

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
October 17, 2000**

CASE NO: GE-2000-639

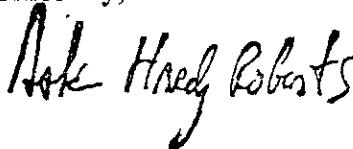
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Dean L. Cooper
Brydon, Swearingen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 17th
day of October, 2000.

In the Matter of the Application of)
UtiliCorp United Inc. d/b/a Missouri)
Public Service for a Waiver of)
Commission Rules 4 CSR 240-40.015 and)
4 CSR 240-40.016 Concerning Capacity)
Release Credits)

Case No. GE-2000-639

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

On April 12, 2000, UtiliCorp United Inc. d/b/a Missouri Public Service (UtiliCorp) applied to the Missouri Public Service Commission (Commission) for waiver from Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) concerning capacity release credits. According to the application, UtiliCorp sought the waiver so it could continue operating in accordance with the process reviewed by the Commission in cases number GR-95-273 and GR-96-192. In those cases, the Commission examined the process by which UtiliCorp released capacity to unregulated affiliate entities and the credits provided in exchange for those releases. Releases to regulated affiliates and non-affiliates were not in dispute.

On June 28, 2000, the Staff of the Commission (Staff) filed its memorandum which contained a recommendation that the waiver be granted and set forth several conditions that Staff concluded that UtiliCorp should follow.

UtiliCorp filed its response July 28, 2000, which stated that it had an alternative proposal which it believed would be more straightforward and satisfy the objectives identified by the Staff.

Although no party formally asked for a prehearing conference, the Commission found that this case was contested. Thus, on August 16, 2000, the Commission scheduled a prehearing conference and also set a date for the filing of a proposed procedural schedule. The prehearing conference was held as scheduled on September 18, 2000.

On September 26, 2000, all of the parties (i.e., Staff, UtiliCorp and the Office of the Public Counsel (Public Counsel)) filed a unanimous stipulation and agreement (Agreement), which is attached hereto as Attachment A.

The parties informed the Commission that the Agreement was the result of discussion between the parties, and the parties stated that they now believe that the areas of disagreement have been resolved in a way that is reasonable and just. Accordingly, the Agreement stated that the Commission should issue an order granting UtiliCorp a temporary waiver for good cause from Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) solely for natural gas pipeline capacity release transactions for a two-year trial period with conditions.

The conditions, briefly set forth, are:

- a) Before releasing capacity to a non-regulated affiliate, UtiliCorp shall post (or offer) such available capacity for bid on the interstate pipelines' electronic bulletin boards. UtiliCorp will not prearrange a release to a non-regulated affiliate;¹ and,

¹ The Agreement noted that UtiliCorp would be allowed to perform prearranged capacity release transactions with non-affiliates. Likewise, according to the Agreement, UtiliCorp does not propose to post (or offer) for bid capacity releases by one regulated Missouri operation to another regulated Missouri operation. The Agreement made clear that this does not reflect any prejudgment of these transactions by the Staff or Public Counsel for ratemaking purposes.

- b) UtiliCorp be required to collect, retain and include in the Company's annual actual cost adjustment (ACA) filing evidence of the posting of the capacity and a summary of the capacity releases which have been awarded by the interstate pipeline in the relevant time period. Copies of screens printed from the interstate pipelines' electronic bulletin boards reflecting the capacity being offered and capacity releases which have been awarded shall satisfy this requirement.
- c) UtiliCorp be required (for all capacity release transactions involving any regulated entity, affiliate, or division) to collect, retain and include in the Company's annual ACA filing (1) a summary of the prearranged capacity release transactions which have been awarded to Company's regulated entities in the relevant time period and (2) copies of screens printed from the electronic bulletin boards reflecting the capacity being offered and capacity releases which have been awarded for all similar transactions on the date of any prearranged deals to regulated entities of UtiliCorp.

Briefly, the Agreement also contained provisions that:

1. None of the Parties shall be bound in this or any other proceeding, except as specified;
2. Because the Agreement resulted from negotiations, the terms are interdependent. If the Commission does not approve the Agreement, then it is void;
3. If the Commission approves the Agreement, the Parties waive their rights to call, examine and cross-examine witnesses; to present oral argument or written briefs; to the reading of the transcript by the Commission; to seek rehearing; and to judicial review. If the Commission does not approve the

Agreement, the Parties requested that a procedural schedule be established which provides for the filing of testimony and a hearing, to include the opportunity for cross-examination.

