

*Exhibit No.:*

*Issue: Violation of Missouri  
Statutes and Commission  
Rules*

*Witness: Janis E. Fischer*

*Sponsoring Party: MoPSC Staff*

*Type of Exhibit: Direct Testimony*

*Case No.: TC-2006-0184*

*Date Testimony Prepared: February 22, 2006*

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY SERVICES DIVISION**

**DIRECT TESTIMONY**

**OF**

**JANIS E. FISCHER**

**NEW FLORENCE TELEPHONE COMPANY**

**CASE NO. TC-2006-0184**

**Jefferson City, Missouri  
February 2006**

**\*\*Denotes Highly Confidential Information\*\***

**NP**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

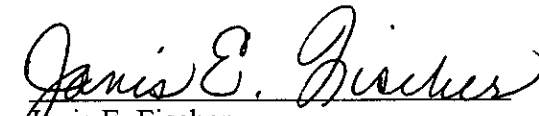
Staff of the Public Service Commission of the State )  
of Missouri, Complainant v. New Florence )  
Telephone Company, Respondent. )

Case No. TC-2006-0184

**AFFIDAVIT OF JANIS E. FISCHER**

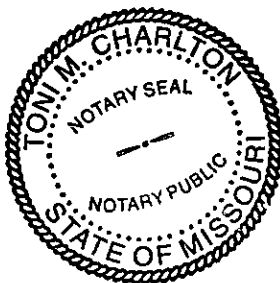
STATE OF MISSOURI     )  
                                  )  
COUNTY OF COLE     )     ss.

Janis E. Fischer, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Direct Testimony in question and answer form, consisting of 18 pages to be presented in the above case; that the answers in the foregoing Direct Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.

  
Janis E. Fischer

Subscribed and sworn to before me this 21<sup>st</sup> day of February 2006.





TONI M. CHARLTON  
Notary Public - State of Missouri  
My Commission Expires December 28, 2008  
Cole County  
Commission #04474301

**TABLE OF CONTENTS**

**DIRECT TESTIMONY OF**

**JANIS E. FISCHER**

**NEW FLORENCE TELEPHONE COMPANY**

**CASE NO. TC-2006-0184**

NEW FLORENCE HAS VIOLATED COMMISSION RULES AND MISSOURI STATUTES.....	3
Commission Rule 4 CSR 240-30.040 .....	3
FCC Part 32 Affiliate Transactions Rule .....	4
Section 386.560 of the Missouri Revised Statutes.....	7
CHRONOLOGY OF SWITCH TRANSACTIONS.....	8
COUNT V – SWITCH RULE VIOLATION .....	16
COUNT X – SWITCH STATUTE VIOLATION .....	17
COUNT XI – LOANS STATUTE VIOLATION.....	18

## DIRECT TESTIMONY

**OF**

**JANIS E. FISCHER**

# NEW FLORENCE TELEPHONE COMPANY

**CASE NO. TC-2006-0184**

Q. Please state your name and business address.

A. Janis E. Fischer, 200 Madison Street, Suite 440, Jefferson City, MO 65102.

Q. By whom are you employed and in what capacity?

A. I am a Regulatory Auditor IV for the Missouri Public Service Commission (Commission).

Q. Please describe your educational and employment background.

A. I graduated from Peru State College, Peru, Nebraska in December 1979 and received a Bachelor of Science degree in Education (Basic Business) and Business Administration. In May 1985, I completed course work and earned a Bachelor of Science degree in Accounting. I passed the Uniform Certified Public Accountant examination in May 1994 and received my license to practice in March 1997.

Q. Please describe your work background.

A. Prior to my employment at the Commission, I worked from February 1988 through November 1994 as the office and accounting supervisor for the Falls City, Nebraska Utilities Department (Falls City Utilities Department).

I also was employed as a staff accountant with the accounting firm of Cuneo, Lawson, Shay and Staley, PC, in Kansas City, Missouri, from November 1994 through October 1996. Prior to that, I worked from August 1985 to September 1987 as the accountant for the Sac and

1 Fox Tribe of Missouri and in the business office of the Falls City Community Hospital from  
2 September 1987 to February 1988.

