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



In the matter of the Application of
UtiliCorp United Inc., d/b/a Missouri
Public Service, for authority to sell
a part of its franchise, works or
system.

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) Case No. GM-97-435
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REPORT AND ORDER

Issue Date: October 15, 1998

Effective Date: October 27, 1998

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APPEARANCES

Dean L. Cooper, Attorney, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for UtiliCorp United Inc.

Richard S. Brownlee, III, Attorney, Hendren and Andrae, 221 Bolivar, Jefferson City, Missouri 65101, for Williams Gas Pipelines Central, Inc., f/k/a Williams Natural Gas Company.

Douglas E. Micheel, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

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

REGULATORY

LAW JUDGE:

Lewis R. Mills, Jr.

REPORT AND ORDER

Procedural History

On April 3, 1997, UtiliCorp United Inc. d/b/a Missouri Public Service (UCU) filed an application with the Commission requesting authorization to sell a 5.3 mile long, 12-inch diameter natural gas transmission pipeline to Williams Natural Gas Company, now called Williams Gas Pipelines Central, Inc. (WNG). The pipeline is currently being used to supply gas to UCU's Greenwood generation facility. On

May 7, the Commission granted WNG intervention. The parties filed testimony pursuant to the procedural schedule established by the Commission, and an evidentiary hearing was held on November 24 and 25.

Discussion

The terms of the transaction are rather complex. In general, WNG will receive the pipeline and a stream of income designed to pay back its investment in the pipeline within seven years. UCU will receive payment of approximately \$1.85 million and a certain amount of natural gas transmission on the WNG system.

Specifically, the transaction for which UCU seeks Commission approval is the sale of the pipeline and related assets for \$1.85 million pursuant to a Pipeline Sale and Purchase Agreement (the Agreement) between the Missouri Public Service (MPS) division of UCU and WNG. Two contracts were entered into by UCU and WNG before the Agreement was finalized, and these two contracts are now in effect and will remain in effect after the sale of the pipeline pursuant to the Agreement is consummated. The first contract (the Firm Contract) is for a term of seven years and provides for firm transportation of up to 8,700 cubic feet per day (MCF/day) in WNG's production area at a cost to UCU of \$640,000/year. The second contract (the Interruptible Contract) provides for interruptible transportation of up to 50,000 dekatherms (Dth)¹ per day through WNG's market area.

The issue at the heart of this case is whether the proposed transaction as a whole is detrimental to the public interest. Only if

¹ Assuming a heat content of 1000 Btu/cubic foot, one Dth, one MCF, and one MMBTU can be considered equivalent.

the Commission finds that the transaction is detrimental can it withhold approval.

Much of the testimony in the case dealt with the consequences of recognizing the cost of the transaction in rates. The Commission will not order any rates changed in this case, as that is properly done in a rate case when all relevant factors can be examined. As a result, the evidence concerning the possible detrimental effects of including the transaction in rates, while a cause for concern, is not determinative of the issues in this case.

Findings of Fact

A. Application Not Detrimental to the Public Interest

The main issue in this case is whether the sale is detrimental to the public interest. Both UCU and WNG assert that WNG, since it is a pipeline company, has the financial resources, the experience, and the personnel to reliably operate the pipeline and ensure that gas is delivered to the plant. They argue that since reliability will not be compromised by the sale, and that since they propose no change in rates, ratepayers will not suffer any detriment.

Staff believes that the sale will be detrimental to the public interest because the \$640,000 annual payment required under the Firm Contract is not a prudent expenditure. The Staff bases its claim of detriment on the presumption that the costs of the Firm Contract will be passed on to ratepayers. The Commission will not make a determination of the proper ratemaking treatment to be afforded this transaction in this case. When the Commission sets rates based upon this transaction, it will need a detailed breakdown of how much of the \$640,000 annual

payment can reasonably be considered as payment for gas transportation, and how much is simply reimbursement to Williams of its purchase price. Only the former properly may be included in rates.

B. Gain on Sale of Assets

Staff argues that there is a detriment to the public because ratepayers will not receive the gain from the sale of the facilities. Staff states that allowing any gain on the sale to flow to ratepayers will offset the harm to ratepayers that it believes will result from the Commission's approval of the sale.

Typically, the Commission has not allocated any gain on the sale of assets between ratepayers and shareholders in a case dealing with the sale of assets. Rather, the Commission defers the treatment of any gain until a rate case when all relevant factors are considered. Since the Commission does not find any harm to ratepayers from the approval of the sale in this case, there is no need to depart from the Commission's typical approach.

