

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

April 3, 2001

CASE NO: ET-2001-482

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

Paul A. Boudreau

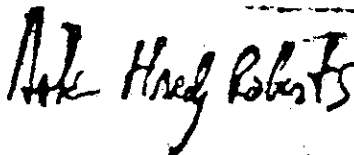
Brydon, Swearngen & England P.C.

P. O. Box 456

Jefferson City, MO 65102

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

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, slightly stylized font.

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of April, 2001.

In the Matter of UtiliCorp United Inc.'s)	
Tariff Filed to Update the Rules and)	
Regulations for Electric and to Increase)	<u>Case No. ET-2001-482</u>
the Interest Rate Paid on Deposits, the)	<u>Tariff No. 200100849</u>
Late Payment Charge, the Reconnection Fee,)	
and the Charge for Returned Checks)	

ORDER REJECTING TARIFF

On February 16, 2001, UtiliCorp United Inc. filed a tariff to make changes to the interest paid on customer deposits, late payment charges, reconnection fees and charges from returned checks for customers of UtiliCorp's St. Joseph Light & Power (SJLP) division's electric operations. The changes proposed in the tariff are designed to conform the charges paid by customers of the SJLP division with those paid by customers of UtiliCorp's Missouri Public Service (MoPub) division. UtiliCorp's tariff bears an effective date of May 1, but the cover letter that accompanied the tariff requested that the Staff of the Commission send UtiliCorp the approved tariff sheets by March 19, to aid UtiliCorp in planning and implementing the changes by May 1.

On March 9, the Office of the Public Counsel filed a Motion to Dismiss or Suspend. Public Counsel argued that changes to rates included in UtiliCorp's tariff could only be made within a general rate case. Public Counsel contended that approval of such rate changes in this tariff would constitute improper single-issue ratemaking.

On March 19, UtiliCorp filed suggestions in opposition to Public Counsel's motion. UtiliCorp argued that the rate changes included in the

tariff will only be in effect for a short period of time, as UtiliCorp intends to file for a general rate increase for its electric operations within three to four months. When it files for a general rate increase, UtiliCorp will seek to unify the amount of the charges and fees imposed by its SJLP and MoPub divisions. UtiliCorp states that synchronizing the charges now would allow it to avoid as much as \$100,000 of total costs that will be necessary to modify the programming and coding of its current Customer Information System to accommodate differing charges and fees for its SJLP and MoPub divisions. UtiliCorp asserts that under the circumstances, approval of its proposed rate changes would not be single-issue ratemaking. In addition, UtiliCorp argued that Public Counsel's motion was essentially moot because the Commission already approved UtiliCorp's tariff through a letter sent to UtiliCorp on March 6.

Staff, on March 19, filed its own response to Public Counsel's motion. In its response, Staff agreed with Public Counsel that the proposed tariff revisions would constitute single-issue ratemaking and that they might be detrimental to SJLP's ratepayers. As part of its response, Staff asked the Commission to consolidate this case with Case Nos. GT-2001-484 and HT-2001-485, cases established to consider similar tariffs filed by UtiliCorp for its gas and steam heating operations.

UtiliCorp's Suggestions in Opposition and Staff's response triggered additional pleadings from the parties. Public Counsel filed a reply on March 21 in which it agreed with Staff's request to consolidate, and disagreed with UtiliCorp's suggestions. UtiliCorp filed an additional reply on March 22, in which it agrees with Staff's request to consolidate, but reiterates its position that its proposed rate changes are not single-issue ratemaking and that the Commission has already approved the tariffs. Staff filed a reply to UtiliCorp's Suggestions in Opposition on March 26.

There are two issues that must be addressed with regard to UtiliCorp's tariff. First, has the Commission already approved UtiliCorp's tariff? Second, would implementation of UtiliCorp's tariff constitute single-issue ratemaking?

Previous Approval of Tariff

UtiliCorp argues that the Commission has already approved its tariff because it has received a letter from the Commission, dated March 6, in which the Commission states that "the tariff filing submitted with your letter of transmittal . . . is being made effective in accordance with Section 393.140(11) RSMo 1994." UtiliCorp states that such letter is consistent with the Commission's customary practice regarding approval of tariff sheets. UtiliCorp misunderstands the meaning of the Commission's March 6 letter.

Section 393.140(11), RSMo 2000, permits a utility to file a tariff with the Commission establishing a new rate or charge with a thirty day effective date. Unless the Commission acts under Section 393.150, RSMo 2000, to suspend that rate or charge, it goes into effect on its effective date.¹ The letter that UtiliCorp received from the Commission simply notified UtiliCorp that, at the time the Commission sent the letter, it did not intend to take any action to prevent the tariff from going into effect by operation of law - specifically Section 393.140(11), RSMo 2000 - on its effective date.

