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 1994-1995 Actual) **Case No. GR-95-273**
Cost Adjustment.)
)

REPORT AND ORDER

Issue Date: September 23, 1998

Effective Date: October 6, 1998

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OF THE STATE OF MISSOURI

In the Matter of Missouri Public Service's Tariff Revisions to be Reviewed in Its 1994-1995 Actual Cost Adjustment.	))))	**Case No. GR-95-273**

APPEARANCES

James C. Swearengen and **Dean L. Cooper**, Brydon, Swearengen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for UtiliCorp United Inc., d/b/a Missouri Public Service.

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, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **L. Anne Wickliffe, Deputy Chief.**

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REPORT AND ORDER

Procedural History

This case was established to track PGA changes to be reviewed in the company's 1994-95 annual Actual Cost Adjustment (ACA) filing. UtiliCorp United Inc. d/b/a Missouri Public Service (UtiliCorp) filed tariff sheets with the Commission on November 6, 1995, reflecting revisions to the annual ACA factors for each of its three Missouri systems based on reconciliation of ACA, Take-or-Pay, Transition Cost and Refund recovery balances. The adjustments will affect approximately 41,000 natural gas customers. The Commission issued an order on November 28, 1995, granting interim, subject to refund, approval of the tariff sheets pending a final determination.

The Commission Staff (Staff) filed a motion for a protective order which was granted on November 15, 1995. Staff conducted an audit and evaluation of the company's billed revenues and gas costs for the period from September 1, 1994, through August 31, 1995. Staff filed its memorandum on September 3, 1996, recommending adjustments to the figures proposed by the company for reconciling certain of the proposed ACA recovery balances. Staff also asked the Commission to direct UtiliCorp to provide Staff with documentation regarding affiliate transactions and reliability data. UtiliCorp filed a response to the Staff's recommendation on October 4, 1996, objecting to a number of the adjustments proposed by Staff. UtiliCorp also objected to Staff's requests for documentation, arguing that they should be handled through the data request process.

The parties met in an early prehearing conference on November 14, 1996. Staff filed a Motion to Establish Procedural Schedule on

November 19 proposing a schedule by agreement of the parties. The Commission adopted the procedural schedule which was later modified. Staff and UtiliCorp filed a Hearing Memorandum on July 28, 1997; the Office of the Public Counsel (OPC) filed a separate Hearing Memorandum and request to file its positions out of time on July 29. OPC's request to file out of time was granted at the hearing.

The parties filed testimony and the Commission conducted an evidentiary hearing on August 5-6, 1997. On the first day of hearing Missouri Gas Energy (MGE) filed a motion for permission to intervene out of time and a motion to strike certain prefiled testimony. The Commission permitted oral argument on the record and denied both motions.

Late-filed Exhibits and Pending Motions

Revised Exhibits 18 and 19, and late-filed Exhibit 24 were filed by UtiliCorp on August 13, 1997. No objections were filed to these exhibits.

Staff filed a Motion to Strike Portion of Brief Not in Compliance with Commission Order on October 8, arguing that UtiliCorp's reply brief exceeded the Commission's page limits. The Commission issued an order regarding the procedural schedule which stated that reply briefs should be limited to 15 pages. Staff asked the Commission to strike pages 16 through 25 of UtiliCorp's reply brief or order UtiliCorp to file a brief that conforms to the 15-page limit.

UtiliCorp filed a Motion for Leave to File Reply Brief and Response to Staff Motion to Strike on October 9. UtiliCorp stated that it had not intended to thwart the Commission's order but had inadvertently failed to file, along with its reply brief, a motion for leave to file more than 15 pages. UtiliCorp argued that its 25-page brief could not have prejudiced Staff, pointing out that Staff's initial brief did not make use of the 30 pages allotted. UtiliCorp asked the Commission to accept the filing of its reply brief in its entirety.

UtiliCorp filed a Motion to Defer Capacity Release Issues on March 13, 1998. UtiliCorp asked the Commission to defer decision on the capacity release issues presented in this case because the question is one of appropriate affiliate transactions. UtiliCorp argued that the issue would be more appropriately addressed in Case No. OX-98-183, a rulemaking case designed to deal with affiliate transactions in the electric, gas, water, and sewer industries.