3 Q. What has been the nature of your duties while employed by the Commission?

4 A. Since I began employment with the Commission in 1996, I have directed and  
5 assisted with various audits and examinations of the books and records of public utilities  
6 operating within the state of Missouri under the jurisdiction of the Commission. I assumed  
7 my present position of Regulatory Auditor IV in December 2001.

8 Q. Have you previously filed testimony before this Commission?

9 A. Yes, please refer to Schedule 1, attached to this direct testimony, for a list of  
10 the major audits on which I have assisted and filed testimony.

11 Q. Have you made an examination of the books and records of New Florence  
12 Telephone Company (New Florence) for purposes of this case?

13 A. Yes, in conjunction with other members of the Staff.

14 Q. Please describe your areas of responsibility in this case, Case No.  
15 TC-2006-0184.

16 A. I am responsible for the sections of the New Florence complaint case  
17 addressing Count V, Switch-Rule Violation; Count X, Switch-Statute Violation; and Count  
18 XI, Loans-Statute Violation. These counts are set out in the Staff's complaint against New  
19 Florence that was filed on October 25, 2005. I also will discuss the affiliate transactions rule  
20 that is applicable to the switch transactions that have occurred at New Florence. Affiliated  
21 transactions between the regulated utility, New Florence, its owners and their affiliated  
22 entities form the basis for most if not all of the complaint counts.

**NEW FLORENCE HAS VIOLATED COMMISSION RULES AND MISSOURI  
STATUTES**

**Commission Rule 4 CSR 240-30.040**

Q. Please describe Commission Rule 4 CSR 240-30.040, Uniform System of  
Accounts Class A and Class B Telecommunications Companies.

A. Commission Rule 4 CSR 240-30.40 provides:

(1) The uniform system of accounts prescribed by the Federal Communications Commission (FCC) for Class A and Class B telecommunications companies effective January 1, 1988, and the text pertaining to the accounts, and contents of the accounts system, a copy of which be approved by the commission and prescribed for the use of Class A and Class B telecommunications companies subject to the jurisdiction of the commission and that every such telecommunications company is required to keep all accounts in conformity with and those telecommunications companies that have not already adopted the uniform system of accounts of the FCC are ordered to do so for intrastate recordkeeping purposes. For purposes of recordkeeping conformity with the uniform system of accounts prescribed by the FCC for telecommunications companies effective January 1, 1988, this commission classifies for accounting purposes Class A and Class B telecommunications companies as follows:

(A) Class A. Companies having annual revenues from regulated telecommunications operations of more than \$100,000,000 system-wide;

(B) Class B. Companies having annual revenues from regulated telecommunications operations of \$100,000,000 or less system-wide; and

(C) Class B companies that desire more detailed accounting may adopt the accounts prescribed for Class A companies upon the submission of a written notification to the commission.

(2) The uniform system of accounts prescribed by the FCC for Class A and Class B telecommunications companies consists of: general instructions; balance sheet accounts—current and noncurrent assets; telecommunications plant accounts; balance sheet accounts—depreciation and amortization; balance sheet accounts—liabilities and stockholders equity; revenue accounts; expense accounts; and income accounts. The uniform system of accounts breaks down each of these major items into individual subitems or accounts.

(3) The adoption by telecommunications companies in Missouri of the uniform system of accounts issued by the FCC shall in nowise bind the commission to the approval or acceptance of any item or account for the purpose of fixing rates or in determining any other matter that may come before the commission.

(4) Class B companies that desire more detailed accounting than is required of them under this rule may do so upon the submission of a written notification to the commission.

(5) All Class B telecommunications companies shall keep their plant accounts in Part 32, Class A detail.

Q. For purposes of this Commission rule, is New Florence a Class B company?

A. Yes.

### **FCC Part 32 Affiliate Transactions Rule**

Q. What is the relationship between the FCC's Part 32 Affiliate Transactions Rule and the Commission's Rule 4 CSR 240-30.040?

