

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
December 5, 2000**

CASE NO: ER-2001-294

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

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Brydon, Swearengen & England, P. C.
P. O. Box 456
Jefferson City, MO 65102-0456

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

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copies:

**To the County Commission located in each county within Missouri Public Service's
Missouri service area.**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 5th
day of December, 2000.

In the Matter of the Tariff Filing of UtiliCorp) Case No. ER-2001-294
United Inc., d/b/a Missouri Public Service.) Tariff No. 200100508

**ORDER SUSPENDING TARIFF,
SETTING PREHEARING CONFERENCE,
REQUIRING PROPOSED PROCEDURAL SCHEDULE,
AND DIRECTING NOTICE**

On November 2, 2000, UtiliCorp United, Inc., doing business as Missouri Public Service (MPS), submitted proposed tariff sheets creating an experimental natural gas cost recovery surcharge. The proposed tariff sheets (PSC Mo. No. 2, Original Sheets 78 and 79) were assigned Tariff No. 200100508. The proposed tariff sheets bear an issue date of November 2, 2000, and an effective date of December 8, 2000.

On November 15, 2000, the Office of the Public Counsel (Public Counsel) filed its Motion to Dismiss or, in the Alternative, Motion to Suspend Tariff and Request for Hearing. Therein, Public Counsel contends that the so-called experimental surcharge is actually an illegal fuel adjustment clause (FAC). See St. ex rel. Utility Consumer Council of Mo. v. Public Service Commission, 585 S.W.2d 41 (Mo. banc 1979). Public Counsel also states that the proposed tariff sheets constitute unlawful single issue ratemaking. Id., and see St. ex rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806 (Mo. App., W.D. 1993). Public Counsel further states that the experimental surcharge that would be created by the proposed tariff sheets is not akin to a Purchased Gas Adjustment (PGA) clause, such as was found to be lawful in Midwest Gas

Users Association v. Public Service Commission, 976 S.W.2d 470 (Mo. App., W.D. 1998), and that MPS's reliance on that decision was misplaced. Public Counsel raises several other points respecting the practicality of the proposed mechanism.

On November 22, 2000, MPS responded to Public Counsel's motion. Therein, MPS seeks to refute each point raised by Public Counsel. Thereafter, on November 30, 2000, Public Counsel replied to MPS, restating its complaints and objections regarding the proposed tariff sheets and the experimental surcharge they would create.

On November 17, 2000, the Staff of the Missouri Public Service Commission (Staff) filed its Motion to Suspend Tariff and for Early Prehearing Conference. Staff raised many of the same issues that Public Counsel had raised, although Staff recommended suspension rather than dismissal. Therefore, Staff requested that the Commission set an early prehearing conference and develop an appropriate procedural schedule.

The Commission has considered the proposed tariff sheets, Public Counsel's motion and reply, Staff's motion, and MPS's response. The Commission concludes that significant questions concerning the proposed tariff sheets have been raised such that the proposed tariff sheets should be suspended for further consideration. The Commission will suspend the tariff sheets for 120 days beyond the effective date shown thereon. Further, because the Commission finds that a hearing on the proposed tariff sheets cannot be concluded in that interval, the Commission will suspend the proposed tariff sheets for a further six months beyond the suspension period referred to above. The Commission will set an early prehearing conference as requested by Staff and will require the parties to jointly prepare and file a proposed procedural schedule.

The Commission has determined that proper parties should be given notice and an opportunity to intervene in this matter. The Records

Department of the Commission shall send a copy of this order to the county commission located in each county within MPS's Missouri service area. In addition, the Public Information Office of the Commission shall send notice and a copy of this order to the members of the Missouri General Assembly who represent customers in MPS's Missouri service area and to the media serving those customers.

IT IS THEREFORE ORDERED:

1. That the Motion to Dismiss or Suspend filed by the Office of the Public Counsel on November 15, 2000, is denied in part and granted in part, in that the proposed tariff sheets will not be dismissed but will be suspended.

2. That the proposed tariff sheets submitted on November 2, 2000, by UtiliCorp United, Inc., doing business as Missouri Public Service, Tariff No. 200100508, are hereby suspended for a period of 120 days beyond December 8, 2000, to March 30, 2001, or until otherwise ordered by this Commission. The sheets suspended are:

Mo. P.S.C. No. 2
Original Sheet No. 78
Original Sheet No. 79

3. That the proposed tariff sheets, suspended in Ordered Paragraph 2, above, are hereby suspended for six months beyond March 30, 2001, to September 30, 2001.

4. That a prehearing conference shall be held on December 28, 2000, beginning at 10:00 a.m. The prehearing will be held at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans With Disabilities Act.

5. That the parties shall jointly prepare and file a proposed procedural schedule no later than January 4, 2001. The proposed procedural

schedule shall set out dates for the filing of prepared direct, rebuttal and surrebuttal testimony, the filing of a joint statement of issues to be determined by the Commission, the filing by each party of a statement of its position on each such issue, and an evidentiary hearing.

6. That the Records Department and Information Office of the Commission shall provide notice as described in this order.

7. That anyone wishing to intervene herein shall submit an application to intervene, no later than December 26, 2000, to:

Dale Hardy Roberts, Secretary
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

and send copies to:

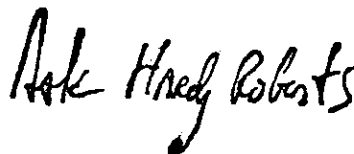
James C. Swearengen, Esq.
Dean L. Cooper, Esq.
Brydon, Swearengen & England
Post Office Box 456
Jefferson City, Missouri 65102-0456

and:

Office of the Public Counsel
Post Office Box 7800
Jefferson City, Missouri 65102

8. That this order shall become effective on December 8, 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.

Thompson, Deputy Chief Regulatory Law Judge

ALJ/Sec'y:

Thompson / Pope

Date Circulated

12-1 ER-2001 1294
CASE NO.

Lumpke, Chair

12-1, 2, 3, 4

Drainer, Vice Chair

not 2, 3, 4

Murray, Commissioner

625

Schemenauer, Commissioner

KS

Simmons, Commissioner

OK

Agenda Date

12-5

Action taken:

5-0AA

Must Vote Not Later Than

12-7

**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 5th day of December 2000.

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge