

(Decision No. R91-1077)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

JOINT APPLICATION OF UTILICORP)	
UNITED, INC., AND CENTEL)	DOCKET NO. 91A-159E
CORPORATION FOR AUTHORITY TO)	
TRANSFER CERTAIN ASSETS, UTILITY)	RECOMMENDED DECISION OF
OPERATIONS, AND BUSINESS OF CENTEL)	ADMINISTRATIVE LAW JUDGE
CORPORATION, CENTEL ELECTRIC-)	KEN F. KIRKPATRICK
COLORADO, TO UTILICORP UNITED, INC.)	

Mailed Date: August 16, 1991

Appearances: Steven H. Denman, Esq., Denver, Colorado, and
Wendy M. Moser, Esq., Denver, Colorado, for
Centel Corporation, Centel-Electric, Colorado,
and UtiliCorp United, Inc.;

James C. Swearngen, Esq., Jefferson City,
Missouri, for UtiliCorp United, Inc.;

Joseph B. Wilson, Esq., Denver, Colorado for the
Cities of Pueblo, Canon City, and Florence,
Colorado; and

Mana L. Jennings-Fader, Assistant Attorney
General, Denver, Colorado, for the Staff of
the Commission.

STATEMENT

This application was filed on February 15, 1991. It seeks authority from this Commission to transfer from Centel Corporation (Centel) to UtiliCorp United, Inc. (UtiliCorp), through one or more transactions, all of the assets, utility operations, certificates of public convenience and necessity, authority under franchises, and business of Centel to UtiliCorp.

The Commission gave notice of the application on February 25, 1991. Notices of intervention were filed by the City of Pueblo on March 21, 1991; by the City of Canon City on March 22, 1991; and by the City of Florence on March 22, 1991.

A prehearing conference was held on June 6, 1991, in Denver, Colorado. The order which resulted from that prehearing conference,

Decision No. R91-765-I, June 11, 1991, set the matter for a hearing to be held on July 30 and 31, 1991, and August 1, 1991, in a Commission hearing room in Denver, Colorado. Certain other procedural guidelines were also established.

By Decision No. R91-980-I, July 26, 1991, Staff of the Commission was permitted to intervene out of time.

At the assigned place and time the undersigned called the matter for hearing. As a preliminary matter the undersigned granted in part a Motion to Alter or Amend Decision No. R91-765-I filed July 19, 1991. Also, the undersigned granted a motion filed July 29, 1991, by the Applicants seeking permission to late-file an exhibit. The matter then proceeded to hearing. During the course of the hearing Exhibits 1 through 9 were identified, offered, and admitted into evidence. At the conclusion of the hearing the parties were ordered to file statements of position no later than August 8, 1991. Such statements of position were timely filed by all parties.

In accordance with § 40-6-109, C.R.S., the administrative law judge now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

FINDINGS OF FACT

1. Centel is the Transferor in this proceeding. It is a Kansas corporation authorized to do business in the State of Colorado. It provides telecommunications service on a national basis and also generates, transmits, and distributes electricity in the State of Colorado. Its Colorado service area includes Pueblo, Colorado, and the surrounding area including the Cities of Florence and Canon City.

2. UtiliCorp is the Transferee in this proceeding. It is a Delaware corporation licensed to do business in the State of Colorado. It currently provides natural gas utility service in Colorado through an operating division doing business as Peoples Natural Gas. It also provides electric utility service in Missouri and West Virginia and natural gas utility service in Minnesota, Iowa, Nebraska, Kansas, Michigan, South Dakota, Missouri, and West Virginia.

3. If this purchase is concluded, UtiliCorp will assume all of Centel's obligations and commitments. UtiliCorp will provide electric utility service in Centel's Colorado areas in accordance with Centel's approved tariffs and the rules and regulations presently on file with the Commission. UtiliCorp will adopt these tariffs, rules, and regulations with no changes.