Staff filed a response in opposition to UtiliCorp's motion on March 23. Staff argued that Case No. GR-95-273 is the only case where UtiliCorp's actions during the 1994-1995 ACA period are reviewable. Staff stated that any rule implemented as a result of Case No. OX-98-183 would operate prospectively and would not affect the period at issue in this case.

The Commission dismissed Case No. OX-98-183 by order issued on April 21 on the grounds that Staff's proposed rule, though appropriate for some industries, could not be applied to all the industries party to the rulemaking case. The Commission directed Staff to develop separate affiliate transaction rules for the various industries whose operations differ.

Terminology

The Commission notes that, in testimony and pleadings, the parties refer to the company at different times as UtiliCorp or as Missouri Public Service, or MPS. In order to maintain consistency the Commission will refer to the company throughout this order as UtiliCorp.

The reader is to understand that UtiliCorp refers to UtiliCorp United Inc. d/b/a Missouri Public Service for purposes of this order.

Capacity Release Credits: A local distribution company (LDC) such as UtiliCorp purchases its natural gas from a supplier and pays a pipeline for transport of the gas supplies. Transportation charges include two rate elements: reservation charges and commodity charges. Commodity charges are based on the amount of natural gas that is actually transported. If no gas is transported, no commodity charges apply.

The reservation charges are designed to pay for the portion of the pipeline company's total capacity reserved specifically for the LDC. The reservation charges apply whether the LDC actually transports any natural gas or not. In order to meet their human needs requirements, LDCs typically contract for at least enough capacity to meet all firm load requirements on a day when the load is at or near peak. These days are relatively rare so there is often idle capacity for which the LDC must pay but which it does not currently require.

When the LDC has capacity reserved that it does not need, it may choose to make the idle capacity available to a third-party purchaser by means of a capacity release agreement. The agreement is between the LDC and a gas marketer or a large-volume end user. The parties must advise the pipeline company of the capacity release transaction. The pipeline company then bills the marketer for the amount negotiated between it and the LDC, and for whatever commodity charges the marketer incurs in transporting gas. The pipeline company then credits the LDC/marketer contract amount against the reservation charges billed to the LDC. This credit is called a capacity release credit.

Discussion of Contested Issues

A. ADJUSTMENTS

1. **Did UtiliCorp's captive firm customers (residential and commercial customers) receive the appropriate capacity release credits as a result of UtiliCorp's releases of capacity to its affiliate UES, given that UES resold that capacity to UtiliCorp's end-user transportation customers?**

Staff's position is that UtiliCorp's customers did not receive the appropriate capacity release credits and that an adjustment should be made to reflect more appropriate credit amounts. Mr. Wallis testified that the Commission should order UtiliCorp to reduce its Southern System gas costs by $345,621 and its Northern System gas costs by $27,654 to account for the fact that the firm captive customers of UtiliCorp did not receive a full credit for the total transportation charges collected from the end-user customers of UtiliCorp by UtiliCorp Energy Solutions, Inc. (UES). He stated that these customers pay the fixed reservation charges associated with the Williams Natural Gas Company (WNG) and Panhandle Eastern Pipe Line (PEPL) transportation contracts, and the pipeline capacity that was used by UES to deliver gas to UtiliCorp's end-user customers. Therefore, UtiliCorp's end users should receive credit for the full transportation charges.

According to Mr. Wallis, Staff believes these adjustments are necessary because: (1) UES is using UtiliCorp's firm transportation contracts to transport the gas supplies to the UtiliCorp end-user customers; (2) UES is buying the majority of UtiliCorp's released capacity; (3) the captive firm customers of UtiliCorp are ultimately paying the fixed reservation charges necessary in order to allow UES to transport the gas to the UtiliCorp end-user customers; (4) UES is providing a bundled sales service to the UtiliCorp end-user customers which includes charges for gas costs, transportation costs, taxes, and local distribution charges; and (5) UES is retaining, as profit, the difference between the transportation charges collected from UtiliCorp end-user customers and the released capacity payments (credits to UtiliCorp's captive customers) which it made to WNG and PEPL. Therefore, any profits UES makes on the transportation charges it collects from the UtiliCorp end-user customers should be flowed back to UtiliCorp's captive customers as compensation for fixed reservation charges.

