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BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS  
PRE-HEARING  
December 12, 2001  
Jefferson City, Missouri  
Volume 6

In the Matter of the Tariff Filing of )  
Missouri Public Service (MPS), a )  
Division of UtiliCorp United, Inc., )Case No. ER-2001-672  
to Implement a General Rate Increase )Tariff No. 200101173  
for Retail Electric Service Provided )  
to Customers in the Missouri Service )  
Area of MPS.

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BEFORE:

KEVIN THOMPSON, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE.

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REPORTED BY:  
TRACY L. THORPE CAVE, CSR  
ASSOCIATED COURT REPORTERS

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FOR: Staff of the Missouri Public Service Commission.:

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1 JUDGE THOMPSON: We are here in the matter of  
2 tariff filing of Missouri Public Service, (MPS) a division  
3 of UtiliCorp United, Inc., to implement a general rate  
4 increase for retail electric service provided to customers  
5 in the Missouri Service Area of MPS, Case No. ER-2001-672.

6 My name is Kevin Thompson. I'm the regulatory  
7 law judge assigned to preside over this matter. We are here  
8 for a late prehearing conference in this case. This  
9 prehearing conference will run for five days. And you all  
10 know much better than I what it is you will accomplish or  
11 hope to accomplish during it.

12 I will simply say at this point that I'd like  
13 to know about any pending motions that need to be ruled  
14 before we go forward. Anyone have a pending motion they'd  
15 like to tell me about? Mr. Coffman?

16 MR. COFFMAN: Well, your Honor, I am aware  
17 that we still have a Motion to Dismiss pending regarding the  
18 adequacy of records that we believe are inadequate at  
19 UtiliCorp. And, of course, the previous -- the other Motion  
20 to Dismiss that Public Counsel has filed regarding the  
21 nature of this case being --

22 JUDGE THOMPSON: That was ruled, was it not?

23 MR. COFFMAN: In a preliminary manner in  
24 that -- I want to make sure --

25 JUDGE THOMPSON: In a preliminary manner?

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1 You're hoping for a more definitive ruling on that?

2 MR. COFFMAN: That's the way I read the  
3 Commission's order, but just so it's clear that those two  
4 issues are still open.

5 JUDGE THOMPSON: All right.

6 MR. COFFMAN: Not that I'm necessarily  
7 requesting a ruling from the Bench at the moment.

8 JUDGE THOMPSON: I understand. You also have  
9 a Motion for Clarification outstanding, do you not?

10 MR. COFFMAN: I believe so.

11 JUDGE THOMPSON: And that refers, does it not,  
12 to the Commission's preliminary denial of your first Motion  
13 to Dismiss?

14 MR. COFFMAN: I think that's correct.

15 JUDGE THOMPSON: And it is action on that  
16 Motion for Clarification that you expect in a way of a more  
17 definitive statement with respect to that motion?

18 MR. COFFMAN: Yes. I think I was clear about  
19 what clarification I wanted in that motion. And I'm  
20 assuming that on the entire issue of whether it is proper to  
21 set rates based on one portion of an electric corporation's  
22 Missouri jurisdictional territory will be litigated in this  
23 case, but --

24 JUDGE THOMPSON: Okay. Thank you.

25 There is a Motion for Leave to File Direct

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1 Testimony Out of Time filed on December 7th. Whose motion  
2 was that?

3 MR. COMLEY: I think it was City of Kansas  
4 City. Exactly. I forgot about that motion. Thank you.

5 JUDGE THOMPSON: That's quite all right,  
6 Mr. Comley.

7 Anybody have any objections to that motion?  
8 That motion will be granted.

9 MR. COMLEY: Thank you.

10 JUDGE THOMPSON: We had a motion of Sedalia  
11 Industrial Energy Users Association to Shorten Time to  
12 Respond to Data Requests and Motion to Shorten Time to  
13 Respond to Motion to Shorten Time to Respond to Data  
14 Requests. I love this case. I do.

15 Mr. Conrad, do you need a ruling on that?

16 MR. CONRAD: I think the answer is no. The  
17 purpose of that whole mish-mash was to obtain some data from  
18 the company. The company has subsequently, on my part, seen  
19 the wisdom of our position and our arguments and has  
20 provided the data. And I believe I had sent to you a  
21 telecopy letter indicating that, in our view, the whole  
22 thing was moot now in view of the fact that that had been  
23 provided.

24 JUDGE THOMPSON: Okay. Very good.  
25 Now, with respect to your Motion for

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1 Authorization from the Commission to File a Complaint  
2 Regarding Over-earnings -- did I say that correctly?

3 MR. WILLIAMS: I believe so.

4 JUDGE THOMPSON: -- is it your view that you  
5 cannot argue in this case as it stands that rates should be  
6 decreased if, in fact, the evidence shows that the revenue  
7 requirement is lower than it was before?

8 MR. WILLIAMS: Certainly Staff can put on  
9 evidence to show what appropriate rates should be in this  
10 case.

11 JUDGE THOMPSON: And is it your opinion then  
12 that that could result in a lower rate?

13 MR. WILLIAMS: My understanding is that in  
14 order for the Commission to lower rates in that situation,  
15 there would need to be a pending complaint case.

16 JUDGE THOMPSON: Interesting. Okay. And  
17 that's why you're seeking the authorization?

18 MR. WILLIAMS: Yes.

19 JUDGE THOMPSON: Okay. Now, would I be  
20 correct in understanding that if that authorization is  
21 granted and if, in fact, you file a complaint, that you'll  
22 seek to have it merged into this case?

23 MR. WILLIAMS: Yes.

24 JUDGE THOMPSON: Okay. Thank you.  
25 Anything else we need to take up at this time?

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1 Mr. Coffman?

2 MR. COFFMAN: For what it's worth, I might  
3 just add that I don't know that that question you put to  
4 Staff is a well settled matter. I suppose to be -- to be  
5 careful, it doesn't hurt to file a complaint, but I don't  
6 know that that's a settled matter. I don't know that Public  
7 Counsel would necessarily concede that rates could not be  
8 reduced wit--

9 JUDGE THOMPSON: The Missouri Supreme Court  
10 has taught us, has it not, that there's two ways to invoke  
11 the Commission's rate-making power; isn't that correct?

12 MR. COFFMAN: Yes.

13 JUDGE THOMPSON: There's the file and suspend  
14 method where the company brings in tariffs and asks the  
15 Commission to revisit its rates and then there's the  
16 complaint method; isn't that correct?

17 MR. COFFMAN: Yeah. I would agree with that.

18 JUDGE THOMPSON: But isn't it the same  
19 Commission power that is invoked through either avenue? I  
20 mean, that's what the Supreme Court seems to have said.

21 MR. COFFMAN: I don't think I can disagree  
22 with that.

23 JUDGE THOMPSON: Okay. Mr. Conrad, help me  
24 with this metaphysical.

25 MR. CONRAD: Well, I'll try to be mercifully

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1 brief, but while we certainly support Staff's motion and  
2 have no difficulty with it, I do agree with Mr. Coffman that  
3 the law in that area, while perhaps to some is clear, it  
4 remains somewhat murky whenever this has been done.

5         The argument seems to be centered around  
6 whether the Staff itself can, in effect, file a complaint or  
7 whether the Staff has to have Commission authorization to  
8 file a complaint.

9         If would be my view, for what little that  
10 might be worth, that once the jurisdiction of the Commission  
11 has been invoked through either methodology, the Commission  
12 then has the responsibility of establishing what rate levels  
13 are just and reasonable and are supported by competent,  
14 substantial evidence upon the whole record.

15         Therefore, evidence could be coming in that  
16 would tend to show the Commission that the existing level of  
17 rates was too high and the reduction thereto should be --  
18 should be ordered.

19         But to follow on Mr. Coffman's comment,  
20 because the areas -- there's no question that the two  
21 methodologies that you refer to have been confirmed by the  
22 Supreme Court and by the Court of Appeals probably numerous  
23 times.

24         But I think there is a question as to, you  
25 know, exactly who it is, because most of that complaint law



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1 was put together by the utilities themselves filing  
2 complaints saying our present level of rates is inadequate  
3 and, therefore, we complain that we're not making enough  
4 money. And they would also then file proposed tariffs.  
5 And it's really just -- I don't know that that  
6 precise question's ever been presented. Out of an abundance  
7 of caution, we think Staff is acting and we would support  
8 their proposal.

9 JUDGE THOMPSON: Thank you.  
10 Mr. Coffman?

11 MR. COFFMAN: Two quick comments.

12 JUDGE THOMPSON: Please.

13 MR. COFFMAN: I believe it's an additional  
14 issue whether Staff has the authority on its own to file a  
15 complaint. I believe that --

16 JUDGE THOMPSON: I agree with you. It sounds  
17 as though there are really two questions.

18 MR. COFFMAN: And I think the answer to that  
19 is yes. I think the Commission's own rules recognize the  
20 Staff as a separate entity for purposes of litigation before  
21 the Commission.