A. The Commission has adopted the Federal Communications Commission (FCC) Part 32 affiliate transactions rule as part of its prescribed uniform system of accounts for telecommunications companies. Included in the general instructions of the uniform system of accounts prescribed by the FCC effective January 1, 1988 and incorporated by reference in Commission Rule 4 CSR 240-30.040 for intrastate recordkeeping, the following requirements for transactions of the regulated entity with affiliates are stated at 47 CFR 32.27:

(a) Unless otherwise approved by the Chief, Common Carrier Bureau, transactions with affiliates involving asset transfers into or out of the regulated accounts shall be recorded by the carrier in its regulated accounts as provided in paragraphs (b) through (f) of this section.

(b) Charges for assets purchased by or transferred to the regulated telephone activity of a carrier from affiliates shall be recorded in the operating accounts of the regulated activity at the invoice price if that price is determined by a prevailing price held out to the general public in the normal course of business. **If a prevailing price for the assets received by the regulated activity is not available, the charges recorded by the regulated activity for such assets shall be the lower**

1                   **of their cost to the originating activity and the affiliated group less**  
2                   **all applicable valuation reserves, or their fair market value.**  
3                   [Emphasis added.]

4           Q.     How does the FCC define “affiliated companies” and “control?”

5           A.     The uniform system of accounts prescribed by the FCC effective January 1,  
6     1988 incorporated by reference in 4 CSR 240-30.040 includes the following definitions at  
7     47 CFR 32.9000:

8                   *Affiliated companies* means companies that directly or indirectly  
9                   through one or more intermediaries, control or are controlled by, or are  
10                  under common control with, the accounting company. See also control.

11                  *Control* (including the terms “controlling,” “controlled by,” and “under  
12                  common control with”) means the possession directly or indirectly, of  
13                  the power to direct or cause the direction of the management and  
14                  policies of a company, whether such power is exercised through one or  
15                  more intermediary companies, or alone, or in conjunction with , or  
16                  pursuant to an agreement with, one or more other companies, and  
17                  whether such power is established through a majority or minority  
18                  ownership or voting of securities, common directors, officers, or  
19                  stockholders, voting trusts, holding trusts affiliated companies,  
20                  contract, or any other direct or indirect means.

21          Q.     Why is adoption of the affiliate transactions rule necessary?

22          A.     The affiliate transactions rule establishes how the price of goods and services  
23     purchased from an affiliate are to be recorded on the books of the regulated utility. When the  
24     regulated utility is acquiring goods or services from an affiliate, the lower of the actual cost or  
25     established market cost is to be recorded on the books. This is to prevent the nonregulated  
26     affiliate from benefiting from transactions with its affiliate, the regulated utility, at the  
27     expense of the utility’s regulated customers.

28                  The regulated utility typically purchases goods and services from third party vendors.  
29     Common sense would dictate that a prudent purchase occurs when the purchaser has  
30     established the price being paid is at or below the market price for the item purchased. In



1 order to remain competitive, vendors must price their products at or below current market  
2 price to encourage sales. These transactions between an entity and vendors are considered to  
3 be arms-length transactions. Each side of the transaction is balanced by the interests of the  
4 entities or parties to the transaction.

5 Affiliates of regulated utilities that sell goods or services to customers other than the  
6 regulated utility, to be competitive, must price the goods or services they sell to those  
7 customers at or below the prevailing market price. If the affiliate chooses to sell goods or  
8 services to the regulated utility, then the lower of the regulated utility's cost or the market  
9 price the regulated utility would pay to another vendor would be the price charged by the  
10 affiliate.

11 An affiliate that provides goods and services to a regulated utility has an incentive to  
12 charge prices above the market rate to increase revenues. The regulated utility can recover its  
13 costs from its captive customers. If allowed, these captive regulated utility customers could  
14 pay higher costs for goods or services provided by the affiliate than from a third party vendor  
15 through rates. Captive regulated utility customers cannot easily choose another service  
16 provider for a lower price or better service. The following pages of my direct testimony  
17 support the fact that New Florence has violated the Commission's and FCC's affiliate  
18 transactions rule.

