreement, an Order of the Commission approving the Shareholders Rights Agreement might not be issued before July 25, 2000. The Company indicates in its recent Reply

that it will need time to respond to Staff's evaluation of the Company's *Application*. This suggests the possibility that this *Application* will result in a hearing.

6. The Staff would respectfully suggest that the Commission schedule an early prehearing conference in this matter, at which time the Company would provide, if it has not already provided, written information identified in the instant response as being needed by the Staff to evaluate the Shareholder Rights Agreement. Also, at the early prehearing conference, the Company would have present individuals capable of providing and discussing this information and the Shareholder Rights Agreement in general. The Staff would indicate to the Company at the end of the early prehearing conference whether it will support Empire's request that the *Application* be approved by the Commission. If the Staff indicates that it cannot support approval of the *Application*, then a procedural schedule would be discussed. If a procedural schedule is agreed upon, then the Staff would file with the Commission, within two business days after the conclusion of the early prehearing conference, a report identifying the proposed procedural schedule. If no procedural schedule is agreed upon, then the individual parties would file with the Commission, within two business days after the conclusion of the early prehearing conference, their own individual proposed procedural schedules.

The Staff would make itself available at almost any time that the Commission might set for such an early prehearing conference.

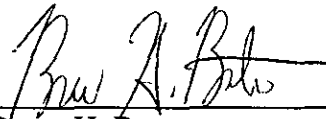
5. The Staff incorporates by reference all matters contained in *Staff's First Response*.

WHEREFORE, Staff prays that the Commission deny Empire's *Motion for Expedited Consideration* and set a date soon for an early prehearing conference in this matter. The Staff

further prays that the Commission make whatever other orders and judgments appear to it to be just and proper in this cause.

Respectfully submitted,

DANA K. JOYCE
General Counsel

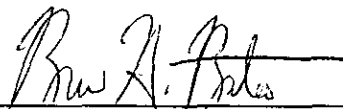


Bruce H. Bates
Assistant General Counsel
Missouri Bar No. 35442

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7434 (Telephone)
(573) 751-9285 (Fax)
bbates@mail.state.mo.us (E-Mail)

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 7th day of June 2000.



Bruce H. Bates

Service List for
Case No. EA-2000-764
June 7, 2000

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

Paul A. Boudreau
Brydon, Swearngen & England
312 E. Capitol Ave.
Jefferson City, MO 65102

Myron W. McKinney, Executive Vice President
The Empire District Electric Company
602 Joplin St., P.O. Box 127
Joplin, MO 64801