

with costs to achieve over a period of 10 years.²⁴ The Joint Applicants are, however, proposing a 40-year amortization of acquisition premium dollars. Inasmuch as transaction costs are, in essence, a necessary and integral component of the acquisition transaction itself, the 40-year time frame would be consistent with the Joint Applicants' own recommendation where the acquisition premium is concerned. If the Commission determines that amortization of transaction costs (or, for that matter, costs to achieve) for inclusion in rates should be allowed, Staff agrees with the Joint Applicants' proposal that any unamortized amounts not be included in rate base.

The Staff further recommends, in the event the Commission decides to permit recovery of transaction costs, that 50% of such costs be allocated to UtiliCorp's non-regulated operations, "on the basis that the Joint Applicants have not provided to the Staff any information concerning a reasonable allocation of the acquisition adjustment to non-regulated operations." (Russo Rebuttal, Ex. 715, p. 9, lines 5-8). As addressed herein in the section on "Acquisition Adjustment," the Staff believes the evidence shows that a significant portion of the benefits the Joint Applicants expect from this merger pertain to non-regulated operations. Based on that evidence, some portion of merger transaction costs should be assigned below-the-line to non-regulated operations.

C. The regulatory treatment of costs to achieve

"Costs to Achieve," as distinguished from transaction costs, are costs that will arise in the merged utilities as they take advantage of opportunities for potential savings presented in the post-acquisition environment. Such costs are typically associated with consolidating and integrating various operations, systems, practices, and procedures. The Staff believes reasonable

²⁴ The Joint Applicants are proposing, however, to amortize bond solicitation costs and banker fees over 40 years. This artificial deviation from the proposed treatment of all other transaction costs and costs to achieve is purely for the purpose of increasing the purported merger benefits to EDE customers. (Oligschlaeger Rebuttal, Ex. 712, p. 41, lines 6-29, p. 42, lines 1-12).

and prudent levels of costs to achieve should be considered for recovery because of their direct relationship to potential merger-related customer savings. (Russo Rebuttal, Ex. 715, p. 12, lines 5-8).

The Joint Applicants propose that costs to achieve be amortized over 10 years. (Siemek Direct, Ex. 6, p. 8, lines 11-12). Staff, however, "recommends that these costs be expensed in the period in which they occur, thereby offsetting any merger savings actually realized during the same time period." (Russo Rebuttal, Ex. 715, p. 12, lines 8-10). This treatment would allow the Joint Applicants to seek recovery of costs to achieve incurred within a test year set for a future rate proceeding. Staff disputes the statement contained in the question on lines 1-3, p. 36 of Mr. Siemek's surrebuttal testimony, i.e., contrary to that statement, Mr. Russo does NOT recommend 40-year amortization of ANY costs to achieve, as Staff defines such costs. In fact Mr. Russo does not even recommend such treatment of transaction costs, except in the event the Commission endorses recovery thereof. In the event the Commission decides that an amortization of costs to achieve is appropriate, the Staff would agree with the Joint Applicants' 10-yr. amortization proposal, with no inclusion of the unamortized balance in rate base.

Furthermore, if the Commission were to authorize rate treatment in this proceeding, Staff takes the position that some of the items listed by the Joint Applicants under costs to achieve should not be allowed recovery through rates. Specifically, the Commission should not permit rate recovery of the amounts estimated for the "Officers Severance/Retention" (\$1,406,000) packages, the "Paid Advisory Board" (\$250,000), and "Curtailment Costs for Retiree Medical Plan" (\$2,732,000). (Russo Rebuttal, Ex. 715, p. 11, lines 12, 14 and 22; Traxler Rebuttal, Ex. 716, p.23, lines 15-17). These cost items are discussed below:

1. Officers Severance/Retention: In Staff's view, these packages, which, in essence, provide what are frequently dubbed "golden parachutes" to top executives, are not legitimately recoverable in rates. As noted earlier, business combinations are put together primarily for the benefit of the shareholders. The Officers Severance/Retention packages, which are designed to ensure the executives' neutrality in the event of a takeover attempt that may be of interest to shareholders, should therefore be viewed as insurance policies for the shareholders. To require ratepayers to foot the bill for such "insurance premiums" would be patently unfair. (Russo Rebuttal, Ex. 715, p. 15, lines 18-25, p. 16, lines 1-2). In addition, on the witness stand, Mr. Robert Fancher, an executive with EDE, indicated that the severance packages for executives provided for total severance benefits of three times the executives' annual salary, an amount in excess of the severance benefits available to EDE rank and file employees. (Tr. 477-78). Severance packages of this magnitude, above the levels offered to other EDE employees who potentially may lose their jobs, is not warranted for rate purposes.

2. Paid Advisory Board: The Paid Advisory Board will be composed of former members of Empire District Electric's Board of Directors. Its existence is to be limited to a term of three years. The role of the Advisory Board has not yet been fully sorted out; however, the Direct testimony of UCU witness Robert K. Green (Sched. 1 attached thereto) indicates that the Board will advise UCU on such matters as charitable contributions, which are not included in rates, and economic development, which are subject to a cost/benefit analysis before rate recovery is permitted. (Russo Rebuttal, Ex. 715, p. 14, lines 16-18). In fact, UCU is obligated, under its agreement with EDE, to continue charitable contributions at pre-merger levels for the first five years following the merger anyway. (Russo Rebuttal, Ex. 715, p. 14, lines 21-25). In brief, there is no evidence that ratepayers will be benefiting in any way from the activities of the

Paid Advisory Board. (Russo Rebuttal, Ex. 715, p. 14, lines 10-11, p. 15, lines 1-4). Witness Siemek's statement that costs associated with ten years of EDE's Board of Directors are being replaced by costs associated with three years of an Advisory Board (Siemek Surrebuttal, Ex. 7, p. 33, lines 3-5) is no consolation when one considers that UCU apparently expects EDE ratepayers to pay for part of the cost of the UCU Board of Directors as well as duplicative costs associated with the Paid Advisory Board. Given that no ratepayer benefits have been identified from the establishment of the Paid Advisory Board, the Staff recommends, therefore, that the costs of the Board be excluded from recovery in rates.

3. Curtailment Costs for Retiree Medical Plan: A final concern raised by Staff in the area of costs to achieve is UCU's proposed regulatory treatment of a Financial Accounting Standard ("FAS") 106 curtailment resulting from the merger. FAS 106 is the accrual accounting method for retiree retirement benefits other than pension ("OPEBs")---i.e., medical, dental, vision and life insurance costs---expected to be paid by UCU between retirement and death and/or age 65, depending upon the hire date for the employee. (Traxler Rebuttal, Ex. 716, p. 22, lines 12-15). A curtailment refers to, among other things, "an event that significantly reduces the expected years of future service of active plan participants or eliminates the accrual of defined benefits for some or all of the future services of a significant number of plan participants." (Traxler Rebuttal, Ex. 716, p. 22, lines 20-24)

As a result of the proposed merger, UCU expects a reduction of 152 non-union employees by January 1, 2003. As a result, there will be an increase in the accrued liability for retiree benefit costs under FAS 106. The total impact of the plan curtailment is \$2,732,422. (Traxler Rebuttal, Ex. 716, p. 23, lines 11-17). UCU has characterized the approximately \$2.7 million as a cost to achieve and is therefore proposing a 10-year amortization thereof, which will

allow recovery in rates of half that amount (approximately \$1.4 million) in years 6-10 of the proposed regulatory plan. (Traxler Rebuttal, Ex. 716, pp. 23-24).

