

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office in
Jefferson City on the 21st day of
February, 2002.

In the Matter of the Tariff Filing of Missouri Public
Service (MPS), a Division of UtiliCorp United Inc.,
to Implement a General Rate Increase for Retail)
Electric Service Provided to Customers in the)
Missouri Service Area of MPS.)

)
) **Case No. ER-2001-672**
) Tariff No. 200101173
)
)

ORDER APPROVING STIPULATION AND AGREEMENT

On June 8, 2001, Missouri Public Service, a division of UtiliCorp United, Inc., submitted to the Commission proposed tariff sheets intended to implement a general rate increase for electric service provided to retail customers in its Missouri service area. The proposed tariff sheets bear a requested effective date of July 9, 2001. The proposed electric service tariff sheets are designed to produce an annual increase of \$49,352,769 in the Company's revenues, exclusive of franchise and occupational taxes, a 16.86 percent increase. On June 21, the Commission suspended Company's proposed tariff sheets for 120 days plus six months, until May 6, 2002.

On June 27, the Commission granted the unopposed application to intervene of the Sedalia Industrial Energy Users Association.^[1] On August 6, the Commission granted the unopposed applications to intervene of the City of Kansas City and of the County of Jackson, and the contested application of the Missouri Joint Municipal Electric Utility Commission.^[2] On August 14, 2001, the Commission set the test year and adopted a procedural schedule. On November 7, 2001, the Commission held Local Public Hearings in Raytown and Warrensburg, Missouri. Also on November 7, the Commission issued its Order Regarding Motion to Compel Discovery and Revising Procedural Schedule.

On December 6, 2001, the Staff of the Commission filed its motion for leave to file

an excess earnings complaint against UtiliCorp. On December 21, Staff filed its complaint, asserting Staff's position that UtiliCorp has excess earnings amounting to about \$20 million annually.^[3] Also on December 21, Staff filed its Motion to Consolidate Case Nos. ER-2001-672 and EC-2002-265. In its motion, Staff explained that Case No. EC-2002-265 arose out of its preparation for trial in Case No. ER-2001-672. The Commission by its order on January 18, 2002, authorized Staff to pursue its overearnings complaint and consolidated the two cases.

On January 25, 2002, the Commission convened an evidentiary hearing. At that time, the parties advised the Commission that a settlement was imminent. The Commission canceled the scheduled evidentiary hearing, issuing its Order Suspending Procedural Schedule and Directing Filing on January 31. On February 5, the Commission's Staff moved for leave to file the Unanimous Stipulation and Agreement of the parties; accompanying Staff's motion was the Unanimous Stipulation and Agreement, duly executed by all parties of record or their representatives. A copy of the Unanimous Stipulation and Agreement is attached to this order as Attachment A.

On February 8, UtiliCorp filed its Proposed Findings of Fact and Conclusions of Law. On February 11, Staff filed its Suggestions in Support of the Unanimous Stipulation and Agreement. On the same day, the Office of the Public Counsel and Intervenors Jackson County, Missouri; United States Executive Agencies; Kansas City, Missouri; and SIEUA filed their joint motion for expedited treatment, pointing out that the Unanimous Stipulation and Agreement provides for a rate reduction and that every day that passes prior to the approval of that agreement, consequently, costs UtiliCorp's ratepayers money that cannot be recovered.

The parties agree that the Unanimous Stipulation and Agreement resolves all issues in these consolidated cases. The parties filed a Joint List of Issues on January 18, which contained nearly two dozen contested issues. In reaching the settlement represented by the Unanimous Stipulation and Agreement, the parties compromised some of these issues and deferred others. Additionally, The parties agreed to the continued exchange of information in an agreed-upon format. The parties further agreed that all of the prepared testimony prefiled

in this case shall be received into the record.

In summary, the Unanimous Stipulation and Agreement provides:

1. Revenue requirement:

The Unanimous Stipulation and Agreement provides for a revenue *decrease* of \$4,250,000, approximately 1.43 percent, for UtiliCorp's Missouri Public Service division.

2. Rate Design:

The Unanimous Stipulation and Agreement provides for allocation of the rate decrease as an equal percentage decrease to all nonresidential classes, with the residential class receiving 50 percent of the percentage decrease allocated to the nonresidential classes. Each rate component shall be adjusted by the same percentage as the percentage adjustment to the revenue generated by that rate class.

3. Implementation:

The Unanimous Stipulation and Agreement provides that UtiliCorp will implement conforming tariff sheets within 15 days of the effective date of the Commission's approval of the Unanimous Stipulation and Agreement and the Commission will permit UtiliCorp to file its tariff sheets on less than 30 days notice.

4. Moratorium:

The Unanimous Stipulation and Agreement provides that none of the parties, barring the occurrence of some extraordinary event, shall seek either an increase or a decrease in UtiliCorp's Missouri jurisdictional electric service revenues before January 1, 2003. This moratorium is not intended to restrict any power of the Commission.

5. True-up:

The Unanimous Stipulation and Agreement provides that no true-up proceeding is necessary in this case.

6. Reliability and Call Center Reporting:

The Unanimous Stipulation and Agreement provides that UtiliCorp will maintain certain indicators and provide them to the Commission's Staff on a quarterly basis through calendar years 2002 and 2003.

7. Depreciation:

The Unanimous Stipulation and Agreement provides that UtiliCorp shall adopt and implement for its Missouri Public Service service area the depreciation rates advocated by Staff, based on average service lives and recovering only the original cost of plant. Net salvage costs shall be treated as an expense for ratemaking purposes. Current levels of net salvage costs shall be booked as an expense and not be booked against accrued depreciation reserve. The parties are free to contest the treatment of future net salvage costs in the next case in which Missouri Public Service's rates are at issue.

