

Exhibit No.:  
Issue: Retiree Benefits, Health Trust Acct.,  
Labor Protective Provisions  
Witness: Robert B. Browning  
Sponsoring Party: UtiliCorp United Inc.  
Case No.: EM-2000-369  
Date Prepared: September 6, 2000

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

Supplemental Surrebuttal Testimony

of

Robert B. Browning

Jefferson City, Missouri

Exhibit No. 31  
Date 9-14-00 Case No. EM-2000-  
Reporter W 369

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI  
SUPPLEMENTAL SURREBUTTAL TESTIMONY  
OF ROBERT B. BROWNING  
ON BEHALF OF UTILICORP UNITED INC.**

**CASE NO. EM-2000-369**

1 Q. Please state your name, position, and business address.

2 A. My name is Bob Browning. I am employed by UtiliCorp United Inc. ("UtiliCorp"),  
3 within the Enterprise Support Functions division, as Vice President of Human Resources.

4 Q. Are you the same Bob Browning that previously filed Direct and Surrebuttal Testimony  
5 in this case?

6 A. Yes.

7 Q. What is the purpose of your Supplemental Surrebuttal Testimony?

8 A. The purpose of my Supplemental Surrebuttal Testimony is to respond to the Cross-  
9 Surrebuttal Testimony filed by Bill Courtney on behalf of the International Brotherhood  
10 of Electrical Workers (IBEW) Local 1474 and the Surrebuttal Testimony filed by Albert  
11 Fuchs on behalf of the Empire District Electric Company Retired Employees.

12 Q. Mr. Courtney, on page 16 of his testimony, indicates that he has not received any  
13 assurances from UtiliCorp that the terms of the collective bargaining agreement that are  
14 currently in effect will remain in effect following the expiration of the contract. Is this  
15 true?

16 A. UtiliCorp has consistently stated that it would recognize the IBEW as the representative  
17 of the bargaining unit at Empire District Electric Company (EDE). In addition, in several  
18 meetings with bargaining unit employees during the week of April 24, 2000, I told  
19 employees that UtiliCorp recognizes they are covered by a collective bargaining

1 agreement and that any changes to their working conditions, benefits or wages that have  
2 traditionally been negotiated in the past would be negotiated when the contract expires.

3 At no time did I lead anyone to believe that UtiliCorp could or would unilaterally  
4 eliminate any provisions that is a mandatory subject of bargaining of the labor contract  
5 that is currently in effect. It is common knowledge that any such provisions in a labor  
6 agreement must be negotiated and that neither party has the right to unilaterally make  
7 such changes.

8 Q. Mr. Courtney also states on page 16 of his testimony that UtiliCorp intends to provide  
9 benefits to the bargaining unit "only for the length of that agreement." Is this UtiliCorp's  
10 intent?

11 A. While Mr. Courtney's statement is technically true, UtiliCorp certainly intends to  
12 negotiate levels of participation in the health and welfare plans, just as EDE has in the  
13 past. During the employee meetings referenced earlier, I clearly stated that there would  
14 be no material changes to the bargaining unit's current benefits except as negotiated with  
15 the union's representatives when their contract expires.

16 Q. Mr. Courtney states on page 18 of his testimony that UtiliCorp will be free to seek  
17 changes in the current labor agreement and that the current severance provision, which is  
18 in effect through 18 months following the close of the merger, may not survive following  
19 that period. Is that true?

20 A. Technically that is true. It is also the purpose of labor negotiations. The IBEW will also  
21 be free to seek changes in the current labor agreement. However, if the IBEW feels  
22 strongly their members should enjoy such a provision following this 18-month window

1 period following the close of the merger, UtiliCorp is certainly willing to discuss it, just  
2 as we would any other matter that is a mandatory subject of bargaining. UtiliCorp has  
3 included severance provisions in several other labor agreements that we have negotiated.

4 Q. On page 21 of Mr. Courtney's testimony, he asks that the Commission impose Labor  
5 Protective Provisions, in order to protect the interests of bargaining unit employees, as a  
6 condition of the merger. Do you support Mr. Courtney's position?

