

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
January 16, 2001**

**CASE NO: ER-2001-294**

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**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**

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Tariff Filing            )	
of UtiliCorp United Inc., doing            )	<b>Case No. ER-2001-294</b>
business as Missouri Public Service.       )	<b>Tariff No. 200100508</b>

**ORDER GRANTING INTERVENTION**  
**AND ADOPTING A PROCEDURAL SCHEDULE**

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), bearing an issue date of November 2, 2000, and an effective date of December 8, 2000, were assigned Tariff No. 200100508. On November 15, 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. On November 22, MPS responded to Public Counsel's motion. Thereafter, on November 30, Public Counsel replied to MPS, restating its complaints and objections regarding the proposed tariff sheets.

On November 17, 2000, meanwhile, 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 and requested that the Commission set an early prehearing conference and develop an appropriate procedural schedule.

On November 28, 2000, the Sedalia Industrial Energy Users' Association (SIEUA), an unincorporated association consisting of Alcan Cable Company, American Compressed Steel Corporation, Gardner Denver Corporation, Hawker Industries, Hayes Lemmerz International, Pittsburgh

Corning Corporation, Stahl Specialty Company, and Waterloo Industries, applied to intervene. On December 13, Wire Rope Corporation of America, Inc., and TransWorld Airlines, Inc., moved to join SIEUA's application to intervene.

Meanwhile, on December 5, 2000, the Commission issued its Order Suspending Tariff, Setting Prehearing Conference, Requiring Proposed Procedural Schedule, and Directing Notice. By this order the Commission denied Public Counsel's Motion to Dismiss and suspended the proposed tariff for eleven months, to September 30, 2001. The Commission also established an intervention period ending December 26, 2000, set a prehearing conference for December 28, 2000, and required the filing of a proposed procedural schedule by January 4, 2001. The prehearing conference was held as scheduled on December 28, 2000.

On January 2, 2001, MPS moved for expedited treatment. Therein, MPS explained that the experimental gas cost recovery surcharge tariff was necessary for the current heating season. MPS requested that it be approved for service no later than March 1, 2001. MPS proposed an expedited procedural schedule designed to accomplish the prompt resolution of this matter. On January 4, the Public Counsel filed objections to MPS's motion for expedited treatment. Also on January 4, Staff filed its proposed procedural schedule and response to MPS, as did SIEUA. SIEUA also responded to Staff's proposed procedural schedule on January 5.

### **Intervention:**

Commission Rule 4 CSR 240-2.075 governs intervention:

(1) An application to intervene shall comply with these rules and shall be filed within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission.

(2) An application to intervene shall state the proposed intervenor's interest in the case and reasons for seeking intervention, and shall state whether the

proposed intervenor supports or opposes the relief sought or that the proposed intervenor is unsure of the position it will take.

(3) An association filing an application to intervene shall list all of its members.

(4) The commission may on application permit any person to intervene on a showing that:

(A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

(5) Applications to intervene filed after the intervention date may be granted upon a showing of good cause.

(6) Any person not a party to a case may petition the commission for leave to file a brief as an amicus curiae.

Each of the proposed intervenors herein has stated allegations in its application or motion which support intervention under the Commission's rule. No party has opposed any of the proposed interventions and the time for doing so has now expired. The Commission has reviewed the applications and motions to intervene and finds that they are in substantial compliance with the cited Commission Rule and that each of the proposed intervenors has shown good cause under the cited Commission Rule for intervention herein. Therefore, the Commission will grant the requests for intervention.

### **Expedited Treatment and the Proposed Procedural Schedules:**

MPS seeks expedited treatment so that its experimental recovery surcharge tariff may become effective as soon as possible, and in no case later than March 1, 2001. MPS points out that it expects increased natural gas costs to affect its 2001 operations in the amount of \$25 million to \$30 million. To that end, MPS proposed this procedural schedule:

Direct Testimony-MPS	January 16, 2001
Rebuttal Testimony-Parties other than MPS	January 29, 2001
Surrebuttal Testimony-MPS	February 5, 2001
Prehearing Conference	February 7, 2001
Issues List	February 8, 2001
Position Statements	February 9, 2001
Hearing	February 12-13, 2001

