

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 16th
day of December, 1994.

In the matter of the Joint Application of)
Missouri Gas Company, a Missouri corporation,)
Missouri Pipeline Company, a Missouri)
corporation, and UtiliCorp United, Inc., a)
Delaware corporation, for an order authorizing the)
sale, transfer and assignment of certain rights,)
properties and assets from Missouri Gas Company) Case No. GM-94-252
and Missouri Pipeline Company to UtiliCorp)
United Inc., d/b/a Missouri Public Service, or)
to wholly-owned subsidiary corporations to be)
formed by UtiliCorp United Inc., and in)
connection therewith, certain other related)
transactions.)

**ORDER REGARDING POST-HEARING MOTIONS
AND APPLICATIONS FOR REHEARING**

On October 12, 1994, the Commission issued its Report and Order in this matter, deciding all issues presented to it as the result of the evidentiary hearing of this case. Upon motion made by UtiliCorp United, Inc., the Commission extended the effective date of the Commission's Report and Order from October 25, 1994 to November 25, 1994.

On November 15, 1994, Applicants Missouri Pipeline Company and Missouri Gas Company filed a motion with the Commission to clarify the Report and Order. On November 18, 1994, the Staff of the Commission filed a response to that motion, in which the Staff agrees to most, but takes issue with one, of the requested clarifications.

On November 23, 1994, an application for rehearing was filed by Laclede Gas Company, taking exception to the Commission's findings in issue no. 1 of the Report and Order.

Also on November 23, 1994, Applicant Utilicorp United, Inc. filed a motion with the Commission to modify the Report and Order, or, in the alternative, grant a rehearing of this matter.

In regard to the joint motion to clarify the Report and Order, filed by Missouri Pipeline Company and Missouri Gas Company jointly, the motion contends that the Commission erred, first, in referring only to Case No. GA-90-280 as the sole case in which Missouri Pipeline Company and Missouri Gas Company were granted certificates of convenience and necessity. The joint movants indicate that the record shows that Missouri Pipeline Company was granted its first certificate in Case No. GA-89-126. The joint movants offer two locations in which correction of this error is requested, those being in the second full paragraph on page 4 of the Report and Order, and in Ordered paragraph no. 8. No objection has been made to these corrections and they will, therefore, be ordered.

The joint movants next state that the Commission erred in stating in the Report and Order that Vesta Energy was the successor to ESCO, and that the contractual dispute in issue before the Commission was one involving Vesta Natural Gas Company, the correct successor to ESCO, not Vesta Energy. As a result, the joint movants offer a series of changes, altering the wording "Vesta Energy" to "Vesta Natural Gas." No objection has been made to these changes, and the record seems to indicate that this may, in fact, be the correct corporate structure. The Commission would comment that the record, however, is far from clear in this regard, particularly to a reader not already familiar with the everchanging corporate structure of the Edisto "family" of companies. The Commission will elaborate on this matter further in this Report and Order. As no objection was made to the above suggested changes, the Commission will order those corrections.

In paragraph numbered 6 of the motion by the joint applicants, it is stated that "evidence also establishes" that the Commission statement that Vesta Natural Gas Company is a "sister" corporation of Vesta Energy, is incorrect. The joint movants state that the word "subsidiary" should be substituted. No objection is made to this change. The Commission would again point out that the record is not clear in this regard; however, the suggested change appears to be correct, and will be ordered.

In paragraph no. 8 of its motion, the joint applicants seek to delete the word "original" from two locations in the Report and Order, both of which refer to Case No. GA-90-280 as the original certification case. The error in case reference has been discussed above. No objections having been made, the Commission will order the requested deletion of the word "original."

In paragraph no. 8, the joint movants request the term "instant" be removed from the second full paragraph on page 13 of the Report and Order. The Staff objects to this correction, stating that the joint applicants are seeking to change the Commission's intent. The Commission agrees. In stating "pipeline" or "instant pipeline" the Commission was referring, in principle, to both Missouri Gas Company and Missouri Pipeline Company. In stating "per the suggestion of the Staff, the Commission will order UCU to file tariffs reflecting the transportation rate charged to any affiliate on the pipeline is the maximum rate which may be charged to non-affiliates," the Commission was again referring to both that portion of the system currently owned by Missouri Gas Company and that portion currently owned by Missouri Pipeline Company. Paragraph No. 8 of the joint movants' motion is denied.

