

Exhibit No.:

Issue: Standards for Approval
and Regulatory Plan

Witness: John W. McKinney

Sponsoring Party: UtiliCorp United Inc.

Case No.: EM-2000-369

Date Prepared: August 23, 2000

MISSOURI PUBLIC SERVICE COMMISSION
Case No. EM-2000-369

Surrebuttal Testimony

of

John W. McKinney

Jefferson City, Missouri

Exhibit No. 5
Date 9-11-00 Case No. EM-2000-369
Reporter KF

**SURREBUTTAL TESTIMONY
JOHN W. MCKINNEY**

**UTILICORP UNITED INC.
CASE NO. EM-2000-369**

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
SURREBUTTAL TESTIMONY OF JOHN W. MCKINNEY
ON BEHALF OF UTILICORP UNITED INC.**

CASE NO. EM-2000-369

1 Q. Would you please state your name for the record?

2 A. John W. McKinney.

3 Q. Are you the same John W. McKinney who previously caused to be prepared and
4 filed in this proceeding certain direct testimony on behalf of UtiliCorp United Inc.
5 ("UtiliCorp") in connection with its proposed merger with The Empire District
6 Electric Company ("Empire")?

7 A. Yes.

8 **PURPOSE OF TESTIMONY**

9 Q. What is the purpose of your surrebuttal testimony?

10 A. The purpose of this testimony is to provide an overview of UtiliCorp's response
11 to the rebuttal testimony filed by various other parties to this proceeding. In
12 addition, I will specifically respond to certain of the issues raised by the Missouri
13 Public Service Commission Staff ("Staff") including Staff witnesses Mark L.
14 Oligschlaeger, Cary G. Featherstone, Charles R. Hyneman, Steve M. Traxler,
15 Michael S. Proctor, Phillip Williams and David Broadwater; the Office of the
16 Public Counsel ("Public Counsel") witnesses Ryan Kind, Ted Robertson, and the
17 testimony of Russell Trippensee, the rebuttal testimony of David Meade, witness
18 for Praxair, Inc. ("Praxair"), and Whitfield A Russell, witness for Springfield City
19 Utilities ("Springfield").

1 Q. How does your testimony in this case compare to the testimony you filed with the
2 Missouri Public Service Commission ("Commission") concerning the same issues
3 in the UtiliCorp and the St. Joseph Light & Power Company ("SJLP") case, Case
4 No. EM-2000-292?

5 A. My testimony is consistent on many issues. However there are differences in the
6 two transactions and I will point out those in this testimony. Perhaps the most
7 significant difference involves the pre-moratorium rate case, which is discussed
8 by Mr. Robert Fancher in his direct and surrebuttal testimony. Some of the other
9 issues, which I will testify about, are as follows:

10 1) FERC merger approval

11 2) The Rate Moratorium

12 3) Rate Comparisons

13 3) Corporate Costs

14 There are a number of other issues that the Staff and Public Counsel have
15 included in their rebuttal testimony but most of them are not relevant and in fact
16 are distracting to the decision this Commission has to make in this case. Various
17 UtiliCorp witnesses will respond to most of these side issues, but I do not want
18 the Commission to lose sight of the decision before it. That decision is whether or
19 not this merger is detrimental to the public and whether the regulatory plan should
20 be approved, as the shareholders of UtiliCorp are taking all the risks.

21 **FERC APPROVAL**

22 Q. Has the Federal Energy Regulatory Commission ("FERC") issued an order
23 approving the merger of UtiliCorp and Empire?

1 A. Yes. On July 26, 2000 the FERC issued an order in Docket Nos. EC00-27-000
2 and EC00--27-001 approving UtiliCorp's merger with Empire and UtiliCorp's
3 merger with SJLP. The order is attached as Surrebuttal Schedule JWM-1

4 Q. Are all parties to this case before the Commission parties to the above mentioned
5 merger dockets before the FERC?

6 A. No. The Commission, the Public Counsel, ICI Explosives USA Inc. and the City
7 Utilities of Springfield were the only parties to both cases. Springfield filed
8 motions for leave to intervene out of time, protests and requests for conditions.
9 Springfield's issues that are being presented before the Commission are the same
10 as those presented by Springfield to the FERC. In reaching its final decision and
11 order the FERC gave consideration to all the arguments made by Springfield, as
12 the FERC is the proper jurisdiction to hear these issues and the only agency that
13 could provide Springfield with the relief it is requesting.

14 Q. Would you review the order of the FERC as it pertains to the merger approval?

15 A. Yes. The FERC ordered as follows:

- 16 "(A) The proposed mergers are hereby conditionally authorized, as
17 discussed in the body of this order.
18 (B) Applicants shall file a supplemental market power analysis, as
19 discussed in the body of this order.
20 (C) The foregoing authorization is without prejudice to the authority of
21 this Commission or any other regulatory body with respect to rates,
22 service, accounts, valuation, estimates, determination of cost, or any
23 other matter whatsoever now pending or which may come before
24 this Commission.
25 (D) Nothing in this order shall be construed to imply acquiescence in
26 any estimate or determination of cost or any valuation of property
27 claimed or asserted.
28 (E) The Commission retains authority under sections 203(b) and 309 of
29 the FPA to issue supplemental orders as appropriate.
30 (F) Applicants shall promptly notify the Commission of the date the
31 disposition of jurisdictional facilities is consummated."

1 Q. You indicated that the FERC approval was conditional. Would you please
2 explain the conditions the FERC placed upon its approval?

3 A. Yes. The FERC approved the proposed mergers as long as UtiliCorp submits a
4 revised competitive analysis six months prior to commencement of integrated
5 operations. The FERC will review this analysis and will "impose any conditions
6 necessary to mitigate any potential adverse competitive effects."

7 Q. Did the FERC make any requirements with respect to UtiliCorp joining any
8 specific Regional Transmission Organization ("RTO")?

9 A. No. The FERC did state, "Applicants must make a filing on or before October 15,
10 2000, as required under Order No. 2000, in which Applicants, as they have
11 indicated, will propose to transfer operational control of their transmission
12 facilities to Commission-approved RTO on or before December 15, 2001."
13 UtiliCorp does not have any problem with this requirement.

14 Q. Were there any other conditions imposed by the FERC?

15 A. Yes. The FERC ordered the Applicants to include provisions in their tariff
16 (transmission) to ensure that, when two or more operating divisions are involved
17 in the same transaction, customers are not subjected to pancaked rates for using
18 multiple operating divisions of the UtiliCorp systems. UtiliCorp will make this
19 revision to its FERC Open Access Transmission ("OAT") tariffs, as soon as all
20 regulatory approvals are obtained.

21 Q. The FERC order indicates that UtiliCorp and Empire did not specify which
22 method of accounting (pooling or purchases) will be used to account for the
23 merger between UtiliCorp and Empire. How do you respond?

1 A. UtiliCorp will clear up this misunderstanding in its filing required by the FERC
2 within six months after the mergers are consummated in accordance with the
3 Uniform System of Accounts. UtiliCorp will also correct the FERC's
4 misunderstanding that the SJLP merger with UtiliCorp will be accounted for as a
5 pooling. UtiliCorp believes the applications originally filed with the FERC made
6 it very clear that both transactions would be accounted for under purchased
7 accounting.

8 **STANDARD TO BE APPLIED**

9 Q. Beginning at page 22 of his rebuttal testimony, Staff witness Cary G. Featherstone
10 discusses the standard which the Staff has utilized to develop its recommendation
11 regarding the proposed merger between UtiliCorp and Empire. There he cites
12 what he refers to as the "not detrimental to the public interest" standard. He goes
13 on to define the "public" as Empire's present electric and water customers and
14 defines "public interest" as the nature and level of the impact or affect that the
15 merger will have on Empire's Missouri customers. How do you respond?

16 A. My understanding of the appropriate standard to apply to this transaction is
17 essentially the same as Mr. Featherstone's; that is, the Commission should
18 approve the proposed merger unless it can be demonstrated that the transaction
19 will be detrimental to the public. I also agree with Mr. Featherstone that the public
20 in this case consists of Empire's electric and water customers. While I do not
21 necessarily agree with Mr. Featherstone's conclusion, at page 24 of his rebuttal
22 testimony, that the public in this instance also includes UtiliCorp's Missouri
23 customers, it doesn't really matter. The proposed transaction will not be

1 detrimental to Empire's existing customers or to UtiliCorp's existing Missouri
2 customers.

3 Q. What is your understanding as to how the Staff would measure detriment?

4 A. Staff witnesses Steve M. Traxler, at page 9 of his rebuttal testimony, says that
5 "detriment" is higher rates and/or deterioration in the level of customer service.

6 Q. How do you respond?

7 A. I agree that those are the elements to be considered. I would also add that there is
8 no evidence in this case to show that any detriment will result to Empire's
9 customers or UtiliCorp's customers as that term is defined by the Staff.

10 Q. At page 49 of his rebuttal testimony, Mr. Mark L. Oligschlaeger states that the
11 Staff is opposed to the proposed merger on the grounds that it is "detrimental to
12 the public interest." He reaches the same conclusion at page 69 of his testimony.
13 How do you respond?

14 A. Again, there is no evidence in this case to show that UtiliCorp cannot or will not
15 provide safe and reliable electric and water service in the Empire service area.
16 The level of service presently enjoyed by Empire's customers will not deteriorate
17 as a result of the merger. UtiliCorp witness provided detailed direct testimony
18 explaining the service quality and plans for servicing the Empire customers after
19 the merger. UtiliCorp witness Steve Pella's surrebuttal testimony addresses
20 service issues raised by other parties. Also, there is no evidence that rates will
21 increase for Empire's customers as a result of the merger. In fact, rates will be
22 frozen at existing levels for 5 years. The UtiliCorp regulatory plan ensures that
23 customers are protected from any higher rates during the moratorium period. As

1 discussed in Jon Empson's surrebuttal testimony, under the proposed regulatory
2 plan, the shareholders of UtiliCorp face the risks of the transaction including
3 premium recovery. In other words, the status quo will be maintained, at least for
4 the immediate future, with no change in rates or conditions of service. Thus, there
5 will be no detriment from the transaction with respect to Empire's customers.
6 Also, there will be no detriment to UtiliCorp's existing Missouri customers. In
7 fact, they will receive a benefit according to Mr. Oligschlaeger. To better
8 understand why I say there will be no detriment as a result of the proposed merger
9 and to clear up the confusion which may have been created by the rebuttal
10 testimony of the other parties, a brief review of UtiliCorp's proposed regulatory
11 plan for the operation of the combined companies is appropriate.

12 **THE REGULATORY PLAN**

13 Q. Would you please summarize the regulatory plan?

14 A. The regulatory plan for the proposed transaction is set out in paragraph 15 of the
15 Joint Application and is described at pages 6 through 8 of my direct testimony. In
16 essence, when the merger is closed, a five-year rate moratorium for the former
17 Empire properties will be put in place. During the fifth year of that rate
18 moratorium, UtiliCorp will initiate general rate cases for the electric operations of
19 the Empire unit. The intent would be that the new rates, if necessary, will take
20 effect at the end of the moratorium period. In the context of that rate case, and for
21 ratemaking purposes, fifty percent (50%) of the unamortized balance of the
22 merger premium ("Assigned Premium") will be included in the rate base of the
23 Empire unit's electric operations. In addition, the annual amortization of the

1 Assigned Premium will be included in the expenses allowed for recovery in cost
2 of service. As indicated, for purposes of clarity, I refer to the amount of premium
3 for which rate recovery is sought as the "Assigned Premium".

