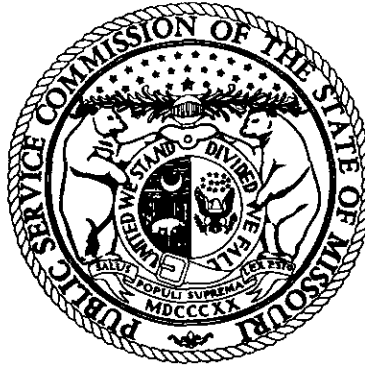


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the matter of Missouri Public Service's)
Tariff Revisions to be Reviewed in its)
1995-1996 Actual Cost Adjustment.)

Case No. GR-96-192

REPORT AND ORDER

Issue Date: December 16, 1998

Effective Date: December 29, 1998

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Public Service's)
Tariff Revisions to be Reviewed in its)
1995-1996 Actual Cost Adjustment.) Case No. GR-96-192

APPEARANCES

Dean Cooper, Attorney at Law, Brydon, Swearingen & England, P.C., P.O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for UtiliCorp United, Inc., d/b/a Missouri Public Service.

Cherlyn D. McGowan, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Douglas E. Micheel, Senior Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of Public Counsel.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History

Case No. GR-96-192 was established on December 13, 1995, for the purpose of receiving UtiliCorp United Inc., d/b/a Missouri Public Services' (UtiliCorp's) annual cost adjustment (ACA) filings for the 1995-1996 period. On October 31, 1996, the Commission issued its standard form protective order in response to a Motion for Protective Order filed by the Staff of the Missouri Public Service Commission

(Staff). Staff filed its recommendation on July 1, 1997. On July 3, the Commission issued a notice to the parties indicating that any response to Staff's recommendation was to be filed no later than August 4. On August 15, UtiliCorp filed its Response to Staff's Recommendation along with a Motion for Leave to Late-File Response to Staff Recommendation. On August 26, the Commission issued an Order Granting UtiliCorp's Motion for Leave to Late-file Response to Staff Recommendation and directed the parties to file a proposed procedural schedule or stipulation and agreement no later than September 12.

Staff and UtiliCorp each filed proposed procedural schedules, and on September 25, the Commission issued its Order Establishing Procedural Schedule and Providing Notice. Pursuant to the procedural schedule, the parties prefiled direct, rebuttal and surrebuttal testimony. On February 10, 1998, UtiliCorp filed a Motion to Supplement Prefiled Rebuttal Testimony of Mr. Warnock. On February 18, Staff filed a response indicating that Staff did not object to UtiliCorp's Motion to Supplement provided that Staff was afforded an opportunity to file reasonable supplemental surrebuttal. On February 23, the Commission issued an order granting UtiliCorp's Motion to Supplement which granted Staff an opportunity to file reasonable supplemental surrebuttal testimony. Staff filed the supplemental surrebuttal testimony of Mr. Wallis on February 27.

A prehearing conference was held on March 3. The parties filed a Hearing Memorandum on March 11. UtiliCorp filed a Motion to Defer

Capacity Release Issues on March 13. On March 23, the parties filed a Unanimous Stipulation and Agreement Concerning the Storage Utilization Issue. The evidentiary hearing was held on March 24. On March 26, Staff filed Staff Data Request 74 & Response Workpapers marked as late-filed Exhibit No. 22. No party filed an objection to late-filed Exhibit No. 22. UtiliCorp and Staff filed initial and reply briefs. Public Counsel filed letters indicating that it chose not to file either initial or reply briefs.

Stipulation and Agreement

UtiliCorp, Staff and Public Counsel filed their Unanimous Stipulation and Agreement Concerning Storage Issue (Stipulation and Agreement) on March 23. The Stipulation and Agreement states that Staff had proposed an adjustment to UtiliCorp's Southern System costs in the amount of approximately \$510,000, based on Staff's belief that UtiliCorp's storage withdrawals during the 1995/1996 winter season were not reasonable. UtiliCorp had taken the position that storage withdrawals were reasonable given the circumstances existing at the time. The Stipulation and Agreement states that the parties have reached a resolution and settlement of the Storage Utilization issue which they believe to be reasonable and beneficial to ratepayers in that it would speed the resolution of this issue and avoid the expenses associated with litigation and possible appeal.

The parties agreed that UtiliCorp's Southern System gas costs should be adjusted in the amount of \$190,000. The parties further agreed that to the extent that the Commission approves and adopts the matters addressed in the Stipulation and Agreement, the parties would waive, with respect to the Storage Utilization issue only, their rights to call, examine and cross-examine witnesses; present oral argument or written briefs; and their rights to the reading of the transcript and to judicial review.

The Commission has reviewed the Stipulation and Agreement and determines that it is a reasonable resolution of the Storage Utilization issue. The Commission finds that the Stipulation and Agreement is beneficial to ratepayers in that it will avoid the expenses associated with litigation and possible appeal of this issue and will speed the resolution of this issue. Therefore, the Commission will order the approval of the Stipulation and Agreement.