Finally, the joint movants request an addition to the Commission's order authorizing the sellers to terminate their responsibilities in the State of Missouri upon the closing of the requested transaction. No objection is made

to this portion of the joint motion, and the Commission will, therefore, make the requested change.

In regard to the Laclede Gas application for rehearing, Laclede strongly objects to the Commission's findings in issue 1, styled "should the Commission approve the proposed transaction as being economically feasible?" Laclede maintains generally that the Commission's findings are not based on substantial and competent evidence, unsupported by the evidence, contrary to law, arbitrary, and capricious. After review of both the testimony in evidence in this case and the Commission's decision, the Commission finds that all points raised in Laclede's application for rehearing were thoroughly considered by the Commission in rendering its original decision. The Commission finds no sufficient reason for reconsideration of its original decision. Laclede's application is denied.

The Commission would offer an additional comment on paragraph no. 9 of Laclede's application. This paragraph implies that the Commission did not exercise appropriate care in preparing its Report and Order. The Commission would point out to Laclede that, in large part, the problems noted in paragraph no. 9 of Laclede's application resulted from the testimony of Laclede's own witness, Mr. Michael T. Cline. In his rebuttal testimony at page 4, lines 8 through 20, Mr. Cline states:

"At that time Omega Pipeline Company was a wholly-owned subsidiary of ESCO and a sister company of Vesta Energy Company, ESCO's gas marketing subsidiary. Under the contract, ESCO acquired, through Vesta Energy, gas sourced on the Panhandle system, shipped the gas to Curryville, Missouri on Panhandle, using Omega Pipeline's firm transportation capacity and finally shipped the gas from Curryville to St. Louis under a firm transportation arrangement on MPC. It should be noted that ESCO was eventually dissolved and succeeded by Vesta. Hence today, Laclede's gas purchase contract is with Vesta."

In the remainder of Mr. Cline's testimony on this issue, the term "Vesta" is used over 35 times without further elucidation as to which Vesta company is being discussed. Only once, two pages prior to the above quoted statement, does Mr. Cline seem to indicate that the term "Vesta" refers to Vesta Natural Gas Company. The Commission would add that no other party in this case was forthcoming with a complete and accurate corporate structure of the Edisto "family" of companies.

In regard to the final motion, filed by UtiliCorp United, Inc., requesting modifications of the Report or, alternatively, a rehearing, the Commission would first note that applicants MPC and MGC, the Office of Public Counsel, and Intervenors Conoco, Williams Natural Gas Co., and Fidelity Natural Gas Company, have filed letters stating they have no objections to this motion. On December 2, 1994, the Staff of the Commission filed its response to the UtiliCorp request. It appears that the Staff has reached an agreement with UtiliCorp regarding modifications to the Commission's order concerning the issue styled "affiliated transactions." In addition, the Staff does not object to the addition of the specific authority requested by UtiliCorp in paragraph no. 4 of its motion.

The UtiliCorp request, with the two alterations as proposed by the Staff and agreed to by UtiliCorp, are set out as follows, with the Staff changes underlined or noted.

In lieu of the conditions imposed at page 13 of the Report and Order, the Commission imposes the following conditions on this transaction and order that such conditions be set out in tariff sheets for each pipeline and filed with the Commission within 30 days after the consummation of the sale:

- A. These provisions will be applied to the MPC service area and the MGC service area as separate entities and on a separate basis. Rate comparisons for compliance with these provisions will be calculated assuming a 25% load factor.

- B. UtiliCorp will submit to the Commission's Energy - Rates Staff ("Staff") once every three months, a list of all bids or offers UtiliCorp quotes for transportation service rates for each individual pipeline where the bid is less than the maximum rate contained in the tariff for the MGC area or in the tariff for the MPC area as the case may be. For each of the service areas, UtiliCorp will provide the bid price quoted, the length of and the dates of all offerings, the name, address and telephone number of the party to whom the bid was given, any other terms of the bid and a rate comparison sheet for all bids and offers for each month. For each such bid or offering UtiliCorp will completely explain whether the entity being offered the rate is affiliated in any way with UtiliCorp or with any of its affiliates. If the entity is affiliated, UtiliCorp will completely explain such affiliation.
- C. For all transportation agreements entered into with any affiliate after the effective date of the tariff sheets referred to above in those instances in which the term of the agreement is greater than three months:
- i. The lowest transportation rate charged to an affiliate shall be the maximum rate that can be charged to non-affiliates. Any renegotiation or other type of modification to the rates of any then effective transportation agreement is to be considered an applicable transportation agreement for the purpose of setting this maximum rate for non-affiliates.
 - ii. UtiliCorp will submit each such transportation agreement for Commission approval in those instances in which the rate offered to a non-affiliate is proposed to be greater than any rate offered to any affiliate.
 - iii. UtiliCorp will submit a rate comparison for all transportation agreements.
- D. UtiliCorp will respond immediately to Staff inquiries concerning discounting.
- E. If at some point in time the Staff determines that the provisions of paragraph 3 A., B. and C. above are not effective in preventing rate discrimination to non-affiliates, after contacting UtiliCorp, the Staff may file a notice to that effect with the Commission. As a consequence, on the date of such notice filing, said provisions will be terminated and at that point in time the following provisions will automatically replace paragraph 3 A., B. and C.