Staff is opposed to the Joint Applicants' proposed recovery for two reasons. First, it violates the principle of the Joint Applicants' regulatory plan, to the effect that EDE's rates were not to be increased or decreased as a result of changes to its cost of service occurring during the moratorium years 1-5 following the merger. Under FAS 106, "OPEBs cost is a normal cost of service item used in setting rates for Empire and every other major utility in Missouri. A plan curtailment under FAS 106 should be recognized as such during the moratorium period and not earmarked for a subsequent partial recovery in years 6-10, following the moratorium. Accrual accounting under FAS 106 requires that the entire \$2.7 million in curtailment cost be charged to expense in years 1-5 of the moratorium. (Traxler Rebuttal, Ex. 716, p. 24, lines 3-18).

Second, the proposal fails to take into account the fact that there are offsetting benefits to the Joint Applicants associated with the curtailment, in the form of decreased employee benefits associated with the head count reduction. It is inconsistent with the matching principle of accounting and patently unfair for the Joint Applicants to propose a scheme for recovering half of the curtailment cost from ratepayers, post moratorium, while ignoring and thereby confiscating the whole of the \$3.2 million reduction in employee benefits expense, which more than offsets the \$2.7 million increase in curtailment cost.. (Traxler Rebuttal, Ex. 716, p. 24, lines 19-23, p.25, lines 1-3).

As pointed out by Mr. Traxler, "Consistent treatment of both savings and costs would dictate a \$50,000 annual reduction in Empire's post-moratorium cost of service, instead of the annual increase of 270,000 proposed by Mr. Siemek." (Traxler Rebuttal, Ex. 716, p. 26, lines

13-15). The Commission should order that the entire \$2.7 million cost be recognized during the moratorium, with no amortization and recovery from ratepayers in years 6-10.

XVI. CUSTOMER SERVICE INDICATORS

It is the responsibility of the Commission Staff to work toward ensuring that the proposed merger does not result in a detriment associated with a diminished or reduced level of customer service for any Missouri customer currently served by either of UtiliCorp or Empire. At present, Empire customers contact the PSC Consumer Services Department at a rate that is somewhat lower than that at which MPS customers do.

As presented in the record of this case and other recent cases, mergers may produce a negative or detrimental impact on customer service -- among them, staffing reductions that could preclude some customers from being able to contact the Company in a timely manner.

The quality of service received by customers can become particularly vulnerable given the events that normally occur during or after a merger. The financial pressures typically associated with a merger could encourage a utility to engage in short-term and long-term expense reductions that may adversely impact overall service quality." (Kiebel Rebuttal, Ex. 707, p. 4, lines 20-23 through p. 5, line 1.) "Maintaining quality customer service is a critical component in determining the 'not detrimental to the public interest' criteria." (Kremer Rebuttal, Ex. 708, p. 2, lines 14-15.)

Utility mergers can result in cost-cutting measures that can have a negative impact on customer service. Kremer testified to this point at the evidentiary hearing:

[t]he point that we were trying to make in this testimony is that when companies merge, sometimes they can engage in cost-cutting measures in order to gain synergies." (Tr., p. 769, lines 3-6.)... "[i]f call center employees are reduced, that could certainly hamper the company's ability to effectively answer customer calls and could reduce the level of customer service that's currently enjoyed by Empire customers and MoPub customers. (Tr., p. 769, lines 9-13.)

In order to determine the 'not detrimental to the public interest' criteria as presented in 4CSR 240-2.060 (8), Staff specifically addressed in its rebuttal testimony:

how measurements or indicators can be utilized to determine both the present level of service currently provided by UtiliCorp and Empire and to determine future performance and possible deterioration of customer service in the merged company. My testimony will specifically address customer service measurements unique to Call Center (Center) operations and found at both UtiliCorp and Empire. (Kremer Rebuttal, Ex. 708, p. 2, lines 16-21.)

Because of cost-cutting measures companies sometimes engage in during and after mergers occur, and the possible detriment to customer service, Staff has recommended that UtiliCorp and Empire, consistent with what has been recommended and agreed to in previous merger transactions of Missouri regulated utilities, regularly report on a limited number of significant customer service indicators used to measure existing and future customer service. The Company is already capturing most or all of the reporting data regarding Call Center responsiveness, customer complaints, and system reliability indicators. This information provides Staff with a benchmark over time to determine the extent of changes in the level of service received by the customer. It would only require minimal incremental expense and effort to submit this information to Staff on a quarterly basis. Electronic mail is available if the Company wishes to streamline the process further.

The Staff has recommended the use of several indicators to help assess the level of service being provided to the customer. Once the indicators are developed, they provide a benchmark over time to determine the extent of changes in the level of service received by the customer. Reporting systems have also been included to monitor these indicators. (Kiebel Rebuttal, Ex. 707, p. 8, lines 5-9.)

As testified to by Staff witness Kremer, measurements that Staff is recommending for UtiliCorp and Empire measure performance of Call Center operations. Kremer testified the following regarding Call Center operations:

Call Centers perform a critical function in that they provide the primary means for customers to contact their utility. Customers require contact with their utility regarding a wide range of issues including: reporting of emergencies and service outages; desires to begin, discontinue, transfer or restore service; questions about bills regarding usage; delinquent accounts; and the ability to make payment arrangements. During the winter months, when the Commission's Cold Weather Rule is in effect, Calls Centers may actually be a 'life line' for some customers who are nearing service disconnection and need to make payment arrangements. It is always imperative, but particularly so during emergencies and in times of unusually cold and hot weather, that Call Centers function in an effective manner. As utilities close or consolidate business offices that once accommodated walk-in traffic and provided customers with a utility presence in their community, the role of the Call Center becomes increasingly important as the primary point of contact for utility customers. (Kremer Rebuttal, Ex. 708, p. 4, line 11 through p. 5, line 2.)

(The Cold Weather Rule protects the health and safety of residential customers receiving heat-related utility service by placing restrictions on discontinuing and refusing to provide heat-related utility service from November 1 through March 31 due to delinquent accounts of those customers.)

Staff recommended that specific objectives be established and monitored in the areas of Abandoned Call Rate (ACR) and Average Speed of Answer (ASA) and in the area of distribution reliability. These objectives were developed upon the historical information of each company and in consideration of the objectives recommended by Staff in the UtiliCorp and St. Joseph Light and Power (SJLP) merger, Case No.EM-2000-292. Staff further recommended that the merged Company should report its monthly performance on a calendar year quarterly basis beginning on January 1 following the effective date of the merger. Staff also recommended a mechanism for remedial action should the Company's performance be unfavorable:

Based upon the information above, the Staff recommends an ACR of **__** and an ASA of **_____** for the post-merger Missouri operations of UtiliCorp should the merger be approved. Indicators such as these are critical in determining that customer service does not decline

during the transition from two Call Centers of two different utilities to one Call Center for a merged utility. These indicators will serve to assess and determine the level of customer service experienced by customers in the post-merger company. (Kremer Rebuttal, Ex. 708-HC, p. 17, lines 11-17.)

With respect to remedial measures, Staff recommended the following:

The Staff recommends that the Commission order the following procedures in order to prevent a detriment to the public interest. If the actual performance is unfavorable when compared to the established performance indicator, UtiliCorp should be required to provide the Staff with a written explanation as to why its performance did not meet the acceptable levels as established by the Commission. UtiliCorp should also be required to provide an estimate of any cost to improve its performance to an acceptable level. (Kiebel Rebuttal, Ex. 707, p. 19, lines 7-13.)

Further, with respect to expenditures for remedial action, Staff recommended the following:

UtiliCorp should be required to expend a reasonable and appropriate amount in the following year to improve the performance to the identified level. In addition, UtiliCorp should credit its customers with a like amount during the subsequent year for the year in which the indicator was exceeded. (Kiebel Rebuttal, Ex. 707, p. 19, lines 16-19.)

These expenses would properly be absorbed by UCU's shareholders.

In addition, there are services and programs that Empire presently offers its customers that the Staff believes should continue to be offered by the merged Company as indicated in Staff witness' Kiebel's Rebuttal testimony.

Empire has a support program for its elderly and/or handicapped customers, a flexible payment due date for customers who sign up for the average payment plan, a credit card payment option and a formal customer satisfaction survey. (Kiebel Rebuttal, Ex. 707, p. 11, lines 14-16.)

The Company has not committed to continuing these programs, nor does the new customer billing system that UCU has in place offer customers the option of paying by credit card. In addition, MPS customers are not allowed to change their billing cycle due date, and the new customer billing system that UCU has in place does not offer the flexibility to change a

payment due date. In fact, when Mr. Pella was asked if he was "aware specifically of what components might exist in the Empire EASE program that does not exist already in UtiliCorp's program." (Tr., p. 755, lines 3-5.), he responded "[n]o, I don't (Tr., p. 755, line 6.)

The support program for the elderly and disabled customers, which Staff witness Kiebel testified is called "Ease" (Empire's Action to Support the Elderly),

is designed to lift the burden of worry for approximately 3,200 registered customers. For customers who register, late payment fees and security deposits are waived, due dates can be adjusted, and third party notification is available when an account becomes delinquent. The participant also can be automatically enrolled in Empire's average payment billing plan. (Kiebel Rebuttal, Ex. 707, p. 11, line 21 through p. 12, line 2.)

The UtiliCorp/Empire proposed merger is not the first merger where Staff has expressed its concern regarding possible customer service detriment. The Company would not be held to a higher reporting standard than any other proposed utility merger candidate has gone through since 1997.

The Staff has expressed this concern in at least four recent proposed utility merger applications. They are the following:
Western Resources Inc. (Western Resources) and Kansas City Power & Light Company -- Case No. EM-97-515
Southern Union Company (Southern Union) and Pennsylvania Enterprises, Inc. -- Case No. GM-2000-43
Atmos Energy Company (Atmos) and Associated Natural Gas Company -- Case No. GM-2000-312
UCU and SJLP -- Case No. EM-2000-292 (Kiebel Rebuttal, Ex. 707, p. 5, lines 15-23.)

In all but the last case, UCU and SJLP, a series of indicators and conditions were jointly developed and agreed to by the Staff, both companies and the Office of the Public Counsel. These agreements *disprove* UtiliCorp's contention in its statement of position that "UtiliCorp should not be singled out from all other Missouri utilities in terms of required remedial action or

reporting requirements.” (Statement of Position on Issues of UtiliCorp United Inc. and the Empire District Electric Company, p. 13.)

UtiliCorp *has not been* ‘singled-out’ as presented in its Statement of Position. At best, Staff finds it anomalous that UtiliCorp has taken strong objection to Staff’s recommendation that measurements be established and the Company be required to report its performance as agreed to in a number of other Missouri utility mergers. However, even if the Commission sees fit to approve the instant merger request in 2001, the formal reporting requirements would not begin until the following year.

Staff disagrees with UtiliCorp’s implicit contention that it is somehow unfair to impose requirements on it because it is going through a merger that the Commission would not impose on non-merging utilities. As previously noted, mergers may have the impact of increasing financial pressure on utilities that undertake them. Therefore, it is not unreasonable to take additional steps to ensure adequate quality of service from merging utilities than from utilities not engaged in this activity.

Staff recommends that UCU continue to utilize a third party survey instrument to determine customer perceptions and to identify areas where improvement can be realized. Empire has been using an outside survey since the mid-1980s. Staff recommends that data be stratified to identify Empire customers to allow for timely correction of any identified problems associated with Empire. UCU began using a third party survey similar to the one in use by Empire in the Spring of 2000.

As to the issue of Distribution Reliability as it pertains to Customer Service, Staff witness James L. Ketter stated that

[r]eliability measures that are currently maintained by UtiliCorp include a System Average Interruption Frequency Index (SAIFI), a System Average Interruption

Duration Index (SAIDI) and a Customer Average Interruption Duration Index (CAIDI). These indices provide information from UtiliCorp districts and system-wide averages that can track the overall performance of the delivery of electric service. These same indices are maintained by Empire to track service interruptions. (Ketter Rebuttal, Ex. 706, p. 6, lines 11-16.)

Ketter went on to state that

[t]hese indices (SAIFI, SAIDI and CAIDI) will provide a benchmark to monitor how electric service reliability is being maintained if the utilities are merged. Reliable electric service is an important issue for customers, regardless of the electric supplier, and will be an important issue as the electric industry moves toward a competitive market. (Ketter Rebuttal, Ex. 706, p. 7, lines 1-5.)

Finally, Ketter testified that

[t]hese reliability indices show overall system performance as an average of the total customers, the system average duration and the customer average duration. These measures can help in accessing the performance of the utility in providing reliable electric service. The indices will help define the quality of service provided and bring attention to any positive or negative impact that a merger of utility systems might bring. (Ketter Rebuttal, Ex. 706, p. 8, lines 3-7.)

It should be noted that the reporting and remediation requirements for the reliability standards are identical to those previously discussed for ACR and ASA.