4 Q. Practically speaking how will this work?

5 A. The merger premium will be amortized over forty years beginning at the closing
6 of the transaction. Consequently, at the end of the five year rate moratorium,
7 approximately thirty four fortieths (34/40) of the premium will remain to be
8 amortized. In the post-moratorium rate case, fifty percent of this thirty four
9 fortieths (34/40), the Assigned Premium, will be included in rate base and the
10 amortization of the Assigned Premium will be included in expenses.

11 Q. How does the rate recovery of the Assigned Premium, which will not begin to
12 take place until after year five of the rate moratorium, bear on this Joint
13 Application?

14 A. We are requesting in the Joint Application that in the context of this merger
15 proceeding the Commission expressly authorize and approve the proposed
16 regulatory plan including rate recovery of the Assigned Premium as described.

17 Q. Are there other specific items for which the Commission's express approval is
18 sought in the context of this Joint Application?

19 A. Yes. In addition to the request for a five year rate moratorium and Assigned
20 Premium recovery, as a part of the regulatory plan we are also requesting that in
21 the context of the post moratorium rate case, for ratemaking purposes, the return
22 allowed on the Assigned Premium portion of the rate bases be based on a
23 UtiliCorp capital structure of 60% debt and 40% equity and the return allowed on

1 the balance of the rate bases be based on an Empire unit capital structure of 47.5%
2 equity and 52.5% debt. We are also requesting that in the post moratorium rate
3 case, the allocation of UtiliCorp's corporate and intra-business unit costs to
4 UtiliCorp's Missouri Public Service ("MPS") operating division exclude the
5 Empire factors from the methodology for the period covered by the regulatory
6 plan.

7 Q. Under the proposed regulatory plan, is any premium recovery guaranteed?

8 A. No. There is no guarantee of premium recovery. During the rate moratorium,
9 UtiliCorp will offset the cost of the Assigned Premium with the savings that will
10 be generated. As shown on Mr. Siemek's schedule VJS-1, filed with his direct
11 testimony, the savings will not cover this cost. As a part of the proposed
12 regulatory plan, in the post moratorium rate filings, the burden will be on UtiliCorp
13 to set out an accounting of the synergies realized during the moratorium period as
14 a result of the merger and set out the balance of the Assigned Premium not covered
15 by said synergies. What this means is that each time UtiliCorp appears before the
16 Commission in these future rate proceedings it will have the burden to demonstrate
17 that it has been able to both track and quantify these merger savings. In other
18 words, UtiliCorp will bear the responsibility and risk of generating merger
19 synergies, quantifying them properly and providing that information to the
20 Commission. If UtiliCorp is unable to prove up synergies equal to the Assigned
21 Premium for which recovery is sought, an adjustment would result in a lower
22 percentage of the Assigned Premium being included for rate recovery. In fact, if

1 UtiliCorp cannot prove up any merger synergies, then it would not realize any
2 premium recovery through rates.

3 Q. Is premium recovery a detriment?

4 A. No, not if the benefits from the transaction exceed the costs, including the
5 Assigned Premium costs. Premium costs should be viewed no differently than
6 any other costs for which rate recovery is allowed.

7 Q. At page 22 of his rebuttal testimony, Mr. Oligschlaeger contrasts the proposed
8 UtiliCorp/Empire regulatory plan with a plan, which was offered in connection
9 with a proposed UtiliCorp/Kansas City Power & Light Company merger. How do
10 you respond?

11 A. This is a non-issue. What may have been considered as appropriate for one
12 transaction is not necessarily relevant to another. Furthermore, as I have stated
13 previously, Missouri is a no detriment state and therefore there is no requirement
14 that the transaction actually provide a positive benefit for the public. This
15 transaction, however, will provide a positive public benefit.

16 Q. What position has the Staff, Public Counsel and other taken in regards to the
17 Regulatory Plan offered by UtiliCorp in this filing?

18 A. They are recommending the Commission reject the regulatory plan in its entirety.

19 Q. Are the only options then before the Commission to either approve the regulatory
20 plan as filed or to reject it in total as requested by the Staff?

21 A. UtiliCorp of course wants the Commission to approve the plan we have offered as
22 we believe it is a plan that totally protects the customers and at the same time will
23 allow the transaction to make economic sense to UtiliCorp. If the Commission

1 wishes to approve the merger and at the same time order another plan, UtiliCorp
2 would give careful consideration to any such plan in its making the determination
3 as to whether or not the transaction would, as a result, make economic sense. In
4 any event I believe the Commission has the discretion to propose a variation of
5 the regulatory plan submitted by UtiliCorp.

6 **ASSIGNED PREMIUM**

7 Q. On pages 8 through 15 of his rebuttal testimony, Staff witness Proctor discusses
8 how the merger related acquisition premium should be calculated and that it
9 should not be recovered because it would establish new policy for the
10 Commission. Do you agree with his positions?

11 A. No. Mr. Proctor engages in an exercise to take the merger premium in this case,
12 divide it into different components and then say that none of the components
13 should be recoverable. The Uniform System of Accounts and Generally Accepted
14 Accounting Practices that public utilities must comply with provides the basis for
15 accounting for the merger premium in transactions of this type. UtiliCorp
16 provided those guidelines in the direct testimony filed in this case. The
17 components that Mr. Proctor develops are meaningless.

18 Q. Why?

19 A. The value an investor pays for assets is the value the investor needs to earn a
20 return on and to have the investment returned. This is not a complex concept; it is
21 the basis for all investments in the utility industry and in all other industries.
22 UtiliCorp believes the value it has offered for Empire is a fair price. The
23 customers will not be harmed, as the increase in value above book value for

1 Empire will be totally offset by savings that can only be developed by this
2 transaction. Consequently, there will be no detriment to the customers of
3 Empire. This Commission has previously addressed the concept of premium
4 recovery in previous orders and therefore will not be setting new policy as feared
5 by the Staff.

6 Q. At page 19 of his rebuttal testimony, Mr. Oligschlaeger says that UtiliCorp and
7 Empire have presented no evidence concerning an appropriate assignment of the
8 acquisition adjustment to non-regulated operations. He also questions why more
9 than 50% of the premium should not be assigned to non-regulated operations.
10 How do you respond?

11 A. These claims are really not relevant to this proceeding. I say this because the
12 standard is "no public detriment." So long as Empire's customers experience the
13 status quo or better in terms of service and rates, the fact that any or all of the
14 acquisition premium might be recovered by UtiliCorp through rates should not
15 really matter.

16 **RATE MORATORIUM**

17 Q. Has any party addressed concerns regarding the 5-year rate moratorium as
18 proposed by UtiliCorp in its regulatory plan?

19 A. Yes. On page 17 of his rebuttal testimony, Public counsel witness Trippensee has
20 expressed concern "that the Company may attempt to convince the Commission
21 to issue a report and order that would identify Public counsel or other affected
22 parties as being restricted by the moratorium and thereby precluded OPC or other

1 parties from filing a complaint or other action during the term of the regulatory
2 plan.”

3 Q. Are these concerns well founded?

4 A. No. UtiliCorp’s request only pertains to the Commission and the Commission’s
5 Staff.

6 In other words, the Commission and its Staff would be prohibited from initiating a
7 complaint and the Staff could not participate in a complaint brought by another
8 entity. Other parties could, however, file a complaint regarding the
9 reasonableness of rates.

10 Q. Is the proposed 5-year moratorium a drop-dead issue?

11 A. It is a key component of the overall regulatory plan, which is designed to cause
12 this transaction to make economic sense. A different moratorium period might be
13 acceptable as long as the total regulatory outcome of this case allows this
14 transaction to continue to make economic sense.

15 **MARKET POWER STUDY**

16 Q. Have a number of witnesses called for the inclusion of a Market Power Study to
17 be included in one form or another in this case?

18 A. Yes. Mr. Proctor of the Staff requested that UtiliCorp file a study related to
19 competitive generation sources and Ryan Kind of the Public Counsel filed
20 rebuttal testimony requesting the Commission impose as a condition of merger
21 approval that UtiliCorp agree to a retail market power study to be completed
22 using the same conditions agreed to by Western Resources in Case No. EM-97-
23 515. Mr. Kushler, witness for the Missouri Department of Natural Resources,

1 states that energy efficiency tends to mitigate the risks from increased market
2 power and helps to protect the consumer. Mr. Russell, witness for Springfield,
3 also filed comments regarding the market power study filed by UtiliCorp in
4 regards to the merger application at the FERC.

5 Q. What was Public Counsel's request to the Commission in the area of Market
6 Power?

7 A. Mr. Kind, at page 77 of his rebuttal testimony, states;

8 "OPC recommends that the Commission condition the approval of this merger on
9 the applicant's willingness to accept the same market power provisions that were
10 contained in the Stipulation and Agreement that was approved by the Commission
11 in Case No. EM-97-515. These provisions will insure that the market power
12 detriments that would otherwise be associated with the proposed merger will be
13 largely mitigated."

14
15 In relation to vertical market power, Mr. Kind states on page 66 of his rebuttal
16 testimony,

17
18 "OPC recommends that the Commission condition its approval of the proposed
19 merger on the applicants' willingness to join an RTO under the conditions
20 specified in the Vertical Market Power Section of Attachment 1. Attachment 1
21 contains the same conditions that the Commission ordered in Case No. EM-97-
22 515, in which it approved a Stipulation and Agreement that required Western
23 Resources to join an RTO under certain specified conditions. By requiring
24 UtiliCorp to join an RTO now, before retail competition arrives, the Commission
25 will be helping to foster an environment where wholesale competition can
26 develop under conditions that do not threaten the security of the transmission grid.
27 The Commission's action on this issue is also necessary to assure that all market
28 participants have access to transmission service operated by an independent entity
29 under terms and conditions that are not perceived to be discriminatory."

30
31 Q. Is UtiliCorp agreeable with the Public Counsel's recommendations and the Staff
32 request to have the competitive generation completed?

33 A. No. These parties made somewhat similar requests during the procedural
34 scheduling process of this case and the Commission has already addressed these
35 matters by not requiring retail market power studies to be filed. Furthermore,

1 UtiliCorp stated in its direct testimony that it will comply with all Commission
2 orders requiring retail market power studies for Missouri under the terms put forth
3 by the Commission at the time it requires the studies to be completed. UtiliCorp
4 should not now be expected to agree to complete a retail market power study
5 under conditions that might be contrary to the conditions the Commission
6 believes are proper at that point in time in the future when a study is ordered.
7 UtiliCorp should also not be required to waive its rights as a corporate citizen and
8 not be able to provide the Missouri legislature with UtiliCorp's opinions
9 regarding pending legislation.

10 Q. Does UtiliCorp have a problem with Public Counsel's recommendation that the
11 commission order UtiliCorp to join a RTO?

12 A. As I stated in my direct testimony and earlier in this surrebuttal testimony,
13 UtiliCorp will comply with the FERC's orders addressing RTO membership. The
14 FERC does have primary jurisdiction in regards to the formation of RTOs and the
15 utilities joining them.

16 Q. What is the request of Springfield in regards to RTO's?

17 A. On page 22 of Springfield witness Russell's rebuttal testimony he is
18 recommending to this Commission:

19 "that the merged company put all of its transmission facilities in Missouri and
20 Kansas under the control of the SPP ISO/RTO in a single zone under the SPP
21 transmission tariff and the merged company join – and maintain membership in –
22 the SPP ISO/RTO."

23
24 This is basically the same recommendation Springfield made in the case at the
25 FERC. The FERC did not accept this recommendation and this Commission

1 should not also. UCU will select the RTO that will best serve its customers and
2 will make the appropriate regulatory filings as required.

3 **POOLING vs PURCHASE ACCOUNTING**

4 Q. In his rebuttal testimony, Mr. Oligschlaeger argues that the transaction could have
5 been structured as a "pooling" as opposed to a "purchase" transaction and
6 consequently the issue of an acquisition premium should not exist. How do you
7 respond?

8 A. I believe it is in the discretion of the management of UtiliCorp to decide the
9 structure of this transaction and the management of UtiliCorp made that decision.
10 Moreover, in this case, it is my understanding that the only decision that could be
11 made was to structure the transaction as a purchase as the transaction could not
12 have been structured as a pooling. Mr. Robert C. Kehm, partner with Arthur
13 Andersen & Co., will explain UtiliCorp's position on this issue in greater detail in
14 his surrebuttal testimony.

15 **SYNERGIES**

16 Q. A number of Staff witnesses have stated in their rebuttal testimony that the
17 synergies forecasted by UtiliCorp are overstated. How do you respond?

18 A. It really doesn't matter at this time. UtiliCorp's synergy estimates are the best
19 estimates that can be developed at this time as to the level of synergies that can be
20 expected from this transaction. A large group of employees from both companies,
21 working in transition teams, have spent many hours reviewing the future
22 operations of the merged company to develop these estimates. But, as I have
23 already stated, it is the responsibility of UtiliCorp to prove the development and

1 tracking of the synergies and to present this to the Commission in the Post
2 Moratorium rate case. If the synergies do not develop as estimated, then
3 UtiliCorp will not recover all or possibly any part of the Assigned Premium. The
4 Commission will continue to have jurisdiction to determine what costs are just
5 and reasonable. Therefore, under the proposed regulatory plan, with UtiliCorp
6 having the burden of proof, and the Commission's continuing jurisdiction, the
7 customers are totally protected and cannot be harmed by this transaction.

8 Q. At pages 19 and 27 of his rebuttal testimony, Mr. Oligschlaeger says that a "good
9 faith proposal to recover an acquisition adjustment would require merging
10 companies to provide the following: (1) a description and quantification of
11 expected merger savings in non-regulated areas of operation and (2) a proposal
12 for allocation of an appropriate amount of the acquisition adjustment to non-
13 regulated operations with detailed support provided. How do you respond?

14 A. Our proposal is to recover only the Assigned Premium through rates. UtiliCorp is
15 at risk for the rest of the premium. As long as customers experience the status
16 quo or better, it doesn't matter how much premium is recovered through rates.

17 Q. At page 32 of his rebuttal testimony, Mr. Oligschlaeger argues that UtiliCorp
18 cannot "guarantee" a certain level of merger benefits for its customers unless it
19 can track merger savings. How do you respond?

20 A. This argument is repeated many times by the Staff in their presentation by Mr.
21 Oligschlaeger and other Staff witnesses. As I stated earlier in my direct testimony
22 and in this surrebuttal testimony, UtiliCorp will have the burden of proof in the
23 post moratorium rate case to prove the level of synergies that have been

1 developed. All UtiliCorp is requesting in this case is for the Commission to tell
2 us now, that if we prove up the merger savings, that we will get the requested rate
3 treatment.

4 In this regard, it is important to remember that UtiliCorp is "guaranteeing" a \$3.0
5 million reduction in cost of service for the electric customers in the Empire
6 service area regardless of whether or not UtiliCorp can prove up any merger
7 savings in the post-moratorium rate case.

8 Q. At page 34 of his rebuttal testimony, Mr. Oligschlaeger claims that the Joint
9 Applicants have made no serious proposal as to how their tracking system would
10 work. How do you respond?

11 A. This is another straw issue. I say this because the burden will be on UtiliCorp, in
12 the post moratorium rate case, to demonstrate merger related savings. How
13 UtiliCorp will actually prove up these savings in five years does not need to be
14 litigated now.

15 Q. At page 33, Mr. Oligschlaeger cautions the Commission against putting itself "in
16 the box" of deciding that tracking merger savings is possible. How do you
17 respond?

18 A. The Commission, in agreeing to allow the requested rate treatment of 50% of the
19 unamortized balance of the merger premium, the Assigned Premium, and thereby
20 implicitly recognizing that merger savings can be determined is not putting itself
21 "in the box" on any issue. Rather, it is just carrying forward its previously stated
22 policy of allowing premium recovery subject to certain conditions.

23 Q. Please explain.

1 A. As indicated in Mr. Robert K. Green's direct testimony, in entering into this
2 transaction UtiliCorp assumed that the Commission would provide it with a
3 reasonable opportunity to recover the acquisition premium based on the
4 Commission's previously articulated standard for premium recovery set out in
5 Case No. EM-91-213 and Case No. WR-95-204. In that latter case, the
6 Commission stated that on a policy basis it was not necessarily opposed to
7 consideration of an acquisition adjustment and did not wish to discourage
8 companies from actions, which produced economies of scale, and savings, which
9 can benefit ratepayers and shareholders alike. Stated another way, UtiliCorp had
10 no reason to believe that the Commission had an absolute policy against premium
11 recovery. In this case, we are simply asking that the Commission continue this
12 policy of consideration of an acquisition adjustment, and tell us now, in the
13 context of this merger case, that it will allow the requested ratemaking treatment
14 of the Assigned Premium in the post moratorium rate cases provided that
15 UtiliCorp meets certain conditions.

16 Q. Once again, what are those conditions?

17 A. Those conditions are simply that UtiliCorp has developed synergies to a level
18 high enough to offset the Assigned Premium in this transaction.

19 **OPC'S REGULATORY PLAN**

20 Q. Would you respond to the Public Counsel's proposed regulatory plan in this case
21 which has been offered to the Commission as a condition of approval of this
22 merger?

1 A. Yes. The Public Counsel's regulatory plan is made up of 7 components that
2 ensure the transaction would not be economically viable.

3 Q. Please explain.

4 A. The Public Counsel's plan requires UtiliCorp to withdraw its regulatory plan,
5 accept traditional ratemaking treatment and file rate cases for all Missouri
6 division within one-year after the final determination of the Empire and SJLP
7 mergers. This would result in the shareholders of UtiliCorp paying the total cost
8 to develop the synergies and then those synergies would be flowed directly
9 through to the customers. This makes little business or economic sense.

10 Q. Please explain.

11 A. Next, the Public Counsel wants UtiliCorp to agree to continue to sell to all of its
12 customers in Missouri and in all other jurisdictions, at cost based rates than
13 market based rates.

14 Q. What would result from this?

15 A. This would result in UtiliCorp violating FERC orders and contracts already in
16 place with a number of customers. This would also probably result in UtiliCorp
17 being non-competitive in future markets. When other generating companies are
18 allowed to sell generation at market based rates, UtiliCorp would be required to
19 sell at cost-based rates.

20 Q. What else does the Public Counsel want?

21 A. The Public Counsel wants this Commission to place UtiliCorp under the same
22 Stipulation and Agreement, market power and RTO provisions, that was agree to
23 by Western Resources / KCPL and the other parties in Case No. EM-97-515 and

1 approved by this Commission. I have offered my comments in regards to market
2 power and RTO provisions in a separate section.

3 Q. Please go on.

4 A. The Public Counsel also states that the Joint Applicants must agree to provide
5 both Public Counsel and the Staff with access to the books, records, employees
6 and officers of all entities that are affiliated with UtiliCorp or its wholly owned
7 subsidiaries upon reasonable notice. This access should include all corporate
8 entities for which UtiliCorp or its wholly owned subsidiaries have an ownership
9 interest of 10 percent or more.

10 Q. How do you respond?

11 A. In regard to access to the books, records, employees and officers of all entities
12 that are affiliated with UtiliCorp, UtiliCorp will comply with all laws of the State
13 of Missouri and lawful rules of this Commission. UtiliCorp will comply
14 specifically with the newly enacted rule addressing Affiliate Transactions (4 CSR
15 240-20.015 (6)), which reads as follows:

16 (6) Access to Records of Affiliated Entities

- 17 A. To the extent permitted by applicable law and pursuant to
18 established commission discovery procedures, a regulated
19 electrical corporation shall make available the books and records
20 of its parent and any other affiliated entities when required in the
21 application of this rule.
- 22 B. The commission shall have the authority to:
- 23 1. Review, inspect and audit books, accounts and other
24 records kept by a regulated electrical corporation or
25 affiliated entity for the sole purpose of ensuring compliance
26 with this rule and making findings available to the
27 commission; and
 - 28 2. Investigate the operations of a regulated electrical
29 corporation or affiliated entity and their relationship to each
30 other for the sole purpose of ensuring compliance with this
31 rule.

1 C. This rule does not modify existing legal standards regarding which
2 party has the burden of proof in commission proceedings.
3

4 Q. Please continue with your review and comments regarding the Public Counsel's
5 regulatory plan.

6 A. The next item requires the Commission to commit to close scrutiny of UtiliCorp's
7 compliance with the terms of its Affiliate Transaction Rules.

8 Q. How do you respond?

9 A. I cannot speak for the Commission, as this is a requirement being placed on it. I
10 can only respond that UtiliCorp will comply with the rules this Commission puts
11 forth in its regulation of utilities in this state.

12 Q. Anything else?

13 A. The final point of Public Counsel's regulatory plan relates to the charges that may
14 be made to customers using Empire's fiber optic system sometime in the future.

15 Q. Your response?

16 A. As UtiliCorp moves forward in the use of this system, it will review the cost
17 drivers and will ensure to this Commission that only fair charges are made to the
18 users of the system.

19 **OTHER MERGERS**

20 Q. Is UtiliCorp's position, that the costs to achieve the savings should be matched
21 with the savings developed consistent with other mergers you are familiar with?

22 A. Yes. Mr. Featherstone and Mr. Robertson have discussed two such mergers. Mr.
23 Featherstone discusses the KPL merger with KG&E and the fact that none of the
24 premium associated with this transaction was recovered in rates from Missouri
25 customers. Mr. Robertson discusses the Centel acquisition by UtiliCorp and a

1 like position that none of the premium in that transaction was requested by
2 UtiliCorp to be recovered from Missouri customers. UtiliCorp made no such
3 request because the savings would be developed in Kansas and Colorado and
4 those are the states that UtiliCorp would address the premium recovery issue.

5 Q. Please continue.

6 A. Mr. Featherstone makes the statement, on page 59 of his rebuttal testimony, that
7 "No part of the KGE acquisition adjustment was recovered by KPL from Missouri
8 customers." Again, this is the same matching UtiliCorp is requesting in this
9 transaction, KPL made its request for recovery in Kansas as that is the state where
10 the savings were generated.