Motion to Defer Capacity Release Issues

UtiliCorp filed a motion on March 13 requesting that the Commission issue an order deferring the capacity release issues in the 1994-1995 ACA and 1995-1996 ACA Cases to Case No. OX-98-183, *In the Matter of a Rulemaking to Govern Interaffiliate Transactions Among Electric, Gas, Hearing, Sewer, and Water Companies*. UtiliCorp argued that the adjustments were not ripe for decision, that the rulemaking case involved the same parties and the same issues, and that the

issues would more appropriately be addressed in the rulemaking case.

Staff opposed that motion.

UtiliCorp's motion to defer the capacity release issues to the rulemaking case was rendered moot by the Commission's April 21 order in Case Number OX-98-183, which rejected all the proposed rules that had been filed in that case and closed the case effective May 1. As UtiliCorp's motion is now moot, it is denied.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

Staff witness Michael J. Wallis testified regarding Staff's proposed capacity release adjustment. Mr. Wallis testified that firm captive customers of UtiliCorp did not receive full credit for the total transportation charges collected from end-user customers by UtiliCorp Energy Solutions (UES), a marketing affiliate of UtiliCorp. Mr. Wallis testified that UES has established a special niche market with regard to the end-use customers of UtiliCorp because of: (1) UES' affiliate

relationship with UtiliCorp; (2) UES' access to the system assets of UtiliCorp; (3) UES' access to the end-user customers of UtiliCorp; and (4) UES' provision of a bundled sales service to UtiliCorp's end-user customers. As a result of UES' use of the pipeline transportation contracts and pipeline capacity to serve UtiliCorp's end-user customers and because the firm captive customers are paying the fixed/reservation charges associated with the pipeline transportation service, Mr. Wallis stated that the captive firm customers of UtiliCorp are entitled to a credit equal to the transportation charges assessed to the end-user customers of UtiliCorp by UES.

UtiliCorp witness Daniel W. Warnock, the Vice President - Gas Supply for UtiliCorp, testified regarding the release of capacity from UtiliCorp to UES. Mr. Warnock testified that UES does not have a competitive advantage over other marketers on UtiliCorp's system. Mr. Warnock pointed out that UtiliCorp releases its capacity to entities other than UES and that almost half of the transportation customers on UtiliCorp's system are served by marketers other than UES. According to Mr. Warnock, UtiliCorp reviews the interstate pipeline's electronic bulletin board and calls other LDCs, marketers and brokers to determine that UES pays the prevailing market rate when it purchases capacity from UtiliCorp.

Mr. Warnock testified that Staff's recommendation will result in capacity transfers from UtiliCorp to UES at above-market rates. The result of this action, according to Mr. Warnock, is that UES will be forced to get its capacity from a source other than UtiliCorp, at a

market based rate, and UtiliCorp will be forced to find another purchaser for its capacity. Mr. Warnock testified that there is a high likelihood that another purchaser will not be found for at least some of the capacity, so the end result will be lower capacity transfer credits to UtiliCorp's customers, which will harm the general system customers.

The Commission finds that it has previously addressed this issue in the Report and Order issued on September 23, 1998 in case number GR-95-273. In rejecting the Staff's position in that case, the Commission concluded that:

UtiliCorp's captive firm customers received the appropriate capacity release credits during the 1994-95 ACA period. UtiliCorp presented persuasive testimony demonstrating that its sales of released capacity to UES were made at market rate. Staff's testimony corroborated UtiliCorp's assertion. Staff failed to demonstrate persuasively any competitive advantage accruing to UES as a result of these sales, or any improper affiliate transactions.

No evidence was presented in this case which would lead to a different result for the 1995-96 ACA period that is being reviewed in this case.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

UtiliCorp United Inc., d/b/a Missouri Public Service, is a gas corporation as defined under Section 386.020(18), RSMo Supp. 1997.

UtiliCorp United Inc., d/b/a Missouri Public Service, is an investor-owned public utility engaged in the provision of natural gas service in the State of Missouri and, therefore, is subject to the

jurisdiction of the Missouri Public Service Commission under Chapters 386 and 393, RSMo.

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, pursuant to Section 536.060, RSMo Supp. 1997.

Orders of the Commission must be based upon competent and substantial evidence on the record. Section 536.140, RSMo (1994). Based upon its findings of fact, the Commission concludes that the adjustments proposed by Staff to UtiliCorp's gas costs for the 1995-1996 period, and disputed by UtiliCorp, are not supported by competent and substantial evidence and shall not be implemented.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed by UtiliCorp United Inc., d/b/a Missouri Public Service, the Office of the Public Counsel, and the Staff of the Missouri Public Service Commission on March 23, 1998, is hereby approved (See Attachment A).

2. That the Motion to Defer Capacity Release Issues filed by UtiliCorp United Inc., d/b/a Missouri Public Service, on March 13, 1998, is denied as moot.