XVII. LOAD RESEARCH CONDITION

In the event that the Commission approves the proposed merger of UtiliCorp and EDE, but does not approve the merger of UtiliCorp and SJLP, the Staff proposes that five conditions regarding the production of load research data be imposed.²⁵ The conditions are that the Commission order UCU to:

1. Continue to treat the EDE service territory separately from the MPS service territory for load research purposes;

²⁵ The conditions that the Commission should impose if it approves both this pending merger and also the pending merger of UtiliCorp and SJLP are discussed, *infra*, at pages ____ - ____ of this brief.

2. Maintain EDE's current load research program at its current standard of timeliness and quality;
3. Provide hourly class load data, selected individual customer hourly load research data for the EDE service territory, and the checks and balances performed on that data, to the Staff on an ongoing basis;
4. Improve MPS's current load research program to match the current EDE standards of timeliness and quality; and
5. Provide hourly class load data, selected individual customer hourly load research data, and the checks and balances performed on that data, for the MPS service territory to the Staff on an ongoing basis.

(Mantle Rebuttal, Ex. 710, p. 2, lines 9-23).

Condition No. 1: Treat EDE Territory Separately from MPS Territory.

With regard to Condition No. 1, above, the Company has agreed with the Staff's proposal (Pella Surrebuttal, Ex. 17, p. 16, lines 13-16), so the Commission should order the implementation of this condition.

Condition No. 2: Load Research Program of EDE; and

Condition No. 4: Load Research Program of MPS.

Condition No. 2 (timeliness and quality of EDE's load research program) and Condition No. 4 (timeliness and quality of MPS's load research program) may be examined together. The Staff is satisfied with EDE's load research program, and believes the Joint Applicants should be required to continue to meet these standards of quality.

Staff witness Mantle testified that "EDE has a better load research program than MPS" in regard to its timeliness and quality, which is due in part to its quality control. (Mantle Rebuttal,

Ex. 710, p. 7, lines 3-8). Ms. Mantle noted that EDE's most current class load data was only four months old (Mantle Rebuttal, Ex. 710, p. 7, lines 11-13), and the class load data easily passed "sanity checks" (Mantle Rebuttal, Ex. 710, p. 8, lines 2-5). In addition, Ms. Mantle said she found the EDE personnel to be "very concerned with the quality of EDE's class loads and receptive to ferreting out reasons for errors." (Mantle Rebuttal, Ex. 710, p. 8, lines 14-17).

However the Staff is not satisfied with MPS's load research program, and believes it needs to be improved. For example, Ms. Mantle noted that MPS's most current class load data was two years old (Mantle Rebuttal, Ex. 710, p. 7, line 14), the data that MPS provided to the Staff sometimes contained "obvious errors," whose cause was difficult to identify (Mantle Rebuttal, Ex. 710, p. 8, lines 5-8), and MPS made no attempt to correct the erroneous data (Mantle Rebuttal, Ex. 710, p. 8, lines 17-20).

UCU proposes to consolidate the load research programs in a single department. The same small staff will provide load research services for both EDE and MPS. It is virtually inevitable in such a situation that there will be a "leveling" of the services provided. That is, the timeliness and quality of the services that are provided with respect to EDE will be the same as the timeliness and quality of the services that are provided with respect to MPS. If the timeliness and quality of the two load research programs are indeed "leveled," as is likely, the Commission should insist that the MPS load research program be brought *up* to the current level of the EDE program, rather than allowing the EDE load research program to be brought *down* to the current level of the MPS program. If the EDE program degrades to the level of the MPS program, it will be a detriment to the ratepayers and to the regulatory process.

Unfortunately, UCU has not demonstrated a commitment to this process, thus raising doubts about whether it will maintain the EDE load research program at its present level. The

staffing that the Joint Applicants propose is inadequate for this purpose, and the Joint Applicants have demonstrated a desire to do as little as they can get away with.

EDE presently has two personnel working full-time on load research. (Mantle Rebuttal, Ex. 710, p. 13, lines 7-8). UtiliCorp has "just under one full-time equivalent [employee], maybe like .8" full-time equivalent employees ("FTE") performing load research. (Vol. 5, Tr. 777, lines 20-23 and Tr. 778, line 23 – Tr. 779, line 6). This "maybe .8" FTE must do load research for not only MPS, but also for UtiliCorp's service territories in Kansas and Colorado. This "maybe .8" FTE does, however, have the assistance of an outside firm, namely Quantum Consulting, which assists with the data collection, for a fee of \$129,870 per year. (Vol. 5, Tr. 778, line 19 – Tr. 779, line 15).

Thus the Joint Applicants, combined, presently utilize 2.8 FTE plus the services of a \$129,870-per-year consultant to perform load research for EDE (at a level that is satisfactory to Staff) *as well as* for MPS (at a level that is not satisfactory to Staff), *and for* UtiliCorp's Kansas and Colorado service territories.

The Joint Applicants propose to terminate the services of the outside consultant. (Vol. 5, Tr. 779, lines 16-21). The Staff supports this decision. (Mantle Rebuttal, Ex. 710, p. 13, lines 4-7). In addition, the Joint Applicants propose to add one FTE for load research in the EDE territory, thus bringing the total staff to 1.8 FTE.²⁶ This staff, which would be smaller than the present staff at EDE, would have to perform the load research for EDE, as well as for MPS and for UtiliCorp's Kansas and Colorado service territories – and it would have to do it all in-house,

²⁶ Joint Applicants also propose to add two FTE for load research in the SJLP territory, thus bringing the total staff to 3.8 FTE if *both* mergers are approved.

without the assistance of Quantum Consulting. The conclusion is inescapable that this will result in a degradation of service.

The Joint Applicants have offered no explanation of how 1.8 FTE will be able to do the work previously done by 2.8 FTE *plus* the work of the outside consultant, and simultaneously improve the timeliness and quality of the MPS load research data. Nor does the Staff know of any reason why the Joint Applicants should be expected to perform such a remarkable feat despite a reduction in staff. In fact, this is just one example of how UCU seeks to limit its expenditures, with little regard for the quality of the load research services that it obtains.

The Commission should order the Joint Applicants to maintain EDE's load research program at its present standard of timeliness and quality, and order them to improve MPS's load research program to match this standard of timeliness and quality.

Condition No. 3: Provision of EDE Data to the Staff; and

Condition No. 5 – Provision of MPS Data to the Staff.

Condition No. 3 above (the need for class load data and load research data from EDE) and Condition No. 5 above (the need for class load data and load research data from MPS) may also be examined together. With respect to these two conditions, the Staff maintains that UCU should be required to provide Staff with class load data and selected individual customer load research data for both EDE and MPS on an *ongoing* basis. Unfortunately, UtiliCorp objects that providing such data would be “unnecessarily costly” to the company. (Pella Surrebuttal, Ex. 17, p. 19, lines 7-9).

Providing class load data and load research data on an ongoing basis is the best way to assure that this data is available for analysis when the Staff needs it. (Mantle Rebuttal, Ex. 710, p. 11, lines 7-18).