11 Q. Did KPL not make this request because of the lack of ability to track the saving in
12 Missouri?

13 A. No. Mr. Featherstone covers this point on page 83 of his rebuttal testimony.
14 KPL, now Western Resources, ("Western") did not determine it could not track
15 the savings generated, but determined that merger costs and savings netted each
16 other out with the Missouri allocated costs being virtually unaffected in total by
17 the merger. Western also indicated they discontinued the use of the costs savings
18 tracking system because of "the level of effort necessary to measure the savings
19 and maintain the tracking system was relatively high when compared to the
20 expected level of merger related savings in the jurisdictions (Missouri) in which it
21 would be used." Western never indicated they could not track, they just said
22 because the costs and savings netted out the impact on Missouri, the tracking was
23 not worth the effort. UtiliCorp believes the tracking is worth the effort and will

1 track and present to the Commission in the post-moratorium rate case the savings
2 UtiliCorp has developed.

3 **ADDITIONAL ISSUES TO BE DECIDED**

4 Q. Based on your review of the rebuttal testimony of the Staff, the Public Counsel
5 and the other parties are there other issues related to the proposed regulatory plan
6 that are set out in the "List of Issues" and which should be decided in the context
7 of this merger proceeding.

8 A. Yes, there are several.

9 Q. Please proceed and discuss the first of these issues.

10 A. First, if the Commission is of the opinion that, as claimed by the Staff, there is no
11 way that merger savings can be tracked, verified and later presented in a rate
12 proceeding, the Joint Applicants need to know this now. If the Commission agrees
13 with the Staff on this point, then it would be impossible for UtiliCorp to satisfy its
14 regulatory plan requirements in the post moratorium rate case by proving up the
15 merger savings and thereby securing the requested rate treatment of the assigned
16 merger premium. While UtiliCorp has concluded that, based on the Commission's
17 prior statements with respect to premium recovery, the Commission does believe
18 that merger savings can be tracked and proven, if UtiliCorp is correct or
19 alternatively, if the Commission now has a different position on this issue, this
20 needs to be resolved now in the context of this case and prior to closing of the
21 proposed merger.

1 Q. If the Commission rejects the Staff's argument and determines that tracking
2 merger savings is possible, how would you characterize the need to determine
3 now a specific tracking mechanism to be used by UtiliCorp?

4 A. It is not essential to determine any specific tracking system now. It will be up to
5 UtiliCorp to prove up the merger savings in the post moratorium rate case, and
6 thus UtiliCorp will bear the risk that its method of tracking and proving up these
7 savings will be adequate.

8 Q. Are there any other issues, which need to be resolved now?

9 A. Yes. Staff witness David P. Broadwater as well as Staff witness Michael S.
10 Proctor raise an issue concerning the amount or calculation of the premium and
11 the price paid by UtiliCorp for Empire. Because recovery of the actual premium
12 paid, as described in the Joint Application and UtiliCorp's direct testimony, is
13 critical to the success of UtiliCorp's regulatory plan, if there is an issue as to the
14 amount of premium to be considered for ratemaking purposes, it needs to be
15 resolved in the context of the merger proceeding and prior to the closing of the
16 transaction.

17 Q. Are there any other issues, which need to be determined now?

18 A. Yes. In order for there to be a meaningful measurement of merger savings in the
19 context of the post moratorium rate case, a starting point or benchmark must be
20 established from which merger savings can be measured. The Staff as included
21 this item as an issue on the "List of Issues" filed by the Staff in this case on
22 July 31, 2000. This issue should be resolved now in the context of the merger
23 proceeding in order for UtiliCorp to execute its regulatory plan. Mr. DeBacker's,

1 Mr. Browning's and Mr. Siemek's direct and surrebuttal testimonies address this
2 issue on behalf of UtiliCorp.

3 Q. Are there other issues set out in the List of Issues that need to be decided now in
4 the context of this case and prior to the closing of the merger?

5 A. Yes.

6 Q. Please discuss these additional issues.

7 A. Staff witness Proctor, in his rebuttal testimony, testifies that it is the Staff's
8 position that only \$6.95 million in potential energy costs savings are directly
9 related to the merger. He claims that the Joint Applicants have failed to
10 demonstrate that the increased sales opportunities estimated for the merged
11 company are reasonably likely to occur or that such increased sales opportunities
12 would not be available for the stand alone companies.

13 Q. Why does this matter?

14 A. Since the bulk of the merger savings are anticipated to occur in the areas of joint
15 dispatch and off-system sales it is critical that these matters be resolved now in
16 the context of the merger proceeding prior to closing. We believe that the benefits
17 from this transaction will exceed the costs, including the premium, and we are
18 counting on increased off-system sales as one of these benefits. If the
19 Commission should determine that the increased sales opportunities estimated for
20 the merged company are not likely to occur or would have been available for the
21 stand-alone companies absent the merger, and thus cannot be used to justify
22 premium recovery, UtiliCorp will not be able to execute its regulatory plan by

1 proving up the merger savings necessary to receive recovery of the Assigned
2 Premium.

3 Q. How would you characterize the ability of UtiliCorp to recover the Assigned
4 Premium as proposed?

5 A. It is important to this transaction. As I said in my direct testimony, to complete
6 the transaction the economies must make sense. That is why I also said in my
7 direct testimony that we are requesting the Commission to first examine our
8 proposal and determine that significant merger benefits are or will be created as a
9 consequence of this combination. If the benefits are not there, we would not
10 expect the Commission to authorize premium recovery. Along these lines, Mr.
11 Robert Green advised the Staff in his interview that UtiliCorp needs to recover the
12 premium or the transaction doesn't make economic sense. During that same
13 interview, Mr. Featherstone seemed to recognize this when while discussing
14 premium recovery he acknowledged that "...prudent business people have to have
15 some incentive. They have to have some reasonable assurance they're going to
16 get their return back."

17 Q. Do you attach any significance to Mr. Featherstone's comment?

18 A. Yes. I think he was very candid in admitting the importance to UtiliCorp of
19 recovering its investment.

20 **RATE COMPARISON**

21 Q. Has the Staff indicated how MPS's rates compare to the rates charged by other
22 electric utilities in Missouri?

1 A. Yes. On page 51 of Mr. Traxler's rebuttal testimony he offers testimony on this
2 topic including a calculation of rates per KWH in 1999 for all of Missouri's
3 electric utilities. This calculation was apparently structured to show that MPS's
4 residential rates are higher than all other utilities in the state and the calculation
5 does show that.

6 Q. How do you respond?

7 A. After he offers this calculation Mr. Traxler makes the determination that the
8 reason MPS's rates are the highest is because of, in part, to UtiliCorp's corporate
9 structure. This is not the proper calculation to make that determination.

10 Q. You state Mr. Traxler's calculation is not the proper calculation to determine
11 which utility has the highest residential rates. Please explain.

12 A. Mr. Traxler's calculation is a simple calculation of revenue per kWh using data
13 that has not been normalized for weather or other factors that can alter the results.
14 The calculation does not calculate the residential rates per KWH as claimed.

15 Q. Do you have a proper representation of the residential rates for the electric
16 utilities in Missouri?

17 A. Yes. Attached to this surrebuttal is Schedule JWM-2, which is a correct
18 representation of the residential rates for all the electric public utilities in
19 Missouri. The source of this information is Edison Electric Institute's ("EEI")
20 "Typical Bills and Average Rate Report". This calculation uses each utility's rate
21 schedule and calculates what the typical bill would be at different usage levels.

22 Q. What does EEI's calculation depict?

1 A. UtiliCorp's (MPS) rates are pretty much at the average for the state and in many
2 cases, below the average. MPS's summer rates are consistently below the average
3 for the state. I offer this for the purpose of clarifying the record that has been
4 confused by the improper calculation of the Staff.

5 CORPORATE COSTS

6 Q. Are there other issues you need to comment on?

7 A. Yes. Staff witness Steve Traxler and other Staff witnesses raises the issue of the
8 level of corporate costs being assigned to the operating units of UtiliCorp and
9 how high these costs are in comparison to Empire.

10 Q. How do you respond?

11 A. A review of current FERC Form 1's filed with this Commission reveals that
12 UtiliCorp's level of expenses for these areas is lower than most other electric
13 utilities in the state. These cost levels have been reviewed by the Commission in
14 the past and the Commission has allowed these costs to be recovered by UtiliCorp
15 and has disallowed some costs in past rate cases. UtiliCorp's level of operating
16 costs are reasonable and should not be subject to "Cost Caps".

17 Q. Have you reviewed the Staff rebuttal testimony in regard to UtiliCorp corporate
18 costs?

19 A. Yes. Various Staff witnesses discuss UtiliCorp's corporate costs and comment as
20 to how high these costs are and the detrimental impact they have on rates. Mr.
21 Traxler devotes approximately 20 pages of his testimony developing his argument
22 that since UtiliCorp's corporate costs are so high, the assignment of these costs in
23 the future to Empire makes the merger detrimental to the customers.

1 Q. Do you agree with Mr. Traxler's comments and calculations?

2 A. No. Mr. Traxler's calculations and conclusions are ill-founded. As I have stated,
3 a simple review of the Missouri utilities clearly shows UtiliCorp's corporate costs
4 are reasonable. I have included Schedule JWM-3, which is a comparison of
5 UtiliCorp's corporate costs to the other utilities in Missouri and Kansas. This
6 analysis does show that UtiliCorp costs are in fact below the average of all the
7 utilities and certainly not abnormally high.

8 Q. Please continue.

9 A. The Staff, in its review of the merger, continues to look for the negative items and
10 determine that they are detrimental to the public while at the same time concludes
11 the public should receive all the benefits from the transaction. Any transaction of
12 this type causes differences in cost levels from pre to post merger operations.
13 UtiliCorp, through the work of the transition teams has confirmed the savings can
14 be expected and should develop. The UtiliCorp regulatory plan in this case totally
15 protects the customers from any possible harm.

16 **STRANDED COSTS**

17 Q. In their surrebuttal testimony, Mr. Traxler and Mr. Oligschlaeger discusses the
18 issue of Stranded Costs and the impacts this merger may have on the
19 determination of the level of Stranded Costs for Empire and MPS. How do you
20 respond?

21 A. To the best of my knowledge, the Missouri Legislature, in future electric industry
22 restructuring legislation, will make the determination of the definition of Stranded

1 Costs and what costs are includable as a Stranded Cost. Therefore this is not an
2 issue for this merger case.

3 Q. The Staff brings forth the position that the Assigned Premium should not be
4 allowed because UtiliCorp will be taking assets out of rate base in the future and
5 making these assets non-regulated property. How do you respond?

6 A. This position is invalid because before any asset can be moved out of rate base,
7 this Commission will need to provide its approval. Also, it is my understanding,
8 that if an asset has a related premium, that premium would also be transferred to a
9 new business unit. Because of these two points, this position of the Staff is not an
10 issue that needs to be decided in this case.

11 **CONDITIONS FOR APPROVAL**

12 Q. Other parties to this case through rebuttal testimony have proposed other
13 conditions, which should be imposed on UtiliCorp when the Commission
14 approves this merger. Would you provide us with UtiliCorp's position in regard
15 to some of these recommendations?

16 A. Yes. Staff witness McKiddy wants UtiliCorp to agree to continue to file
17 surveillance reports for UtiliCorp and Empire. UtiliCorp has no problem with this
18 request. However, UtiliCorp does believe that all utilities in the state should be
19 required to comply with the same surveillance report filing requirement expected
20 of UtiliCorp. It is my understanding that some utilities file monthly reports while
21 others only file annual reports. Even though there are no Commission rules
22 requiring these surveillance reports, if utilities are expected to file these reports,
23 the expectations for all utilities should be the same.