22 JUDGE THOMPSON: You'll point that out to  
23 Mr. Joyce, I hope.

24 MR. COFFMAN: Yes. Be happy to.  
25 I don't know that they need to request

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1 permission, but I'm sure out of abundance of caution, that  
2 doesn't hurt -- well, I'm sure they can speak for  
3 themselves.

4 On an additional matter that I might throw out  
5 at this point, just as I believe that it would be improper  
6 for the Commission in this current rate case to establish a  
7 revenue requirement that does not recognize the entire  
8 Missouri jurisdictional service territory --

9 JUDGE THOMPSON: Right.

10 MR. COFFMAN: -- I would believe that that  
11 would also be a constraint on any rate decrease earnings  
12 complaint case.

13 JUDGE THOMPSON: That would also have to be  
14 company-wide, in your view --

15 MR. COFFMAN: Yes.

16 JUDGE THOMPSON: -- of what company-wide  
17 means?

18 MR. COFFMAN: That's the Public Counsel  
19 position.

20 MR. WILLIAMS: Judge, if I may?

21 JUDGE THOMPSON: Yes, sir.

22 MR. WILLIAMS: This case got initiated by  
23 UtiliCorp filing a tariff seeking an increase in rates. The  
24 result of this case would be the Commission saying we  
25 believe that the appropriate rate should be set at whatever

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1 the Commission determines, be it what the company's  
2 requested or otherwise.

3 There's no requirement that the company go  
4 forward and change its rates from where they're currently  
5 set should it decide not to do that. And in order to  
6 initiate that at some future date I believe would require a  
7 complaint case saying they're over-earning, if that's, in  
8 fact, the circumstance.

9 JUDGE THOMPSON: You know, you raise a very  
10 interesting point, because the statute also speaks in terms  
11 of the Commission setting maximum rates, which at least  
12 suggests that perhaps the company could voluntarily publish  
13 rates that are lower than the Commission maximum.

14 MR. WILLIAMS: I think that would be a  
15 possibility.

16 JUDGE THOMPSON: I mean, the word --  
17 MR. CONRAD: Hope springs eternal.

18 JUDGE THOMPSON: I realize the legislature may  
19 have said that knowing it wasn't going to be an issue, but  
20 certainly suggests such a thing. And our rule of  
21 construction is that the legislature doesn't waste any  
22 words, so it must have some meaning.

23 If the Commission were to set a maximum rate,  
24 the statutes also forbid the company from charging -- from  
25 charging customers a rate that exceeds the Commission's set

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1 maximum. So if the Commission were to set a maximum rate in  
2 this proceeding, which is lower than the company's current  
3 rate, then would it not follow that the company would be  
4 required then to publish new tariffs that were no higher  
5 than the Commission maximum rate?

6 MR. CONRAD: That's my point.

7 JUDGE THOMPSON: Would you agree?

8 MR. CONRAD: Uh-huh.

9 JUDGE THOMPSON: Well, this was a very  
10 interesting discussion. If there's nothing more, I'll leave  
11 you guys to do whatever it is you're going to do.

12 MR. SWEARENGEN: Is there going to be an  
13 examination at the end of the prehearing?

14 JUDGE THOMPSON: There's going to be an  
15 examination at the end of the case and it will be a harder  
16 grader than I. Five harder graders.

17 Anything else? Thank you very much for coming  
18 out today. We will conclude the recorded portion of the  
19 prehearing conference.

20 (PREHEARING ADJOURNED.)

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1                                   C E R T I F I C A T E  
2   STATE OF MISSOURI            )  
                                  ) ss.  
3   COUNTY OF COLE             )  
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5           I, Tracy L. Thorpe Cave, Certified Shorthand Reporter,  
6   with the firm of Associated Court Reporters, Inc., and  
7   Notary Public within and for the State of Missouri, do  
8   hereby certify that I was personally present at the  
9   proceedings had in the above-entitled cause at the time and  
10   place set forth in the caption sheet thereof; that I then  
11   and there took down in Stenotype the proceedings had; and  
12   that the foregoing is a full, true and correct transcript of  
13   such Stenotype notes so made at such time and place.

14                   Given at my office in the City of Jefferson, County  
15   of Cole, State of Missouri, this 13th day of December, 2001.  
16   My commission expires December 16, 2001.

17                                   \_\_\_\_\_  
18                                   TRACY L. THORPE CAVE  
19                                   Notary Public, State of Missouri  
20                                   (Commissioned in Boone County.)  
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