4. The Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into the Agreement. Each party shall be served and shall be entitled to respond.
5. The Staff shall also have the right to provide, at an agenda meeting, whatever oral explanation the Commission requests.

On September 28, 2000, the Commission issued its order directing Staff to file its recommendation and memorandum concerning the stipulation and agreement.

On the same day, Staff filed its suggestions in support of the stipulation and agreement, setting forth the following reasons why it was requesting the Commission to issue an order granting UtiliCorp's temporary waiver for a period of two years from Commission Rules 4 CSR-40.015(2)(A) and 4 CSR 240-40.016(3)(A) with regard to capacity release transactions only in conformity with the Agreement:

The [Agreement] recognizes that the affiliate transaction rule need not apply to capacity release transactions between the [local distributing company (LDC)] and its affiliates in that capacity is released or sold at going market rates and not at the fully distributed cost (FDC) of the capacity. The FDC value of released capacity would be much greater than the market rates and if used would cause the capacity to be very difficult to sell in the market place.

The [Agreement] requires UtiliCorp to forgo any prearranged deals with its unregulated marketing affiliates. The only capacity release transactions between the LDC and its unregulated marketing affiliates which will be allowed are bulletin board releases which are open and available to all marketers whether affiliated or not.

The [Agreement] requires UtiliCorp to provide detailed documentation to the Staff of all of its capacity releases to affiliates whether those affiliates are regulated or unregulated.

The [Agreement] is for a temporary period of two years. This time period will allow the Staff to monitor the program and review the documentation. The Staff will be able to determine if the program is working properly and that the documentation is adequate. Staff can determine if the waiver should be extended, made permanent, modified or allowed to terminate.

No party filed a response to Staff's suggestions in support of the stipulation and agreement.

In the Agreement, the parties requested that the Commission issue its order approving all of the specific terms and conditions of the Agreement.

There is no need for an evidentiary hearing since no party requested an evidentiary hearing and the Commission will cancel the remainder of the procedural schedule.

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no party requests an evidentiary hearing, the Commission may determine that an evidentiary hearing is not necessary and that the Commission may make a decision based on the Agreement. See State ex rel. Deffenderfer Enterprises, Inc. v. P.S.C., 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission concludes that all issues were settled by the Agreement. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in a case, pursuant to Section 536.060 RSMo Supp. 1999.

The Commission will approve the Agreement.

IT IS THEREFORE ORDERED:

1. That the Missouri Public Service Commission approves the unanimous stipulation and agreement filed on September 28, 2000, signed by all the parties, and whose terms are set forth in Attachment A.

2. That those portions of the procedural schedule which have not been fulfilled, shall be canceled.
3. That this order shall become effective on October 27, 2000.
4. That this case may be closed on October 28, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, Schemenauer,
and Simmons, CC., concur

Hopkins, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

SEP 26 2000

Missouri Public
Service Commission

In the Matter of the Application)
of UtiliCorp United Inc. d/b/a)
Missouri Public Service for a Waiver)
of Commission Rules 4 CSR 240-40.015)
and 4 CSR 240-40.016 Concerning)
Capacity Release Credits.)

Case No. GE-2000-639

UNANIMOUS STIPULATION AND AGREEMENT

Come 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. On April 12, 2000, UtiliCorp filed with the Commission its Application for Waiver for good cause from Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) as to natural gas pipeline capacity release credits.
2. On or about June 28, 2000, the Staff filed its Memorandum and Recommendation concerning UtiliCorp's application. The Staff recommended that the Commission issue an order with regard to capacity release transactions containing certain conditions.
3. UtiliCorp filed its Response to Staff Memorandum and Recommendation on July 28, 2000.
4. As a result of subsequent discussion between the parties, the parties now believe that the areas of disagreement have been resolved in a way that is reasonable and just. Accordingly, it is agreed that the Commission should issue an order granting UtiliCorp a temporary waiver for good cause from Commission Rules 4 CSR 240-40.015(2)(A) and 4 CSR 240-40.016(3)(A) solely for natural gas pipeline capacity release transactions for a two-year trial period with the following

conditions:

- a) Before releasing capacity to a non-regulated affiliate, UtiliCorp shall post (or offer) such available capacity for bid on the interstate pipelines' electronic bulletin boards. UtiliCorp will not prearrange a release to a non-regulated affiliate;¹ and,
 - b) UtiliCorp be required to collect, retain and include in the Company's annual ACA filing evidence of the posting of the capacity and a summary of the capacity releases which have been awarded by the interstate pipeline in the relevant time period. Copies of screens printed from the interstate pipelines' electronic bulletin boards reflecting the capacity being offered and capacity releases which have been awarded shall satisfy this requirement.
 - c) UtiliCorp be required (for all capacity release transactions involving any regulated entity, affiliate, or division) to collect, retain and include in the Company's annual ACA filing (1) a summary of the prearranged capacity release transactions which have been awarded to Company's regulated entities in the relevant time period and (2) copies of screens printed from the electronic bulletin boards reflecting the capacity being offered and capacity releases which have been awarded for all similar transactions on the date of any prearranged deals to regulated entities of UtiliCorp.
5. 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.

¹ UtiliCorp would be allowed to perform prearranged capacity release transactions with non-affiliates. Likewise, UtiliCorp does not propose to post for bid capacity released by one Missouri regulated operation to another regulated Missouri operation. This does not reflect any prejudgment of these transactions by the Staff or OPC for ratemaking purposes.

6. 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 in their entirety, then this Stipulation and Agreement shall be void and no signatory shall be prejudiced or bound by any of the agreements or provisions hereof for any purpose.

7. In the event the Commission approves and adopts the matters addressed in the Stipulation and Agreement, the Parties waive, with respect to the issues resolved herein: 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); their respective rights to seek rehearing pursuant to Section 386.500, 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 a procedural schedule be established which provides for the filing of testimony and a hearing, to include the opportunity for cross-examination.

8. At the request of the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record shall be served with a copy of any such 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.

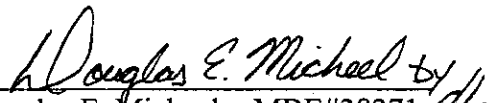
9. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other 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.

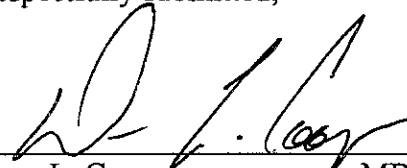
11. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement and the other parties shall have the right to file responsive pleadings.

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

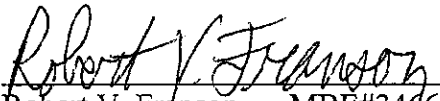
Respectfully submitted,


Douglas E. Micheel MBE#38371 *d/c*
Senior Public Counsel
Governor Office Building, Suite 650
Jefferson City, MO 65101
(573) 751-5560

ATTORNEY FOR THE OFFICE
OF THE PUBLIC COUNSEL


Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
573/635-7166

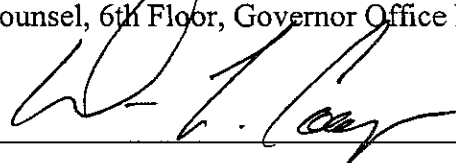
ATTORNEYS FOR UTILICORP UNITED INC.,
d/b/a MISSOURI PUBLIC SERVICE


Robert V. Franson MBE#34663
Assistant General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-6651

ATTORNEY FOR THE STAFF OF
THE MISSOURI PUBLIC SERVICE
COMMISSION

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was either hand-delivered or mailed, U.S. Mail, postage prepaid, on the 26th day of SEPTEMBER 2000, to: Robert V. Franson, Public Service Commission, Governor Office Building, Jefferson City, Mo 65101; and, Douglas Micheel, Office of the Public Counsel, 6th Floor, Governor Office Building, Jefferson City, Mo 65101.



Att/Sec'y: Hopkins/Boyer

Date Circulated 10-11 CASE NO. FE-2000-639

WJ
Lampe, Chair

mad
Draher, Vice Chair

DM
Murray, Commissioner

KS
Schenauer, Commissioner

Simmons, Commissioner

Agenda Date 10-17

Action taken: 5-045

Must Vote Not Later Than _____

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 17th day of Oct. 2000.

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