EDE currently meets this standard. As a result, the Staff can obtain needed data from EDE within 20 days through the data request process. This data is rarely more than four months old, it contains few obvious errors, and when errors are found, EDE personnel have been quick to investigate the problems. (Mantle Rebuttal, Ex. 710, p. 11, line 19 – p. 12, line 6).

MPS, on the other hand, has been unable to provide the needed data within 20 days after Staff requests it. This is because the data requests ask for data that MPS does not possess, since MPS does not compute the hourly class load data and hourly load research data on an ongoing basis, as Empire does. (Mantle Rebuttal, Ex. 710, p. 12, lines 7-14).

The Joint Applicants oppose the Staff's recommendation that they provide hourly class load data for both companies on an ongoing basis. Joints Applicants witness Pella states, vaguely, that UCU intends to ensure that load research data is available for "appropriate business uses" (which are, apparently, to be identified by UCU), and for rate case analysis. (Pella Surrebuttal, Ex. 17, p. 19, lines 5-6). But he adds: "Any requirement to provide load research data on an on-going basis does not take into account the tradeoff between expense and accuracy and would be unnecessarily costly." (Pella Surrebuttal, Ex. 17, p. 19, lines 7-9).

Conditions to impose if the Commission approves both pending merger applications.

If the Commission approves both the proposed merger of UCU and Empire, and also the proposed merger of UCU and SJLP, the Staff proposes that the Commission order UCU to:

1. Continue to treat all service territories separately for load research purposes;
2. Improve the timeliness and quality of the MPS and EDE load research programs to the level of SJLP's load research program; and
3. Provide hourly class load data and other data to the Staff on an ongoing basis.

(Mantle Rebuttal, Ex. 710, p. 3, lines 1-11).

It will be noted that these conditions are similar to those that are recommended above in the case of a two-company merger, except that they would require all three divisions of the merged companies to conduct their load research programs at the level now maintained by SJLP, which, in Staff's view, currently has the best load research program of the three companies. The rationale that supports these conditions is the same as that outlined above for the case of a two-company merger. In particular, the imposition of these conditions would insure that the inevitable "leveling" of services would bring all three divisions of the merged company to the highest level of service. See the discussion, *supra*.

The ability to obtain reliable hourly class load data is dependent upon maintaining an ongoing program of high quality load research.

A utility's load research program is the source of the raw data that is subsequently analyzed to estimate class hourly loads. The quality of the class hourly load estimates is thus dependent upon the quality of the data that is obtained through the load research program. Because the results of any analysis can only be as good as the data on which it is based, the quality and accuracy of any analysis by the Staff, or any other party, that is based on low quality load research will be of similar quality and accuracy. Old, inferior raw data simply cannot be manipulated into good quality data.

UtiliCorp has stated that it will obtain load research data on an "as needed" basis, for "appropriate business uses." But if UCU determines that it does not have a "need" for load research, it is reasonable to expect that it will continue to collect the minimum amount that is required of its MPS, EDE and SJLP divisions. Unfortunately, it takes time to collect load research data and to estimate class hourly loads. It would take UCU several months to upgrade

its load research program to get data of a quality that EDE and SJLP already obtain; and even then the data would only be good if UtiliCorp *continues* collect it on an *ongoing* basis.

The Staff uses load research data and class hourly loads to weather-normalize sales and hourly loads, and in the design of rates. Although UCU committed itself to providing Staff with “available” load research data upon request (Vol. 5, Tr. 789, lines 17-20), there will not *be* any data to provide, unless UCU has first determined that it has a “business need” for the information and has collected the data. UCU also committed itself to providing data that meets the level of precision and accuracy agreed upon between the Staff and UCU. But the level of precision and accuracy that the Staff wants will be irrelevant, because the precision and accuracy of the hourly class loads will be determined long before the Staff requests the data; the Staff will simply have to use whatever is available – if, in fact, anything is available at all.

According to Joint Applicants witness Pella, UtiliCorp is currently implementing a new load research sample (Pella Surrebuttal, Ex. 17, p. 18, lines 10-11). Because the accuracy of hourly class loads is determined by the sample chosen, the accuracy of future hourly class loads for MPS has already been determined – with no input from the Staff.

Mr. Pella acknowledged that there are several uses for bad research data (Vol. 5, Tr. 792, lines 12-25, and Tr. 793, lines 1-4). Nonetheless, UCU still insists on only collecting load research data and developing class loads on an “as needed” basis. (Vol. 5, Tr. 786, line 24 – Tr. 787, line 12). This seems to contradict Mr. Pella’s statement that UtiliCorp has made a “strong commitment” to strengthen its load research program. (Pella Surrebuttal, Ex. 17, p. 18, line 5). Why would UCU make a “strong commitment” to obtain data, if it does not even know for sure whether the data will be needed?

UtiliCorp does not have a workable plan for providing hourly class load data that is representative of test year conditions to Staff within the 20-day period allowed for responding to data requests.

UCU's position is that, for regulatory purposes, it will provide "available load research data that meets the level of precision and accuracy agreed upon between Staff and UCU" within the 20-day period that is typically allowed for responding to data requests. (Vol. 5, Tr. 789, lines 7-20).

However, upon cross-examination, Mr. Pella acknowledged that:

- UCU intends to collect hourly load data on sampled customers only on an "as-needed." basis. (Vol. 5, Tr. 786, line 19 – Tr. 787, line 10).
- UCU intends to produce the work products associated with hourly load data on sampled customers only on an "as-needed" basis. (Vol. 5, Tr. 787, line 11 – Tr. 788, line 2).
- UCU estimates that it would require four to six weeks to produce the work products, including hourly class load data, from the raw load research data. (Vol. 5, Tr. 788, line 4 – Tr. 789, line 6).

When asked to reconcile UCU's commitment to provide the Staff with load research work products within the 20 days that is typically allowed for responding to data requests with his testimony that four to six weeks would be required to produce such work products, Mr. Pella could offer no explanation. (Vol. 5, Tr. 789, line 21 – Tr. 790, line 1).

Mr. Pella was further questioned about the desirability of using, in a rate case, load research data and load research work products that come from the same historical time period, or test year, as the financial data in the case come from. In answer, he stated that "two years of load research data that spans the test year is optimal." (Vol. 5, Tr. 790, lines 2-15). Mr. Pella testified

that if such test year data is unavailable: 1) an additional procedure could be used to make the load research data and work products representative of the test year (Vol. 5, Tr. 790, line 16 – Tr. 791, line 8); and 2) UCU would be responsible for implementing such procedures and defending the results before the Commission. (Vol. 5, Tr. 791, lines 9-13). Mr. Pella was not able to state how long this procedure would take (Vol. 5, Tr. 791, lines 14-16), but it seems reasonable to assume that whatever time is required would be in addition to the four to six weeks that UCU has already determined would be necessary to produce load research work products on an “as-needed” basis.

Conclusion and Recommendations.

