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January 4, 2001

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FILED
JAN 4 2001
Missouri Public
Service Commission

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

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF PROPOSAL FOR PROCEDURAL SCHEDULE**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim
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Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
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In the Matter of the Tariff Filing of UtiliCorp)
United Inc., d/b/a Missouri Public Service)

Case No. ER-2001-294

STAFF PROPOSAL FOR PROCEDURAL SCHEDULE

Comes now the Staff of the Missouri Public Service Commission (Staff) and for its proposal for a procedural schedule and its response to the January 2, 2001 Motion For Expedited Treatment of UtiliCorp United Inc. (UtiliCorp) states as follows:

1. On November 17, 2000 the Staff filed its Staff Motion To Suspend Tariff And Schedule An Early Prehearing Conference in response to the November 2, 2000 surcharge tariff filing of UtiliCorp and UtiliCorp's Suggestions In Support Of Tariff Filing. The Staff requested that the Commission suspend the tariff, establish an intervention period and schedule an early prehearing conference for the purpose of suggesting to the Commission a procedural schedule that will permit adequate time for discovery, evidentiary hearings on the surcharge tariff and briefs on the legal issues presented by the surcharge tariff.

2. On December 5, 2000 the Missouri Public Service Commission (Commission) issued an Order Suspending Tariff, Setting Prehearing Conference, Requiring Proposed Procedural Schedule And Directing Notice. Among other things, the Commission set a prehearing conference for December 28, 2000 for the purpose of submitting a proposed procedural schedule no later than January 4, 2000. The Staff, Public Counsel and UtiliCorp attended the December 20, 2000 prehearing conference set by the Commission for the purpose of determining a procedural schedule. Sedalia Industrial Energy Users' Association (SIEUA), Wire Rope Corporation of America, Inc. (Wire Rope) and TransWorld Airlines, Inc. (TWA), which

had filed timely Applications To Intervene, also attended the prehearing conference. On January 2, 2001, UtiliCorp filed a Motion For Expedited Treatment containing its proposed procedural schedule stating that UtiliCorp had been unable to reach an agreement with the other parties with respect to a proposed procedural schedule.

3. As a result of the discussions that occurred at the December 28, 2000 prehearing conference, UtiliCorp has not reached agreement with the Staff, Public Counsel, SIEUA, Wire Rope and TWA on a procedural schedule to propose to the Commission. UtiliCorp's proposed procedural schedule only permits the Staff, Public Counsel and other parties a rebuttal filing, only provides for thirteen (13) days between UtiliCorp's filing of direct testimony and other parties' filing of rebuttal testimony, which is the only filing permitted these parties under UtiliCorp's proposed procedural schedule, and only provides for seven (7) days between UtiliCorp's surrebuttal filing and the commencement of the hearings on a state holiday, Lincoln's birthday. UtiliCorp's proposed procedural schedule is so abbreviated that it does not provide the Staff, Public Counsel and other parties even the minimum twenty (20) days necessary, under 4 CSR 240-2.090(2), for one round of data requests once these parties receive UtiliCorp's direct and surrebuttal testimony. UtiliCorp's proposed procedural schedule is completely inadequate.

The issues raised by UtiliCorp's filing are both factual and legal. UtiliCorp's surcharge tariff, Suggestions In Support Of Tariff Filing and Motion For Expedited Treatment do not adequately address the factual and legal questions raised by UtiliCorp's November 2, 2000 filing. Besides various details of the operation of the surcharge tariff, it is still not clear from UtiliCorp's filing why the proposed surcharge tariff is characterized by UtiliCorp as an experiment, and what is it that UtiliCorp means by calling the surcharge tariff an experiment.

The Staff believes that adequate time for discovery, an evidentiary hearing and briefing is required because of the significance of the substance of the provisions of the surcharge tariff (the meaning of which provisions are not necessarily clear to the Staff at this point) and the need to determine whether the surcharge tariff will produce just and reasonable rates if approved by the Commission.

The manner in which UtiliCorp has proceeded does not evidence a utility experiencing significant financial harm that requires expedited treatment. The Staff would note that UtiliCorp has not provided any support for its projection that it will experience an annual \$25-30 million of unrecovered natural gas costs. It has not provided any testimony. UtiliCorp could have filed testimony in support of its surcharge tariff at the time that it filed the surcharge tariff, but UtiliCorp did not do so then and has not done so in the nine weeks since its November 2, 2000 surcharge tariff filing.

