

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 PREHEARING CONFERENCE

5 July 24th, 2000
6 Jefferson City, Missouri
7 Volume 1

8 In the Matter of the Joint)
9 Application of UtiliCorp United,)
10 Inc. and The Empire District)
11 Electric Company for Authority to)
12 Merge The Empire District Electric) Case
13 Company with and into UntiliCorp) No. EM-2000-369
14 United, Inc, and, in Connection)
15 Therewith, Certain Other Related)
16 Transactions.

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BEFORE: MORRIS WOODRUFF, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

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REPORTED BY:

21

PATRICIA A. DURBIN, RMR, RPR, CSR, CCR
ASSOCIATED COURT REPORTERS, INC.
714 West High Street
Post Office Box 1308
JEFFERSON CITY, MISSOURI 65102
(573) 636-7551

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1 APPEARANCES:

2 JAMES C. SWEARENGEN, Attorney at Law
3 PAUL A. BOUDREAU, Attorney at Law
4 Brydon, Swearengen & England, P.C.
5 P. O. Box 456
6 312 East Capitol Avenue
7 Jefferson City, Missouri 65102-0456

8 FOR: UtiliCorp United, Inc. and
9 The Empire District Electric Company.

10 JAMES B. DEUTSCH, Attorney at Law
11 Blitz, Bardgett & Deutsch
12 308 East High Street
13 Suite 301
14 Jefferson City, Missouri 65101

15 FOR: Empire District Electric Company Retired
16 Employees, Intervenors.

17 JEFFREY A. KEEVIL, Attorney at Law
18 Stewart & Keevil
19 1001 Cherry Street, Suite 302
20 Columbia, Missouri 65201

21 FOR: City of Springfield, Missouri, through
22 the Board of Public Utilities.

23 STUART W. CONRAD, Attorney at Law
24 JEREMIAH D. FINNEGAN, Attorney at Law
25 Finnegan, Conrad & Peterson
3100 Broadway, Suite 1209
Kansas City, Missouri 64111

FOR: ICI and PraxAir.

SHELLY A. WOODS, Assistant Attorney General
Supreme Court Building
P. O. Box 899
Jefferson City, Missouri 65102

FOR: Missouri Department of Natural Resources.

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24

25

1 APPEARANCES (Continued):

2 DOUGLAS E. MICHEEL, Public Counsel
JOHN B. COFFMAN, Senior Public Counsel

3 P. O. Box 7800
Jefferson City, Missouri 65102

4

5 FOR: Office of Public Counsel and the Public.

6 STEVEN DOTTHEIM, General Counsel
DANA K. JOYCE, General Counsel
DENNIS FREY, General Counsel

7 KEITH R. KRUEGER, Deputy General Counsel
NATHAN WILLIAMS, General Counsel

8 BRUCE BATES, General Counsel
ROBERT FRANSON, Assistant General Counsel

9 P. O. Box 360
Jefferson City, Missouri 65102

10

11 FOR: Staff of the Missouri Public Service
Commission.

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1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 JUDGE WOODRUFF: This is a prehearing
4 conference in Case No. EM-2000-369, which is the matter of
5 the joint application of UtiliCorp United Inc. and the
6 Empire District Electric Company for authority to merge
7 the Empire District Electric Company and UtiliCorp United
8 Inc.

9 Let's start out today by taking entries of
10 appearance and begin with UtiliCorp.

11 MR. SWEARENGEN: James C. Swearengen and Paul
12 Boudreau, Brydon, Swearengen & England, 312 East Capitol
13 Avenue, Jefferson City, Missouri, appearing on behalf of
14 UtiliCorp United Inc. and the Empire District Electric
15 Company.

16 JUDGE WOODRUFF: Okay. Empire does not have
17 separate counsel in this.

18 For Staff?

19 MR. DOTTHEIM: Stephen Dottheim, Dana K. Joyce,
20 Dennis Frey, Keith Krueger, Nathan Williams, Bruce Bates
21 and Robert Franson appearing on behalf of the Staff of the
22 Missouri Public Service Commission, P. O. Box 360,
23 Jefferson City, Missouri 65102.

24 JUDGE WOODRUFF: Thank you.

25 Public Counsel?

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1 MR. MICHEEL: John B. Coffman and Douglas E.
2 Micheel appearing on behalf of Office of the Public
3 Counsel and public, P. O. Box 7800, Jefferson City,
4 Missouri 65102-7800.

5 JUDGE WOODRUFF: And the International Brother
6 of Electrical Work. Really, no one is here for them.
7 Natural Resources?