Quality of Data: The Staff respectfully requests that the Commission require UCU to maintain the current quality of EDE’s load research and hourly class load data, and to improve the quality of the UCU load research and hourly class load data to at least the same quality that EDE currently maintains. If the Commission approves both of the mergers that UtiliCorp is now proposing, the Commission should order UCU to improve the quality of both the EDE and the MPS load research programs to the level that SJLP currently maintains.

Ongoing Collection of Data: The Staff respectfully submits that the best way to insure that the needed data is available to the Staff on a timely basis in a rate case is to reject the Joint Applicants’ proposal to provide data only when they deem it to be “needed,” and instead to require both of the Joint Applicants to provide hourly class load data, individual customer hourly load research data, and the checks and balances performed on that data, on an ongoing basis.

XVIII. STRANDED COSTS

This proposed Staff condition to the merger, in the event the Commission decides to approve UtiliCorp's and EDE's application, pertains to the possibility that the acquisition adjustment from this merger may be claimed as a component of "stranded costs" in the future by UtiliCorp.

"Stranded costs" are defined as costs presently charged by electric utilities in rates that may not be recoverable when and if electric utilities must set their prices based upon a competitive electric market (Oligschlaeger Rebuttal, Ex. 712, p. 67). As the Commission knows, stranded costs have proven to be a particularly controversial aspect of legislative and regulatory policy when jurisdictions undertake electric restructuring.

Stranded costs are measured as the difference between the value of assets reflected in regulated rates and the value of the assets in a competitive marketplace. Since UtiliCorp has chosen to pay a purchase price for EDE higher than the underlying net book value of EDE's assets, a risk exists that any write-up of the EDE asset values due to this merger transaction may increase the differential between future regulated rate levels and the competitive market rate that would result from a decision of the Missouri Legislature, or possibly the United States Congress, to restructure the electric industry. The end result of the EDE- UtiliCorp merger could be an increased level of stranded costs, that could conceivably be charged to EDE and/or MPS customers. The Staff views this situation as a known detriment arising from this merger application, that should be addressed now by imposing conditions upon any approval of the merger.

No party to this case has argued that EDE's generating assets are likely to be less valuable in a competitive market than they are under the current regulatory regime. In fact, there

is considerable evidence that EDE and UtiliCorp expect the opposite situation to be true (Hyneman Rebuttal, Ex. 705, pp. 37, 60). It is possible that payment of a large acquisition premium for the EDE properties may, in and of itself, cause any future market derived electric rates to be less than rate levels reflecting full or partial recovery of the acquisition adjustment. To the extent that this transaction causes EDE customers potential exposure to stranded costs where there was no exposure before the merger, then that situation on its face is detrimental to EDE customers. If a portion of the acquisition adjustment associated with the EDE transaction is charged to MPS customers in the future, the detrimental situation is the same because MPS customers would not have been exposed to these stranded costs without the merger taking place.

To ensure that neither EDE nor MPS customers are exposed at a later date to this particular merger-related risk, the Staff recommends that the Commission direct, as a condition to any merger approval, that the Joint Applicants commit not to seek recovery in any future Missouri regulatory proceeding of any portion of the acquisition adjustment under the claim that such costs represent a "stranded cost." This of course would not ensure that UtiliCorp would not seek to overturn such a condition at a later time through legislation. (Oligschlaeger Rebuttal, Ex. 712, pp. 68-69).

The only argument offered by UtiliCorp opposing this condition is to infer that the Commission would somehow be pre-empting the Legislature in attempting to define "stranded costs" by imposing such a condition. (McKinney Surrebuttal, Ex. 2, pp. 30-31). This argument is misplaced. First, the Commission's adherence to the "not detrimental to the public interest" standard requires that known detriments to the public interest must be resolved before any merger approval is granted. The Staff believes that potential exposure to stranded costs by either EDE or MPS customers occurring solely as a result of this merger (and the acquisition

adjustment) is clearly a current known detriment, which should be addressed by the Commission now.

On the witness stand, Mr. Empson stated he did not expect that UtiliCorp would ever claim that its acquisition adjustment should be considered a stranded cost, and that its stakeholders should bear the costs in that circumstance. (Tr. 217). The Staff believes that acceptance of the its proposed stranded cost condition would be both prudent in protecting customers from detriment and not likely consequential matter to UtiliCorp in any event.

XIX. MARKET POWER AND TRANSMISSION ACCESS AND RELIABILITY

Staff witness Michael S. Proctor testified that analysis of horizontal market power for the SJLP – UtiliCorp merger is not critical. Based on his review of the market power work that was performed for the Staff in the Western Resources, Inc. – Kansas City Power & Light Company merger and the Joint Applicants' filing on market power at the Federal Energy Regulatory Commission (FERC) there appears to be little incremental value in performing additional horizontal market power studies on market concentration for this proposed merger. Nonetheless, horizontal market power can exist in the SJLP and MPS service territories in the form of load pockets (i.e., geographic areas within the service territories where the transmission system will not allow competitive generation to provide services to a significant percentage of the end-use customer loads on a year-round basis). Thus, Dr. Proctor recommended that with respect to potential horizontal market power related to load pockets, as a condition for Missouri Commission approval of the merger, the Joint Applicants should be required to agree to submit, if and when retail competition becomes lawful in Missouri, a study showing what percentage of

load can be served from competitive generation sources throughout the merged service territory. (Proctor Rebuttal, Ex. 713, pp. 58-60).

Respecting vertical market power, the most critical restriction that a supplier can impose is on the use of the transmission system. Even under FERC Order No. 888 and FERC Order No. 889, which require transmission open access, as long as (1) transmission service is provided on a utility-by-utility basis, the utility can restrict the amount of service it offers to favor its own generation, and (2) pancaked transmission rates apply, incumbent utilities maintain an unfair competitive advantage. Recently issued FERC Order No. 2000 seeks to address these two matters by requiring FERC jurisdictional utilities to either join a regional transmission organization (RTO) or explain what efforts and obstacles have prevented the utility from doing so. Thus, Dr. Proctor recommended that as a condition of Missouri Commission approval of the proposed merger, the SJLP and MPS should make a commitment to join the same RTO (either the Southwest Power Pool (SPP) RTO or the Midwest Independent System Operator (MISO) RTO) that meets the eleven separate independent system operator (ISO) principles enumerated in FERC Order No. 888 before the October 15, 2000 deadline of FERC Order No. 2000. He stated that the addition of Empire District Electric Company (EDE) to the merger makes the decision respecting which RTO to join more complicated but does not necessarily result in the merged utility having to join a specific regional transmission entity. (Proctor Rebuttal, Ex. 713, pp. 60-64).

