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May 8, 1997

The Honorable John D. Dingell, Ranking Member  
Commerce Committee Democratic Office  
564 Ford House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

**UTILICORP UNITED**  
**ENERGYONE**

Richard C. Green, Jr.  
Chairman and  
Chief Executive Officer

Dear Congressman Dingell:

I would like to express my appreciation to you for the time and attention you gave me when we met April 10 to discuss electric utility restructuring issues. I very much appreciated our dialogue and am grateful to have this opportunity to provide you with more information and opinion in response to your request for UtiliCorp United's answers to your questions regarding the electricity industry. I commend you for your serious interest in this issue, and I am pleased to participate in this written forum on such an important matter before your Committee.

UtiliCorp United Inc. is an international electric and gas company based in Kansas City, Missouri, with total assets of almost \$4 billion. The company has energy customers and operations across the U.S. and in Canada, Great Britain, New Zealand, and Jamaica. Our responses are as follows:

1. From your company's point of view, is it necessary for Congress to enact legislation bearing on retail competition, and why? If you favor legislation, please outline which issues should be addressed and how you think they should be resolved.

UtiliCorp United thinks that Congress should enact legislation to permit retail competition for four reasons:

First, this country, and indeed your Committee, generally has disfavored government-protected monopolies that have lost the basis for that protection; even those that were state-regulated. One can enumerate a lengthy list of regulated monopolies which began as natural monopolies, evolved into key elements of the national infrastructure, and later lost their monopoly status when Congress no longer saw the need for it.

Developing industries including telecommunications, airlines, natural gas, banking, trucking, and electric utilities soon became regulated, often by the states, because they displayed the characteristics of natural monopolies. Through decisive federal action, often led by your Committee, Congress deregulated virtually all those that had matured into activities affecting interstate commerce and which had lost the justification for government protection as regulated monopolies. Technological change oftentimes prompted the emergence of competitors, and the

industry simply outgrew the need for regulation. Telecommunications is a very recent example of a monopoly industry with which Congress chose to act for the benefit of the national good without waiting for piecemeal action by the States.

The experience with natural gas has been interesting. The federal government chose to deregulate natural gas at the wholesale level beginning in 1978 and left it to the States to implement deregulation at the retail level. While the great bulk of natural gas at the wholesale level was deregulated by the mid-1980s, the retail sale of natural gas is still regulated ten years later with only a patchwork of competitive pilot projects at the retail level today. We fear that State action on electric restructuring will be stretched out in a similar way.

Your Committee began the process of restructuring the electric utility industry in 1978, nearly 20 years ago, with the enactment of PURPA. This legislation introduced competition into the industry. Then in 1992, your Committee reported legislation that became the Energy Policy and Conservation Act, which led to the restructuring of, and open access to, the wholesale electric sector. If this process of favoring competition and disfavoring monopoly is to continue, Congress should pass legislation that completes the restructuring of electricity that began 20 years ago. Utilities now have choice in their source of power, why shouldn't consumers? Of course, the electric transmission and distribution sector still deserves its status as a regulated monopoly, because it remains a natural monopoly.

Second, Congress should enact federal legislation because electricity costs strongly affect interstate commerce. It is difficult to think of any product or service in interstate commerce that does not contain the embedded cost of electricity. The cost of electricity probably has a broader effect on interstate commerce than does any other commodity. Retail residential electric rates across the country vary from 2.5 cents per kWh to 14 cents per kWh. The potential savings in electricity costs through competition at the retail level are sizable since current retail rate regulation (cost of service plus regulated rate of return on investment) does not encourage cost reductions to nearly the extent competition would.

UtiliCorp emphasizes that the benefits of Federal legislation regarding retail sales of electricity are not a zero-sum game. A study recently conducted by The Brookings Institution and The Center for Market Processes concluded just that -- "Regulatory reform is not a zero sum game; it has generated genuine gains for consumers and society as a whole." Consumers gained because 1) regulatory reform aligned prices more closely with costs, leading to a more efficient use of resources by companies and customers; and 2) companies faced greater incentives to adopt cost-cutting and/or quality-enhancing innovations in technology, marketing, and business strategy.