Thus, the Staff proposes the following procedural schedule consistent with the positions it set out in its November 17, 2000 Staff Motion To Suspend Tariff And Schedule An Early Prehearing Conference:

EVENT	DATE
UtiliCorp Files Direct Testimony	1/16/01
Staff, OPC and Other Parties' File Direct Testimony	3/20/01
Prehearing Conference	3/29/01
All Parties File Rebuttal Testimony	5/03/01
All Parties File Surrebuttal and Cross-surrebuttal	5/29/01
List of Issues	6/07/01
Statements of Position	6/11/01

Evidentiary Hearings

6/19-20/01

Operation-of-Law Date

9/30/01

The Staff has provided the above proposed dates to Public Counsel, and Public Counsel has indicated that these dates are acceptable to it. Due to some final changes made by the Staff respecting its proposed procedural schedule, time did not permit the Staff to provide the above dates to SIEUA, Wire Rope and TWA prior to their preparing and submitting their response to the Commission's December 5, 2000 Order. The Staff expects that SIEUA, Wire Rope and TWA will submit a response respecting the above proposed dates in the next few days. Of course, UtiliCorp has not agreed to the above proposed dates.

4. The Staff would note again that since UtiliCorp's filing effectuates a general rate increase, UtiliCorp's filing is deficient because of its failure to include direct testimony consistent with Commission rule 4 CSR 240-2.065, Tariff Filings Which Create Cases. Commission rule 4 CSR 240-2.065 states, in part, as follows:

(1) A general rate increase request is one where the company or utility files for an overall increase in revenues through a company-wide increase in rates for the utility service it provides, but shall not include requests for changes in rates made pursuant to an adjustment clause or other similar provisions contained in a utility's tariffs. . . . *Any public utility which submits a general rate increase request shall simultaneously submit its direct testimony with the tariff.*

(Emphasis added).

If the Commission finds that the Staff's proposed procedural schedule set out above does not provide the Commission enough time for deliberation, the Commission should dismiss UtiliCorp's tariff filing for not complying with 4 CSR 240-2.065(1). Although it is the Staff's recommendation that the Commission adopt the Staff's procedural schedule, the Staff believes that the Commission could dismiss UtiliCorp's tariff filing for not complying with 4 CSR 240-2.065(1).

The Staff would also comment that contrary to 4 CSR 240-2.080(17)(B), UtiliCorp's Motion For Expedited Treatment does not include "a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party." UtiliCorp cannot accurately make such a statement.

5. UtiliCorp states in its January 2, 2001 Motion For Expedited Treatment that it is experiencing financial harm due to increases in natural gas prices and for 2001 forecasts \$25-30 million in unrecovered costs due to increases in gas prices, which the proposed surcharge would address:

By processing this case on an expedited basis and permitting the proposed surcharge to become effective no later than March 1, 2001, continued significant financial harm to UtiliCorp will be avoided. Specifically, UtiliCorp anticipates that it will experience \$25-30 million of unrecovered costs in connection with its 2001 electric retail operations as a result of these gas price increases.

(Emphasis added).

UtiliCorp said at page 1 of its Suggestions In Support Of Tariff Filing submitted to the Commission on November 2, 2000 that "[t]he surcharge proposed by the subject tariff filing is designed to offset a portion of the gas price increases." UtiliCorp further stated at pages 1-2 as follows:

. . . The costs for which recovery through the surcharge are sought are natural gas costs over \$3.00/Mcf for gas used for electric generation for retail load and purchased power energy costs above \$30 per Mwh. Purchased power energy costs above \$78 per Mwh are not included for recovery. The \$78 per Mwh ceiling is based on a gas price of \$6.00 per Mcf. Purchased power energy above \$78 per Mwh would likely have other factors causing the price level other than simply the increase in the cost of gas. Therefore, purchased power energy above this price is not included in the surcharge.

UtiliCorp has not clearly indicated a dollar quantification of total gas price increases that the surcharge tariff is intended to collect. The total dollars that the surcharge tariff is intended to

collect is not an inconsequential matter. For example, if the surcharge tariff is intended to collect the bulk of the purported annual \$25-30 million of unrecovered costs, a comparison of the amount of dollars to be collected by the surcharge tariff to the amount of dollars sought to be collected by the general rate increase cases filed by UtiliCorp in the recent past, for its electric operations, shows that UtiliCorp's surcharge does effectuate a general rate increase:

<u>UtiliCorp Rate Case</u>	<u>\$ Increase (000,000)</u>	<u>% Increase</u>
Case No. ER-97-394	\$25.0	9.3%
Case No. ER-93-37	\$19.4	8.4%
Case No. ER-90-101	\$25.5	12.7%

This comparison supports the Staff's position that UtiliCorp is trying to engage in a general rate increase while calling it something else.

5. The Staff would note that even though customer notice is not constitutionally or statutorily required for general rate increases, the Commission has provided for customer notice and local public hearings in such cases and may want to consider doing so respecting UtiliCorp's surcharge tariff filing, given the size of the increase involved. (See State ex rel. Jackson County v. Public Serv. Comm'n, 532 S.W.2d 20, 31-33 (Mo.banc 1975), cert. denied, 429 U.S. 882, 97 S.Ct. 73, 50 L.Ed.2d 84 (1976); utility customers do not have any vested rights in fixed utility rates and the relevant statutory provisions do not deny due process or equal protection).