8. Creation of a Class Cost of Service and Rate Design Case:

The Unanimous Stipulation and Agreement provides that the Commission shall establish a new and separate case examining class cost of service and rate design in UtiliCorp's Missouri jurisdictional electric service operations. The Commission shall make the parties to the current case parties to the new case.

9. Record-keeping:

The Unanimous Stipulation and Agreement provides that, beginning with the month of May 2002, UtiliCorp shall make available 45-days after it closes its monthly books for its Missouri jurisdictional electric service divisions, certain accounting data in a specified format.

10. Tariff Matters:

The Unanimous Stipulation and Agreement provides for the resolution of several matters respecting UtiliCorp's tariffs, including service area descriptions; charges for meter reading by special appointment; reconnection charges; charges for a temporary meter set; per foot charges for excess service line lengths; and the contents of tariff sheets 62 and 63.

11. Pending Motions and Issues:

The Unanimous Stipulation and Agreement provides that all pending motions and issues, not otherwise specifically addressed in the Unanimous Stipulation and Agreement, are withdrawn and shall not be raised again during the moratorium period.

12. Effectiveness:

The Unanimous Stipulation and Agreement provides that it shall become effective on

the effective date of a Commission order approving it without modification or condition, and that it shall be null and void if the Commission modifies it or conditions it.

13. Admission of Prefiled Testimony:

The Unanimous Stipulation and Agreement provides that all of the testimony prefiled in this matter shall be admitted to the records so long as the Commission approves the Unanimous Stipulation and Agreement without modification or condition.

14. Reservations:

The parties included in the Unanimous Stipulation and Agreement certain reservations and conditions common to such agreements.

15. Contingent Waiver of Rights:

The Unanimous Stipulation and Agreement provides that, so long as the Commission approves its specific terms, the parties waive their right to call, examine and cross-examine witnesses; to present oral arguments or written briefs; to require the Commissioners to read the transcript of the proceedings; and to seek either rehearing or judicial review.

16. Rights to Disclose:

The parties included in the Unanimous Stipulation and Agreement certain terms regarding the submission to the Commission of written and verbal support for the approval of the agreement.

As noted, the Commission's Staff filed suggestions in support of the Unanimous Stipulation and Agreement. Therein, Staff points out that the reconciliation prepared by Staff for the hearing in this matter showed that UtiliCorp sought a revenue *increase* of approximately \$31 million annually while Staff sought a revenue *decrease* of approximately \$22 million annually. Against this background, a compromise revenue decrease of \$4.25 million represents a significant benefit to ratepayers. The parties agree that the rates set out in the sample tariff sheets attached to the Unanimous Stipulation and Agreement are just and reasonable. In resolving this case by an agreed settlement, the parties have not only saved the costs of extended litigation, but have spared the ratepayers the uncertainties necessarily

consequent upon the protracted litigation of multiple issues with a large impact on rates.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.^[4] In reviewing the Unanimous Stipulation and Agreement submitted by the parties, the Commission notes that^[5] Every decision and order in a contested case shall be in writing, and, except in default cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. * * *

Consequently, the Commission need not make either findings of fact or conclusions of law in this order. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.^[6] Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Unanimous Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on February 5, 2002, is hereby approved as a resolution of all issues in this case (See Attachment A).
2. That UtiliCorp United, Inc., is ordered to comply with the terms of the Unanimous Stipulation and Agreement.
3. That the proposed electric service tariff sheets (File No. 200101173) submitted on June 8, 2001, by Missouri Public Service, a division of UtiliCorp United, Inc., for the purpose of increasing rates for electric service to retail customers are hereby rejected.
4. That UtiliCorp United, Inc., shall file, no later than the 15th working day after the effective date of this Order, proposed tariff sheets in compliance with the Unanimous Stipulation and Agreement approved herein.
5. That Case No. EO-2002-384 is hereby established for the purpose of examining class cost of service and rate design in UtiliCorp United Inc.'s Missouri jurisdictional electric service operations. All of the parties to the present case are hereby made parties to Case No. EO-2002-384 and the Commission's Data Center shall add them as such to the service list in Case No. EO-2002-384.

6. That this order shall become effective on February 28, 2002.

BY THE COMMISSION

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Simmons, Ch., Murray, Lumpe,
Gaw, and Forbis, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge

[1] An unincorporated, voluntary association consisting of Pittsburgh Corning Corporation, Waterloo Industries, Hayes Lemmerz International, Hawker Industries, Inc., Alcan Cable Co., Gardner Denver Corporation, American Compressed Steel Corporation, and Stahl Specialty Company. Each of these entities is an industrial energy user located in or near Sedalia, Missouri, and a major electric customer of MPS. Together, they employ some 3,815 persons. For convenience, the Sedalia Industrial Energy Users Association shall be referred to herein as SIEUA.

[2] A political subdivision of the state of Missouri, organized pursuant to Section 393.700, RSMo 2000, *et seq.*, with 55 member municipalities.

[3] Staff states that UtiliCorp has \$37.2 million in annual excess earnings, however, Staff expects this figure to be reduced by \$17 million during the true-up.

[4] Section 536.060, RSMo Supp. 2001.

[5] Section 536.090, RSMo Supp. 2001. This provision applies to the Public Service Commission. *State ex rel. Midwest Gas Users' Association v. Public Service Commission of the State of Missouri*, 976 S.W.2d 485, 496 (Mo. App., W.D. 1998).

[6] *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).