Mr. Wallis testified that 94 percent of UtiliCorp's excess capacity on the Williams Natural Gas pipeline during the ACA period was purchased by UES, and that UES sells to 23 of UtiliCorp's 41 transportation end users. Mr. Wallis stated that these figures, combined with the fact that UES is providing a combined bill to these end users for the services supplied by both UES and UtiliCorp, indicate that there is a niche market for UES. Staff stated that UES is taking advantage of UtiliCorp's system assets, i.e. its contracts with pipelines and the pipeline capacity itself. Mr. Wallis testified that where a marketer is taking advantage of a niche market, the capacity release rate is not the market rate but whatever the marketer is receiving for the capacity. Specifically, Staff's position is that UES should make no profit on the excess capacity it purchases from UtiliCorp and sells to UtiliCorp's transportation customers.

Mr. Wallis stated that UtiliCorp has made sales of excess capacity to other, nonaffiliated marketers who also get the advantage of UtiliCorp's pipeline contracts and reserved pipeline capacity. Mr. Wallis testified that he made a comparison of the rates UtiliCorp charged for excess capacity sold to nonaffiliated marketers with those charged to UES. He stated that the prices fell within a two-cent to 20-cent range, and that UES paid prices ranging from five to ten cents. Mr. Wallis also expressed a concern that UtiliCorp could be over-reserving capacity in order to benefit UES but presented no supporting evidence.

OPC supports Staff's position on the issue of capacity release credits.

UtiliCorp stated in the Hearing Memorandum that the appropriate basis for valuing released capacity is the market rate. UtiliCorp's witness, Mr. Warnock, testified the company determines the market price of released capacity at the time of transfer by consulting the interstate pipeline's electronic bulletin boards, and by calling other LDCs, marketers, or brokers to determine their sale or purchase prices for similar capacity. Mr. Warnock testified that UtiliCorp does not transfer capacity to UES at rates lower than it would offer to a nonaffiliate; "UES pays the prevailing market rate."

Mr. Warnock stated that, in addition to market price, capacity release prices are affected by whether the capacity is released subject to recall, and whether the capacity is on a constrained pipeline, i.e. one which has little or no uncommitted capacity available for sale. Capacity released subject to recall is less valuable to shippers because it may be interrupted. UtiliCorp releases capacity on both the WNG and PEPL pipelines subject to recall. Mr. Warnock testified that capacity is often recalled during cold weather to meet the needs of UtiliCorp's end users. Mr. Warnock stated that, although PEPL is usually a constrained pipeline, WNG normally has an abundance of capacity.

Therefore, capacity released or transferred from the WNG pipeline has less value than that of constrained pipelines.

Mr. Warnock testified that, if UES is required to pay UtiliCorp an above-market rate for capacity releases, UES would probably purchase its capacity from another marketer, broker, or LDC, or purchase capacity directly from the pipeline. The result would be to remove UES as a viable competitor for UtiliCorp's excess capacity. According to Mr. Warnock the capacity ready for release is generally greater than the available market. There would be no guarantee that UtiliCorp could find another purchaser for its excess capacity. Mr. Warnock believes that if UES is forced out of the market for UtiliCorp's excess capacity, UtiliCorp's end users may actually receive lower capacity transfer credits than they are currently receiving due to a lack of buyers.

Mr. Warnock testified that UES is not receiving a competitive advantage by purchasing UtiliCorp's excess capacity. He stated that any nonaffiliated marketer could provide the same services and that UtiliCorp transfers capacity to nonaffiliates using the same market-determined rate as used for UES. Generally unused interstate pipeline capacity is transferred at less than the maximum or tariff rate of the regulated utility. A list of nonaffiliated marketers to whom UES releases capacity is included in Warnock's Direct Testimony as Schedule DWW-1.

Mr. Warnock also testified that there are nonaffiliated marketers providing rebundled sales services both to UtiliCorp's end users, and to customers of other Missouri LDCs.

2. **If the Commission determines that the appropriate release credits were not applied, *should the release credits be applied beginning in the current docket for the* 1994-1995 ACA period or prospectively beginning in the 1995-1996 ACA period?**

Staff's position is that the increased release credits in issue should be applied in the 1994-1995 ACA period. Staff also asks the Commission to review the release credits separately for each subsequent ACA period in the applicable ACA case. OPC supports Staff's position.

UtiliCorp's position is that any Commission decision to require that transfer credits be based on an above-market price must be prospective in effect. UtiliCorp argues that, because the Commission has not indicated before now that transfer credits would be treated in this way, either by rule or by order, it would be unfair to apply this approach to the 1994-1995 ACA period.

Mr. Warnock stated in his *Direct Testimony* that UtiliCorp's capacity transfer process has been used since October of 1993. UtiliCorp was not aware of Staff's objections to the process until its testimony was filed in this case. According to Mr. Warnock, requiring release credits at the maximum tariffed rate would reflect a new Commission policy and, if the Commission accepts Staff's position, all Missouri utilities should be given adequate notice.

3. **Should the Commission order UtiliCorp to reduce its Eastern District gas costs as a result of the company's overestimation of actual customer conversions for its Rolla service area (Eastern District)?**

Staff's witness, Mr. Wood, testified that the lower-than-projected growth rate in the Eastern district was the main factor in creating "excessive firm transportation cost per customer". Mr. Wood performed a peak day study to support his conclusion.

Mr. Lock testified on behalf of Staff that UtiliCorp's transportation contract with PEPL for its Eastern District exceeded its actual needs because actual customer growth was significantly lower than UtiliCorp projected. Staff made its own calculation of needed transportation capacity based on actual customer conversions, weather, and load factor analysis. Staff proposed that the difference between the contracted-for transportation capacity and Staff's calculated capacity amount be considered excess capacity and the associated expenses disallowed. Mr. Lock argued that UtiliCorp's contract with PEPL included a "ratcheting provision" permitting the company to increase capacity as customers were added to the system and, therefore, there was no need to contract for "excess" capacity.

Mr. Lock stated that UtiliCorp's shareholders, not its customers, should bear any losses associated with the lower-than-projected customer conversions in the Rolla area. He testified that the Commission permitted UtiliCorp to expand into the Rolla area solely at the risk of UtiliCorp's shareholders. He quoted the Commission's order approving the certificate of convenience and necessity for this expansion, Case No. GA-94-325, which states "MPS bears most of the risk if it has underestimated the economic feasibility of the project."

OPC supports Staff's position.

Mr. Ono testified on behalf of UtiliCorp that its estimate of customer conversions in the Rolla area was appropriate but conversions were limited by obstacles UtiliCorp could not have foreseen. He argued that Staff's calculations were made after the fact and with information that was not available to UtiliCorp before beginning the expansion. Although Staff witness Wood argued that UtiliCorp should have used a peak day study and that its "customer conversion methodology" was inadequate, Mr. Ono stated that, if Staff and the company rely on the same information, Mr. Wood's peak day study would support UtiliCorp's calculation of capacity needs.

Mr. Wood countered that the similarities in the estimates using his method and UtiliCorp's were merely coincidental. Mr. Wood did admit that it is essential for an LDC to have enough capacity available to serve its human needs customers on the coldest days.

Mr. Ono stated that UtiliCorp entered into a contract for firm transportation capacity with PEPL based on the number of customers it expected to convert. The actual conversion rate was significantly lower, resulting in losses because UtiliCorp had contracted for capacity that went unused. Mr. Ono testified that the conversion rate was affected by factors beyond UtiliCorp's control. Specifically, the completion of the I-44 bore, estimated to take two weeks, took eight weeks. UtiliCorp's crews encountered much more rock than anticipated, an amount that Mr. Ono described as "unprecedented" in UtiliCorp's experience. In addition, weather conditions prevented construction for several weeks. Mr. Ono testified that UtiliCorp had no way of anticipating these delays and pointed out that, in the Salem project, conversions are running "well ahead" of UtiliCorp's expectations. Mr. Ono stated that the conversion rate has averaged more than 90 percent in eight other recent natural gas expansion projects.

Mr. Ono admitted that the PEPL contract included a ratcheting provision that would allow the company to increase capacity as demand increased. He stated that the inclusion of this provision made the contract more valuable but also testified at the hearing that the contract did not include a corresponding provision allowing it to decrease capacity if demand was less than anticipated.

