

Exhibit No.:
Issue: Policy
Witness: Robert K. Green
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

Robert K. Green

Jefferson City, Missouri

Exhibit No. 15
Date 9-2-00 Case No. EM-2000-369
Reporter JS

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
SURREBUTTAL TESTIMONY OF ROBERT K. GREEN
ON BEHALF OF UTILICORP UNITED INC.**

CASE NO. EM-2000-369

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

2 A. Robert K. Green.

3 Q. Are you the same Robert K. Green who previously caused to be prepared and filed with
4 the Missouri Public Service Commission ("Commission") in this proceeding certain
5 direct testimony on behalf of UtiliCorp United Inc. ("UtiliCorp") in connection with its
6 proposed merger with The Empire District Electric Company ("EDE or Empire")?

7 A. Yes.

8 Q. How does your testimony filed in this Merger Application compare to the testimony you
9 filed concerning the same issues in the UtiliCorp and the St. Joseph Light & Power Co.
10 merger application, Case No. EM-2000-292?

11 A. My testimony is very similar to that I filed in Case No. EM-2000-292 and in most areas it
12 is identical.

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

14 A. The purpose of this testimony is to provide a general response to what I see as the overall
15 thrust of the rebuttal testimonies of the other parties and to respond to certain specific
16 issues raised by these other witnesses. In the context of addressing these matters I will
17 once again explain that:

- 18 • This is a merger between Missouri utilities which will benefit all Missouri
19 stakeholders and the long term economic development of the State of Missouri.

- 1 • The price paid is reasonable.
- 2 • The benefits for ratepayers will be achieved only if the merger occurs.
- 3 • The merger proposal is consistent with UtiliCorp's past commitments.
- 4 • The merger proposal is consistent with my understanding of the Commission's policy
- 5 not to discourage activities which produce economies of scale and savings.

6 Q. What is your general reaction to the overall thrust of the testimonies of the other parties to
7 this case including witnesses for the Missouri Public Service Commission Staff ("Staff")
8 and the Office of the Public Counsel ("Public Counsel")?

9 A. Based on the number of witnesses, the volume of testimony and the variety and large
10 number of alleged issues raised, I am concerned that the Commission could lose sight of
11 what we are trying to accomplish with this merger and how that goal relates to what I
12 understand to be the standard which the Commission should apply to this Joint
13 Application.

14 Q. What is the standard?

15 A. It is my understanding that the Commission must approve the proposed merger unless it
16 can be demonstrated that the transaction will be detrimental to the public interest. It is
17 my view that no such detriment will result.

18 Q. Please explain.

19 A. There has been no evidence suggesting, let alone tending to prove, that UtiliCorp is
20 incapable of providing safe and reliable electric and water service in the EDE service
21 area. In fact, just the opposite is true. UtiliCorp is committed to providing such service
22 to all of its customers which now exceed four million world-wide. Steve Pella will
23 provide testimony on how UtiliCorp has been successful benchmarking the provision of

1 utility service to achieve and maintain quality service. Moreover, under the proposed
2 regulatory plan, rates for the EDE customers will be frozen at existing levels for five
3 years and will not increase as a result of the merger. In fact, UtiliCorp is guaranteeing at
4 least a \$ 3 million reduction in cost of service in the sixth year post-merger. It is difficult
5 to comprehend how comparable or improved service and stable or declining rates, relative
6 to the rates EDE customers would have seen absent the merger, can be construed as a
7 detriment to the public interest. The continuation of quality service at fair and reasonable
8 rates surely meets any definition of not detrimental to the public interest.

9 Q. Why are you concerned about the Commission losing sight of the goal of this Joint
10 Application?

11 A. I am concerned that many of the issues will distract from the task of addressing the
12 merger's impact on the public interest. For example, there are over 80 issues in this case,
13 many involving matters which are under the jurisdiction of the Federal Energy
14 Regulatory Commission ("FERC"). Some issues are apparently based on nothing more
15 than unsupported opinions of the author. Other issues are just misstated or
16 mischaracterized, especially with respect to UtiliCorp's ability to actually perform in the
17 manner described.