6. Further, UtiliCorp acknowledges in its surcharge tariff, but not in its November 2, 2001 Suggestions In Support Of Tariff Filing or its January 2, 2001 Motion For Expedited Treatment, that what it is seeking is a general rate increase by a means other than the statutorily and judicially recognized procedures for a general rate increase or an interim/emergency rate increase. UtiliCorp's proposed surcharge tariff states, in part, as follows:

. . . The surcharge is intended to recover certain increased costs above prescribed target levels in a timely manner, *preventing undue financial harm* to Missouri Public Service while *avoiding frequent, costly general rate increase requests*.

(Emphasis added).

Although not in the recent past, UtiliCorp's predecessor, Missouri Public Service Company, filed several times for interim/emergency rate relief:

Re Missouri Public Service Company, Report And Order, Case No. ER-81-154, 24 Mo.P.S.C.(N.S.) 245 (1981).

Re Missouri Public Service Company, Report And Order, Case No. ER-79-59, 22 Mo.P.S.C.(N.S.) 427 (1978).

Re Missouri Public Service Company, Case No. 18,502 (1976); See 24 Mo.P.S.C.(N.S.) at 247.

The most current interim rate case filed with the Commission by an electrical corporation is a 1996 Empire District Electric Company (EDE) case, Re Empire District Electric Company, Case No. ER-97-82, 6 Mo.P.S.C.3d 17 (1997). On August 30, 1996, EDE filed interim tariff sheets with the Commission designed to increase EDE's annual electric revenues by approximately \$4 million. Empire proposed that the \$4 million rate increase be interim subject to refund, pending the Commission's decision in EDE's permanent electric rate increase case, wherein EDE was seeking a permanent increase in rates in excess of \$23 million, Case No. ER-97-81. As in the instant UtiliCorp case, EDE in Case No. ER-97-82 argued that an increase in natural gas prices warranted extraordinary action by the Commission. The Commission's Report And Order related as follows in denying EDE any interim rate relief:

Empire provided evidence showing that as of June 30, 1996, its return on average equity was 7.97 percent. Empire maintains that this is below a reasonable return for it or any other electric utility. (Ex. 3, p. 2; Tr. 112). Empire argues that an unexpected increase in natural gas prices occurring after its currently effective rates were put into effect is a significant factor causing a need for interim rate relief. (Ex. 2, p. 2).

6 Mo.P.S.C.3d at 19; Emphasis added.

In this case Empire has not demonstrated good cause for granting interim relief. The evidence demonstrates that Empire earned a return on equity of 7.97 percent and that was caused in large part by an unexpected increase in fuel costs. Under the facts of this case, the inability of the company to earn its authorized return on equity does not, in and of itself, constitute sufficient justification for granting interim relief.

Id. at 20.

In this case, Empire argues that its return has fallen to a point that the Commission should grant a request for interim rate relief pending the outcome of Empire's permanent rate case. This Commission addressed the same issue in a case which was appealed to the Missouri Court of Appeals, Kansas City District (now called the Western District).^{*} The Commission stated that an interim increase should be granted only where a showing has been made that the rate of return being earned is so unreasonably low as to show such a deteriorating financial condition that would impair a utility's ability to render adequate service or render it unable to maintain its financial integrity.^{**}

^{*} State ex rel. Laclede Gas Co. v. Public Serv. Comm'n, 535 S.W.2d 561 (1976).

^{**} Id. at 568-569.

There is no showing by the Company that its financial integrity will be threatened or that its ability to render safe and adequate service will be jeopardized if this request is not granted. Furthermore, the Company has shown no other exigent circumstances that would merit interim relief.

Id. at 21.

7. The Staff again would point out that Mr. John W. McKinney, UtiliCorp Vice President – Regulatory Services, testified on September 12, 2000 in the Empire District Electric Company – UtiliCorp merger evidentiary hearings that UtiliCorp had notified the Staff that UtiliCorp was looking at the present time at filing a rate increase case due to the increase in gas prices. (September 12, 2000, Vol. 3, Tr. 461-62, Case No. EM-2000-369).

The Commission already has established a long-standing procedure for providing emergency rate relief. The Staff would suggest to UtiliCorp that if Missouri Public Service

(MPS) is truly experiencing "undue financial harm," then UtiliCorp should consider filing an interim (subject to refund)/emergency general rate increase case and a permanent general rate increase case.

Wherefore the Staff requests that the Commission reject the procedural schedule proposed by UtiliCorp and adopt the procedural schedule proposed above by the Staff. Alternatively, should the Commission believe that the Staff's proposed procedural schedule does not provide the Commission with adequate time to deliberate, then the Staff requests that the Commission dismiss the instant case for UtiliCorp's failure to comply with the Commission's rules, and direct UtiliCorp to file direct testimony concurrent with its surcharge tariff, should UtiliCorp choose to file its surcharge tariff again with the Commission.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 4th day of January 2000.



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Case No. ER-2001-294
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