Mr. Ono testified that the consumption figures that were used for each customer class in calculating capacity needs were approved in Case No. GR-94-325 *[sic]*. UtiliCorp's position, set out in the Hearing Memorandum, is that its costs in providing service to the Rolla service area were reasonably incurred and the company should be allowed to include them in its rates. UtiliCorp argues that this would not be inconsistent with the Commission's order in Case No. GA-94-325 because, although UtiliCorp's shareholders bear the risk that expansion into Rolla will not be profitable, they need not bear the risk for each and every otherwise prudent decision that turns out to be improvident in retrospect.

B. DOCUMENTATION

1. Should the Commission order UtiliCorp to provide the Staff access to (1) a variety of information related to UtiliCorp's marketing affiliate UES, (2) methodology for pool and non-pool gas, (3) a variety of information related to UtiliCorp's gas supply division, and (4) documentation and rationale with regard to UtiliCorp's allocation methodology for transportation costs to its Northern, Southern, and Eastern Districts?

Staff's witness, Mr. Wallis, testified that the Commission should order UtiliCorp to provide Staff with the following in all future ACA period reviews: (1) access to all contracts between UES and UtiliCorp and/or MPS with regard to gas supplies, all contracts between UES and WNG and/or PEPL (including corresponding invoices), and a schedule which shows UES's monthly use of system capacity and storage agreements and use of system gas commodity and related costs; (2) detailed documentation of UtiliCorp's allocation methodology and rationale with regard to both pool and non-pool gas supplies; (3) access to all UtiliCorp United Gas Supply Services (UtiliCorp's gas supply division) documents related to storage accounting, operations, pricing, and any other documentation with regard to future ACA filings; and (4) detailed, referenced, and indexed documentation and rationale of its allocation methodology with regard to the transportation costs being allocated to the Northern, Southern, and Eastern Districts of MPS.

Mr. Wallis stated that Commission action is necessary to ensure the provision of this information because Staff had difficulty obtaining UES contracts and pricing data during its audit of UtiliCorp's 1994-1995 ACA period. Specifically, Mr. Wallis testified that Staff had problems in obtaining UES contracts through the discovery process. He also testified that Staff had difficulty obtaining pricing data, and documentation of UtiliCorp's allocation methodology regarding pool and non-pool gas supplies, transportation costs, and storage supplies. Mr. Wallis argued on behalf of Staff that these are basic informational requirements for Staff to conduct a thorough audit of future ACA filings.

OPC supports Staff's position.

UtiliCorp stated in the Hearing Memorandum that, although it has reservations about the Staff's authority to obtain information belonging to its unregulated affiliates, it has provided the information requested in regard to the 1994-1995 ACA period. Mr. Ono testified that UtiliCorp is always willing to provide Staff with the information it needs to perform its oversight function. He stated that the information Staff has requested is generally reasonable and could be supplied in the future. However, Mr. Ono testified that UtiliCorp might not be able to provide the information until the 1997-98 ACA period because the company may not be maintaining its records in a format Staff would find usable.

2. **Should the Commission order UtiliCorp to document its bidding process for spot market gas supplies?**

Staff takes the position that the Commission should order UtiliCorp to document its bidding process for spot market gas supplies for all future ACA periods. Mr. Lock testified that UtiliCorp did not provide written documentation of its bid process for spot supplies for the 1994-1995 or 1995-1996 ACA periods. He stated that proper documentation is essential in determining the lowest spot price and for evaluating the supplies which are ultimately selected by UtiliCorp. Staff stated that proper documentation would include bids solicited from various suppliers, bids received, bids selected, and the reasons for selection of any particular bid.

OPC supports Staff's position.

UtiliCorp stated in the Hearing Memorandum that it is not opposed to providing written documentation of its bidding process for spot market gas supplies. However, UtiliCorp stated that the documentation it maintains is apparently not satisfactory to the Staff. UtiliCorp is willing to modify its documentation to provide additional information but asks the Commission to require Staff to specify exactly what information it needs. UtiliCorp also pointed out that it would probably be unable to provide this additional information before the 1997-98 ACA review.