7 A. No. Although I delineated my position with respect to Labor Protective Provisions in my  
8 Surrebuttel Testimony already filed, I would like to reiterate that all of the issues Mr.  
9 Courtney identifies that should be covered under such a Provision are mandatory subjects  
10 of bargaining under the National Labor Relations Act. Furthermore, it is my  
11 understanding the Commission is not authorized by Missouri law to change the terms of a  
12 collective bargaining agreement. Therefore, it is my belief that current federal law would  
13 at the least preclude the need for such Provisions and potentially usurps the  
14 Commission's authority to institute such provisions.

15 Q. Mr. Albert Fuchs, on behalf of the EDE retirees, states on page 3 of his testimony that the  
16 health insurance trust fund for retirees is a "funded account," which is sought to be  
17 acquired by UCU. Is this true?

18 A. No. In fact, in Schedule RBB-6, which was filed with my original testimony, it is clear  
19 that the future estimated benefit obligation is \$17,100,350, while the fair value of the  
20 assets is only \$6,154, 238. Therefore, the funded status is negative \$10,946,112.

21 Q. Mr. Fuchs has stated in pages 4 and 5 of his testimony that EDE has set aside funds in  
22 "trust amounts to pay for health care insurance premiums, life insurance, surviving

1 spouse health care benefits and insurance for disabled workers.” He goes on to state that  
2 to the extent that these funds might be in excess of legal obligations they will likely inure  
3 to the benefit of UCU shareholders. From this he concludes that such excess funds would  
4 be considered by UCU to be “excess assets” and that UCU can take these “excess assets”  
5 as “merger savings.” Is this true?

6 A. No. Not only is Mr. Fuchs’ logic flawed, his conclusions are based on erroneous facts.  
7 First of all, it is not clear to me in Mr. Fuchs’ testimony on page 4 whether he is referring  
8 to the health care plans for active or retired employees, but I must assume he is referring  
9 to retirees, since they are whom he states he represents. Had Mr. Fuchs reviewed the  
10 Schedules submitted by me in my original testimony and referred to in Mr. Traxler’s  
11 rebuttal testimony, he would have seen that FAS 106 benefit obligations greatly exceed  
12 the funded status by over \$1 million. EDE is projected to be expensing over \$2 million  
13 per year for the next 10 years for FAS 106 obligations. Therefore, it is clear that merger  
14 savings from retiree health insurance funding has not been overestimated, as Mr. Fuchs  
15 has claimed and that there are no excess assets in the fund.

16 Q. On page 5 of his testimony, Mr. Fuchs offers a condition of the merger relative to retiree  
17 health care, which includes that the entire fund held for health care be separately  
18 maintained, funded, and devoted to maintenance of current health plan benefits applicable  
19 to retirees and that the excess assets in the pension fund be used to pay for any  
20 insufficient funding in the retiree health care trust. Do you support Mr. Fuchs’ proposal?

21 A. No, I do not. UCU currently maintains separate VEBA accounts for several prior merged  
22 plans and breaks out expenses by retiree, active, union and non-union categories. UCU

1 plans to continue the VEBA Trusts for current retirees and active employees consistent  
2 with past procedures. To require such accounting as a condition of the merger is  
3 unnecessary. In addition, the excess assets of the pension trust are there as a result of  
4 favorable market returns on the invested assets. The market could just as easily be less  
5 favorable in the future and the pension trust will need this excess capacity to ensure  
6 funding exists for the company's pension obligations. To use these excess assets in the  
7 pension fund for health care coverage for retirees would be "robbing Peter to pay Paul."

8 Q. Mr. Fuchs, on page 7 of his testimony, states that funds for retiree health benefits, which  
9 were paid in and accumulated through rates paid and to be paid by EDE retirees will be  
10 diverted from the intended use and to the use of UCU through the proposed merger. Is  
11 this true?