This is certainly true in the electric utility industry. Just the specter of competition and of losing captive ratepayers has forced electric utilities across the country, including our own, to search for greater efficiency. Frankly, the decades-old regulatory approach of cost of service plus regulated rate of return on investment has not created much incentive for the most efficient production of electricity.

Just as important, the utility industry finds itself with hundreds of billions of dollars invested in facilities to produce essentially one product, a commodity whose value will likely decline in real terms. This strategy worked when customers were captive. It will not work when they are free to choose. Utilities are scrambling to develop new products and services to retain customers in the face of competition. The Committee has already seen such a proliferation in new services to the consumer in the telecommunications industry and we believe that the same can be expected in the electric utility industry.

Third, Congress should enact retail access legislation in order to create a fully competitive market in electricity and to minimize a patchwork of conflicting laws. Federal retail competition legislation should be enacted which sets out a framework for electric industry restructuring and sets deadlines for state action. Although states should have control over the implementation of retail customer choice, general federal parameters will ensure a speedy transition across the nation on a virtually simultaneous basis. In that way, barriers will not be erected by states which would prevent the development of a fully competitive nationwide market. This federal framework will benefit those states that are moving forward rapidly, and also will benefit the consumers in the states which have failed to act.

The following issues should be addressed by federal legislation:

- ◆ All customers should have the right to choose their electric supplier no later than the end of the year 2000. This requires the removal of barriers to entry at the federal and state level.
- ◆ Independent System Operators (ISOs) should control all transmission. The ISO should be responsible for the reliability of energy supply.
- ◆ Municipalities, cooperatives and other governmental entities must play by the same rules that apply to investor-owned utilities.
- ◆ Utilities should be governed by the same environmental rules that apply to other businesses. If additional environmental measures are found to be necessary, they should be applied appropriately to all industries, including a restructured electric industry.
- ◆ The Public Utility Holding Company Act should be repealed and the Public Utility Regulatory Policies Act should be amended to eliminate the mandatory power purchase requirements. Current PURPA contracts should not be affected.

Fourth, Congress should enact legislation on retail access because consumers clearly want to be able to choose their electric suppliers. UtiliCorp sponsored a survey of its customers and found that a large majority would switch electric suppliers for a savings of 5 to 10 percent.

**Likelihood to Switch Electric Companies\***

	Switch for 5% Savings	Switch for 10% Savings
Colorado	64%	75%
Iowa	66%	65%
Kansas	64%	70%
Michigan	60%	61%
Missouri	66%	78%
Nebraska	55%	67%
West Virginia	61%	64%

\* Research conducted for UtiliCorp by the Gallup Organization in February 1997

2. If the states you serve have adopted or are considering adopting retail competition, what are your biggest concerns? Indicate how you are dealing with them and any recommendations you may have.

For the most part, the states UtiliCorp serves are only now beginning to study retail competition through legislative and regulatory commission task forces. UtiliCorp is generally frustrated with the slow and disjointed movement by the states toward retail competition. For example, in Colorado, the "Retail Wheeling Coalition" successfully stopped the passage of retail wheeling legislation by arguing, among other things, that Colorado should not be first in the region to deregulate because utilities in neighboring states could compete for Colorado customers while remaining immune to similar marketing efforts in their own states. Our fear is that without a mandate provided at the federal level, our customers will not see the benefits retail competition can provide.

The survey mentioned above is evidence that our customers in Missouri want to choose their electric supplier. The Missouri Legislature and Public Service Commission are moving along without any clear resolution of this issue in sight. UtiliCorp believes that the best way to prove the benefits of competition is to quit theorizing and "get on with it." UtiliCorp decided to initiate a choice program voluntarily whereby our own customers with a specified number of sites within UtiliCorp's service territory in Missouri are able to purchase their electricity from competing suppliers using our power lines to access the power. Since we do not yet have enabling legislation authorizing retail choice in Missouri, this is clearly an experimental project which will have to come to an end unless such legislation is enacted. The initial program set aside 25 MW for supplier choice. Twenty-three McDonalds restaurants in western Missouri are

purchasing power from competing suppliers under this program. The restaurants band together to aggregate their power needs, and then negotiate with power suppliers for lower-priced electricity. In its competitive filing, UtiliCorp is asking that an additional 100 MW be set aside for supplier choice. This unusual initiative on UtiliCorp's part demonstrates, we believe, our commitment even in our own service territory.