3. **Should the Commission order UtiliCorp to provide a variety of information related to reliability, such as send-out equations by district, peak day projections, monthly load projections, pipeline transportation/storage capacity, gas supply resources, and flexibility of supply and transportation provided by UtiliCorp?**

Staff maintains that the Commission should require UtiliCorp to provide certain reliability related information (as set out in Wood Direct Testimony, Schedule 4) for the 1996-1997 ACA period for audit purposes, and for the 1997-1998 ACA period for reliability purposes.

Mr. Wood testified that Staff needs this information in order to determine UtiliCorp's system reliability. Mr. Wood stated that Staff is concerned about UtiliCorp's apparent shift toward dependence upon spot market purchases and deliveries to secondary delivery points to meet the demands of human needs customers in midwinter. In addition, Staff is concerned about UtiliCorp's capability to redirect or divert a portion of supplies and/or transportation capacity allocated to serve one particular customer to a different customer, or LDC, to meet unexpected demands.

OPC supports Staff's position.

UtiliCorp agrees that the information Staff has requested is generally reasonable and UtiliCorp would be willing to provide it in the future. However, Staff has asked that it be provided beginning with the 1996-97 ACA period and some of this information may not be available for that period. UtiliCorp would be willing to begin providing the information in the 1997-98 ACA review.

C. TARIFF LANGUAGE

1. Should the Commission adopt agency billing requirements for situations where UtiliCorp's transportation customers use a marketer as their agent for purchasing gas? *If so, what requirements should be adopted?*

Staff believes the Commission should order UtiliCorp to add the following language relating to billing requirements to its tariff:

> In a situation where a marketer is an agent for the end-use customer (transporter), the Company may send the agent (marketer) the bill for the customer's local distribution service only when it has received an agency agreement between the customer and the customer's agent specifically requesting such. In all such agency billing situations, the Company will additionally send a copy of the detailed bill to its end-use customer. (Hubbs Direct testimony, pages 2-3.)

According to Mr. Hubbs, Staff proposed this language in order to ensure that the company has an executed agreement from its customer to send its bill to the marketer. Staff believes that, without an explicit agreement, UtiliCorp could be violating provisions of its tariff found on Revised Sheets 21 and 22. Sheet 21 states that "Missouri Public Service will render bills monthly for transportation service furnished the previous monthly period which may include billings from third-party transporters delivering gas to Missouri Public Service on the customer's behalf." Staff's position is that the tariff language would have to be modified to permit UtiliCorp to bill a marketer instead of directly the end user. When asked if the tariff would "definitely need modification" to allow for only one bill being sent, Mr. Hubbs testified that "[i]t is kind of gray since it does not specifically address the agency type of agreements."

Staff's proposed language is also intended to ensure that the customer using a marketer is fully aware of the detail and the total amount of the company's monthly charges. Mr. Hubbs stated in his Direct Testimony that this information is necessary to assure the customer that the marketer is not reselling the transportation service at a profit. Mr. Hubbs testified at the hearing that he had no evidence to indicate that UtiliCorp is currently engaging in this type of conduct. Staff later revised its position to permit the end-user customer to forgo receiving a detailed bill from UtiliCorp by making a written request to UtiliCorp and identifying the agent to whom the bill should be sent.

OPC supports Staff's position but proposed some changes. In his Rebuttal Testimony Mr. Trippensee stated that the Commission should put utilities on notice that affiliate transactions will not be allowed where they are detrimental to ratepayers.

UtiliCorp's position is that the standards proposed by Staff are matters of regulatory policy. UtiliCorp's witness, Mr. Jurek, argued that, since Staff intends to eventually recommend that these standards apply to every Missouri LDC, they should be addressed in a generic proceeding with general applicability rather than a company-specific gas cost review case.

UtiliCorp believes having rules that apply only to UtiliCorp would place it and its subsidiaries at a competitive disadvantage. Specifically, Mr. Jurek stated that the company would be forced to incur expenses in order to comply with the tariff language that are not required of other companies, such as mailing, timekeeping, bill tracking, and computer time.

Mr. Jurek argued that implementing this tariff language would inappropriately interfere with the contractual relationship between customer and agent and would thwart a customer's decision to consolidate administrative and natural gas purchasing activities. He stated that there are no measurable benefits flowing from the imposition of these requirements that would outweigh the incremental expense to UtiliCorp, and the confusion for customers that would result. However, Mr. Jurek also testified that UtiliCorp had not attempted to quantify the costs associated with Staff's proposal.