C. Allocation of Overhead Costs

Staff asserts that UCU improperly allocated too much overhead cost to the portion of the facilities it will retain. Staff asserts that overheads should be allocated between the facilities sold and the facilities retained using the same ratio as bare expenses. UCU agrees that this is the appropriate allocation. Although the Commission will reserve ratemaking treatment until the next rate case, for the purpose of recording the effects of the transaction on its books, UCU should allocate overhead cost between the facilities sold and the facilities retained using the same ratio as bare expenses.

D. Facility Construction, Ownership and Operating Agreement

This agreement provides the terms under which WNG will provide transportation of gas to the Greenwood facility. Staff believes that the charges UCU incurs under the agreement are too high, and that the agreement will require UCU's ratepayers to fund WNG's purchase of the pipeline. As discussed above, since UCU's rates will not change as a result of Commission approval of this sale, UCU and not its ratepayers will be funding WNG's purchase of the pipeline. Accordingly, there is no detriment to the public.

E. Missouri Gas Energy's Proposal(s)

Staff argues that the Agreement with WNG is detrimental to the public because there were proposals to purchase the pipeline made by Missouri Gas Energy (MGE) that the Staff believes were superior to the Agreement. The Commission finds that the MGE proposals are not relevant to the question of whether the transaction at issue in this case is detrimental to the public interest. The record is clear that these proposals had been withdrawn by the time the Williams' proposal was accepted. Simply because there may have been proposals more favorable to ratepayers at some point does not have much bearing on whether or not the current proposal is detrimental. The MGE proposals may form the basis for a challenge in a subsequent rate case to UCU's prudence in not accepting them and accepting the WNG offer instead, but they do not have any relevance to the issues in this case.

F. Environmental Liability

UCU claims that the proposed sale will be beneficial to ratepayers because it will reduce its environmental exposure liability. The sale agreement provides that UCU will be liable for any environmental

liability resulting from the construction of the pipeline and that WNG will be liable for such liability resulting from the operation of the pipeline. The Commission has determined that there is no detriment from the transaction. Therefore, the Commission need not make a finding as to whether any benefit exists.

G. Stranded Costs

UCU argues that the sale reduces its ratepayers' exposure to stranded cost if the Greenwood facility ceases operations. UCU's argument assumes that the Commission would allow recovery of UCU's cost to build the pipeline if the facility no longer uses the pipeline. Even if the Commission were to consider allowing such recovery, it would require, at a minimum, proof that UCU was prudent in building a pipeline to serve a facility that may have had a limited life at the time the pipeline was built and that UCU was prudent in allowing the facility to cease operations. However, the Commission has determined that there is no detriment from the transaction without considering any possible benefits from the alleged reduction in stranded cost exposure, and as a result will not make a finding as to whether such benefit exists.

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 public utility engaged in the provision of electric service to the general public in the state of Missouri and, as such, is subject to the general jurisdiction of the Missouri Public Service Commission pursuant to Chapters 386 and 393, RSMo 1994.

Specifically, the proposed sale, transfer and assignment of certain rights, properties, and assets is controlled by Section 393.190(1), which states in part:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it to do so.

The Commission finds the proposed transaction, as reflected in the application to sell a part of its franchise, works or system filed on April 3, 1997 by UtiliCorp United Inc. d/b/a Missouri Public Service is not detrimental to the public interest.

IT IS THEREFORE ORDERED:

1. That the application to sell a part of its franchise, works or system filed on April 3, 1997 by UtiliCorp United Inc. d/b/a Missouri Public Service is granted.

2. That the Staff of the Commission shall, in its testimony in the next rate case in which UtiliCorp United Inc. d/b/a Missouri Public Service seeks to increase Missouri jurisdictional electric revenues, analyze the Firm Contract to determine what portion of the \$640,000 annual payment can reasonably be attributed to gas transportation.

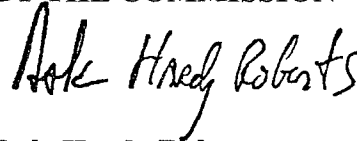
3. That UtiliCorp United Inc. d/b/a Missouri Public Service shall keep its books and records in such a way to facilitate the analysis referred to in Paragraph 2, above, and make those books and records available to the Staff of the Commission.

4. That UtiliCorp United Inc. d/b/a Missouri Public Service shall, for the purposes of recording this sale, allocate overhead cost between the facilities sold and the facilities retained using the same ratio as bare expenses.

5. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties herein involved, or as an acquiescence in the value placed upon said properties by UtiliCorp United Inc. d/b/a Missouri Public Service. Furthermore, the Commission reserves the right to consider the ratemaking treatment to be afforded this transaction in any later proceeding.

6. That this order shall become effective on October 27, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
Schemenauer and Drainer, CC., concur and
certify compliance with the provisions
of Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 15th day of October, 1998.