8 MS. WOODS: Shelly Woods, Assistant Attorney
9 General, Post Office Box 899, Jefferson City, Missouri
10 65109, appearing on behalf of Missouri Department of
11 Natural Resources.

12 JUDGE WOODRUFF: Union Electric?
13 And they are not here. They called in and left
14 a message on my machine that they would not be able to be
15 here but were planning on participating to the extent that
16 they participated in the last case.

17 City of Springfield?

18 MR. KEEVIL: Jeffrey E. Keevil of the law firm
19 of Stewart and Keevil, LLC. Our address is 1001 Cherry
20 Street, Suite 302, Columbia, Missouri 65201.

21 JUDGE WOODRUFF: PraxAir and ICI?

22 MR. CONRAD: On behalf of those parties, Your
23 Honor, please show the appearance of Stuart W. Conrad of
24 the law firm of Finnegan, Conrad and Peterson, LC,
25 Suite 1209, 3100 Broadway, Kansas City, Missouri 64111.

1 I'd like also, although Mr. Finnegan isn't here
2 physically today, to enter his appearance in this docket
3 also.

4 JUDGE WOODRUFF: All right. Thank you.

5 And finally the ten individuals who are
6 identified as the Empire District Electric Company Retired
7 Employees.

8 MR. DEUTSCH: I'm James B. Deutsch of the law
9 firm of Blitz, Bardgett and Deutsch, 308 East High Street,
10 Suite 301, Jefferson City, Missouri, and my firm is
11 representing those ten individuals, as well as the several
12 other Empire District Electric Company former employees
13 who are not retired.

14 JUDGE WOODRUFF: Are there any other matters
15 that anyone wants to bring up while we're on the record?

16 Mr. Dottheim, you made mention at the last
17 hearing about asking parties to identify where in their
18 testimony, which issues you're talking about.

19 Do you want to bring that up again?

20 MR. DOTTHEIM: Yes, Judge. I had mentioned in
21 the UtiliCorp/St. Joseph Light and Power proceedings that
22 I thought it might be beneficial if the parties, for
23 purposes of the statements of positions, if no later than
24 at that point when they submitted those documents to you
25 and the other parties, if they would indicate for each of

1 the issues what -- what portions of their witnesses'
2 testimony covered the specific issues for which they were
3 being identified.

4 That used to be the procedure followed with the
5 hearing memorandum. It appears we've gotten away from
6 that with the list of issues and statements of positions.

7 In a case such as this, I think that that would
8 be helpful. And also with the hearing memorandum, the
9 pages of testimony were identified with the understanding
10 that through oversight a party might not literally
11 identify all of the pages, and as a consequence, the party
12 was not precluded from having that testimony -- that
13 testimony that probably was not identified, the party was
14 not precluded from having that testimony applied to the --
15 to the particular issue.

16 JUDGE WOODRUFF: Does any party want to make
17 any response to those? They sound reasonable to me.

18 Mr. Swearengen, did you want to say something?

19 MR. SWEARENGEN: I think that's fine.

20 One of the little problems we have here is we
21 come in with our issue list before the surrebuttal
22 testimony is filed and the result, that document doesn't
23 really identify who all of the witnesses are, and I don't
24 think Steve intends it to be there.

25 The one thing that we did do, you'll recall, in

1 fact, the company did, once all of the testimony was in
2 and we finalized the schedule of issues and witnesses, we
3 prepared a document which I think we distributed to
4 everybody that showed that.

5 JUDGE WOODRUFF: Yes. And that was very
6 helpful.

7 MR. SWEARENGEN: I think if we had this
8 information from the other parties' pleadings, we can
9 probably put that on that document to identify where the
10 testimony can be found. And we would be more than happy
11 to try to do that.

12 JUDGE WOODRUFF: Okay. I'll leave it all up to
13 you to work out all of the details.

14 MR. SWEARENGEN: Right.

15 JUDGE WOODRUFF: I'm sure it would be helpful
16 to the Commission to help identify by pages of testimony
17 what issues are being discussed.

18 Okay. Any other matters anyone wants to bring
19 up?

20 MR. CONRAD: Judge, I think that it was a
21 fellow named Santano (phonetic sp.), those who do not
22 remember the past are condemned to repeat it.

23 I'd like to explore whether there would be any
24 way in this case, in conjunction with what Mr. Dottheim
25 has talked about, to avoid what we had for about a day and

1 a half in the last merger case, which was witnesses
2 parading back and forth and no one really having questions
3 for them.