Other states are experimenting with pilot projects. It has been our experience that pilot programs aren't moving things along fast enough and can, at times, be used by utilities as a stalling tactic. Pilots may be interpreted to mean that the process has not only a beginning but an end, and because of flaws in the implementing procedures, a pilot may be declared to be a failure and terminated. Instead of pilots, UtiliCorp prefers to think in terms of a phase-in to customer choice which assumes success, but allows for mid-course corrections based on experience. Retail customer choice should be phased in for all customer classes over a period of several years, ending so that all customers have access no later than the end of the year 2000.

During the transition to a competitive market, regulators should concern themselves primarily with removing barriers to competition. This would involve such things as requiring utilities to file open access tariffs and preventing utilities from engaging in anti-competitive behavior.

Electric industry restructuring should provide an opportunity for innovative solutions to improving environmental quality. These solutions could include expanded appliance efficiency standards, expanded power plant siting reviews, resource portfolio requirements, "green pricing" and emissions trading. Preferences for natural gas-fired generation should be considered.

Once competition is firmly established, the appropriate role of regulation will continue to be the setting of prices for monopoly services. Even in a competitive marketplace, it is unlikely that distribution systems, *i.e.*, wires, will be duplicated on a wide scale. Therefore, distribution will remain a monopoly function, subject to commission regulation.

Most other utility services can be expected to become competitive over the next five to ten years and will no longer need to be regulated. In a competitive world, state regulation should focus on: 1) developing alternatives to traditional rate base/cost of service frameworks, 2) consumer education, 3) speedy complaint resolution, and 4) placing increased emphasis on safety and regulated service quality.

3. Please indicate your position on the following specific issues:

a. *A Federal mandate requiring states to adopt retail competition by a date certain.* If retail competition is under consideration in the states you serve, do you believe Congress should provide additional direction or authority?

Yes. UtiliCorp believes Congress must provide the states with additional direction for two reasons: 1) to provide a date by which the states must have retail electric competition in

place-- each year of delay is delaying savings to consumers; and 2) to establish the general framework needed in order to have a viable electric industry. UtiliCorp is in favor of leaving to the states the implementation of retail electric competition.

b. *Recovery of stranded investment.* If the states you serve already have adopted retail competition, how was this issue addressed and are you satisfied with the outcome? If your states are considering adopting retail competition, how would you recommend that this issue be treated? Do you think Congress should enact legislation relating to stranded cost issues, and if so what would you recommend? Is securitization a useful mechanism for dealing with stranded costs, and whom does it benefit?

The states served by UtiliCorp have not yet adopted retail competition. UtiliCorp believes that utilities should be allowed to recover legitimately incurred and appropriately determined stranded costs. Federal legislation should require that the states address the issue of stranded cost recovery. However, the calculation of the amount of stranded costs and the determination of a recovery mechanism should be left to the states.

UtiliCorp advocates that the states consider a three-prong approach to the recovery of stranded costs. First, utilities should be required to mitigate these costs to the maximum extent possible. Second, creative regulatory solutions should be implemented now, so that many of these costs can be dealt with prior to the advent of retail competition. Securitization is one mechanism the states could consider. Third, alternatives must be devised for the determination of the *amount* of stranded costs which a utility can recover and for the *methodology* of recovery.

c. *Reciprocity.* Can states condition access to their retail markets on the adoption of retail competition by other states? Should Congress enact such a requirement? Could such a requirement create an incentive for states with low electric rates not to adopt retail competition, in order to keep cheap power at home?

The supply and marketing of electricity at retail clearly is a matter affecting interstate commerce since power moves or is displaced for hundreds of miles over a national grid. UtiliCorp questions whether under the interstate commerce clause, states can legally use reciprocity as a condition for gaining access to their retail markets. UtiliCorp advocates against the use of mandatory state reciprocal requirements (whether imposed at the state or federal level) because they effectively result in barriers to open access and inhibit a competitive electric marketplace. While appearing to promote a level playing field, mandatory reciprocal requirements may provide a delay tactic or avoidance mechanism for utilities to prevent access to their customers or for states to in effect close their borders.