2. Should the Commission adopt the standards of conduct for transactions between UtiliCorp and its marketing affiliates?

Staff recommends that the Commission order UtiliCorp to place in its tariff the Standards of Conduct set out in the Direct Testimony of Mr. Hubbs. Staff believes that including this tariff language will help ensure that UtiliCorp and all transporting parties are aware of the standards applicable to UtiliCorp when participating in transactions with marketing affiliates and their customers. The standards would also enable the Commission to obtain the necessary documentation to determine that transactions with affiliates have been consummated in a prudent manner and on a nondiscriminatory basis.

Staff offered no evidence of any conduct of UtiliCorp amounting to undue discrimination in favor of, or preferential treatment toward, UES. Mr. Hubbs stated in his Surrebuttal Testimony that he had given a deposition setting out this type of evidence. However, the deposition was not offered into the record.

Mr. Hubbs stated in his Surrebuttal Testimony that he intends to ask the Commission to impose "the affiliated standards in all cases where gas marketing affiliates can exploit utility assets." He stated at the hearing that a generic proceeding would be preferable to imposing standards of conduct on a case-by-case basis. Mr. Hubbs testified that one of his reasons for proposing the Standards of Conduct for UtiliCorp was because the Commission had not taken action in the generic docket concerning affiliate transactions for energy providers that was pending at the time of hearing. Mr. Hubbs also testified that UtiliCorp was not unique and that any LDC with a marketing affiliate should be subject to the same rules regarding transactions with affiliates.

OPC agrees that the Commission should order UtiliCorp to place Standards of Conduct in its tariff. OPC submitted its own version of proposed tariff language in the Rebuttal Testimony of Mr. Trippensee. Mr. Trippensee's proposal includes provisions regarding use of the regulated utility's brand name recognition by an affiliate, and requires development of a cost allocations manual. (Trippensee Schedule RWT-2, p. 4M, p. 7E).

UtiliCorp's position is that the standards proposed by Staff are matters of regulatory policy. Since Staff intends to eventually recommend that these standards apply to every Missouri LDC, they should be addressed in a generic proceeding with general applicability rather than a company-specific gas cost review case. UtiliCorp argues that there is no evidence of any UtiliCorp conduct that would support the implementation of these standards and justify the additional costs associated with compliance.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Capacity Release Credits

The Commission finds 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.

Effects of Customer Conversion Shortfall

The Commission finds that UtiliCorp's overestimation of actual customer conversions for its Eastern District was primarily a result of construction delays beyond the company's control. The Commission considered UtiliCorp's projected conversion rate in GA-95-324 and made a finding that UtiliCorp's projection figures were "as reasonable" as Staff's lower projection. Evidence presented by the company and Staff demonstrate that a peak day study, as proposed by Staff, based on a similar number of expected conversions would yield capacity needs similar to those relied upon by the company. The evidence does not support Staff's proposed adjustment to UtiliCorp's gas costs for the Eastern District.

Staff's argument that the Commission intended UtiliCorp's expansion into the Rolla service area to be at the risk of its shareholders is supported in part by the language of the Commission's order in GA-94-325. However, with one exception the Commission did not specify what costs of the expansion would be attributed to shareholders rather than ratepayers. The Commission permitted UtiliCorp a variance from the rule prohibiting promotional practices by allowing UtiliCorp to provide a maximum of $300.00 of free conversion, installation, and recalibration services per customer, on the customer's side of the meter. The Commission stated that "any remaining customer conversion costs paid by the Company should be appropriately borne by the shareholders, and will be accounted for below the line." This limited language, in light of the Commission's finding favoring UtiliCorp's projected customer conversion rate, does not support Staff's position that increased gas costs resulting from the lower than expected customer conversions should be disallowed in UtiliCorp's ACA filing.

Documentation

The Commission finds that UtiliCorp has agreed to provide the documentation requested by Staff regarding its relationship with UES, its spot gas purchases, and system reliability. Because the Commission's decision in this case has been considerably delayed, it is clear that UtiliCorp cannot be ordered here to provide the documentation for the 1996-97 ACA period. The Commission will direct UtiliCorp to provide the type of documentation described by Staff, if and when specifically requested by Staff, beginning in the 1997-98 ACA period.