19 Q. Are there inherent problems in gathering information related to affiliate  
20 transactions?

21 A. Yes, there are. Problems exist when affiliates do not choose to provide access  
22 to information within their possession that supports the transactions. In the case of New  
23 Florence, access to information at the affiliate level was not readily available. The Staff had

1 to use Commission subpoenas to obtain documents and deposition testimony of the owners  
2 and employees of New Florence's affiliates to substantiate the nature of New Florence's  
3 affiliate transactions. The Staff obtained subpoenas for information directly related to its  
4 investigation of New Florence when New Florence's responses to Staff's data requests stated  
5 that the information requested was not in the possession of New Florence. Local Exchange  
6 Company, LLC (LEC) provided support services to New Florence and, until January 2005, its  
7 employees did the majority of the day-to-day administrative functions for New Florence.

8 The need to allocate certain costs between regulated utilities and their affiliates creates  
9 additional problems because the determination of appropriate allocation factors depends on  
10 having access to affiliate information.

11 Q. Is New Florence required to follow the affiliate transactions rule?

12 A. Yes.

13 Q. What information was critical to the Staff's determination of New Florence's  
14 compliance with the affiliate transactions rule?

15 A. Review of the audited financial statements, external auditor workpapers,  
16 general ledgers and source documents that support the general ledger transactions postings  
17 were critical to the Staff's review.

18 **Section 386.560 of the Missouri Revised Statutes**

19 Q. Please describe Section 386.560 RSMo 2000 of the Missouri statutes.

20 A. Section 386.560 provides:

21 Any person who shall willfully make any false entry in the accounts,  
22 books of account, records or memoranda kept by any corporation,  
23 person or public utility governed by the provisions of this chapter, or  
24 who shall willfully destroy, mutilate, alter or by any other means or  
25 device falsify the record of any such account, book of accounts, record  
26 or memoranda, or who shall willfully neglect or fail to make full, true

1 and correct entries of such account, book of accounts, record or  
2 memoranda of all facts and transactions appertaining to the business of  
3 such corporations, persons or public utilities, or who shall falsely make  
4 any statement required to be made to the public service commission, in  
5 which a penalty has not heretofore been provided for, shall be deemed  
6 guilty of a felony, and upon conviction shall be punished by a fine of  
7 not less than one thousand dollars nor more than five thousand dollars,  
8 or by imprisonment for not less than two years nor more than five  
9 years, or by both such fine and imprisonment; provided, that the  
10 commission may, in its discretion, issue orders specifying such  
11 operating, accounting or financial papers, records, books, blanks,  
12 tickets, stubs or documents, of carriers which may after a reasonable  
13 time be destroyed, and prescribing the length of time such books,  
14 papers or documents shall be preserved; and provided further, that such  
15 orders shall be in harmony with those of the Interstate Commerce  
16 Commission.

17 Q. Does the Staff allege that New Florence has violated both the Commission's  
18 affiliate transactions rule and the Missouri statute quoted above?

19 A. Yes, for the reasons discussed in the remainder of this testimony.

20 Q. Are the Commission rule and Missouri statute violations of New Florence  
21 interrelated?

22 A. Yes, they are. In order to understand how the activities of New Florence  
23 contributed to the rule and statute violations, one must understand the sequence of events that  
24 occurred at New Florence related to the purchase of the Siemens Carrier Networks, LLC  
25 (Siemens) switch.

26 **CHRONOLOGY OF SWITCH TRANSACTIONS**

27 Q. \*\* \_\_\_\_\_ \*\*

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Direct Testimony of  
Janis E. Fischer

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3 Q. \*\* \_\_\_\_\_ \*\*

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Direct Testimony of  
Janis E. Fischer

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Direct Testimony of  
Janis E. Fischer

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Direct Testimony of  
Janis E. Fischer

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**COUNT V – SWITCH RULE VIOLATION**

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18 **COUNT X – SWITCH STATUTE VIOLATION**

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**COUNT XI – LOANS STATUTE VIOLATION**

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Q.

Does this conclude your direct testimony?

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Yes, it does.