Surrebuttal Testimony:
John W. McKinney

1 Q. Other Staff witnesses are asking for the Commission to make as a condition of
2 approval of this merger the requirement that UtiliCorp file a number of reports
3 relating to the operation of UtiliCorp's utility divisions in Missouri. How do you
4 respond?

5 A. If this Commission believes this type of information is needed to carry out its
6 responsibilities, then this information should be required from all utilities in the
7 state and not from just UtiliCorp.

8 Q. Does this conclude your Surrebuttal Testimony at this time?

9 A. Yes, it does.

UNITED STATES OF AMERICA 92 FERC ¶ 61,067
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
William L. Massey, Linda Breathitt,
and Curt Hébert, Jr.

UtiliCorp United Inc. and
St. Joseph Light & Power Co.

Docket Nos. EC00-27-000
and EC00-27-001

UtiliCorp United Inc. and
Empire District Electric Co.

Docket Nos. EC00-28-000
and EC00-28-001

ORDER CONDITIONALLY AUTHORIZING MERGERS

(Issued July 26, 2000)

On November 23, 1999, UtiliCorp United Inc. (UtiliCorp), St. Joseph Light & Power Company (St. Joseph), and Empire District Electric Company (Empire) (collectively, Applicants) submitted an application under section 203 of the Federal Power Act¹ (FPA) seeking authorization for the disposition of the jurisdictional facilities of St. Joseph and Empire to UtiliCorp through proposed mergers.

As discussed below, the Commission has reviewed the proposed mergers under the Commission's Merger Policy Statement.² In this order, we will conditionally authorize the mergers, subject to Applicants submitting a revised competitive analysis six months prior to commencement of integrated operations, at which time we will use our authority under section 203(b) of the FPA to impose any conditions necessary to mitigate potential adverse competitive effects.

¹16 U.S.C. § 824b (1994).

²Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

I. Background

A. Description of the Parties to the Mergers

1. UtiliCorp

UtiliCorp is a public utility that provides electric service through four operating divisions,³ each of whom sells and/or purchases power at wholesale and offers open access transmission service under approved tariffs. Two of those divisions, MPS and WPE-KS, participate in the Mid-Continent Area Power Pool (MAPP) regional tariff. UtiliCorp also provides electric and/or natural gas service to retail customers in nine states.

In addition, UtiliCorp owns Aquila Energy Marketing Corp. (Aquila), which engages in electric generation, natural gas gathering, storage, and processing, as well as the marketing of electric power and natural gas. Aquila does not own or operate any jurisdictional transmission facilities, but has the authority to make market-based sales under a jurisdictional rate schedule. Aquila sells natural gas under long-term contracts to thirteen cogeneration and independent power projects.

2. St. Joseph

St. Joseph is a public utility that purchases and sells power at wholesale and offers open access transmission service under an approved tariff. St. Joseph also participates in the MAPP regional tariff. In addition, St. Joseph supplies electric energy to approximately 62,000 customers in northwest Missouri. St. Joseph also supplies natural gas to several small communities in the same region.

3. Empire

Empire is a public utility that purchases and sells power at wholesale and offers open access transmission service under an approved tariff. Empire also participates in the Southwest Power Pool's (SPP) regional transmission tariff. Empire also supplies electricity to customers in southwest Missouri, southeast Kansas, northeast Oklahoma, and northwest Arkansas.

³The four operating divisions are WestPlains Energy-Colorado division (WPE-CO), WestPlains Energy-Kansas division (WPE-KS), the Missouri Public Service division (MPS), and the West Virginia Power division (WVP).

B. Description of Proposed Mergers

On March 4, 1999, UtiliCorp and St. Joseph entered into an Agreement and Plan of Merger under which UtiliCorp will acquire St. Joseph with a combination of UtiliCorp common stock and cash. On May 10, 1999, UtiliCorp and Empire entered into an Agreement and Plan of Merger under which UtiliCorp will acquire Empire for stock and cash. Existing Empire preferred stock will be redeemed prior to closing.

Applicants state that, in both transactions, UtiliCorp will be the surviving corporation and will continue to provide electric service through separate control areas in Colorado, Missouri-Kansas, and West Virginia. Applicants state that these mergers will not affect any contract for the purchase, sale, or interchange of electric energy because the merging companies will continue to operate as separate entities.

II. Notices of Filings and Responsive Pleadings

Notice of Applicants' application was published in the Federal Register, 64 Fed. Reg. 69,248 (1999), with protests or interventions due on or before January 24, 2000. Timely motions to intervene and protests were filed by Kansas Electric Power Cooperative, Inc. (KEPCo), Ag Processing Inc. (AG Processing) and ICI Explosives USA Inc. (ICI Explosives). The Kansas Municipal Energy Agency (Kansas Municipals) filed a timely motion to intervene and motion for clarification. The Missouri Office of the Public Counsel (Missouri OPC) filed a timely motion to intervene and requesting a hearing. The Kansas City, Kansas, Board of Public Utilities (Kansas BPU) filed a timely motion to intervene, protest, and request for hearing. The Kansas Corporation Commission (Kansas Commission) filed a timely notice of intervention. Timely notices of intervention raising no substantive issues were filed by the Arkansas Public Service Commission and the Missouri Public Service Commission. Western Area Power Administration filed a timely motion to intervene raising no substantive issues.

City Utilities of Springfield, Missouri (Springfield) and the Missouri Joint Municipal Electric Utility Commission (Missouri Municipals) filed motions for leave to intervene out of time, protests, and requests for conditions.

On February 11, 2000, Applicants filed a consolidated response to motions to intervene, motions for clarification, requests for hearing, and protests. On February 28, 2000, KEPCo filed an answer to Applicants' consolidated response of February 11, 2000.

On March 10, 2000, Applicants filed a request for leave to clarify the record. On March 24, 2000, KEPCo filed an answer to Applicants' request for leave to clarify the record.

By letter issued on April 17, 2000, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates (Director), requested that Applicants provide additional information and an amended competitive analysis. On May 19, 2000, Applicants filed their response to the Director's April 17 letter.

Notice of Applicants' May 19, 2000 submittal was published in the Federal Register, 65 Fed. Reg. 35,920 (2000), with protests or interventions due on or before June 8, 2000. Missouri Municipals and Springfield filed timely renewed motions to intervene, supplemental protests and requests for conditions. KEPCo filed timely comments. On June 21, 2000, Applicants filed a response.

III. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the notices of intervention and timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding.⁵

Although Rule 213 of the Commission's Rules of Practice and Procedure⁶ generally prohibits answers to protests and answers to answers, we will allow Applicants' February 11 consolidated response, KEPCo's February 28 answer, and Applicants' June 21 response. They have aided us in understanding the application and the issues.

We will also grant Applicants' March 10 request for leave to clarify the record. It has aided our understanding of the application and the issues.

B. The Mergers

1. Standard of Review

⁴18 C.F.R. § 385.214 (2000).

⁵In view of the amended application, all of the motions to intervene are timely.

⁶18 C.F.R. § 385.213(a)(2) (2000).

Section 203(a) of the FPA ⁷ provides that the Commission must approve a proposed merger if it finds that the merger "will be consistent with the public interest." The Commission's Merger Policy Statement provides that the Commission will generally take account of three factors in analyzing proposed mergers: (a) the effect on competition; (b) the effect on rates; and (c) the effect on regulation.

For the reasons discussed below, we find that the Applicants' proposed mergers, with their mitigation commitments and as conditioned herein, are consistent with the public interest. Accordingly, we will approve the mergers without further investigation.

2. Effect on Competition and RTO Commitments

a. Applicants' Analysis

i. Effects of Combining Generation

Applicants' original analysis of the horizontal aspects of the proposed mergers did not reflect the effect of any system integration. In response to the Director's April 17 letter, Applicants revised their original analysis to reflect their proposed system integration under two alternative scenarios involving the construction of a 25-mile 161 kV transmission line connecting St. Joseph with Missouri Public Service and a 42-mile 161 kV line connecting Empire with Missouri Public Service. ⁸ One integration option would place the systems of the merged companies, as interconnected by the new facilities, under the SPP regional transmission tariff, while the second integration option would place the interconnected systems under the regional transmission tariff of the Midwest Independent System Operator (MISO).⁹

⁷16 U.S.C. § 824b (1994).

⁸Applicants state that integrating through the use of network service under the SPP tariff is no longer under consideration, in part, because of the prohibitive costs of the necessary upgrades indicated by the SPP "System Impact Study." Applicants state that for a period of three years after completion of their system integration, they would limit "priority transfer rights" to 200 MW from Missouri Public Service to St. Joseph and from Missouri Public Service to Empire (and 100 MW of priority transfer rights in the reverse direction). Applicants also propose to take out of service, as part of their integration plan, a 161 kV line interconnecting St. Joseph and Kansas City Power & Light Company (KCP&L).

⁹Applicants commit that any interconnection plan they effectuate will not reduce available transmission capacity (ATC) into or out of Applicants' systems below the levels

Applicants identify four relevant products: energy (non-firm and short-term energy), capacity, power marketing, and transmission service.¹⁰ Applicants further differentiate the energy product into night, weekend, low peak, next 10 percent of peak and top 5 percent of peak periods. They use economic capacity and available economic capacity as alternative proxies for suppliers' ability to participate in relevant markets. They identify 33 relevant geographic ("destination") markets and define and evaluate those markets under a number of scenarios. For example, Applicants perform analysis using two proxies for market prices (system lambda and Power Markets Week data) and using two alternative methods for allocating ATC (pro-rata and economic (i.e., least cost)).¹¹

Applicants' revised analysis shows that without system integration, merger-induced increases in market concentration do not exceed the thresholds specified in the Merger Policy Statement. Under the integration scenarios, however, Applicants' results show that merger-induced increases in market concentration, as measured by the Herfindahl-Hirschman Index (HHI), exceed the thresholds (i.e., fail the screen) in the Missouri Public Service, West Plains Energy+Kansas (West Plains), Empire, KCP&L, and Sunflower Electric Corp. (Sunflower) markets using economic capacity. In the Missouri Public Service market, screen failures occur in 41 of 60 total scenarios examined by Applicants. These 41 screen failures occur regardless of the market price, transmission allocation method, or integration alternative reflected in the particular scenario, with changes in HHI ranging from 100 to 157 in moderately concentrated

needed by a transmission dependent entity to import energy to serve its load or to export energy from existing generation.

¹⁰ Applicants analyze the effect of the proposed mergers on the capacity market (using uncommitted capacity in Missouri and Kansas) in the summer period from 2000 through 2004. They state that UtiliCorp, Empire and St. Joseph have small market shares and that merger-induced increases in concentration do not exceed the thresholds. Applicants also argue that entry could easily overwhelm any hypothetical withholding and that there are no apparent long-run barriers to entry. Applicants state that neither St. Joseph nor Empire engages in power marketing to any significant extent and that because each Applicant provides transmission service under an open access transmission tariff, neither the power marketing nor transmission markets will be adversely affected.

¹¹ Applicants confirm their identification of relevant geographic markets using trading data from FERC Form 1. Applicants evaluate the effect of the mergers under summer, winter, and spring/fall seasonal conditions.

(1,017 to 1,433 HHI) post-merger markets. In the West Plains, Empire, KCP&L, and Sunflower markets, screen failures occur in one or more of the three summer peak periods. These screen failures also occur regardless of the market price, transmission allocation method, or integration alternative reflected in the particular scenario, with changes in HHI ranging from 179 to 188 in moderately concentrated (1,277 to 1,372 HHI) post-merger markets and 51 to 62 in highly concentrated (1,815 to 2,281 HHI) post-merger markets.