with regard to all contracts in effect at the time of Staff's filing of said notice with the Commission:

(Phrase omitted). The transportation rate charged to any affiliate on the individual pipelines pursuant to a contract for a term greater than three months entered into after the consummation of the sale shall be the maximum rate which may be charged to non-affiliates.

UtiliCorp states that, in regard to the above changes, it is desirous that the Commission state the following:

The above-stated conditions are being imposed for the sole purpose of resolving the affiliate transaction issue in this case and that said conditions shall not be considered as a precedent for dealing with any affiliate transaction issue in any other case or proceeding. UtiliCorp United, Inc. may petition the Commission for a waiver of these conditions in any specific instance should it believe that good cause exists to do so and that at some point in the future should UtiliCorp or any other party to this case prefer an alternative safeguard to prevent unlawful rate discrimination or unlawful affiliate transactions, said party may petition the Commission accordingly.

Also, as agreed to by the parties, UtiliCorp asks the Commission to grant, in a modified order, the following specific authority, as set out in its original application:

UtiliCorp respectfully requests that the Commission further modify its Report and Order by granting the specific authority requested in the prayer of the Joint Application, in which UtiliCorp seeks specific authority:

- (a) Authorizing Sellers and UtiliCorp to perform in accordance with the terms and conditions of the Agreement, Schedule 1 to the Joint Application;
- (b) Authorizing Sellers to sell, transfer and assign the Assigned Assets to UtiliCorp or to UCU Subs and to undertake the related transactions all as more particularly described in the Agreement, upon the terms and conditions set out therein;
- (c) Authorizing UtiliCorp or UCU Subs to purchase and acquire the Acquired Assets and to

undertake the related transactions all as more particularly described in the Agreement, upon the terms and conditions set out therein;

- (d) Authorizing the transfer of Sellers' Certificates of Convenience and Necessity to UtiliCorp or to UCU Subs or granting a new certificate or certificates to UtiliCorp or to UCU Subs which are identical in scope;
- (e) Authorizing UtiliCorp or UCU Subs to own, operate, control, manage and maintain the Acquired Assets and to provide intrastate natural gas pipeline transportation service to the public subject to the jurisdiction of the Commission in those areas in which Sellers are now authorized to operate in Missouri;
- (f) Authorizing UtiliCorp or UCU Subs to subject the Acquired Assets to the lien of any applicable indenture of mortgage and deed to trust or to otherwise encumber the Acquired Assets as may be necessary in accordance with the terms and conditions of any of UtiliCorp's or UCU Subs' financing instruments;
- (g) Authorizing UtiliCorp or UCU Subs to adopt the rates, rules and regulations and other tariffs of Sellers as may be on file with and approved by the Commission on the date of closing of the transaction, and to operate under same as they may be changed from time to time as provided by law;
- (h) Authorizing UtiliCorp to acquire the stock of UCU Subs at the time of the incorporation of UCU Subs;
- (i) Authorizing Sellers, or their successors, effective upon the closing of the involved transactions and the transfer of their corporate names, to terminate their responsibilities as gas corporations and public utilities in Missouri;
- (j) Authorizing Sellers, UtiliCorp and UCU Subs to enter into, execute and perform in accordance with the terms of, all other documents which may be reasonably necessary and incidental to the performance of the transactions which are the subject of the Agreement and this Joint Application;
- (k) Granting such other relief as may be deemed necessary to accomplish the purposes of the

Agreement and the Joint Application and to consummate the sale, transfer and assignment of the Acquired Assets and related transactions pursuant to the Agreement.

