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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 6th
day of August, 1993.

In the matter of Missouri Public Service, a division)
of UtiliCorp United, Inc.'s proposed tariffs to)
increase rates for electric service provided to) CASE NO. ER-93-37
customers in the Missouri service area of the)
Company.)

ORDER GRANTING REHEARING AND CLARIFICATION

On July 31, 1992, Missouri Public Service, a division of UtiliCorp United, Inc. (MoPub) submitted tariff sheets designed to increase rates for electric service. On June 18, 1993, the Commission issued a Report and Order in this case which approved, among other things, an increase in revenues of \$4,865,804 for MoPub. The Commission's decision was reached after consideration of a nonunanimous Stipulation filed by MoPub, the Staff of the Commission (Staff) and Intervenor Sedalia Industrial Energy Association (Association), and consideration of several issues disputed by the Office of the Public Counsel (Public Counsel). On June 28, 1993, Public Counsel filed an Application For Rehearing and Staff filed a Motion For Clarification. On July 2, 1993, MoPub filed a response to Public Counsel's Application For Rehearing and Staff's Motion For Clarification.

Pursuant to Section 386.500, RSMo 1986, the Commission shall grant a rehearing "if in its judgment sufficient reason therefor be made to appear." Upon review of Public Counsel's application, Staff's motion, MoPub's response, and based upon its own reconsideration of the June 18, 1993 Report and Order, the Commission finds that there is sufficient reason to grant a rehearing. The Commission also finds that some clarification of its Report and Order in this

case is warranted. Thus, the Commission determines that Public Counsel's Application For Rehearing and Staff's Motion For Clarification should be granted.

Pursuant to 4 CSR 240-2.115 a nonunanimous stipulation of any or all issues in a case may be filed by two or more parties. The stipulation is treated as nonunanimous if a party objects to all or a part of the stipulation and requests a hearing on the issues to be contested by the nonsignatory party(ies). In this case the nonunanimous stipulation was filed near the end of the hearing when most of the evidence and testimony had already been placed on the record. The parties agreed to proceed with the hearing and allow Public Counsel to raise contested issues in its brief. Whereas Public Counsel, as the nonsignatory party, would normally file testimony on the issues it wished to raise, thereby notifying the Commission and the other parties of those issues, Public Counsel first raised its disputed issues in its initial brief. The Commission was then left with a record without support by the signatory parties for the settled issues and one in which Public Counsel attempted to support its position on some contested issues with evidence of a party (Staff) which had been compromised by settlement. Due to the parties' agreement to utilize the testimony and evidence already on the record, Public Counsel was able to use the record to contest issues even though it had not presented any testimony or evidence on some of the issues.

Adopting a signatory party's original testimony on an issue avails the nonsignatory party very little. Not only has the signatory party compromised its original position, thereby rendering its original evidence of little value, but even if the nonsignatory party prevailed on that issue, the Commission has no evidence from which to make an adjustment. Where, as in this case, the actual point of settlement on particular issues is not specified, additional evidence must be adduced by those supporting the settlement when a part of the settlement

is contested. In addition, where a party contests a settled issue no adjustment can be made without evidence from the party contesting the issue.

In view of the foregoing, the Commission determines that additional testimony and evidence on the disputed issues in this case is warranted. The parties should discuss substantive and procedural issues at a prehearing conference and file a proposed procedural schedule for the receipt of the additional testimony and evidence. Furthermore, the Commission is of the opinion that, inasmuch as the disputed issues are to be reconsidered, the tariffs filed by MoPub pursuant to the June 18, 1993 Report and Order in this case should be made interim subject to refund pending an order on rehearing of the disputed issues.

Having considered Staff's Motion For Clarification, the Commission determines that some clarification of the points cited by Staff is warranted. Inasmuch as there is no opposition to the depreciation expense levels and depreciation rates included in the Stipulation, the Commission determines that Staff's depreciation expense levels and depreciation rates, including the curve shape, salvage, cost of removal and life components of those depreciation rates, as they are listed on Attachment 4 to the Stipulation should be adopted. Also, inasmuch as there is no opposition to MoPub using its calculated ERISA contribution as its pension expense for regulatory purposes, the Commission determines that MoPub should be authorized to reflect in its accounts pension costs equal to contributions made to its established pension funds as is set out in the Stipulation.

This order should clarify the procedure by which a nonunanimous stipulation is considered. When a nonunanimous stipulation is filed, the nonsignatory party must notify the Commission and the stipulating parties of the specific issues

which it is disputing and must adduce evidence or testimony on those specific issues. The stipulating parties must likewise file evidence and testimony supporting settlement of the disputed issues.

The Commission considers a nonunanimous stipulation as merely a change of position by the signatory parties from their original positions to the stipulated position. The new position must still be supported and the stipulating parties, particularly the company, bear the risk concerning any disputed issues. Should the nonsignatory party prevail on any of the disputed issues, the value of that issue would be subtracted from the stipulated revenue requirement agreed to by the company.

IT IS THEREFORE ORDERED:

1. That the Office of the Public Counsel's Application For Rehearing is hereby granted.

2. That the Missouri Public Service Commission Staff's Motion For Clarification is hereby granted.

3. That the tariffs filed by Missouri Public Service, a division of UtiliCorp United, Inc., pursuant to the June 18, 1993 Report and Order in this case shall be interim subject to refund as of the effective date of this Order pending a final order in this case.

4. That the parties shall file additional testimony and evidence on the disputed issues in this case.

5. That a prehearing conference is set for 10:00 a.m. on August 27, 1993, to be held in the Commission's hearing room located on the fifth floor of the Harry S. Truman State Office Building, 301 West High Street, Jefferson City, Missouri.

6. That the parties shall file a proposed procedural schedule for the receipt of the additional testimony and evidence on or before August 30, 1993.

7. That the depreciation expense levels and depreciation rates which are listed on Attachment 4 to the Stipulation in this case are hereby adopted.

8. That Missouri Public Service, a division of UtiliCorp United, Inc., is hereby authorized to reflect in its accounts pension costs equal to contributions made to its established pension funds as set out in the Stipulation to this case.

9. That this Order shall become effective on August 17, 1993.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
and Kincheloe, CC., Concur.
Crompton, C., Absent.