The letter is not a decision or order of the Commission. And indeed, under the principles announced by the Missouri Supreme Court in the *Philipp Transit Lines* case,² it cannot be a decision or order of the

¹ *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 48 (Mo. banc 1979)

² *State ex rel. Philipp Transit Lines, Inc. v. Public Service Comm'n , et al.*, 552 S.W.2d 696 (Mo. banc 1977).

Commission because it was not adopted by a majority of the Commissioners at a public agenda meeting. The tariff submitted by UtiliCorp, by its terms, does not become effective until May 1, 2001. Therefore, it is still subject to the Commission's review under Section 393.150, RSMo 2000, until its effective date. The letter received by UtiliCorp cannot preclude the Commission's further review of UtiliCorp's tariff.

Single-Issue Ratemaking

The law is quite clear that when the Commission determines the appropriateness of a rate or charge that a utility seeks to impose on its customers, it is obligated to review and consider *all* relevant factors, rather than just a single factor.³ To consider some costs in isolation might cause the Commission to allow a company to raise rates to cover increased costs in one area without recognizing counterbalancing savings in another area. Such a practice is justly considered to be single-issue ratemaking.⁴

UtiliCorp, through its proposed tariffs, seeks to change various fixed charges applied to customers of its SJLP division. Some charges would be increased, and some decreased. UtiliCorp has not submitted tariffs that would revise its rates generally. Instead, UtiliCorp requests that these changes to its rates be approved outside a general rate case. In other words, UtiliCorp asks the Commission to approve these charges without considering all relevant factors.

In order to avoid condemnation as single-issue ratemaking, UtiliCorp argues that its tariff should be approved as a matter of

³ *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704 (Mo. 1957); *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo. banc 1979); and *Midwest Gas Users' Association v. Public Service Commission*, 976 S.W.2d 470 (Mo. App. W.D. 1998).

⁴ *Midwest Gas Users' Association* at 480.

expediency. UtiliCorp points out that the net effect of its proposed changes would result in an increase in UtiliCorp's revenues of only about \$11,000 per year. UtiliCorp also alleges that synchronizing the charges and fees of its SJLP and MoPub divisions will allow it to avoid as much as \$100,000 of total costs required to modify the programming and coding of its current Customer Information System to accommodate differing charges and fees. UtiliCorp's practical arguments have a certain appeal. But the Commission simply does not have the authority to engage in single-issue ratemaking, and convenience, expediency, and necessity are not proper matters for consideration when determining the extent of the Commission's authority.⁵

The Commission takes seriously its obligation to consider all factors before approving any tariff that would increase the rates or charges paid by the customers of a utility. Thus, for example, the Commission recently rejected, as single-issue ratemaking, a tariff offered by a small telephone company that would have introduced a \$5.00 late-payment charge.¹⁶ UtiliCorp asks the Commission to approve changes to its customer charges without considering all factors. The Commission does not have the authority to do so. Therefore, UtiliCorp's tariffs cannot be approved.

Because it violates the prohibition against single-issue ratemaking, the Commission is without authority to approve UtiliCorp's tariff. Suspension of the tariff for further consideration would be pointless. For that reason the tariff submitted by UtiliCorp will be rejected. With the rejection of the tariff, there is no reason to

⁵ *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979); *Kansas City v. Public Service Commission*, 301 Mo. 179, 257 S.W. 462 (banc 1923)

⁶ *In the Matter of the Chapter 33 Tariff Filing of Miller Telephone Company*, Report and Order, Case No. TT-2001-257, December 12, 2000.

consolidate this case with the similar cases regarding UtiliCorp's gas and steam operations. Staff's Motion to Consolidate will be denied.

IT IS THEREFORE ORDERED:

1. That the Staff of the Public Service Commission's Motion to Consolidate is denied.

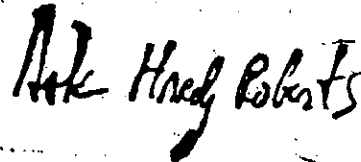
2. That the tariff sheets issued by UtiliCorp United Inc. on February 16, 2001 (tariff file number 200100849) with an effective date of May 1, 2001, are rejected. The tariff sheets rejected are:

P.S.C. Mo. No. 6

3rd Revised Sheet No. 47, Canceling	2nd Revised Sheet No. 47
2nd Revised Sheet No. 49, Canceling	1st Revised Sheet No. 49
2nd Revised Sheet No. 50, Canceling	1st Revised Sheet No. 50
2nd Revised Sheet No. 53.1, Canceling	1st Revised Sheet No. 53.1
2nd Revised Sheet No. 58.1, Canceling	1st Revised Sheet No. 58.1

3. That this order shall become effective on April 13, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., and Simmons, CC., concur
Drainer, C., concurs with concurring opinion attached
Murray, C., dissents with dissenting opinion attached
Gaw, C., not participating