4 And at a minimum we ought to be able to have a
5 procedure that would indicate that nobody has questions
6 for that witness on that issue.

7 An alternative might be -- and I guess I'd seek
8 some indication from the bench -- that this -- that the --
9 I don't have any problem with framing the case in the
10 sense of the issue-by-issue approach, but I'm wondering if
11 it might not be more efficient to at least explore the
12 possibility of putting a witness on even though that
13 witness may be on several issues and asking that witness
14 to stand on either all of the issues that they're
15 sponsoring or on a group of them that may somehow be
16 related to the topic for that day.

17 It just seems to me we used about probably
18 through the course of that hearing perhaps as much as a
19 day just moving people off and on the witness stand and
20 they're ought to be a better way.

21 JUDGE WOODRUFF: Any response to that?

22 Does anyone wish to make a response to that?

23 MR. DOTTHEIM: Staff's preference is still to
24 try the case on an issue-by-issue basis. But given the
25 experience of the St. Joseph Light & Power/UtiliCorp

1 hearings, certainly the Staff would be -- would be
2 interested in pursuing if any of the parties know at this
3 stage or some later stage whether they have no
4 cross-examination for certain witnesses.

5 Certainly we should be able to simplify the
6 proceedings by -- by identifying those situations as early
7 as possible and as a consequence, not as Mr. Conrad has
8 indicated, have a parading of witnesses on and off the
9 stand just for the parties to indicate that they have no
10 cross-examination.

11 JUDGE WOODRUFF: Well, the Commission -- yes,
12 Mr. Swearengen.

13 MR. SWEARENGEN: Just my two cents' worth.

14 I agree with both Stu and Steve. My preference
15 is try it on an issue-by-issue basis and set it up the
16 same way that we did previously. I think everyone was
17 pretty tolerant in -- because many of the witnesses'
18 testimony covered a variety of topics.

19 Everyone was pretty tolerant about allowing
20 cross-examination to go beyond maybe the very first issue
21 that that witness was up for. And I think that's why in
22 the end there wasn't any cross-examination for the
23 witnesses on some of the sub issues because we already
24 asked the questions earlier in the proceeding.

25 And I think as long as we do that and continue

1 to allow that to happen, I think it will speed things up.

2 JUDGE WOODRUFF: Well, the Commission is
3 certainly open to any ideas that the parties may have as
4 to how to make things run more smoothly.

5 MR. SWEARENGEN: The other thing, of course, we
6 are all concerned we would waive cross and tell each other
7 we didn't have any questions but we didn't know where the
8 bench was on that. And that was -- that was the -- I
9 guess the factor that caused us to continue to bring these
10 people back up --

11 JUDGE WOODRUFF: Okay.

12 MR. SWEARENGEN: -- and put them on the stand.
13 So maybe you could give us some guidance on that.

14 JUDGE WOODRUFF: Well, of course I can't speak
15 for what individual commissioners might want to ask
16 questions on. So that is a problem as to waiving
17 cross-examination. And, of course, a lot of the
18 commissioners, based on previous experience, will ask
19 questions beyond what was intended as the issues. Of
20 course, they've not taken part in deciding what those
21 issues are going to be.

22 Yes, Mr. Dottheim.

23 MR. DOTTHEIM: If we're able to indicate to the
24 bench issues for which apparently there is no
25 cross-examination or very limited cross-examination, that

1 might well also help the bench. The commissioners
2 themselves know when certain issues will be heard --

3 JUDGE WOODRUFF: Yes.

4 MR. DOTTHEIM: -- and, therefore, if they do
5 have questions, be able to be in the hearing room if their
6 schedule permits or be prepared for that situation.

7 I think some of us maybe were under the
8 impression that we caught people unaware after a very slow
9 start, having picked up speed quite a bit, getting through
10 issues which otherwise there might have been some
11 questions from the bench, if the bench had just known
12 that -- that the issue was going to be coming up sooner
13 than -- than the events the first couple of days would
14 have indicated would -- would occur.

15 So hopefully, again, we'll be able to identify
16 for the bench better what issues at least the parties have
17 or do not have questions for the witnesses on.

18 JUDGE WOODRUFF: I think that would be helpful.

19 Any other matters anyone wants to bring up?

20 All right. I anticipate, again, asking parties
21 to prenumber exhibits as we did in the previous case.
22 I'll issue an order closer to the hearing date assigning
23 those numbers again. It seemed to work pretty well.

24 Anything anyone else wants to bring up?

25 All right. Hearing nothing, then, we'll go off

1 the record at this time.

2 WHEREUPON, the prehearing conference was
3 concluded.

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