4. If Congress enacts comprehensive restructuring legislation, should it mandate “unbundling” of local distribution company services? What effects would this have, and would they differ for various customer classes? Would this entail substantial expense, and who would incur any such costs?

Unbundling should be left to the states. Unbundling is simply the separation of traditional utility services into various components and associated costs. It allows customers to pick and choose only the services they want, without having to pay for services they do not want. Unbundling allows customers to compare the charges they are paying with those offered by competitors. Deregulation should be distinguished from unbundling. Only after unbundling has occurred as part of the state regulatory process should any service(s) that become subject to effective competition be deregulated. In order to achieve retail customer choice of electric suppliers, states will have to unbundle the regulated electric services and rates from the electric supply component.

UtiliCorp is very familiar with the issue of unbundling as it is a key component of the competitive filing UtiliCorp made in March with the Missouri Public Service Commission. From our own personal experience, the process of unbundling our Missouri electric rates has not been any more expensive than providing the cost-of-service and rate design information required in a traditional rate case. I've attached testimony from our competitive filing currently pending in Missouri which explains in more detail how a utility goes about unbundling its rates. All utilities must examine their billing systems in order to address the Year 2000 computer problem. It should not be a major additional expense at the same time to unbundle on the utility bill the different utility services and rate components.

Ideally, subsidies among customer classes should be eliminated as quickly as possible. States may choose, however, to maintain certain subsidies for public policy reasons. For example, a state may require all customers to fund through a charge assessed on the distribution service, service to low-income customers or energy efficiency programs. In order for customers to understand what they are paying for, the charges for these subsidies should be clearly itemized on the utility bill.

5. Recently, Chair Moler of the Federal Energy Regulatory Commission (FERC) recommended that, as part of comprehensive legislation, Congress authorize the FERC to enforce compliance with North American Electric Reliability Council standards to help maintain reliability of service. Do you believe this is necessary, and why or why not?

We support the recent endeavors of the North American Electric Reliability Council to improve and make mandatory appropriate reliability standards. These standards must properly balance reliability while allowing a competitive electric market. UtiliCorp believes FERC should have an oversight role to ensure this balance is achieved.

6. What concerns does your company have with respect to the role of public power and federal power marketing agencies in an increasingly competitive wholesale electric market? In markets in which retail competition has been adopted? Are there concerns you would like to have addressed if Congress enacts comprehensive restructuring legislation? Should Congress

consider changes to federal law as it applies to regulation of public or federal power's transmission obligations?

UtiliCorp believes the FERC must be given jurisdiction over public power agencies to the extent necessary to achieve a competitive retail electric industry. Today, public power agencies have tax and other advantages which would give them a competitive advantage in supplying power to the retail customer. UtiliCorp believes that a level playing field is imperative in the development of a competitive market for energy. Tax policies constructed by the state and federal governments provide a "safe harbor" for governmental utilities and cooperatives. This "safe harbor" allows the governmental utilities and the cooperatives to participate in a deregulated competitive marketplace with significant advantages over other utilities and providers of energy services. For example, in Nebraska, public power districts make in lieu of tax payments equal to **five percent** of the revenue they collect. In 1995, investor-owned electric utilities paid **fifteen percent** of their revenue in taxes. Public power has access to low cost financing and federal preference power which is not available to private enterprise. UtiliCorp supports an approach whereby public power entities are allowed to retain these advantages if they provide electric suppliers with access to their transmission lines and do not provide service outside of their historical boundaries. If public power entities choose to provide any type of business outside their historical service territory, they should lose all of their tax and low cost financing advantages.

UtiliCorp supports both federal and state legislation which would subject the generation, sales, transmission and distribution functions of municipalities and cooperatives to the FERC's and the state commission's authority for the limited purpose of requiring compliance with the same open access provisions which apply to investor-owned utilities.

Government's traditional role in a free market economy has been to provide necessary services which cannot be provided cost-effectively by private enterprise. It is questionable, given that the economy of this country is based upon the free enterprise system, whether governmental and other tax-exempt entities belong in competitive enterprises. However, if they do intend to compete against private enterprise, they must do so under the same terms and conditions. It is patently unfair to have government and other tax-exempt entities compete with private industries without giving up the advantages that tilt the playing field in their favor.

7. If Congress enacts comprehensive restructuring legislation, should changes be made to federal, state or local tax codes, and if so, why?