Public Counsel, in response, states that counsel met on December 28, 2000, to prepare a proposed procedural schedule for this matter. At that time, Public Counsel states, counsel for MPS was advised that other commitments would prevent Staff and Public Counsel from filing testimony earlier than late March. Public Counsel asserts that the following proposed procedural schedule was tentatively developed:

Direct Testimony-MPS	January 16, 2001
Direct-All other parties	March 20, 2001
Prehearing Conference	March 29, 2001
Rebuttal Testimony-All parties	May 9, 2001
Surrebuttal Testimony-All parties	June 7, 2001
Issues List	June 12, 2001
Position Statements	June 15, 2001
Hearing	June 21-22, 2001

Public Counsel further complains that MPS's proposed procedural schedule makes no provision for direct testimony by parties other than MPS. The involvement of Public Counsel's staff in the pending St. Louis County Water Company general rate case, in which the hearing is set for February 5-9, 2001, makes the expedited schedule proposed herein by MPS impossible. Additionally, Public Counsel asserts that MPS's proposed schedule unfairly deprives it of a reasonable interval after the filing of

MPS's direct testimony in which to prepare rebuttal testimony. Public Counsel contends that MPS's proposed tariff is either an unlawful Fuel Adjustment Clause or a general rate case.

Staff asserts many of the same points as Public Counsel in opposition to MPS's proposed procedural schedule. In particular, Staff points out that MPS failed to file prepared direct testimony simultaneously with its proposed tariff and has failed to file such testimony in the nine or more weeks that have passed since it filed its tariff. MPS, Staff states, is not acting like a utility facing financial difficulties. Staff suggests the following procedural schedule, and states that Public Counsel has indicated that it is acceptable to it:

Direct Testimony-MPS	January 16, 2001
Direct Testimony-All other parties	March 20, 2001
Prehearing Conference	March 29, 2001
Rebuttal Testimony-All parties	May 3, 2001
Surrebuttal and Cross-Surrebuttal Testimony-All parties	May 29, 2001
Issues List	June 7, 2001
Position Statements	June 11, 2001
Hearing	June 19-20, 2001

Staff strongly opposes MPS's request for expedited treatment. Staff suggests that MPS's proposed tariff should be viewed as a request for a general rate increase, in which case it is subject to dismissal for failure to satisfy all of the Commission's filing requirements for a general rate case. Staff further suggests that a mechanism of long standing exists for electric utilities suffering the adverse effects of rising natural gas prices, namely, the interim or emergency rate relief request, subject to refund. Staff suggests that MPS should seek quick relief, if such is indeed necessary, through that mechanism.

SIEUA, in turn, urges the Commission to adopt the proposed procedural schedule tentatively agreed upon by the parties on December 28, as set out previously herein. SIEUA states that this schedule, which differs only in minor regards from that proposed by Staff, provides sufficient time to the parties to conduct discovery, and yet will present the case to the Commission for decision well in advance of the operation-of-law date. SIEUA also strongly opposes MPS's request for expedited treatment. SIEUA contends that MPS's proposed procedural schedule is so attenuated that it deprives it of a meaningful opportunity to participate in the litigation of this matter. SIEUA suggests that the Commission would not be able to consider "all relevant factors" if MPS's proposed procedural schedule were adopted, and that the Commission's decision made on such a schedule would necessarily be unlawful. Like Staff, SIEUA reminds the Commission of the mechanism whereby interim rate relief may be sought in emergencies.

Finally, on January 5, 2001, SIEUA concurred in the slightly different procedural schedule recommended by Staff.

Having considered the alternatives proposed by the parties and the arguments made in support and in opposition thereof, the Commission will adopt the procedural schedule proposed by the Staff and concurred in by SIEUA and Public Counsel. This decision is driven by the complexity of the legal and factual issues herein raised and the need for all parties to have adequate time to conduct discovery and develop their positions. In particular, the Commission notes that MPS has not advanced its case by its failure to file its direct testimony early. The Commission further agrees that this case is in the nature of a general rate case, in view of the fact that Fuel Adjustment Clauses for electric utilities are impermissible in Missouri. State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41 (Mo. banc 1979). All relevant

factors must be considered herein. Should MPS require emergency rate relief, it may choose to seek an interim rate order.

The Commission will apply the following conditions to the procedural schedule herein adopted:

(A) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(B) The parties shall agree on and file a list of issues to be determined herein by the Commission. Staff shall be responsible for actually drafting and filing the list of issues and the other parties shall cooperate with Staff in the development thereof. Any issue not included in the issues list will be presumed to not require determination by the Commission.