4. As of March 31, 1991, UtiliCorp's total assets were approximately \$1,784,997,000. As of the same date the capital structure

consisted of \$612,815,000 in long term debt, \$35,364,000 in preferred and preference stock, \$105,023,000 in issues convertible to common equity, and \$509,878,000 in common equity. The Colorado portion of this transaction¹ is for a purchase price of \$86,800,000 plus the assumption of current liabilities, estimated on September 30, 1990, to be \$7,800,000. The acquisition will be financed initially by short term debt, and eventually through a combination of long term debt and common equity issuances in a ratio which will keep UtiliCorp's long term equity ratio in a range of 40 to 45 percent. UtiliCorp's capital structure will be affected little. Moody's and Standard and Poors, national rating agencies, have recognized the plans of UtiliCorp and have indicated that the long term financing will have no detrimental effect on their rating of UtiliCorp's public securities or commercial paper.

5. Prior to the announcement of the proposed acquisition of Centel by UtiliCorp, Centel had been conducting studies relating to its future power supply. Centel has terminated, pursuant to contractual option, its power purchase contract with Public Service Company of Colorado (Public Service) effective 1993. In recent years, Public Service has been supplying a major part of Centel's power over half. Negotiations with Public Service and Centel had been ongoing until the announcement of the acquisition of Centel by UtiliCorp.

6. Centel's installed generating capacity meets only a portion of its power supply needs, well under 50 percent. In addition, several units are scheduled for retirement over the next ten years, further reducing the power supply generating capacity of the Centel system. Planned retirements of existing steam plants will reduce generation capacity by over half by the year 2000. See Exhibit 9.

7. UtiliCorp has retained the same consulting firm that had been assisting Centel in its power supply planning. This group, on behalf of UtiliCorp, is investigating a power purchase contract with Public Service as well as Public Service of New Mexico and Tri-State Generation and Transmission Cooperative. In addition, other power supply alternatives such as possible ownership of a share of a new coal-fired power plant; utilization of gas turbines; increased demand side management; and possible integration with Kansas power supplies are under evaluation.

8. As a result of this sales transaction, Centel will be required to pay to the Internal Revenue Service (IRS) the balance of certain deferred income tax and investment tax credit accounts. Centel

¹ UtiliCorp is purchasing Centel's operations in both Colorado and Kansas. This application relates only to the portion of the overall agreement relating to the purchase of the Colorado operations.

consisted of \$612,815,000 in long term debt, \$35,364,000 in preferred and preference stock, \$105,023,000 in issues convertible to common equity, and \$509,878,000 in common equity. The Colorado portion of this transaction¹ is for a purchase price of \$86,800,000 plus the assumption of current liabilities, estimated on September 30, 1990, to be \$7,800,000. The acquisition will be financed initially by short term debt, and eventually through a combination of long term debt and common equity issuances in a ratio which will keep UtiliCorp's long term equity ratio in a range of 40 to 45 percent. UtiliCorp's capital structure will be affected little. Moody's and Standard and Poors, national rating agencies, have recognized the plans of UtiliCorp and have indicated that the long term financing will have no detrimental effect on their rating of UtiliCorp's public securities or commercial paper.

5. Prior to the announcement of the proposed acquisition of Centel by UtiliCorp, Centel had been conducting studies relating to its future power supply. Centel has terminated, pursuant to contractual option, its power purchase contract with Public Service Company of Colorado (Public Service) effective 1993. In recent years, Public Service has been supplying a major part of Centel's power over half. Negotiations with Public Service and Centel had been ongoing until the announcement of the acquisition of Centel by UtiliCorp.

6. Centel's installed generating capacity meets only a portion of its power supply needs, well under 50 percent. In addition, several units are scheduled for retirement over the next ten years, further reducing the power supply generating capacity of the Centel system. Planned retirements of existing steam plants will reduce generation capacity by over half by the year 2000. See Exhibit 9.

7. UtiliCorp has retained the same consulting firm that had been assisting Centel in its power supply planning. This group, on behalf of UtiliCorp, is investigating a power purchase contract with Public Service as well as Public Service of New Mexico and Tri-State Generation and Transmission Cooperative. In addition, other power supply alternatives such as possible ownership of a share of a new coal-fired power plant; utilization of gas turbines; increased demand side management; and possible integration with Kansas power supplies are under evaluation.