Applicants state that their analysis does not raise competitive concerns about the proposed mergers for a number of reasons, including: (1) UtiliCorp, St. Joseph and Empire do not do not compete significantly with each other in any market and even with the merger, they own a small portion of the area's generation; (2) pre- to post-merger increases in concentration do not exceed the thresholds for moderately and highly concentrated post-merger markets by an amount significant enough to raise antitrust concerns; (3) screen violations using economic capacity are irrelevant until states have reduced utilities' obligations to serve; and (4) entry by new competitors should alleviate any possible competitive concerns because the affected markets display prices that would attract entry of modern gas-fired combustion engines.

ii. Effects of Combining Gas Delivery and Electric Interests

Applicants' analysis addresses the possibility that the mergers confer on the merged company the ability and/or incentive to raise electricity prices through its position in upstream gas markets by, for example, raising rivals' costs. They conduct this analysis for the two relevant markets (St. Joseph and KCP&L) where they supply gas to competing gas-fired generators. In this analysis, such generating capacity is attributed to Applicants for the purposes of calculating market shares. Market concentration is 1,836 HHI in the KCP&L market in two of seven time periods analyzed. Applicants argue that the merger raises no competitive concerns in this regard because their share of the KCP&L market is only 3.3 percent; the capacity of the single generator to which Applicants deliver gas is less than 0.5 percent of capacity; and the time during which the market is highly concentrated is less than 2 percent of the year.

Applicants also argue that UtiliCorp's assets in the various stages of gas supply¹² will not create or enhance the ability or incentive of the merged firm to raise prices in

¹² The stages of natural gas supply are: exploration and production, gathering, processing, transportation to regions of consumption, storage, marketing, and local distribution.

either the upstream delivered gas or downstream electricity markets because market concentration in upstream markets is low and UtiliCorp has small market shares.

b. Intervenor Protests, Motion for Clarification, Answer, Supplemental Protests, and Comments

Springfield argues that Applicants' revised market power study erroneously concludes that there will be no change in ATC due to system integration because Applicants assume that there will be no change in internal dispatch pre- to post-merger. Applicants focus only on system limitations that exist before the proposed integration, but it is likely that the new post-merger redispatch will create new transmission constraints. It is highly likely that the proposed mergers will reduce ATC, which is important given that Applicants' analysis shows a number of screen violations during peak periods. Further, Applicants' commitment not to reduce ATC needed by transmission-dependent utilities is inadequate because priority for native load can be used anti-competitively where transmission is constrained and a post-merger reduction in ATC would affect the entire region, not just Applicants' systems. Springfield therefore requests that the Commission fully consider the potential effect of Applicants' integration plans on the adequacy of transmission service to others and the corresponding effect on competition.¹³ Because Applicants have not provided the data necessary to tailor conditions that mitigate the merger's effect on users of the regional transmission system, Springfield recommends that the Commission impose a series of broad, stringent conditions to mitigate the potential for reduction of ATC and the increase in market power due to the merger.

KEPCo argues that the proposed mergers threaten to increase Applicants' transmission market power and enhance their ability to raise rivals' costs and foreclose competition. By placing certain of its affiliates under different regional tariffs, the merged company could increase rate pancaking, and therefore raise the costs of delivering energy to its competitors. KEPCo therefore states that the mergers will have anticompetitive effects unless the Applicants are, among other things, required to transfer operational assets to a fully functioning, Commission-approved RTO that includes members of the SPP, by December 15, 2001 and to use the SPP regional transmission tariff across the merged firm in the interim.¹⁴

¹³Affidavit of Whitfield A. Russell on behalf of City Utilities of Springfield, Missouri, at 7-8.

¹⁴KEPCo also argues that its contracts with Empire and UtiliCorp should be modified to allow KEPCo to immediately use the SPP tariff and then use the RTO tariff and that Applicants should provide a compliance filing 30 days prior to consummation

Missouri Municipals argue that the need for mitigation measures is shown by the screen failures in a number of (especially peak) periods. Missouri Municipals suggest that mitigation include a definite RTO commitment and across-the-board elimination of rate pancaking. They also argue that their members' current interruptible buy-sell contract with Empire should be replaced by firm service under the SPP regional tariff. Kansas BPU contends that the mergers would create opportunities for anticompetitive coordination because Empire participates in a buy-sell contract with Kansas BPU at the same time it has a commitment to sell power to UtiliCorp from a Kansas BPU generation station. Kansas BPU contends that the buy-sell contract should be modified. Finally, AG Processing and ICI Explosives state that Applicants have not fully satisfied the requirements of an Appendix A analysis and that the Commission should require that the merging firms set a specific schedule for joining an RTO.

c. Commission Determination

The Commission agrees with Applicants that combining the merged company's delivered gas and generation interests will not create or enhance the ability of the merged company to raise prices or decrease output in downstream electricity markets. However, we find that Applicants have not shown that their proposed mergers will not adversely affect competition as a result of consolidating generation (i.e., horizontal effects) or consolidating generation and transmission (i.e., vertical effects).

In the Merger Policy Statement, we explained that we will set for hearing the competitive effects of merger proposals if, for example, there are factors external to the screen that put the screen analysis in doubt.¹⁵ Similarly, in American Electric Power Co. and Central & South West Corp., the Commission noted that the loading of the Applicants' generation post-merger could change flows on adjacent systems, which might hamper competitors' ability to reach certain customers.¹⁶ Our primary concern is that it is unclear whether Applicants have fully captured the effect of the merger--including integrated system operation--on competition. Applicants' revised analysis calculates new flowgate and net import limits and new transfer distribution factors resulting from

showing evidence of and progress regarding active participation in the RTO collaborative process.

¹⁵Merger Policy Statement at 30,120.

¹⁶85 FERC ¶ 61,201 at 61,819 n.79 (1998), reh'g denied, 87 FERC ¶ 61,274 (1999).

improvements in the transmission system.¹⁷ However, as intervenor Springfield points out, Applicants do not account for the effects of integrated, jointly dispatched system operation on transmission availability. Specifically, as noted by Springfield, joint dispatch by applicants might subject the region to unanticipated swings in power flows which may reduce ATC for competing power suppliers. In the Merger Policy Statement, the Commission required applicants to present evidence regarding how transmission capability will be affected by mergers. The Commission explained that transmission line loadings are likely to change as a result of merger applicants' combined operations and that such changes are likely to result in transmission availability different from historical experience.¹⁸ Transmission availability is a critical parameter in defining relevant markets, particularly in the transmission-constrained areas affected by the proposed merger, as Springfield points out. Therefore, failure to fully reflect the effects of joint dispatch may result in inaccurate identification and definition of relevant markets and, in turn, an inaccurate assessment of the effect of the proposed mergers in those markets.

In light of the foregoing, certain of Applicants' results heighten our concerns that the proposed mergers could adversely affect competition. For example, Applicants' analysis under both integration options shows a consistent pattern of screen failures using economic capacity in a number of markets and using alternative proxies for market prices and methods of transmission allocation.¹⁹ Applicants' analysis also shows that in many cases, the effect of post-merger system integration is to increase the combined companies' market share beyond the simple combination of their pre-merger market shares, further increasing concentration in relevant markets.²⁰ Our concern regarding Applicants'

¹⁷Supplemental Testimony of Mark W. Frankena, Exhibit No. __ (MWF-24), at 10.

¹⁸Merger Policy Statement at 30,133.

¹⁹Contrary to Applicants' argument, the Commission believes that economic capacity, though not determinative in all cases, is a relevant and forward-looking measure and therefore merits attention, particularly in cases that show a consistent pattern of screen failures.

²⁰The Commission views transmission expansion as largely beneficial in that it can increase access to regional electricity markets by increasing capability and relieving transmission constraints. However, we believe it is important to ensure that integration (either through construction of transmission facilities or procurement of a transmission path) does not affect markets in a way that would create or enhance the ability of the merged company to adversely affect electricity prices.

treatment of system integration is also relevant to an analysis of whether combining Applicants' generation and transmission creates or enhances the merged company's ability and/or incentive to adversely affect electricity prices or output. Applicants have not performed such an analysis.

As Applicants point out, they will not integrate their systems until mid- to late 2002, when the proposed new transmission facilities are constructed and in service. Applicants' analysis identifies no screen failures absent system integration. In light of the above, we see no reason to require at this time mitigation in this particular case. We conditionally approve the proposed merger, subject to Applicants submitting a revised competitive analysis six months prior to commencement of integrated operations. Applicants' revised competitive analysis must accurately and fully reflect all aspects of system integration, not just on Applicants' systems, but also, for example, on power flows and ATC throughout the region; examine the effects of (1) consolidating generation, and (2) consolidating generation and transmission controlled by the merging companies; reflect which transmission tariff and RTO membership is selected by the merged company;²¹ and propose remedies necessary to mitigate any adverse competitive effects identified.

The siting and sizing of transmission facilities constructed to integrate Applicants' systems can affect the analysis of the competitive effects resulting from integration of their systems. In order to minimize any adverse competitive effects resulting from integration, we believe that Applicants should accommodate regional interests and concerns related to network expansion and operation in the affected markets in siting and sizing transmission facilities necessary to integrate their systems. We note that transmission planning in an RTO context would provide for the open planning and participation of other regional participants that the Commission found to be beneficial in Order No. 2000.²² To the extent that Applicants' transmission planning process can be implemented through an RTO, our concerns in this regard would be substantially reduced. However, should Applicants' transmission planning take place prior to their participation in an RTO, we would encourage Applicants to adopt an open planning and participation

²¹We note that this requirement addresses KEPCo's concern that if rate pancaking is exacerbated by the merged company's decisions regarding regional transmission tariffs and RTO membership, competitors' costs could increase or they could be foreclosed from the market.

²²See Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000).

process for the siting and sizing of transmission facilities necessary to integrate their systems.²³ The Commission will review Applicants' revised analysis, along with any proposed mitigation, and use its authority under section 203(b) of the FPA if necessary to impose any conditions necessary to mitigate potential adverse competitive effects.

In their various pleadings, intervenors discuss the need for Applicants to join an RTO and Applicants discuss their commitment to joining an RTO.²⁴ We believe that Applicants' participation in an RTO may be helpful in addressing concerns of the type discussed above.

Applicants state that they are strong supporters of RTOs, regarding RTOs as a positive step toward the elimination of undue discrimination. However, Applicants have not made a commitment to join a specific RTO. The application notes that, among other reasons, Applicants have choices relative to which RTO to join - Midwest ISO, MAPP or SPP.²⁵ Given the changing landscape in their region, Applicants request that the Commission afford them the flexibility to allow these various RTO options to become better defined before Applicants make a commitment.²⁶ Applicants say that there is likely to be significant changes in the structure and configuration of the regional transmission entities in its area.²⁷ In addition, Applicants state that, "[n]aturally, it has always been UtiliCorp's expectation that it will join an RTO in its own region, and with the issuance of Order No. 2000 in December 1999, there is now a definite time frame within which that decision will be made."²⁸ Furthermore, Applicants also state that they

²³See Public Service Co. of Colorado and Southwestern Public Service Co., 78 FERC ¶ 61,267 at 62,140-141 (1997) (establishing a joint planning and open participation process, including appropriate dispute resolution procedures, for construction of new transmission line); accord, Ohio Edison Co., et al., 81 FERC ¶ 61,110 at 61,406 (1997), reh'g denied, 85 FERC ¶ 61,203 (1998).