Woodruff, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of UtiliCorp United Inc.'s)
Tariff Filed to Update the Rules and)
Regulations for Electric and to Increase) Case No. ET-2001-482
the Interest Rate Paid on Deposits, the) Tariff No. 200100849
Late Payment Charge, the Reconnection Fee,)
and the Charge for Returned Checks)

CONCURRING OPINION OF VICE CHAIR M. DIANNE DRAINER

I respectfully concur with the decision of the Commission. The tariff submitted by UtiliCorp clearly must be rejected as single-issue ratemaking. I write separately to address concerns raised by UtiliCorp regarding transition costs that it states it will incur if its tariff is not approved. If UtiliCorp does incur transition costs necessary to complete the merger with St. Joseph Light & Power Company, it will have the opportunity to present those costs to the Commission for consideration in an upcoming rate case. The Commission will give due consideration to those costs at the time they are presented.

Respectfully submitted,


M. Dianne Drainer, Vice Chair

Dated at Jefferson City, Missouri
On this 3rd day of April, 2001

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of UtiliCorp United Inc.'s)
Tariff Filed to Update the Rules and)
Regulations for Electric and to Increase)
the Interest Rate Paid on Deposits, the)
Late Payment Charge, the Reconnection Fee,)
and the Charge for Returned Checks)

Case No. ET-2001-482
Tariff No. 200100849

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

Today's Order Rejecting Tariff is similar to straining out gnats and swallowing camels. The tariff sheets in this and case numbers GT-2001-484 and HT-2001-485 were for the stated purpose of making certain changes to synchronize charges and fees between UtiliCorp's Missouri divisions in order to avoid substantial reprogramming expense. While some charges would be reduced, the net effect of the tariffs would be to increase revenues to the electric, gas and steam operations of UtiliCorp's St. Joseph Light & Power Division by \$11,240. UtiliCorp states that the reprogramming expense to be avoided is approximately \$100,000. Today's decision, therefore, may result in increased costs of approximately nine hundred per cent, or more.

Single-issue ratemaking can occur when consideration of some costs in isolation improperly allows an increase in rates without consideration of offsetting savings. Such a result would not be revenue neutral. In its initial recommendation for approval of these tariffs, however, Staff stated that it "considers this change to be revenue neutral as this amount is so small as to be insignificant." I concur with Staff's original reasoning.

The Utility Operations Division circulated, along with Staff's recommendation, a routing slip to the Commissioners for approval of the tariff "by delegation." All five Commissioners initialed to approve "by delegation." This action had the effect of authorizing the tariff to become effective by operation of law, which means without a Commission vote. Accordingly, on March 6, the Commission Secretary sent written notice to the company that "the tariff filing submitted . . . is being made effective in accordance with Section 393.140(11) RSMO 1994." The majority now claims, in effect, that there was no decision of the Commission because nothing was adopted by a majority of the Commissioners at a public agenda meeting. The Commission did, however, delegate authority to advise the company that the tariff would become effective by operation of law. The company was thereby placed on notice that no formal Commission action was planned and that the tariff would become effective at the expiration of the required 30-day notice period.

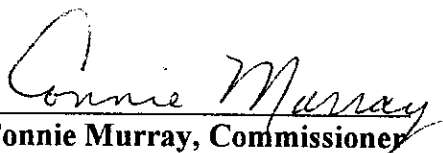
The Missouri statutes give the Commission the power to "authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized . . . to do or perform; provided, that no order, rule or regulation of any person employed by the commission shall be binding on any public utility or any person unless expressly authorized or approved by the commission." 386.240 RSMO While the majority cites *Philipp Transit Lines Inc. v. Public Service Comm'n, et al.* (552 S.W. 2d 696 (Mo. Banc 1977)) for the proposition that the letter to the company had no meaning because no vote was taken in a public agenda meeting, I submit that the Commission properly delegated authority to Staff to circulate tariffs recommending approval "by delegation." No vote was required, because the tariff was to be allowed to go into effect

by operation of law. Express authorization for the Secretary of the Commission to advise the company that the tariff would become effective by operation of law occurred when the routing slip was circulated and initialed.

While it is true that the Commission could suspend or possibly even reject the tariff prior to the operation of law date, notwithstanding notice to the utility that the tariff would become effective, such action should not be taken, as it is here, where no substantial reason exists. Parties should be able reasonably to rely upon official correspondence issued by delegation of Commission authority.

For these reasons, I respectfully dissent.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 3rd day of April, 2001.

Alt/Sec'y:

Woodruff / Boyce

Date Circulated

3-30

CASE NO. ET-2001-482

LL pt
Lumpé, Chair

mod concern attached
Draher, Vice Chair

Can NO - draft attached
Murray, Commissioner

AP
Seegerman, Commissioner

KS
Gow

Simmons, Commissioner

Agenda Date

4-3

Action taken:

3-1 AS

Must Vote Not Later Than

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 3rd day of April 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