In response to a request to SPP by UtiliCorp for network service, SPP performed a regional study of load flows with respect to UtiliCorp jointly dispatching the MPS, SJLP and EDE generating units, but the study was based on transfer capability among the unconnected three service territories rather than a joint economic dispatch of the MPS, SJLP and EDE

generating units. UtiliCorp itself developed a minimum cost plan to jointly dispatch the generating units of MPS, SJLP and EDE to meet the coincident loads of MPS and the two prospective new divisions of UtiliCorp. Based upon his review of the two different plans, which will be noted in greater detail below, Dr. Proctor testified that: (1) although he recommends that the Commission support region-wide optimization of the transmission system, he cannot recommend that the Commission support the SPP proposal for providing network service to UtiliCorp based on regional pricing policies that, for example, require UtiliCorp to pay the full incremental cost of an upgrade without any revenue recovery from the market's use of the incremental transfer capability created by the upgrade; and (2) he cannot recommend that the Commission support the UtiliCorp proposal for connecting MPS, SJLP or EDE until it is clear that the UtiliCorp plan does not have detrimental effects on the regional grid. (Proctor Cross-Surrebuttal, Ex. 714, pp. 1-3). (Proctor Cross-Surrebuttal, Ex. 714, pp. 1-2, 4, 7-8).

UtiliCorp's minimum cost plan to jointly dispatch the generating units of MPS, SJLP and EDE to meet the coincident loads of the three divisions appears to be: (1) to lease from KCPL an upgraded 161 kV line connecting MPS' Nashua substation to SJLP's Lake Road substation and (2) construct a new 161 kV line connecting MPS' Nevada substation with EDE's Asbury generating unit. Dr. Proctor recommended that in order to determine the impact of the UtiliCorp minimum cost plan on the regional grid, the Commission should require that UtiliCorp have a region-wide load flow study performed that models the load-flow impacts of UtiliCorp's proposal to connect MPS, SJLP and EDE. UtiliCorp can request that SPP perform such a study. This SPP study would be significantly different from the one performed by SPP in response to UtiliCorp's request for network service. This new study would involve a determination of whether UtiliCorp's plan to connect the MPS, SJLP and EDE systems meets SPP's regional

transmission planning criteria "3.3.2. Planning Assessment Studies." Under "3.3.2. Planning Assessment Studies," a utility is required to contact the Transmission Assessment Working Group "whenever new facilities are in the conceptual planning stage so that optimal integration of any new facilities and potentially benefiting parties can be identified." (Proctor Cross-Surrebuttal, Ex. 714, pp. 2, 8).

Dr. Proctor stated that the Commission should require UtiliCorp to file the results of the SPP study in the instant case as supplemental direct testimony. Each party should be given no more than four weeks to file rebuttal testimony, and UtiliCorp should be permitted two weeks to file surrebuttal testimony. A hearing on this specific issue should then occur. (Proctor Cross-Surrebuttal, Ex. 714, p. 9).

Addressing this recommendation in greater detail, the Staff would note that Springfield City Utilities has raised two concerns about UtiliCorp's minimum cost plan to jointly dispatch the generating units of MPS, SJLP and EDE to meet the coincident loads of the three divisions that are not just specific to Springfield City Utilities:

Allowing UtiliCorp to jointly dispatch MPS, SJLP and EDE will use transmission transfer capability within the region that will not be replaced through the proposed upgrades and construction included in the UtiliCorp plan. This could negatively impact Missouri utilities and retail customers and any utility or power marketer wanting to transmit power through the northern SPP region in two ways:

1. A reduction in transfer capability in the region will make it more difficult for Missouri utilities and any utility or power marketer wanting to carry out transactions in the off-system energy markets and could result in higher costs.
2. A reduction in transfer capability within the region may result in higher transmission costs to transmit power already purchased long-term.

(Proctor Cross-Surrebuttal, Ex. 714, pp. 1-3). Due to the assumptions used by SPP in modeling the impact of combining the MPS, SJLP and EDE systems not being the assumptions upon

which SPP should have performed the modeling, Dr. Proctor testified that the SPP study does not conclusively show the validity of the two concerns identified by Mr. Russell. (Id. at 6).

Dr. Proctor related that load flow studies for the region need to be performed using what are called "base case" inputs from all utilities within the region. UtiliCorp had SPP perform a regional study of load flows with respect to UtiliCorp jointly dispatching the MPS, SJLP and EDE generating units. However, the SPP study was performed under the assumption that MPS, SJLP and EDE generating units would not be connected and that 200 megawatts of transfer capability between the three systems would be needed to carry out the joint dispatch. The SPP study looked at "worse case" scenarios to implement 200 megawatts of transfers for ten years of network service for the MPS, SJLP and EDE systems. (Proctor Cross-Surrebuttal, Ex. 714, pp. 4-5).

Dr. Proctor stated that the SPP study did not look at the region assuming that MPS, SJLP and EDE were interconnected and that the MPS, SJLP and EDE generating units were being jointly economically dispatched. The SPP study based on "worse case" scenarios showed what transmission upgrades would be needed in order to restore the security of the regional system to acceptable levels when the "worse case" transfers take place. Although some of these SPP upgrades were in the UtiliCorp post mergers control area, many of the upgrades were in the control areas of other utilities within the entire SPP region. SPP is proposing to apply incremental cost pricing to UtiliCorp for the entire upgrade even though UtiliCorp would not receive any revenues from the market's use of that portion of the upgrade not used by UtiliCorp. SPP in effect is asking UtiliCorp to subsidize the rest of the market. UtiliCorp found the net present value of the upgrades to the SPP network to be higher than the cost of its own plan to interconnect MPS, SJLP and EDE. (Proctor Cross-Surrebuttal, Ex. 714, pp. 4-6).

As previously noted, due to the assumptions used by SPP in modeling the impact of combining the MPS, SJLP and EDE systems not being the assumptions upon which SPP should have performed the modeling, Dr. Proctor testified that the SPP study does not conclusively show that the UtiliCorp plan results in reducing the transfer capability within the region as predicted by Mr. Russell. He stated that it is not possible to reach conclusions regarding a comparison of the costs of the UtiliCorp plan and the SPP plan until corrections are made to the SPP study and the SPP incremental pricing policy. (Proctor Cross-Surrebuttal, Ex. 714, pp. 6-7).

XX. FERC ORDER CONDITIONALLY AUTHORIZING MERGERS OF SJLP AND UTILICORP AND EMPIRE AND UTILICORP

UtiliCorp, SJLP and Empire filed an application under Section 203 of the Federal Power Act (FPA) on November 23, 1999 for disposition of their FERC jurisdictional facilities through proposed mergers. The FERC reviewed the proposed mergers under the FERC's Merger Policy Statement, Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. And Regs. ¶ 31,044 (1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). On July 26, 2000, the FERC issued an Order Conditionally Authorizing Mergers, subject to UtiliCorp, SJLP and Empire submitting a revised competitive analysis six months prior to commencement of integrated operations, at which time, according to the FERC, it will use its authority under FPA Section 203(b) to impose any conditions necessary to mitigate potential adverse competitive effects. 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, 92 FERC ¶61,067 (2000), Mimeo at 1.