3. That Staff's recommendation to reduce UtiliCorp United Inc., d/b/a Missouri Public Service, gas costs by an amount equal to the transportation charges assessed to the end-user customers of UtiliCorp by UtiliCorp Energy Solutions, is denied.

4. That the Staff Data Request 74 & Response Workpapers filed on March 26, 1998, are received into the record as late-filed Exhibit No. 22.

5. That those motions and objections not specifically ruled on in this order are hereby denied or overruled.

6. That this Report and Order shall become effective on December 29, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crumpton, Murray, and Drainer, CC., concur;
Lumpe, Ch., dissents; certify compliance with
the provisions of Section 536.080, RSMo 1994.
Schemenauer, C., not participating.

Dated at Jefferson City, Missouri,
on this 16th day of December, 1998.

FILED

MAR 23 1998

MISSOURI
PUBLIC SERVICE COMMISSION

Case No. GR-96-192

UNANIMOUS STIPULATION AND AGREEMENT CONCERNING THE STORAGE UTILIZATION ISSUE

Comes now UtiliCorp United Inc., d/b/a Missouri Public Service (“MPS”), the Missouri Public Service Commission (“Commission”) Staff (“Staff”) and the Office of the Public Counsel (“OPC”) and state to the Commission that all Parties hereby stipulate and agree as follows:

1. Staff has proposed an adjustment to MPS's Southern System gas costs in the amount of approximately \$510,000, based upon Staff's belief that MPS's storage withdrawals during the 1995/1996 winter season were not reasonable (described in the Hearing Memorandum as Contested Issue 1 -- Storage Utilization). MPS has taken the position that the utilization of its storage was reasonable given the circumstances existing at the time.

2. The Parties initiated discussion to determine whether an amicable settlement of this issue was possible shortly before the prehearing conference. As a result of these discussions, the Parties have now reached a resolution and settlement of the Storage Utilization issue which they believe to be reasonable and beneficial to ratepayers in that it will avoid the expenses associated with litigation and possible appeal of this issue and speed resolution of the issue.

3. The Parties agree that MPS's Southern System gas costs should be adjusted in the amount of \$190,000. This adjustment represents the compromise of a disputed issue and by entering into this Settlement and Agreement no Party acquiesces or consents to the position of

another with respect to the Storage Utilization issue or any related allegation of fact.

4. None of the Parties shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.

5. Because this Stipulation and Agreement has resulted from negotiations among the Parties, the terms of the Stipulation and Agreement are interdependent. In the event the Commission does not approve and adopt the matters addressed in this Stipulation and Agreement, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

6. To the extent the Commission approves and adopts the matters addressed in the Stipulation and Agreement, the Parties waive, with respect to the Storage Utilization issue only: their respective rights pursuant to Section 536.070(2) (RSMo. 1994) to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, (RSMo. 1994); their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 (RSMo. 1994); and their respective rights to judicial review pursuant to Section 386.510 (RSMo. 1994). If this Stipulation and agreement is not approved by the Commission, the Parties request that the issue be set for hearing, to include the opportunity for the Staff and OPC to cross-examine MPS witness Dennis L. Odell and the opportunity for MPS and OPC to cross-examine Staff witnesses Michael J. Wallis and Randy L. Flowers as to the Storage Utilization issue.

7. The parties agree that all of the prefiled testimony submitted by MPS witness Dennis L. Odell in this case shall be received into evidence without the necessity of his taking

the stand.

8. The Staff may submit to the Commission a memorandum explaining its rationale for entering into the Stipulation and Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all Parties. All memoranda submitted by the Parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all Parties, and shall not become a part of the record of this proceeding or bind or prejudice the Party submitting such memorandum in any future proceeding or in this proceeding, whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

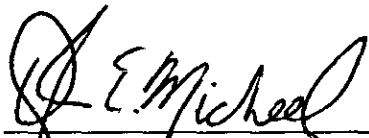
9. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

10. To assist the Commission in its review of this Stipulation and Agreement, the

Parties also request that the Commission advise them of any additional information that the Commission may desire from the parties relating to the matters addressed in this Stipulation and Agreement, including any procedures for furnishing such information to the Commission.


WHEREFORE, the undersigned Parties respectfully request that the Commission issue its Report and Order approving all of the specific terms and conditions of this Unanimous Stipulation and Agreement.

Respectfully submitted,



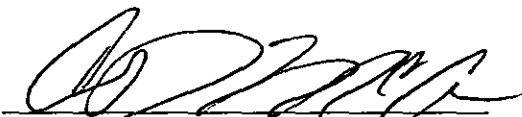
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ATTORNEY FOR THE STAFF OF
THE MISSOURI PUBLIC SERVICE
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 23rd day of March, 1998.

A handwritten signature in cursive script, appearing to read "D. M. F.", is written over a horizontal line.

Service List for Case No. GR-96-192
Revised: March 23, 1998

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