

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
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.)

EM-2000-369

MISSOURI DEPARTMENT OF NATURAL RESOURCES'
STATEMENT OF POSITION

COMES NOW the Missouri Department of Natural Resources (MDNR), an Intervenor in the above-styled case, and submits its Statement of Position pursuant to the Commission's Procedural and Scheduling Order in this case.

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 Policy

POSITION: The MDNR has no position on this issue.

Merger Costs/Benefits

1. Under reasonable assumptions, do estimated merger savings 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?"

POSITION: The MDNR has no position on this issue.

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

POSITION: The MDNR has no position on this issue.

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

POSITION: The MDNR has no position on these subissues.

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?

2. Does the Companies estimate of generation/joint dispatch savings reflect only impacts directly attributable to the merger?

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

POSITION: The MDNR has no position on this issue.

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?

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

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?

4. If yes" to question 3 above, what period of time should be used as a "baseline" for the purpose of measuring future merger savings?

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

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

POSITION: The MDNR has no position on this issue.

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?

POSITION: The MDNR has no position on this issue.

Corporate Allocation:

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?

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?

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?

POSITION: The MDNR has no position on these subissues.

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?

POSITION: The MDNR has no position on this issue.

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?

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?

POSITION: The MDNR has no position on this issue.

Transaction Costs:

1. Should the Companies recover in rates the transaction costs associated with the merger?

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

3. If yes to question 1, what portion of transaction costs should be assigned to nonregulated operations?

POSITION: The MDNR has no position on this issue.

Costs to Achieve:

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

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

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

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?

POSITION: The MDNR has no position on this issue.

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?

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

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

POSITION: The MDNR has no position on this issue.

Market Power:

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

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?

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?

POSITION: The MDNR has no position on this issue.

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?

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?

3. Could a post-merger UCU refunctionalize its transmission facilities in anti-

competitive ways to the detriment of the public?

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?

POSITION: The MDNR has no position on this issue.

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?

POSITION: The MDNR has no position on this issue.

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?

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

POSITION: The MDNR has no position on this issue.

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?

POSITION: The MDNR has no position on this issue.

Energy Efficiency:

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

POSITION: The MDNR's position is that the proposed merger will have a detrimental impact on low-income weatherization and therefore on the public. The MDNR believes that the proposed merger will disproportionately impact low-income customers of any merged company and that the benefits of the proposed merger will not be equitably shared with low-income consumers.

Jackson: All

Colton: All

Randolph: pp. 8-18

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

POSITION: The MDNR believes that the proposed merger will have a detrimental impact on other energy efficiency assistance and therefore on the public. Nothing in the merger application discusses or even acknowledges energy efficiency assistance. All

Missourians, particularly low-income Missourians, benefit from energy efficiency measures, which the proposed merger application fails to address.

Colton: pp. 41-46

Kushler: All

Jackson: All

Randolph: pp. 5-21

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

POSITION: The MDNR believes that the proposed merger will have a detrimental on the use of renewable energy resources and therefore the public. The merger application does not address the need for the use of renewable energy resources. In this current climate, the use of renewable energy resources is vital, both economically and environmentally.

Colton: pp. 44-46

Lehr: All

Randolph: pp. 1-8; 21-23

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?

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?

POSITION: The MDNR has no position on this issue.

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?

POSITION: The MDNR has no position on this issue

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?

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?

POSITION: The MDNR has no position on this issue.

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?

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

Market Power Condition:

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?

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?

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?

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?

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?

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?

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?

POSITION: The MDNR has no position on these conditions.

Transmission Access and reliability Conditions:

1. 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?

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?

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?

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?

POSITION: The MDNR has no position on these conditions.

Load Research Condition:

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

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

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?

POSITION: Yes, the Commission should approve the DNR's proposed condition to eliminate the detrimental impacts of the proposed merger on low-income consumers and the public in general.

Randolph: p. 21

Kushler: All

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?

POSITION: Yes, the Commission should approve DNR's proposed condition Number 2 in order to eliminate the detrimental impacts of the proposed merger.

Randolph: All

Colton: All

Jackson: All

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?

Randolph: p. 22

Lehr: All

POSITION: Yes, the Commission should approve DNR's proposed condition number 3 in order to eliminate the detrimental impacts of the proposed merger.

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?

POSITION: Yes, the Commission should approve DNR's proposed condition number 4 in order to eliminate the detrimental impacts of the proposed merger.

Randolph: p. 20

Jackson: pp. 7-8

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?

POSITION: Yes, the Commission should approve DNR's proposed condition number 5 in order to eliminate the detrimental impacts of the proposed merger.

Jackson: pp. 7-8

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?

POSITION: Yes, the Commission should approve DNR's proposed condition number 6 in order to eliminate the detrimental impacts of the proposed merger.

Jackson: pp. 7-8

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?

POSITION: Yes, the Commission should approve DNR's proposed condition number 7 in order to eliminate the detrimental impacts of the proposed merger.

Jackson: pp. 7-8

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?

POSITION: Yes, the Commission should approve DNR's proposed condition number 8 in order to eliminate the detrimental impacts of the proposed merger.

Colton: p. 36-41, 51-57

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?

POSITION: Yes, the Commission should approve DNR's proposed condition number 9 in order to eliminate the detrimental impacts of the proposed merger.

Colton: pp. 41-44, 51-57

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?

POSITION: Yes, the Commission should approve DNR's proposed condition number 10 in order to eliminate the detrimental impacts of the proposed merger.

Colton: pp. 44-46, 51-57

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

POSITION: Yes, the Commission should approve DNR's proposed condition

number 11 in order to eliminate the detrimental impacts of the proposed merger.

Colton: pp. 46-47, 51-57

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?

POSITION: Yes, the Commission should approve DNR's proposed condition number 12 in order to eliminate the detrimental impacts of the proposed merger.

OPC Regulatory Plan Condition:

Colton: pp. 47-57

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

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

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?

POSITION: The MDNR has no position on this condition.

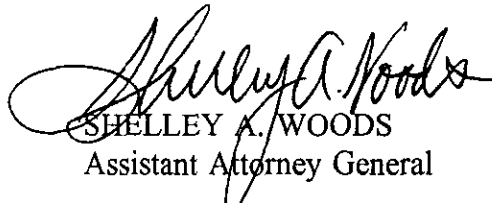
Tariff Condition:

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

POSITION: The MDNR has no position on this condition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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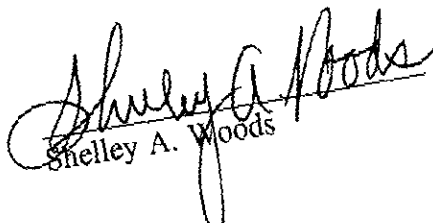
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