18 Q. What are the FERC jurisdictional issues?

19 A. Generally those set out on the List of Issues under the heading "Transmission Access and
20 Reliability".

21 Q. Can you give me an example of an issue raised that is only the unsupported opinion of the
22 author?

1 A. Yes. In his testimony on page 12, Public Counsel witness Ryan Kind states, "This
2 merger appears to be driven by the following factors:". On page 13 the fourth of six
3 factors is stated as "UtiliCorp's desire to prevent its neighboring utilities (Kansas City
4 Power & Light, Western Resources, Inc. and others) from expanding their mid-continent
5 footprint in UtiliCorp's backyard by acquiring SJLP or Empire." I know of no facts to
6 support this conclusion. As I have said many times, UtiliCorp entered into this merger
7 agreement because it supports our strategy of being a world-class manager of delivery
8 network and production facilities in the mid-continent region and, as structured, benefits
9 all stakeholders...customers, employees and shareholders.

10 Q. Please give an example of an issue that has been misstated or mischaracterized.

11 A. Public Counsel witness Ryan Kind raises the issue of the possibility of a break-up or
12 spin-off of some of the assets or businesses that currently make up the integrated EDE.
13 Several pages of his testimony are devoted to describing UtiliCorp's corporate strategies
14 and our Value Cycle philosophy. But he never clearly frames an issue. The inference is
15 that our strategy *might* in some way be harmful to ratepayers if executed. But he fails to
16 acknowledge two important facts.

17 Q. What are these facts?

18 A. First, his description of the outcome of UtiliCorp's strategy is simply a reflection of what
19 will most likely be realized in any event as the industry transitions into a restructured,
20 competitive environment. EDE, like any integrated utility, consists of several distinctly
21 different businesses. Generation is a different business from network services and retail
22 is different from either of the other two. We have seen many times here in the U.S. and
23 internationally that these businesses are separated over time as the industry deregulates.

1 Second, whether by our initiative or as part of a changing industry, the break-up of the
2 integrated Missouri jurisdictional utility would require Commission approval. The
3 potential for the harm implied by this lengthy testimony can only be realized with the
4 Commission's blessing. It is my understanding that Staff and Public Counsel have even
5 debated the functional separation of these businesses and the potential divestiture options
6 when they participated in the Retail Electric Competition Task Force (Docket No. EW-
7 97-245).

8 Q. Can you provide another example of a misstated issue?

9 A. Yes. Several witnesses have stated that the economics of this merger were driven by the
10 perceived value of EDE's investment in the fiber optic or telecommunications area. This
11 is incorrect.

12 Q. What are the facts on this point?

13 A. UtiliCorp is very interested in pursuing a telecom strategy in the United States. We
14 initiated this strategy in Australia and have a base of experience which we believe has
15 proven to be very successful. We recently announced our partnership with Everest
16 Communication to provide broadband services in the Kansas City area and have
17 implemented a dark fiber project in Colorado. UtiliCorp has also made a \$7.5 million
18 investment in ExOp. EDE's fiber investment is complimentary to the UtiliCorp strategy,
19 but is clearly not the driver behind the merger.

20 Q. Earlier you referenced several issues. What specific issue would you like to address first?

21 A. Our commitment to this Commission regarding our corporate strategy and merger and
22 acquisition policy. At pages 101 through 106 of his rebuttal testimony, Staff witness
23 Cary G. Featherstone argues that by this Joint Application UtiliCorp has somehow "gone

1 back" on a commitment it previously made to the Commission concerning its merger and
2 acquisition strategy. Mr. Featherstone is wrong.

3 Q. Why?

4 A. This allegation, or a variation of it, has been before the Commission in prior cases
5 involving UtiliCorp. UtiliCorp has not "gone back" on its commitment.

6 Q. What is your understanding of UtiliCorp's commitment to this Commission with respect
7 to its corporate strategy and merger and acquisition policy?