8. As a result of this sales transaction, Centel will be required to pay to the Internal Revenue Service (IRS) the balance of certain deferred income tax and investment tax credit accounts. Centel

¹ UtiliCorp is purchasing Centel's operations in both Colorado and Kansas. This application relates only to the portion of the overall agreement relating to the purchase of the Colorado operations.

has approximately \$11,000,000 in its deferred income tax reserve account and approximately \$2.8 million in unamortized investment tax credits. The accumulated deferred income tax of \$11,000,000 is currently treated as an offset against rate base. The balance in the investment tax credit account is currently treated as an amortized deduction to expenses in the amount of approximately \$185,000 annually.

9. The Cities of Pueblo, Canon City, and Florence, Colorado (Cities) are Intervenors in this proceeding. The Cities urge the Commission to approve this application only under four specific conditions:

1. The Commission should require UtiliCorp to produce a business plan which outlines UtiliCorp's plans with respect to: future power supply plans; future treatment of the acquisition adjustments; and accounting treatment of the accumulated deferred income tax balance and unamortized investment tax credits.
2. The Commission should not allow an acquisition adjustment to be made on UtiliCorp's books for ratemaking purposes.
3. The accumulated deferred income tax balance and income tax credit balances which will not be transferred to UtiliCorp must not cause rates to increase to offset the losses.
4. UtiliCorp must be instructed to maintain and operate all existing Centel facilities and service centers.

DISCUSSION

The evidence in this proceeding establishes that UtiliCorp is qualified, financially and otherwise, to fully operate the business of Centel. No party has challenged that proposition. The parties differ as to whether the application should be granted unconditionally or conditionally. Applicants, unsurprisingly, seek unconditional granting of the application. Staff concurs that the public interest will be served if this application is granted. Staff reserves its right to challenge any acquisition related expense, or premium, and any tax consequences in any future rate proceeding. However, Staff contends that the appropriate forum for such a review is such a future rate case and not in this docket.

Cities seek conditional granting of the application as set forth above. Cities propose that a Commission order in this proceeding set the framework for a future rate proceeding by announcing in advance that the

Commission will not allow any acquisition adjustment associated with the premium paid for the Colorado assets and that no rate increase may result due to income tax consequences of the asset sale.

The undersigned agrees with the Applicants and Staff that the appropriate forum for addressing those issues would be any future rate case which the Transferee may bring. Attempting here to bind the Commission in a future rate case is futile and not appropriate to this proceeding where the issue is "the public interest". UtiliCorp has indicated that rates will remain identical to those of Centel until any changes are authorized by the Commission. Presumably the Commission will authorize only changes which are just and reasonable given the facts and circumstances that then exist.

Cities also seek to have the Commission order UtiliCorp to produce a business plan. The Cities' statement of position indicates that this could be mandated by requiring Centel and UtiliCorp to immediately proceed to procure the most advantageous wholesale power supply source.

UtiliCorp contends that the ongoing power supply study being performed constitutes a prudent course of action and that the preparation of a separate business plan would perhaps delay the power supply planning process. Applicants also state that such a business plan condition is not legally required.

The administrative law judge agrees that such a business plan condition is not legally required, but the appropriate inquiry is whether it should be made a condition to granting the transfer. Exhibit 9 makes it clear that whoever is operating the Centel system in the future has a challenging project ahead of it in terms of obtaining appropriate power supply. The magnitude of the Public Service contract and the rapidly approaching planned retirement of Centel's own generation capacity leave little room for delay or procrastination. Nonetheless, the evidence in this proceeding established that the Applicants are proceeding in a reasonably appropriate manner. It appears likely that a power supply plan can be developed on terms favorable to the company and the ratepayers within an appropriate timeframe. Certainly, it is essential to the future operation of the system that this be done expeditiously. So essential is this to the operation of the Centel system that the undersigned believes that no order from the Commission mandating power supply planning is necessary.

CONCLUSIONS

1. The proposed transfer is not contrary to the public interest.
2. The application should be granted with no conditions.

3. In accordance with § 40-6-109, C.R.S., the Commission should enter the following order.

ORDER

THE COMMISSION ORDERS THAT:

1. The joint application for approval of asset transfer filed by Centel Corporation and UtiliCorp United, Inc., is granted.