²⁴The Kansas Commission, KEPCo, Missouri Municipals, and Springfield all request conditioning the proposed mergers on Applicants joining an RTO.

²⁵Midwest ISO, MAPP and SPP are not RTOs as yet.

²⁶Applicants' witness Robert K. Green, Direct Testimony at 8 and Applicants' witness Richard C. Kreul, Direct Testimony at 22 - 24.

²⁷Applicants' May 19, 2000 Response to Staff Data Request at 4.

²⁸Consolidated Response to Motions to Intervene, Motions for Clarifications,

"have no objection to being required to join a Regional Transmission Organization meeting the criteria of Order No. 2000 (an "RTO") as a condition of approval of their mergers" but request that "they be given the same latitude afforded to all other public utilities under that Order regarding the timing of their statement of intentions with respect to the specific RTO they intend to join." ²⁹

We accept Applicants' commitment to join an RTO consistent with the requirements of Order No. 2000 and rely on it in approving these mergers. Accordingly, Applicants must make a filing on or before October 15, 2000, as required under Order No. 2000, in which Applicants, as they have indicated, will propose to transfer operational control of their transmission facilities to a Commission-approved RTO on or before December 15, 2001.

We believe that our findings regarding the competitive effects of and resulting conditions imposed on the proposed mergers address intervenors' concerns. We do not find compelling KEPCo's, Kansas BPU's, and Missouri Municipals' argument that certain contracts should be modified as a result of proposed merger. These intervenors do not demonstrate how such contracts could be used by the merged company to adversely affect competition. If the parties believe that these contracts themselves are unjust and unreasonable, they may file a section 206 complaint with the Commission.

3. Effect on Rates

The Merger Policy Statement explains our concerns that there be adequate ratepayer protection from adverse rate effects as a result of a merger. It describes various commitments that may be acceptable means of protecting ratepayers, such as hold harmless provisions, open seasons for wholesale customers, rate freezes, and rate reductions.³⁰

According to Applicants, their proposed ratepayer protection plan fully protects all of Applicants' wholesale requirements and transmission service customers from any possible adverse rate effect resulting from the merger.

Requests for Hearing and Protests, at 10-11.

²⁹Applicants' May 19, 2000 Response to Staff Data Request at 4 (footnote omitted).

³⁰Merger Policy Statement at 30,123-24.

Applicants' proposed ratepayer protection plan consists of three forms of ratepayer protection. First, Applicants commit that transmission customers taking service under Applicants' open access transmission tariffs and all wholesale requirements customers (including those customers that have given notice to terminate their requirements contracts) will be held harmless from rate increases resulting from the mergers for five years following consummation of the mergers. However, Applicants state that the costs associated with newly constructed transmission facilities would not be considered "merger-related costs" for purposes of the hold-harmless commitment.³¹

Second, Applicants commit that with respect to transmission customers taking firm transmission service pursuant to transmission agreements that predate UtiliCorp's, St. Joseph's and Empire's open access transmission tariffs, the merged company will freeze rates for five years, provided that the customers continue to take service under their existing agreements.

Third, Applicants commit that, if the merged company files any proposed increase in rates for wholesale requirements service during the five-year period following consummation of the mergers, the merged company will offer all affected customers an open season. During the open season the affected customers may terminate their service from the merged company. This open season will begin the day after any Commission order is issued accepting for filing a proposal by the merged company to increase rates and will end six months later.

a. Intervenor Protests, Motion for Clarification, and Answer

ICI Explosives and AG Processing argue that there may be an immediate effect on retail rates and that Applicants' proposed hold harmless provision does not provide adequate protection for retail ratepayers. They express concern that merger-related rate increases could offset the benefits of retail access in Missouri.

Kansas Municipals seek clarification that nothing in the proposed mergers would impair their existing contract rights, which were reconfirmed in a Settlement Agreement.³² Kansas Municipals seek assurance that the Settlement Agreement, as an existing contract, will be covered by Applicants' proposed ratepayer protection proposals. They also request that the merged company agree (or that the Commission order the

³¹Application at 12-13.

³²Empire District Electric Co., 80 FERC ¶ 61,169 (1997).

merged company) to file a single system-wide transmission rate that would allow transmission service on any of the merged company's transmission facilities on a non-pancaked basis. If Applicants do not make this commitment, Kansas Municipals request that the Commission order an evidentiary hearing .

Kansas BPU argues that the Commission should require Applicants to either modify the notice of termination provision in an existing Kansas BPU-Empire contract to permit Kansas BPU's termination of the contract on minimal notice in order to avail itself of open access transmission under the SPP Tariff, or offer an open season to permit Kansas BPU to obtain open access transmission without economic penalty. Missouri Municipals, like Kansas BPU, seek to change the notice of termination provision in an existing contract with Empire and requests that the Commission condition the mergers upon Applicants' commitment to cooperate in eliminating the pancaked transmission rate to the City of Higginsville.

Springfield contests the in Applicants' hold harmless provision that excludes the costs of any new transmission lines. In light of Applicants' apparent plans to construct new transmission facilities for integrating their operations, Springfield claims that the costs of such new or upgraded transmission facilities are clearly merger-related and should be included in the hold harmless provision.

Springfield requests that the Commission condition the mergers to require UtiliCorp and St. Joseph to participate in the SPP regional tariff and the SPP RTO to eliminate rate pancaking and to protect Springfield and others from any adverse effects of Applicants' possible integrated operations. Missouri Municipals argue that any approval of the mergers should be conditioned on Applicants' commitment to cooperate in eliminating the pancaked transmission rates to which its member, the City of Higginsville, Missouri (City of Higginsville) continues to be subject under an existing contract with Empire.

KEPCo opposes Applicants': (1) proposal to hold harmless wholesale customers from cost increases arising from the mergers for a term of the customer's contract or five years, whichever is less; (2) the proposed open season period if the merged company files a proposed rate increase; and (3) proposal to freeze rates under pre-Order No. 888 bilateral transmission agreements for five years after consummation of the merger.

b. Discussion

With respect to ICI Explosives' and AG Processing's concerns about retail ratepayer protection, the Commission notes that the proposed mergers have been

submitted to the state commissions with jurisdiction over the retail rates of the operating utilities. Accordingly, we will not address the retail ratepayer issues.

With respect to Kansas Municipals' and Kansas BPU's concern that their existing contracts with Empire are covered by Applicants' proposed transmission rate freeze, Applicants in their response state that all of the Empire transmission arrangements, including the Kansas Municipals and Kansas BPU contracts, are covered by Applicants' proposed transmission rate freeze.³³

Kansas BPU and Missouri Municipals are seeking modifications to the notice of termination provisions in their contracts with Applicants. We do not believe that this merger proceeding is the appropriate forum to address changes to the terms and conditions of existing contracts when intervenors have not demonstrated that they are harmed by the proposed merger. If Kansas BPU and Missouri Municipals feel that the terms and conditions of their existing agreements with Empire are unjust and unreasonable, they may file a complaint under section 206.

While we agree that it is appropriate that UtiliCorp continue to establish separate transmission prices for each operating division based on that division's transmission costs, we shall require the Applicants to include provisions in their tariff to ensure that, when two or more operating divisions are involved in the same transaction, customers are not subjected to pancaked rates for using multiple operating divisions of the UtiliCorp systems. See, e.g., Public Service Co. of Colorado and Southwestern Public Service Co., 75 FERC ¶ 61,325 (1996) (where customers are charged no more than one of the tariff rates for any transaction that involves more than one of the companies).

KEPCo expresses concerns that prior to any integrated operations, UtiliCorp could exacerbate rate pancaking in the region by withdrawing Empire's transmission facilities from the SPP regional tariff. However, we note that Applicants have subsequently claimed that KEPCo's concerns are moot due to "Applicants' plans to place all of their Missouri and Kansas facilities under the SPP tariff."³⁴ We will accept Applicants' commitment. Notwithstanding Applicants' commitment herein, we note that the withdrawal of any of Applicants' facilities from the SPP regional tariff would require the

³³ Applicants state that all of Empire's transmission arrangements listed in Applicants' witness Kreul's Exhibit No. __ (RCK-16) are covered by Applicants' proposed rate freeze, including the Kansas Municipals and Empire contracts.

³⁴ Applicants' February 11, 2000, Consolidated Response to Motions to Intervene, Motions for Clarification, Requests for Hearing, and Protests at 10, fn. 9.

the filing of appropriate applications with the Commission. Any potential adverse effects of such a change would therefore be appropriately examined at such time.

With respect to KEPCo's argument concerning the transmission rate freeze, we disagree that the rate freeze forecloses rate reductions. Customers who wish to seek rate reductions can do so under section 206 of the FPA. Applicants state in their consolidated response that they have simply committed not to seek to raise rates under the contracts pursuant to section 205.³⁵ Regarding the length of the open season period, KEPCo provides no support for its claim that the six-month open season period will not permit customers sufficient time to negotiate long-term contracts.

Applicants have specifically excluded the costs of new transmission facilities from their hold harmless provision, claiming that such costs would not be merger-related. Applicants offer no further support for this claim. Springfield and KEPCo object to this exclusion, particularly since Applicants now apparently plan to integrate their operations by constructing new transmission facilities to interconnect the operating companies. We agree with Springfield and KEPCo, and find that the transmission costs associated with new interconnection facilities to permit system integration would clearly be merger-related costs. Therefore, we will condition the proposed mergers on Applicants' revising their hold harmless provision to hold transmission customers harmless from the costs of the new transmission facilities, including the interconnection facilities to allow Applicants to integrate their operations.

4. Effect on Regulation

As explained in the Merger Policy Statement, the Commission's primary concern with the effect on regulation of a proposed mergers involves possible changes in the Commission's jurisdiction when a registered holding company is formed, thus invoking the jurisdiction of the Securities and Exchange Commission (SEC). We are also concerned with the effect on state regulation where a state does not have authority to act on a merger and raises concerns about the effect on state regulation.³⁶

With respect to federal regulation, Applicants state that none of Applicants are currently part of a holding company and that the merged company will not be a part of a

³⁵Consolidated Response to Motions to Intervene, Motions for Clarifications, Requests for Hearing and Protests, at p.16.

³⁶Merger Policy Statement at 30,124-25.

holding company. Therefore, the proposed mergers will not create any issues regarding the overlap of jurisdiction by this Commission and the SEC.

With respect to state regulation, Applicants state that the proposed mergers will be submitted to the appropriate state commissions and that those commissions will have a full opportunity to review the proposed mergers.

Accordingly, the Commission finds that there is no indication that the proposed merger will have an adverse effect on either federal or state regulation, and no commenter argues otherwise.

5. Accounting Issues

According to the application, the two proposed mergers are separate and distinct transactions. Applicants state that the merger of UtiliCorp and St. Joseph will be recorded using the pooling of interests method of accounting. Applicants do not specify which method of accounting will be used to account for the merger of UtiliCorp and Empire.

The application also did not contain sufficient information to reach a definitive conclusion regarding the Applicants' accounting for the two mergers. However, the Merger Policy Statement states that proper accounting treatment is a requirement of all mergers.³⁷ Therefore, we will direct Applicants to submit their accounting for the mergers within six months after the mergers are consummated in accordance with the Uniform System of Accounts.³⁸

The Commission orders:

(A) The proposed mergers are hereby conditionally authorized, as discussed in the body of this order.