8 A. UtiliCorp has previously given assurance to this Commission that its Missouri customers
9 would be protected from any downside risks which might result from the implementation
10 of UtiliCorp's corporate strategy. The commitment is that the net benefits of UtiliCorp's
11 strategy will flow to its Missouri customers and they will be insulated from any related
12 negative impacts. This does not mean, however, that all of the costs associated with the
13 strategy will be borne by UtiliCorp with all of the benefits passed on to customers.
14 Rather, our customers will experience the net benefits of the strategy. Our request in this
15 case is consistent with this pledge.

16 Q. What about Mr. Featherstone's claim that UtiliCorp has promised that premiums paid for
17 utility acquisitions would not be recovered through Missouri rates?

18 A. Mr. Featherstone is apparently referring to a statement made in the context of Case No.
19 ER-90-101, a Missouri Public Service ("MPS") rate proceeding before this Commission
20 back in 1991. The fact is that prior to the present case, UtiliCorp has never sought to
21 recover any premiums associated with its acquisitions from its Missouri customers.

22 Q. Please explain.

1 A. At the time of that rate case, UtiliCorp had made a series of seven or eight utility
2 acquisitions in other jurisdictions dating back to 1984. These were non-Missouri utility
3 transactions we refer to as "foreign" acquisitions or mergers. It is also important to
4 understand that in the early 1980's the UtiliCorp strategy was to diversify risk by
5 growing geographically, by fuel (electric versus gas) and into multiple regulatory
6 jurisdictions. Mr. Rick Green's comments from that period must be interpreted in that
7 context. It had always been and continues to be our intent not to seek recovery of any
8 premiums from our Missouri ratepayers associated with such "foreign" acquisitions. We
9 have, however, sought to recover premiums from customers in certain of those "foreign"
10 jurisdictions in which the assets are located. Examples of this are referred to in my direct
11 testimony.

12 Q. How does your past policy compare with your approach in this case?

13 A. Our approach in this case is consistent with what we have done in other jurisdictions and
14 our promise to this Commission concerning our Missouri customers. Once again,
15 UtiliCorp's policy and commitment is that the net benefits of its strategy will flow to
16 Missouri customers and they will be insulated from negative impacts. Consequently, as
17 indicated, UtiliCorp has never sought to recover merger and acquisition expenses or
18 premiums associated with its "foreign" acquisitions from its Missouri customers.
19 However, a very good case could be made that the corporate development costs
20 associated with those "foreign" acquisitions should be included in Missouri rates.

21 Q. Why do you say this?

22 A. In Case No. ER-93-37, an MPS rate case, the Staff alleged that there was no evidence that
23 our Missouri customers were better off as a result of mergers and acquisitions undertaken

1 by UtiliCorp. In that case, I presented over 60 pages of testimony which demonstrated
2 that UtiliCorp's corporate strategy had produced benefits for our Missouri customers.

3 The Commission, in its Report and Order on Remand, found that MPS had received some
4 benefit from UtiliCorp's growth strategy. It could, therefore, be argued that the corporate
5 development costs associated with our growth strategy and "foreign" acquisitions should
6 be recovered from Missouri customers, at least to the extent of those benefits.

7 Q. What about costs, including premium costs, associated with "non-foreign" acquisitions
8 such as the proposed merger with EDE?

9 A. Our request for recovery of such costs in this case is not inconsistent with our
10 commitment.

11 Q. Please explain.

12 A. It has always been and continues to be UtiliCorp's position that Missouri ratepayers will
13 not be adversely or detrimentally affected by UtiliCorp's corporate strategy. Once again,
14 seeking premium recovery, funded by creating transactional synergies, in connection with
15 the acquisition of Missouri assets is not inconsistent with this position. I say this because
16 the benefits from the proposed merger with EDE will exceed the costs, including the
17 premium costs, and the net benefits will flow to customers. Consequently, there will be
18 no detriment to Missouri customers. I tend to simplify our position in this Joint
19 Application as a request for the opportunity to use shareholders' money to initiate a
20 transaction to merge two Missouri utilities, provide shareholders the opportunity to retain
21 synergies which recover costs and to bring customers a guaranteed benefit of at least \$3
22 million through lower cost of service.