The Commission has reviewed the UtiliCorp request, the Staff response, and the responses of various other parties to this case. The requested modifications of the affiliated transactions issue are apparently designed to alleviate a problem which concerns the Staff, while allowing UtiliCorp an acceptable framework within which to operate its pipeline economically. In regard to affiliated transactions, the Commission remains concerned that adequate safeguards are put in place to prevent unauthorized rate discrimination against non-affiliates. The Commission will, therefore, afford the parties an additional opportunity to explain and justify, on the record, the adequacy and safeguards contained in the agreed-upon proposed modifications of issue no. 3 of the Commission's original Report and Order. The Commission will grant the requested rehearing and set that rehearing for 1:30 p.m., December 19, 1994 in the Commission's offices, Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri, solely on the "affiliated transactions issue."

As the remainder of the requested modifications are by consent of the parties, the Commission will grant the requested rehearing by UtiliCorp and is of the opinion that no additional evidence is necessary on those modifications. The Commission finds the remaining modifications of the Commission's original Report and Order, issued October 12, 1994, to be reasonable and not detrimental to the public interest, and, therefore, approved.

IT IS THEREFORE ORDERED:

1. That the requested rehearing by UtiliCorp United, Inc. is granted and the Commission's Report and Order in this case, issued October 12, 1994, is hereby modified to renumber ordered paragraph no. 10 to ordered paragraph no. 11 and substitute a modified ordered paragraph no. 10, which states as follows:

10. That UtiliCorp United, Inc., Missouri Pipeline Company, and Missouri Gas Company are hereby granted the following specific authority:

- (a) Authorizing Sellers and UtiliCorp to perform in accordance with the terms and conditions of the Agreement, Schedule 1 to the Joint Application;
- (b) Authorizing Sellers to sell, transfer and assign the Assigned Assets to UtiliCorp or to UCU Subs and to undertake the related transactions all as more particularly described in the Agreement, upon the terms and conditions set out therein;
- (c) Authorizing UtiliCorp or UCU Subs to purchase and acquire the Acquired Assets and to undertake the related transactions all as more particularly described in the Agreement, upon the terms and conditions set out therein;
- (d) Authorizing the transfer of Sellers' Certificates of Convenience and Necessity to UtiliCorp or to UCU Subs or granting a new certificate or certificates to UtiliCorp or to UCU Subs which are identical in scope;
- (e) Authorizing UtiliCorp or UCU Subs to own, operate, control, manage and maintain the Acquired Assets and to provide intrastate natural gas pipeline transportation service to the public subject to the jurisdiction of the Commission in those areas in which Sellers are now authorized to operate in Missouri;
- (f) Authorizing UtiliCorp or UCU Subs to subject the Acquired Assets to the lien of any applicable indenture of mortgage and deed to trust or to otherwise encumber the Acquired Assets as may be necessary in accordance with the terms and conditions of any of UtiliCorp's or UCU Subs' financing instruments;
- (g) Authorizing UtiliCorp or UCU Subs to adopt the rates, rules and regulations and other tariffs of Sellers as may be on file with and approved by the Commission on the date of closing of the transaction, and to operate under same as they may be changed from time to time as provided by law;
- (h) Authorizing UtiliCorp to acquire the stock of UCU Subs at the time of the incorporation of UCU Subs;

- (i) Authorizing Sellers, or their successors, effective upon the closing of the involved transactions and the transfer of their corporate names, to terminate their responsibilities as gas corporations and public utilities in Missouri;
- (j) Authorizing Sellers, UtiliCorp and UCU Subs to enter into, execute and perform in accordance with the terms of, all other documents which may be reasonably necessary and incidental to the performance of the transactions which are the subject of the Agreement and this Joint Application;
- (k) Granting such other relief as may be deemed necessary to accomplish the purposes of the Agreement and the Joint Application and to consummate the sale, transfer and assignment of the Acquired Assets and related transactions pursuant to the Agreement.

2. That a rehearing is granted regarding the requested modifications of the "affiliated transactions" issue and set for December 19, 1994, at 1:30 p.m. in the offices of the Commission, Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri.

3. That the joint application filed by Missouri Pipeline Company and Missouri Gas Company on November 15, 1994, is granted and denied in accordance with this order, and the Commission's Report and Order, issued October 12, 1994, is hereby modified in accordance with this order.

4. That the application for rehearing, filed November 23, 1994, by Laclede Gas Company is, for the reasons as set out above, denied.

5. That the application for modification or rehearing, filed November 23, 1994, by UtiliCorp United, Inc., is granted and denied as set out above and a rehearing is set, and the Commission's order of October 12, 1994, is modified in accordance with this order.

6. That this order shall become effective on the date hereof.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., concur.