(C) Each party shall file a list of the witnesses to appear on each day of the hearing and the order in which they shall be called. The parties shall establish the order of cross examination and file a joint pleading indicating the same.

(D) Each party shall file a statement of its position on each disputed issue, including a summary of the factual and legal points relied on by the party. Such statement shall be simple and concise, shall follow the issues set out in the issues list, and shall not contain argument about why the party believes its position to be the correct one. The position statement shall be filed in both paper form and electronically, either on computer disk or by e-mail. Electronically-submitted documents shall be in



Word, WordPerfect, or ASCII format. The Regulatory Law Judge's e-mail address is: ktomp099@mail.state.mo.us.

(E) Transcript due dates and briefing schedules are included in the Procedural Schedule.

(F) All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080. The briefs to be submitted by the parties shall follow the same list of issues as filed in the case. The briefs must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission. Each principal brief shall not exceed 30 pages in length; reply briefs shall not exceed 15 pages in length.

(G) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the three copies for the court reporter, copies for the five Commissioners, the regulatory law judge, and all counsel.

(H) Each party shall prepare and file Proposed Findings of Fact and Conclusions of Law as directed in the Procedural Schedule. Each proposed finding of fact shall include specific citations to competent and substantial supporting evidence in the record. Each proposed conclusion of law shall include specific citations of authority.

**IT IS THEREFORE ORDERED:**

1. That intervention in this case in accordance with 4 CSR 240-2.075(4) is granted to the Sedalia Industrial Energy Users' Association, including Alcan Cable Company, American Compressed Steel Corporation, Gardner Denver Corporation, Hawker Industries, Hayes Lemmerz International,

Pittsburgh Corning Corporation, Stahl Specialty Company, TransWorld Airlines, Inc., Waterloo Industries, and Wire Rope Corporation of America, Inc. The Records Department of the Commission shall add counsel for the Sedalia Industrial Energy Users' Association to the service list for this matter.

2. That the following procedural schedule is adopted for this case:

Direct Testimony Missouri Public Service	January 16, 2001 3:00 p.m.
Direct Testimony All Other Parties	March 20, 2001 3:00 p.m.
Prehearing Conference	March 29, 2001 10:00 a.m.
Rebuttal Testimony All Parties	May 3, 2001 3:00 p.m.
Surrebuttal and Cross-Surrebuttal Testimony-All Parties	May 29, 2001 3:00 p.m.
List of Issues, List of Witnesses, Order of Cross	June 7, 2001 3:00 p.m.
Position Statements All Parties	June 11, 2001 3:00 p.m.
Reconciliation	June 11, 2001 3:00 p.m.
Evidentiary Hearing	June 19-20, 2001 8:30 a.m.
Transcript Due	June 21, 2001 Noon
Initial Briefs All Parties	July 13, 2001 3:00 p.m.
Reply Briefs - All Issues Except True-up - All Parties	July 27, 2001 3:00 p.m.
Proposed Findings of Fact and Conclusions of Law - All Parties	July 27, 2001 3:00 p.m.

The hearing and prehearing conference will be held at the Commission's offices at the Governor Office Building, 200 Madison Street,

Jefferson City, Missouri, in a facility which meets all requirements of the Americans with Disabilities Act (ADA). Any person with special needs as addressed by the ADA should contact the Missouri Public Service Commission at least ten days prior to the hearing or prehearing conference at one of the following numbers: Consumer Services Hotline - 1-800-392-4211, or TDD Hotline - 1-800-829-7541.

3. That this order shall become effective on January 26, 2001.

**BY THE COMMISSION**

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

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Kevin A. Thompson, Deputy Chief Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 16th day of January, 2001.

FYI: To Be Issued By Delet. on

ALJ/Sec'y: Thompson, Joyce

1-11  
Date Circulated  
1-17  
Return by 3:30 pm  
10 am

ER-2001-294  
CASE NO.

*HL*  
Lumpe, Chair

*ML*  
Draimer, Vice Chair

*QW*  
Murray, Commissioner

*SL*  
Schemenauer, Commissioner

*KS*  
Simmons, Commissioner

*OK*

CONTESTED

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 16<sup>th</sup> day of Jan. 2001.

*Dale Hardy Roberts*

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