1 Q. What about Mr. Featherstone's argument that UtiliCorp has understood that it would have
2 to develop its growth strategy without assurances of recovery of merger premiums?

3 A. It is true that no Commission has guaranteed us recovery of any premiums associated
4 with any of our prior acquisitions and we are not seeking a guarantee of premium
5 recovery in this case. We are simply requesting the opportunity to recover the premium
6 within the parameters of the proposed regulatory plan.

7 Q. Please explain.

8 A. As a part of our proposed regulatory plan, after the rate moratorium, the burden will be on
9 us to account for the merger savings necessary for premium recovery. Mr. John
10 McKinney and Mr. Vern Siemek address this issue in detail in their surrebuttal testimony.

11 Q. How do you respond to the notion that UtiliCorp should bear all of the costs of this
12 proposed merger with all of the benefits flowing to its customers?

13 A. Recommending such an approach to this transaction would make absolutely no sense
14 from a business point of view as it would place all of the risk on UtiliCorp with no
15 potential for gain. I think that even Mr. Featherstone concedes this point when he
16 candidly admitted to me in my interview: "(o)ur position has been in the past, what
17 you've said in mind, we also believe that prudent business people have to have some
18 incentive. They have to have some reasonable assurance they're going to get their return
19 back." (See Schedule RKG-1, Transcript of the Informal Interview of Robert Green,
20 page 39, lines 20 through 24).

21 Q. How do you reconcile Mr. Featherstone's admission with his testimony?

22 A. I think the Staff realizes that for this transaction to make economic sense, UtiliCorp must
23 recover the premium. I guess the real issue here is just how that is accomplished. Based

1 on Mr. Featherstone's comments, the Staff apparently has no objection to what it calls an
2 "indirect" recovery of premium, they just don't want any of it built into rates and thus
3 "directly" recovered. In his words, "(s)o for us it has been the indirect, or what you do in
4 those three or four or five years, you have a powerful incentive in those years to go
5 aggressively and get the savings. And what you do with those savings, if you want to say
6 that is part of recovering the premium, is fine. That doesn't offend us." (See Schedule
7 RKG-1, Transcript of the Informal Interview of Robert Green, page 39, line 24 through
8 page 40, line 5).

9 Q. Is the opportunity to recover the premium under some method essential to this case?

10 A. Absolutely. As Mr. Featherstone has correctly stated, UtiliCorp must "have some
11 reasonable assurance they're going to get their return back." That is what this Joint
12 Application is designed to achieve.

13 Q. On page 21 of his rebuttal testimony Public Counsel witness Ted Robertson has asserted
14 "(t)o the extent any recovery of the acquisition premium is recovered through rates and
15 would increase costs to Missouri customers the acquisition is a significant public
16 detriment. It would have a detrimental affect on the public because their service costs
17 would then be higher than if the sale had not occurred." How do you respond?

18 A. It is incorrect to assert that the mere existence of an acquisition premium is a public
19 detriment. This ignores the benefits of merger synergies and savings by choosing to only
20 look at one side of the issue. Granted, an acquisition premium is a cost, but it is a cost
21 that is only realized if there is a merger and if there is a merger then there are also merger
22 synergies and savings to consider. These savings would decrease costs, holding rates at
23 current or lower levels. That is why I say the acquisition premium issue must be

1 considered in conjunction with all other aspects of the merger. For some reason, Mr.
2 Robertson has ignored the commitment that EDE cost of service will receive a guaranteed
3 reduction of \$3 million in year six.

4 Q. On page four of his rebuttal testimony, Staff witness Michael Proctor characterizes the
5 proposed treatment of the acquisition premium as a "new Commission policy". Do you
6 concur?