Although UtiliCorp recognizes that restructuring will result in the need to make changes in the tax code, we believe it is not necessary to solve all of the tax issues before setting a date certain for retail customer choice. UtiliCorp is working with some of its states such as Iowa to encourage them to take the initiative to develop replacement mechanisms to prevent any tax erosion resulting from electric and gas industry restructuring. Iowa is proposing to replace property tax on investor-owned electric and gas utilities with a replacement tax imposed on the company generating electricity, the company performing the delivery service, and on every kWh of electricity and therm of natural gas. Allocation of the revenue from the replacement tax to

local governments would be based on the current allocation of property tax revenue from utilities. There must be appropriate action by the states given a federal mandate of retail choice by the end of the year 2000. There is ample time for the parties to resolve the replacement tax issue. UtiliCorp will work with the states in which it serves to design tax code changes which will provide revenues comparable to that received by governmental entities today.

8. What, if any, concerns do you have about the reliability of the electric system? If the industry moved to retail competition, will adequate reserves be available? Is the transmission system capable of handling full retail competition?

Since we already have competition at the wholesale level, any reliability concerns today are primarily at the retail level. UtiliCorp supports the establishment in the federal legislation of Independent System Operators (ISO) which have control over widespread regional areas and are responsible for the reliability of the transmission system. FERC should have oversight responsibility of these ISOs. Planning groups at the ISO level should be formed to assure coordination of transmission, production and end user demand.

Utilities should retain responsibility for maintenance of their own transmission and distribution systems, as this will allow liability and accountability to remain clearly with the utility and will allow ISOs to become larger, more efficient units. The distribution and transmission functions will remain regulated. States should consider establishing incentive ratemaking provisions which would reward utilities for safe operation.

UtiliCorp is confident that a competitive market will help assure reliability, as suppliers will be expected to compete with each other not only on the basis of price, but on all aspects of customer service. A number of vehicles are available which could be used by the states to enhance reliability. These include:

- ◆ Penalties and charges established by tariff to assure that those who impose costs because of nonperformance pay for those costs, and to deter nonperformance.
- ◆ New unbundled tariff services, such as aggregation, balancing, and line loss coverage, regulated at the wholesale level by the FERC and at the retail level by the states.
- ◆ New contractual arrangements for commodity service which will allow customers to choose their level of reliability based on price.

UtiliCorp believes the transmission system is capable of handling full retail competition. We note that the restructured gas industry has remained reliable, even under instances of extreme cold weather over the past two years. Real-time pricing will also enhance reliability as consumers will have economic reasons (e.g., pricing discounts) to consume electricity during off-peak hours. Such market pricing will help even out the peaks. Reliability is also being enhanced by the construction of smaller generating units in lieu of the big power stations built in the past. In addition, the surge in technology which will occur under the competitive industry will enhance energy alternatives. UtiliCorp agrees with Federal Energy Regulatory Commissioner Bill Massey who stated in a speech to the California Independent Energy Producers his belief that reliability can actually increase in a competitive era.

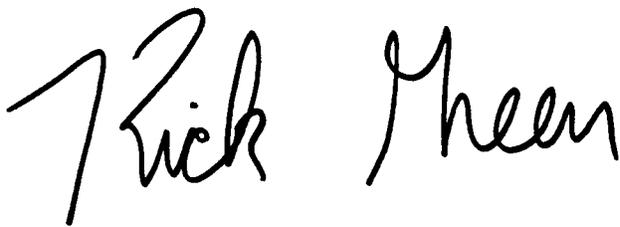
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In closing, your Committee has a long and proud history of overseeing interstate commerce for the benefit of American consumers in all fifty States. We believe that the Congress should move prudently but quickly to establish a time certain when consumers will have a choice as to their electric suppliers.

Our company is pleased that you gave us the opportunity to respond to your inquiry. We hope that our responses are useful to the Committee as it considers the legislative proposals to end the monopoly on sales of electricity to consumers. If you, your staff, or the Committee have additional questions, we would be pleased to respond.

Sincerely,

A handwritten signature in black ink that reads "Rick Green". The signature is written in a cursive, slightly slanted style.

Richard C. Green  
Chairman and Chief Executive Officer  
UtiliCorp United