Tariff Language

Agency Relationships. The Commission finds that Staff failed to adduce evidence demonstrating a need for the proposed tariff language regarding agency billing relationships. Staff alleged that when a marketer bills an end user for capacity purchased from UtiliCorp, it constitutes a violation of UtiliCorp's existing tariff. However, Mr. Hubbs testified at the hearing that whether this situation is a tariff violation is "kind of gray." Given the lack of evidence of customer dissatisfaction with this arrangement, and the testimony by UtiliCorp regarding the advantage that a single bill provides to customers who use a marketing agent, the Commission will not require UtiliCorp to include Staff's proposed tariff language regarding agency billing situations.

Standards of Conduct. The Commission finds that Staff has failed to demonstrate any improper affiliate transactions between UtiliCorp and

UES. Absent such a showing, and in light of the conclusion of law below, the Commission finds it would be inappropriate to impose the tariffed standards of conduct on UtiliCorp in the context of this ACA review.

Other Issues

The Commission finds that UtiliCorp's filing of a 25-page reply brief does not prejudice other parties to the case and was not done with the intention of thwarting the Commission's procedural order.

The Commission finds that UtiliCorp agreed that the reallocation proposed by Staff of $95,901 in gas costs from the Northern System to the Eastern System is appropriate.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

UtiliCorp is a public utility engaged in the provision of natural gas and electric service in the State of Missouri and is subject to Commission jurisdiction under Chapters 386 and 393 of the Revised Statutes of Missouri 1994. The Commission has authority to prohibit implementation of gas service rates that are unjust or unreasonable pursuant to Section 393.130.

Orders of the Commission must be based upon competent and substantial evidence on the record. § 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 1994-95 ACA period, and disputed by UtiliCorp, are not supported by substantial and competent evidence and shall not be implemented. For the same reason, the Commission concludes that the proposed tariff language regarding agency billing situations shall not be implemented.

Staff and OPC have proposed that the Commission impose upon UtiliCorp a set of Standards of Conduct for Affiliate Transactions by means of tariff language. Staff has admitted that it intends to propose that the same standards be imposed upon every Missouri gas local distribution company with a marketing affiliate, and admitted that such standards would be better established in a generic proceeding of general applicability. Neither Staff nor OPC offered persuasive evidence demonstrating that UtiliCorp has engaged in inappropriate affiliate transactions or other conduct that would require the imposition of this special tariff language. Further, the Commission may not issue a ruling that would have general applicability in the context of a contested case involving only one, or some, of the companies that would be affected. State of Missouri, ex rel. Beaufort Transfer Company, et al. v. Public Service Commission of Missouri, 610 S.W.2d 96 (Mo. App. 1990). Absent convincing evidence of improper conduct by UtiliCorp, the Commission concludes that the Staff's proposed Standards of Conduct will not be implemented.

IT IS THEREFORE ORDERED:

1. That Revised Exhibits 18 and 19 and late-filed Exhibit 24, filed by UtiliCorp United Inc. d/b/a Missouri Public Service on August 13, 1997, are admitted into the record.

2. That the Motion to Strike Portion of Brief Not in Compliance with Commission Order filed by the Commission Staff on October 8, 1997, is denied.

3. That the Motion for Leave to File Reply Brief filed by UtiliCorp on October 9, 1997, is granted.

4. That the Motion to Defer Capacity Release Issues filed by UtiliCorp on March 13, 1998, is denied as moot.

5. That UtiliCorp's Eastern System gas costs balance should be increased by $95,901 and its Northern System balance decreased by the same amount by agreement of the parties.

6. That Staff's recommendation to reduce UtiliCorp's Southern System gas costs by $345,621 and its Northern System gas costs by $27,654 is denied.

7. That Staff's recommendation that UtiliCorp be required to bill its own end-user transportation customers for LDC charges is denied.

8. That Staff's recommendation that UtiliCorp be required to provide specified documentation beginning with the 1996-97 ACA period is denied. UtiliCorp has agreed to, and shall, provide the described documentation as specifically requested by Staff beginning with the 1997-98 ACA period.

9. That this Report and Order shall become effective on October 6, 1998.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dated at Jefferson City, Missouri, on this 23rd day of September, 1998.