7 A. No. As I stated in my direct testimony, UtiliCorp believes the Commission policy is
8 already clearly stated. In Case No. EM-91-213, the Commission said that it "did not wish
9 to discourage companies from actions which produce economies of scale and savings
10 which can benefit ratepayers and shareholders alike." In WR-95-205/SR-95-206, the
11 order stated: "The Commission finds that, on a policy basis, it is not necessarily opposed
12 to consideration of acquisition adjustment" The Commission went on to state again
13 "that it does not wish to discourage companies from actions which produce economies of
14 scale and savings which can benefit ratepayers and shareholders alike." I view the
15 Commission policy as a glass half full – each transaction viewed on a case by case basis
16 with the underlying principle of not discouraging transactions with the potential to create
17 benefits for all stakeholders.

18 Q. On page 29 of his rebuttal testimony, Staff witness David Broadwater implies that the
19 price being paid by UtiliCorp for EDE was overstated. Staff witness Roberta McKiddy,
20 on pages four and five of her rebuttal testimony, asserts that the premium percentage (and
21 therefore the price offered) is substantially higher than average. Other witnesses have
22 also stated or implied that the offering price was too high. Please respond.

1 A. The \$29.50 per share is a fair and reasonable price which was finalized through an arm's
2 length negotiation process. This price provides benefits to all stakeholders and is
3 comparable to industry norms. The valuation process was described in my direct
4 testimony and included discounted cash flow, IRR and NPV valuations along with an
5 analysis of the impact on earnings and various market multiples and norms. These inputs
6 and our experience in these matters allowed us to make a judgment about price based on a
7 feel for the sensitivities and aggressiveness of our business case and the achievement of a
8 competitive IRR that would recover our cost of capital. This information was taken to
9 UtiliCorp's Board of Directors which approved a maximum offer price. By setting a
10 maximum price, the Board gave us the authority to negotiate the best deal possible.

11 Q. Please briefly summarize some of the key results of your valuation process.

12 A. The basic financial analysis supported an offer price of \$28 - \$33 per EDE share. The
13 average multiples for industry M&A transactions announced during the past 14 months
14 prior to UtiliCorp's final bid were as follows: 2.1 x book value; 27% premium over
15 current stock price, and 18.2 x next year's estimated EPS. Applying these multiples to
16 the EDE transaction produces an estimated share value between \$27.30 and \$31.59.
17 UtiliCorp's actual \$29.50 offer price results in multiples that approximated industry
18 norms.

19 Q. Staff witness Charles Hyneman, in his rebuttal testimony, raises several issues relating to
20 the UtiliCorp interest in Quanta Services, Inc. ("Quanta"). On page eighty-three he refers
21 to Quanta's "preferred Contractor" status and infers a benefit to UtiliCorp, through
22 Quanta, from acquiring EDE. Please respond.

1 A. I was asked a similar line of questions during my interview. As I stated at that time, the
2 preferred status requires Quanta to come in with the low bid. UtiliCorp's utility
3 operations has not outsourced its construction and maintenance work to Quanta. It has
4 simply awarded contracts to Quanta when they submitted the winning bid.

5 Q. Will Quanta be the prime contractor for UtiliCorp's construction and maintenance work
6 as claimed by witness Hyneman?

7 A. Not necessarily. At the present time, UtiliCorp seeks bids for these utility services. If we
8 find at a later date that a total outsourcing arrangement makes economic sense for our
9 customers, we will seek the appropriate approvals from the Missouri Commission.

10 Q. Will Quanta "be awarded most, if not all of the future construction and maintenance work
11 in the Empire regulated service areas" as claimed by witness Hyneman?

12 A. Again, our current practice is to seek bids for the required services. Obviously, if Quanta
13 is the winning bidder, it should receive the contract.

14 Q. Has UtiliCorp "already begun the process of outsourcing its utility construction and
15 maintenance projects, even before deregulation takes effect" as witness Hyneman asserts?

16 A. There are two responses to that question. First, UtiliCorp has always and still does
17 outsource some construction and maintenance projects. We have for as long as I have
18 been associated with this company and its predecessors. In fact, to the best of my
19 knowledge, most utility companies outsource some construction and maintenance work.
20 It would make no sense what-so-ever to employ a work force capable of meeting our peak
21 construction needs or to saddle our customers with the costs of such capability. From
22 time to time it has always be necessary to outsource work. But this is done through a
23 bidding process to insure the best possible results and lowest costs. Quanta has been the

1 recipient of some of those contracts, but they still went through the bidding process and
2 submitted the winning bid. Second, the added clause "even before deregulation takes
3 effect" is a red herring. As I said, we outsource now. We always have. In a deregulated
4 environment, we will probably continue, but there is no requirement to outsource.