## **CASE PROCEEDING PARTICIPATION**

**JANIS E. FISCHER**

<b>PARTICIPATION</b>		<b>TESTIMONY</b>
<b>COMPANY</b>	<b>CASE NO.</b>	<b>ISSUES</b>
St. John's Regional Medical Center	TC-2004-0406	Violation of Annual Report Commission Rules
Heartland Health Systems, Inc.	TC-2004-0390	Violation of Annual Report Commission Rules
Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	GR-2004-0072	Rebuttal – Sharing of Merger Savings
Union Electric Company d/b/a AmerenUE	EO-2004-0108	Rebuttal - Affiliated Transactions, Assets/Liabilities
Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2004-0034 & HR-2004-0024	Rebuttal - Sharing of Merger Savings
Osage Water Company	ST-2003-0562 & WT-2003-0563	Rebuttal – EU Operation & Maintenance Agreement, Use of Projected Expenses to Determine Cost of Service for Ratemaking, Utility Plant-Rate Base, Depreciation Expense and Depreciation Reserve
Osage Water Company	ST-2003-0562 & WT-2003-0563	Direct - Test Year, Accounting Schedules, Revenues and Cost of Removal and Salvage
Union Electric Company d/b/a AmerenUE	GR-2003-0517	Direct - Rate Case Expense, Legal Expense, Corporate Franchise Tax, Cost of Removal and Salvage, Pensions and OPEBs
Laclede Gas Company	GR-2002-356	Direct - Pensions and OPEBs, Rate Base Asset, Incentive Compensation
Missouri Gas Energy, Division of Southern Union Company	GR-2002-292	Direct - Pensions and OPEBs, Other Employee Benefits, SERP, COLI Amortization
Missouri-American Water Company	WO-2002-273	Rebuttal - Security Costs, Accounting Authority Order Staff Criteria
Citizens Electric Company	ER-2002-217	Direct - Test Year, Accounting Schedules, Revenues, Purchased Power and Transmission, Other Revenues, Uncollectibles Expense
Union Electric Company d/b/a AmerenUE	EC-2002-1	Surrebuttal - Incentive Compensation
Missouri Public Service, Division of UtiliCorp United, Inc.	ER-2001-672 EC-2002-265	Direct - Pensions and OPEBs, Merger Transition/Transaction Costs, Merger Savings-SJLP, Revenues, Uncollectibles
Missouri Public Service, Division of UtiliCorp United, Inc.	ER-2001-672 EC-2002-265	Rebuttal - Merger Transition/Transaction Costs, Merger Savings-SJLP, Revenues, Uncollectibles

PARTICIPATION		TESTIMONY
COMPANY	CASE NO.	ISSUES
The Empire District Electric Company	ER-2001-299	Direct - Payroll, Pensions and OPEBs, Payroll Related Benefits, Payroll Taxes, Outside Services, Merger Costs, Miscellaneous Expenses True-up Rebuttal – Chemicals, Property Taxes
The Empire District Electric Company	ER-2001-299	Rebuttal - Payroll Expense, Bonuses and Incentive Pay
The Empire District Electric Company	ER-2001-299	Surrebuttal - Payroll Expense, Bonuses and Incentive Pay
The Empire District Electric Company	ER-2001-299	Supplemental Surrebuttal - Incentive Awards
The Empire District Electric Company	ER-2001-299	True-up Direct - Payroll, Payroll Taxes, Payroll Related Benefits
KLM Telephone Company	TT-2001-120	Direct - Revenue Requirement
UtiliCorp United, Inc./ Empire District Electric Company	EM-2000-369	Rebuttal - Merger Savings, Acquisition Adjustment, Tracking of Merger Savings
UtiliCorp United, Inc./ St. Joseph Light & Power Company	EM-2000-292	Rebuttal - Merger Savings, Acquisition Adjustment, Tracking of Merger Savings
Osage Water Company	WA-98-236 WC-98-211	Rebuttal - Financial Viability, Organizational Costs
Western Resources/ Kansas City Power & Light Company	EM-97-515	Rebuttal - Merger Savings, Tracking of Merger Savings, Transaction Costs, Costs to Achieve
Union Electric Company d/b/a AmerenUE	GR-97-393	Direct - Cash Working Capital, Materials/Supplies, Prepayments, Federal/State Income Tax Offset, Purchased Gas Offset, Interest Expense Offset
The Empire District Electric Company	ER-97-81	Direct - Dues and Donations, Advertising, Rate Case Expenses, PSC Assessment, Non-Health Insurance, Miscellaneous Expenses

Schedules 2 through 4

Deemed

Highly Confidential

In Their Entirety