FPA Section 203(a) requires that the FERC approve a proposed merger if it finds that the merger "will be consistent with the public interest." 92 FERC ¶61,067, Mimeo at 4. The FERC's 1996 Merger Policy Statement provides that the FERC "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." Id. at 5. The FERC found that the proposed mergers with the Applicants' mitigation commitments, as conditioned by the FERC in the instant July 26, 2000 Order Conditionally Authorizing Mergers, are consistent with the public interest. Id.

Regarding the effect on regulation, the FERC stated that its concern about the effect of the merger on state regulation went to the effect on state regulation where a state does not have authority to act on a merger and the state raises concerns about the effect on state regulation. 92 FERC ¶61,067 at 17. UtiliCorp, SJLP and Empire stated that the proposed mergers would be submitted to the appropriate state commissions and they would have a full opportunity to review the proposed mergers. The FERC found that there was no indication that the proposed mergers would have an adverse effect on state regulation, and no commenter contended otherwise. Id. at 18.

Regarding the proposed mergers' effect on rates, the FERC stated that the concerns of Intervenor ICI Explosives and AG Processing about retail ratepayer protection would not be addressed since the proposed mergers had been submitted to the state commissions with jurisdiction over the retail rates of the operating utilities. 92 FERC ¶61,067, Mimeo at 15-16.

Also regarding the proposed mergers' effect on rates, UtiliCorp, SJLP and Empire proposed a wholesale ratepayer protection plan. UtiliCorp, SJLP and Empire proposed that transmission customers taking service under the UtiliCorp, SJLP and Empire open access transmission tariffs and all wholesale requirements customers would be held harmless from rate

increases resulting from the mergers for five years following consummation of the mergers. However, UtiliCorp, SJLP and Empire stated in their application that for purposes of the hold harmless commitment, the costs related to newly constructed transmission facilities would not be considered to be merger-related costs. 92 FERC ¶61,067, Mimeo at 14. City Utilities of the City of Springfield, Missouri (Springfield) and Kansas Electric Power Cooperative Power, Inc. (KEPCo) contested the exclusion of costs related to newly constructed transmission facilities from the hold harmless provision. Springfield argued that since UtiliCorp, SJLP and Empire plan to construct new transmission facilities to integrate their operations, the costs of such new or upgraded transmission facilities are clearly merger related and should be included in the hold harmless provision. Id. at 15.

The FERC specifically held that such transmission facilities costs are merger-related and therefore should be part of the hold harmless commitment:

. . . . 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.

92 FERC ¶61,067, Mimeo at 17.

Regarding the proposed mergers' effect on competition, the application did not include an analysis of the effect of any system integration on the horizontal aspects of the proposed mergers. 92 FERC ¶61,067, Mimeo at 5. The Director, Division of Corporate Applications, Office of Markets, tariffs and Rates, requested by letter on April 17, 2000 that UtiliCorp, SJLP and Empire provide additional information and as amended competitive analysis. Id. at 4. UtiliCorp, SJLP and Empire revised their analysis to reflect their proposed system integration

under two alternative scenarios involving the construction of a transmission line connecting SJLP and Missouri Public Service and a transmission line connecting Empire with Missouri Public Service. One integration option would place the interconnected systems of the merged companies under the Southwest Power Pool (SPP) regional tariff and the second integration option would place the interconnected systems of the merged companies under the Midwest Independent Operator (MISO) regional tariff. Id. at 5.

UtiliCorp, SJLP and Empire filed their response to the April 17, 2000 letter on May 19, 2000. 92 FERC ¶61,067, Mimeo at 4. The FERC in its July 26, 2000 Order Conditionally Authorizing Mergers found that UtiliCorp, SJLP and Empire had not shown that their proposed mergers will not adversely affect competition as a result of consolidating generation facilities (horizontal effects) or consolidating generation and transmission facilities (vertical effects):

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. . . .

Id. at 6.

The FERC held that since UtiliCorp, SJLP and Empire will not integrate their systems until mid- to late 2002, when the proposed new transmission facilities are in service, there is no reason to require at this time mitigation in this case. The FERC conditionally approved the proposed mergers, subject to UtiliCorp, SJLP and Empire submitting a revised competitive analysis six months prior to competitive operations, in which, among other things, it proposes remedies necessary to mitigate any adverse competitive effects identified. 92 FERC ¶61,067, Mimeo at 11. The FERC stated that it "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.” Id. at 12.

The FERC accepted the commitment of UtiliCorp, SJLP and Empire to join a regional transmission organization (RTO) consistent with the requirements of Order No. 2000 and stated that it relied on this commitment in approving the mergers. It noted that under Order No. 2000, UtiliCorp, SJLP and Empire must make a filing on or before October 15, 2000, in which they will propose to transfer operational control of their transmission facilities to a FERC-approved RTO on or before December 15, 2001. 92 FERC ¶61,067, Mimeo at 13.

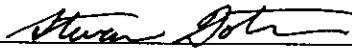
Finally, it should be noted that the FERC commented in its Order Conditionally Authorizing Mergers that in their application, UtiliCorp, SJLP and Empire stated that the merger of UtiliCorp and SJLP would be recorded using the pooling of interests method of accounting and the application did not specify which method of accounting will be used to account for the merger of UtiliCorp and Empire. 92 FERC ¶61,067, Mimeo at 18.

XXI. CONCLUSION

Wherefore for the above stated reasons, the Staff requests that the Commission adopt the Staff position on each and every issue presented in the instant proceeding.

Respectfully submitted,

DANA K. JOYCE
General Counsel
Missouri Bar No. 28553


Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

Dennis L. Frey
Associate General Counsel
Missouri Bar No. 44697

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

Nathan C. Williams
Assistant General Counsel
Missouri Bar No. 35512

Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7489 (Telephone)
(573) 751-9285 (Fax)
sdotthei@mail.state.mo.us

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 31st day of October 2000.



Service List for
Case No. EM-2000-369
Revised: October 31, 2000 (lb)

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

Shelley Woods
Assistant Attorney General
P.O. Box 176
Jefferson City, MO 65102

James Swearengen/Paul Boudreau
Brydon, Swearengen & England, PC
P.O. Box 456
Jefferson City, MO 65102-0456

William Jolley
Jolley, Walsh, Hurley & Raisher
204 West Linwood
Kansas City, MO 64111

Jeffrey Keevil
Stewart & Keevil Law Offices
1001 Cherry St., Ste. 302
Columbia, MO 65201

Stuart Conrad
Finnegan, Conrad & Peterson
3100 Broadway, 1209 Penntower Office
Kansas City, MO 64111

Leslie Jackson Parrette, Jr.
Utilicorp Inc.
20 W. 9th Street
Kansas City, MO 64105

Mark Comley
Newman, Comley & Ruth
P.O. Box 537
Jefferson City, MO 65102

James Deutsch
Blitz, Bardgett, & Deutsch, LC
308 East High St.
Jefferson City, MO 65101

James J. Cook
Union Electric Company d/b/a AmerenUE
P. O. Box 66149 (MC 1310)
St. Louis, MO 63166