5 Outsourcing and deregulation are unrelated concepts. This is another good example of
6 how some witnesses have attempted to mischaracterize issues and imply concerns that
7 just don't exist.

8 Q. Do you have any final comments?

9 A. Yes. As I stated in my direct testimony, this transaction provides this Commission and
10 the State of Missouri with the unique opportunity to join two Missouri utilities into a
11 stronger, more economically viable entity that can create benefits for all stakeholders.

12 This stronger utility will help advance the economic development agenda for the State
13 and continue the heritage of community involvement, innovation and support that is

14 needed for Missouri to be successful. I am concerned that the parties to this Joint

15 Application are disregarding the clear benefits of this transaction. I encourage the

16 Commission to evaporate the negative cloud cast by these other parties and approve this

17 Joint Application to merge.

18 Q. Does this conclude your surrebuttal testimony?

19 A. Yes.

1 A. I guess, it depends on how you define direct. I mean, I
2 don't think it necessarily has to be direct, but it
3 can't be intangible. It's got to be real. It's got to
4 hit the bottom line.

5 MR. SWEARENGEN: Cary, let me just ask you,
6 when you say "indirect," I want to make sure I
7 understand what you are talking about. I know the
8 staff in the past has been a proponent of rate
9 freezes as a way to recover investment, let's say,
10 or recover premium. And is that what you're
11 talking as an indirect way?

12 MR. FEATHERSTONE: The staff really has taken
13 the position, while we are kind of indifferent to
14 the merger process, we are in favor of kind of the
15 no comment earlier, we don't want to stop the
16 process. We're not necessarily wanting to be a
17 cheerleader or encourager either, we're just kind
18 of caught in the middle, so to speak.

19 Q. (By Mr. Featherstone) And our policy -- I don't know
20 whether it's even a policy. Our position has been in
21 the past, what you've said in mind, we also believe that
22 prudent business people have to have some incentive.
23 They have to have some reasonable assurance they're
24 going to get their return back. So for us it has been
25 the indirect, or what you do in those three or four or

1 five years, you have a powerful incentive in those years
2 to go aggressively and get the savings. And what you do
3 with those savings, if you want to say that is part of
4 recovering the premium, is fine. That doesn't offend
5 us.

6 A. So with that definition, I mean part of it could be
7 indirect. But we're going -- it's five years, we're
8 going to make a judgment about what we think -- and we
9 have made a judgment about what we think we can
10 accomplish in five years. And we can effectively-- if
11 we can have a five-year moratorium, we only need to
12 recover, effectively, half of the premium and can
13 deliver rate reductions to the rate payers, which seems
14 like a win/win fair deal. Freeze rates for five years,
15 no increases, and then being able to reduce rates. So
16 there would -- there are other ways to get there and
17 we'd consider other ways. We've laid out our preferred
18 method.

19 Q. We asked Mr. McKinney -- and I do this every time and he
20 gets a little angry at me so --

21 MR. SWEARENGEN: I've never gotten angry at
22 you.

23 Q. (By Mr. Featherstone) -- by bringing in the other
24 interviews that we've had. We talked to Mr. McKinney a
25 few weeks ago. And I think the question, I'm going to

**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)

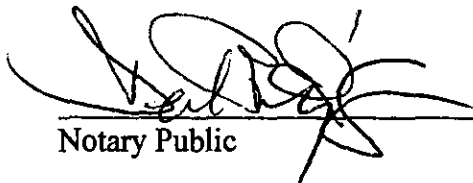
AFFIDAVIT OF ROBERT K. GREEN

Robert K. Green, 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.



Robert K. Green

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



Notary Public

My Commission Expires:

Deborah Riley Riggs
Notary Public, State of Missouri
County of Jackson
My Commission Exp. 07/28/2001