12 A. No. Mr. Fuchs states that Mr. Traxler's testimony with respect to diversion of excess  
13 pension assets does not go far enough as Mr. Traxler does not make the same objection  
14 with regard to EDE health benefits. There is a reason Mr. Traxler does not go this far.  
15 There are no excess assets to divert. Referring to Schedule RBB-6 and on page 7, line 5  
16 of my original testimony relative to this merger, I stated, "The non-bargaining unit plan is  
17 expected to generate approximately \$222,048 in incremental expense in the first 6 months  
18 following the close and \$2,309,586 in the final year prior to EDE moving onto UCU's  
19 plan as a result of a greater than normal number of early retirees." In addition, the Trust  
20 Agreement for the EDE Employee Benefit Fund, in Article VII, states, "In the event of  
21 termination of the trust, the Trustees shall apply the Trust Fund to pay or to provide for  
22 the payment of any and all obligations of the Trust Fund and distribute in accordance

1 with the Health and Welfare Plans until the Fund is exhausted; provided however, that no  
2 part of the corpus or income of said Trust Fund shall be paid to the Employer, nor shall  
3 any part of the corpus or income of said Trust Fund be used for or diverted to purposes  
4 other than the exclusive benefit of employees or the administrative expenses of the Trust  
5 Fund...". Based on these two facts, I believe Mr. Fuchs' allegations that the retiree  
6 health benefit funds will be diverted from the intended use to be erroneous and mis-  
7 informed.

8 Q. On page 6 of Mr. Fuchs' testimony, he states that the collective bargaining agreement  
9 will reveal that the retirement health care, life insurance, death and disability insurance  
10 and surviving spouse benefits are the subject of collective bargaining agreement. Is this  
11 true?

12 A. No. Evidently, Mr. Fuchs made this statement prior to reviewing the current EDE  
13 collective bargaining agreement because there are no references whatsoever to health care  
14 benefits for retirees. In addition, Mr. Myron McKinney, in his surrebuttal testimony, has  
15 stated that the collective bargaining agreement contains no language relative to health  
16 care benefits for retirees. He goes on to explain that the union has attempted, in the past,  
17 to negotiate health care benefits for retired employees. However, at no time have the  
18 parties adopted a collective bargaining agreement that contains any health care-related  
19 issues, plans, benefits or premiums for retired employees or their spouses.

20 Q. Does this conclude your Supplemental Surrebuttal Testimony at this time?

21 A. Yes, it does.

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

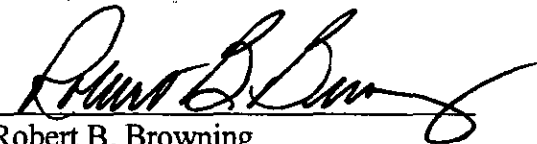
In the Matter of the Joint Application of     )  
UtiliCorp United Inc. and The Empire     )  
District Electric Company for Authority to     )  
Merge The Empire District Electric     )  
Company with and into UtiliCorp United     )  
Inc., and, in Connection Therewith, Certain     )  
Other Related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

Case No. EM-2000-369

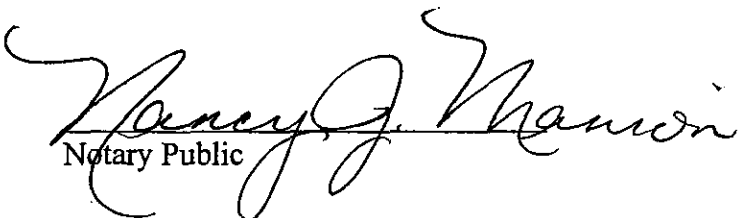
County of Jackson     )  
   )  
State of Missouri     )

**AFFIDAVIT OF ROBERT B. BROWNING**

Robert B. Browning, **being first duly sworn**, deposes and says that he is the witness who sponsors the accompanying testimony, entitled supplemental 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.

  
Robert B. Browning

Subscribed and sworn before me this 6<sup>th</sup> day of September, 2000.

  
Notary Public

My Commission Expires:

**NANCY J. MANION  
NOTARY PUBLIC STATE OF MISSOURI  
JACKSON COUNTY  
MY COMMISSION EXPIRES 7/31/2001**