2. The Commission authorizes and approves the sale and transfer from Centel Corporation to UtiliCorp United, Inc., of the assets, utility operations, and business in the State of Colorado as provided by the asset purchase agreement (Exhibit C to the application) including the transfer of the subject assets from Centel Corporation to a subsidiary corporation, the purchase by UtiliCorp United, Inc., of the stock of said subsidiary corporation and subsequent merger of said subsidiary corporation with and into UtiliCorp United, Inc., and authorizes Centel Corporation and UtiliCorp United, Inc., to otherwise perform in accordance with the terms of said asset purchase agreement and in accordance with the terms of all other documents reasonably necessary to consummate the sale, transfer, and other transactions described in that agreement.

3. The Commission authorizes UtiliCorp United, Inc., to succeed to all of Centel Electric Corporation's electric utility rights, title, and interest in its utility plant and facilities and to all franchises in statutory cities and towns, certificates, consents, and permits relating to the ownership and operation of such plant and facilities and to assume certain debt of Centel Corporation, all as provided in Exhibit C, and to subject the acquired property to the lien of the Indenture of Mortgage and Deed of Trust dated January 1, 1966, from Missouri Public Service Corporation, UtiliCorp's predecessor, to Commerce Trust Company (Predecessor to Commerce Bank of Kansas City, N.A.) as Trustee, under which Indenture United Missouri Bank of Kansas City, N.A. is now serving as successor trustee, to the extent provided by that document, and to the lien of UtiliCorp United, Inc.'s general mortgage indenture and deed of trust from UtiliCorp United, Inc., to Commerce Bank of Kansas City, N.A. Trustee, dated as of September 15, 1988, to the extent provided by that document.

4. The Commission authorizes UtiliCorp United, Inc., to commence providing electric utility service to the public in Centel Corporation's former service areas.

5. The Commission authorizes Centel, effective upon the closing of the transaction, to discontinue providing electric utility service to the public in its service areas and to file a closing annual report for the portion of 1991 in which it actually provided electric service.

6. UtiliCorp United, Inc., shall adopt as its initial rates, rules, regulations, and conditions of service for electric utility service in the areas now served by Centel Corporation the applicable rates, rules, regulations, and conditions of service of Centel presently in effect. UtiliCorp United, Inc., shall accomplish this by filing an adoption notice in the form of a tariff, in accordance with Rule 42 of the Commission's Rules of Practice and Procedure, to be effective on one day's notice.

7. UtiliCorp United, Inc., and Centel Corporation are authorized to perform any and all other acts and transactions, consistent with this Recommended Decision, which may be necessary or convenient to carry out the transactions approved herein.

8. Decision No. R91-765-I is modified as follows. On page 1, third paragraph, delete the third sentence in its entirety. In the same paragraph, change the currently sixth sentence to read as follows:

This means that were the application to be granted and the Transferor authorized to transfer all of its assets as desired, at some future point in time the Transferee will have to obtain an additional certificate of public convenience and necessity if the Cities of Pueblo or Canon City amend or renew their franchises with the Transferee.

9. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

10. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. IF NO EXCEPTIONS ARE FILED WITHIN 20 DAYS AFTER SERVICE OR WITHIN ANY EXTENDED PERIOD OF TIME AUTHORIZED, OR UNLESS THE DECISION IS STAYED BY THE COMMISSION UPON ITS OWN MOTION, THE RECOMMENDED DECISION SHALL BECOME THE DECISION OF THE COMMISSION AND SUBJECT TO THE PROVISIONS OF § 40-6-114, C.R.S.
- b. IF A PARTY SEEKS TO AMEND, MODIFY, ANNUL, OR REVERSE BASIC FINDINGS OF FACT IN ITS EXCEPTIONS, THAT PARTY MUST REQUEST AND PAY FOR A TRANSCRIPT TO BE FILED, OR THE PARTIES MAY STIPULATE TO PORTIONS OF THE TRANSCRIPT ACCORDING TO THE PROCEDURE STATED IN § 40-6-113, C.R.S. IF NO TRANSCRIPT OR STIPULATION IS FILED, THE COMMISSION IS BOUND BY THE FACTS SET OUT BY THE

ADMINISTRATIVE LAW JUDGE AND THE PARTIES
CANNOT CHALLENGE THESE FACTS. THIS WILL
LIMIT WHAT THE COMMISSION CAN REVIEW IF
EXCEPTIONS ARE FILED.

11. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Administrative Law Judge

KFK:srs:4287J