(B) Applicants shall file a supplemental market power analysis, as discussed in the body of this order.

³⁷Merger Policy Statement at 30,126.

³⁸Electric Plant Instruction No. 5, Electrical Plant Purchased or Sold, and Account 102, Electric Plant Purchased or Sold, 18 C.F.R. Part 101 (2000).

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, determination of cost, or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall promptly notify the Commission of the date the disposition of jurisdictional facilities is consummated.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

Typical Electric Bills (In \$/month)

Summer Rates--Rates in effect July 1, 1999

Line #	Company	kWh	100	250	500	750	1000	1500	2000	3000	5000	7500
1	AmerenUE	GS	\$ 14.61	\$ 27.53	\$ 49.07	\$ 70.61	\$ 92.15	\$ 135.22	\$ 178.20	\$ 264.46		
2		SH	\$ 14.61	\$ 27.53	\$ 49.07	\$ 70.61	\$ 92.15	\$ 135.22	\$ 178.20	\$ 264.46	\$ 436.77	\$ 652.16
3	Empire District Electric Co.	GS	\$ 14.01	\$ 23.66	\$ 39.73	\$ 55.81	\$ 71.88	\$ 104.03	\$ 136.18	\$ 200.48		
4		SH	\$ 14.01	\$ 23.66	\$ 39.73	\$ 55.81	\$ 71.88	\$ 104.03	\$ 136.18	\$ 200.48	\$ 329.08	\$ 489.83
5	Kansas City Power & Light Co.	GS	\$ 13.95	\$ 25.41	\$ 44.51	\$ 63.61	\$ 82.71	\$ 120.91	\$ 159.11	\$ 235.51		
6		SH	\$ 13.95	\$ 25.41	\$ 44.51	\$ 63.61	\$ 82.71	\$ 120.91	\$ 159.11	\$ 235.51	\$ 388.31	\$ 579.31
7	St. Joseph Light & Power Co.	GS	\$ 12.36	\$ 22.26	\$ 38.76	\$ 55.26	\$ 71.75	\$ 104.75	\$ 137.74	\$ 203.73		
8		SH	\$ 12.40	\$ 22.33	\$ 38.88	\$ 55.42	\$ 71.97	\$ 105.06	\$ 138.16	\$ 204.34	\$ 336.71	\$ 502.18
9	UtiliCorp United, Inc. (MPS)	GS	\$ 13.71	\$ 24.21	\$ 41.71	\$ 59.51	\$ 77.51	\$ 115.31	\$ 153.11	\$ 228.71		
10		SH	\$ 13.71	\$ 24.21	\$ 41.71	\$ 59.51	\$ 77.51	\$ 115.31	\$ 153.11	\$ 228.71	\$ 379.91	\$ 568.91
11	Missouri Average	GS	\$ 13.73	\$ 24.61	\$ 42.76	\$ 60.96	\$ 79.20	\$ 116.04	\$ 152.89	\$ 226.58		
12		SH	\$ 13.74	\$ 24.63	\$ 42.78	\$ 61.03	\$ 79.24	\$ 116.11	\$ 152.97	\$ 226.70	\$ 374.16	\$ 558.48

Winter Rates--Rates in effect January 1, 2000

	Company	kWh	100	250	500	750	1000	1500	2000	3000	5000	7500
13	AmerenUE	GS	\$ 12.24	\$ 21.61	\$ 37.23	\$ 52.85	\$ 63.18	\$ 83.82	\$ 104.48	\$ 145.78		
14		SH	\$ 12.24	\$ 21.61	\$ 37.23	\$ 52.85	\$ 63.18	\$ 83.82	\$ 104.48	\$ 145.78	\$ 228.39	\$ 331.64
15	Empire District Electric Co.	GS	\$ 14.01	\$ 23.66	\$ 39.73	\$ 51.85	\$ 61.32	\$ 80.27	\$ 99.22	\$ 137.12		
16		SH	\$ 14.01	\$ 23.66	\$ 39.73	\$ 51.85	\$ 61.32	\$ 80.27	\$ 99.22	\$ 137.12	\$ 212.92	\$ 307.67
17	Kansas City Power & Light Co.	GS	\$ 12.77	\$ 22.76	\$ 39.41	\$ 52.04	\$ 61.99	\$ 78.59	\$ 95.19	\$ 128.39		
18		SH	\$ 10.79	\$ 17.81	\$ 29.51	\$ 41.21	\$ 52.91	\$ 69.21	\$ 85.51	\$ 118.11	\$ 183.31	\$ 264.81
19	St. Joseph Light & Power Co.	GS	\$ 11.47	\$ 20.15	\$ 34.62	\$ 47.57	\$ 58.23	\$ 79.56	\$ 100.89	\$ 143.55		
20		SH	\$ 9.98	\$ 16.40	\$ 27.10	\$ 37.80	\$ 48.51	\$ 63.79	\$ 79.08	\$ 109.66	\$ 170.82	\$ 247.26
21	UtiliCorp United, Inc. (MPS)	GS	\$ 13.71	\$ 24.21	\$ 41.71	\$ 55.90	\$ 67.87	\$ 91.82	\$ 115.77	\$ 163.67		
22		SH	\$ 13.71	\$ 24.21	\$ 41.71	\$ 54.38	\$ 63.83	\$ 79.48	\$ 95.13	\$ 126.46	\$ 189.03	\$ 267.28
23	Missouri Average	GS	\$ 12.84	\$ 22.48	\$ 38.54	\$ 52.04	\$ 62.52	\$ 82.81	\$ 103.11	\$ 143.70		
24		SH	\$ 12.15	\$ 20.74	\$ 35.06	\$ 47.62	\$ 57.95	\$ 75.31	\$ 92.68	\$ 127.43	\$ 196.89	\$ 283.73

SOURCE: EEI Typical Bills and Average Rate Report

GS=General Service Rate

SH=Space Heating Rate

UtiliCorp United Inc.
Electric O & M Account Analysis
Per December 31, 1999 & 1998 FERC Form 1 (including Staff Adjustments)

Missouri Public Service					
O & M Account	1999		1998		
	Total	per Customer	Total	per Customer	
Customer Accounts Expenses	\$ 5,202,667	\$ 26	\$ 5,996,988	\$ 30	
Customer Service & Informational Expenses	279,671	1	206,480	1	
Sales Expenses	785,570	4	982,933	5	
Administrative & General Expenses	30,582,707	151	29,979,356	152	
Total for MPS	\$ 36,850,615	\$ 182	\$ 37,165,757	\$ 188	

Kansas City Power & Light					
O & M Account	1999		1998		
	Total	per Customer	Total	per Customer	
Customer Accounts Expenses	\$ 21,396,238	\$ 47	\$ 18,360,471	\$ 41	
Customer Service & Informational Expenses	2,205,792	5	3,130,154	7	
Sales Expenses	6,665,677	15	4,768,469	11	
Administrative & General Expenses	80,352,064	176	76,985,554	172	
Total for KCP&L	\$ 110,619,771	\$ 242	\$ 103,244,648	\$ 230	

Ameren/Union Electric					
O & M Account	1999		1998		
	Total	per Customer	Total	per Customer	
Customer Accounts Expenses	NA--filed as privileged and confidential.		\$ 55,000,549	\$ 48	
Customer Service & Informational Expenses	NA--filed as privileged and confidential.		7,268,867	6	
Sales Expenses	NA--filed as privileged and confidential.		3,786,817	3	
Administrative & General Expenses	NA--filed as privileged and confidential.		235,627,824	204	
Total for UE	\$ -	\$ -	\$ 301,684,057	\$ 262	

St. Joseph Light & Power - Per Books					
O & M Account	1999		1998		
	Total	per Customer	Total	per Customer	
Customer Accounts Expenses	\$ 1,606,803	\$ 26	\$ 1,568,576	\$ 25	
Customer Service & Informational Expenses	396,318	6	423,338	7	
Sales Expenses	460,701	7	645,167	10	
Administrative & General Expenses	10,277,364	164	9,059,380	146	
Total for SJLP	\$ 12,741,186	\$ 204	\$ 11,696,461	\$ 189	

St. Joseph Light & Power - Total Electric Staff Adjusted					
Traxler - Acctg. Schedule 9 (EM-2000-292)					
O & M Account	1999				
	Total	per Customer			
Customer Accounts Expenses	\$ 1,585,563	\$ 25			
Customer Service & Informational Expenses	409,417	7			
Sales Expenses	550,035	9			
Administrative & General Expenses	7,835,796	125			
Total for SJLP	\$ 10,380,811	\$ 166			

UtiliCorp United Inc.

Electric O & M Account Analysis

Per December 31, 1999 & 1998 FERC Form 1 (including Staff Adjustments)

The Empire District Electric Company					
O & M Account	1999		1998		
	Total	per Customer	Total	per Customer	
Customer Accounts Expenses	\$ 4,798,342	\$ 33	\$ 5,758,090	\$ 40	
Customer Service & Informational Expenses	852,936	6	755,741	5	
Sales Expenses	696,586	5	806,000	6	
Administrative & General Expenses	18,549,865	127	12,132,661	85	
Total for EDE	\$ 24,897,729	\$ 171	\$ 19,452,492	\$ 136	

Traxler - Schedule STM 6-2

O & M Account	1999		
	Total	per Customer	
Customer Accounts Expenses	\$ 4,798,342	\$ 33	
Customer Service & Informational Expenses	852,936	6	
Sales Expenses	696,586	5	
Administrative & General Expenses	13,849,865	95	
Total for EDE	\$ 20,197,729	\$ 138	

Western Resources (KPL Division)					
O & M Account	1999		1998		
	Total	per Customer	Total	per Customer	
Customer Accounts Expenses	\$ 9,993,298	29	\$ 10,992,025	33	
Customer Service & Informational Expenses	534,977	2	504,227	1	
Sales Expenses	779,554	2	639,340	2	
Administrative & General Expenses	59,931,046	176	57,093,632	169	
Total for KLP	\$ 71,238,875	\$ 209	\$ 69,229,224	\$ 205	

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

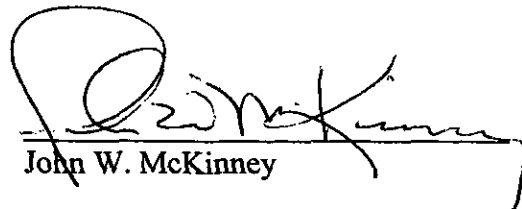
In the Matter of the Joint Application of)
UtiliCorp United Inc. and The Empire)
District Electric Company for Authority to)
Merge The Empire District Electric)
Company with and into UtiliCorp United)
Inc., and, in Connection Therewith, Certain)
Other Related Transactions.)

Case No. EM-2000-369

County of Jackson)
)
State of Missouri)

AFFIDAVIT OF JOHN W. MCKINNEY

John W. McKinney, **being first duly sworn**, deposes and says that he is the witness who sponsors the accompanying testimony entitled surrebuttal testimony; that said testimony was prepared by him and or under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information, and belief.


John W. McKinney

Subscribed and sworn before me this 18th day of August, 2000.


Notary Public

My Commission Expires:

ALEXA NUNNERY
Notary Public - State of Missouri
County of Jackson
My Commission Expires May 4, 2004