

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

July 19, 2001

CASE NO: ER-2001-672

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

James C. Swearngen/Dean L. Cooper
Brydon, Swearngen & England, P. C.
P. O. Box 456
Jefferson City, MO 65102-0456

Stuart W. Conrad
Finnegan Conrad & Peterson, L.C.
3100 Broadway, Suite 1209
Kansas City, MO 64111

Duncan E. Kincheloe, Attorney
2407 West Ash Street
Columbia, MO 65203

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

Sincerely,



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

ORDER DIRECTING FILING

On June 8, 2001, UtiliCorp United, Inc., submitted to the Commission proposed tariff sheets intended to implement a general rate increase for electric service provided to retail customers in the Missouri service area of its Missouri Public Service Company operating division. UtiliCorp's other Missouri operating division, St. Joseph Light & Power, was not included in the rate increase request. On June 21, the Commission suspended the proposed tariff sheets until May 6, 2002.

On June 15, 2001, the Office of the Public Counsel moved to reject the proposed tariff sheets as "unlawful and deficient" because they do not include both operating divisions of the regulated company, UtiliCorp United, Inc.¹ Public Counsel makes five arguments. First, Public Counsel contends that the various sections in Chapter 393, RSMo 2000,² that authorize the Commission to set electric rates all refer to the "electrical corporation" and thus require that rates be set on a corporation-wide basis and not separately for operating divisions. Second, Public Counsel asserts that Commission Rules

¹ Missouri Public Service Company and St. Joseph Light & Power are fictitious names under which UtiliCorp operates in different regions of Missouri.

² All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

4 CSR 240-2.065(1) and 4 CSR 240-2.070(2) "require that a general rate increase be made 'company-wide.'"³ Third, Public Counsel characterizes UtiliCorp's single-division general rate increase request as "unprecedented" and states that "no Chapter 393 utility . . . has ever been permitted by the Commission to initiate a general rate case by filing revised tariffs for only selective regions within their certificated electric service areas." Fourth, Public Counsel contends that proceeding with UtiliCorp's rate case would violate the "all relevant factors" requirement imposed by Section 393.270.4, RSMo 2000. This statute requires that the Commission consider all relevant factors in setting just and reasonable utility rates.⁴ Finally, Public Counsel argues that it would be bad public policy, for several reasons, to permit UtiliCorp to initiate a general rate case for only one of its two operating divisions. The reasons cited are, first, that it would limit the Commission's rate-design options and, second, that it will encourage other utilities to follow suite in hopes of gaming the system to the advantage of investors by showing the Commission less than the whole financial picture of the regulated entity.

UtiliCorp responded twice to Public Counsel's motion, first on June 25, 2001, and again on July 11, 2001. None of the other parties responded at all.

UtiliCorp responds to Public Counsel's first argument by suggesting that the sections in Chapter 393 cited by Public Counsel nowhere require that rates be set on a corporation-wide basis and not separately for operating divisions. UtiliCorp further asserts that Section 393.150 "makes it quite clear that a public utility is not required to put at issue

³ Rule 4 CSR 240-2.070(2), which refers to informal complaints against utilities by consumers, was presumably cited in error.

⁴ It is the source of the prohibition on single-issue ratemaking, which might better be characterized as a prohibition on less-than-all-issues ratemaking. See *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979).

all tariffs related to all of its operations if it only desires to propose a change for certain operations of one of its divisions."

In response to Public Counsel's second argument, UtiliCorp states that Commission Rules 4 CSR 240-2.065(1) and 4 CSR 240-10.070(2) do not "purport to establish requirements as to what tariffs must be put at issue in a general rate case filing." It is noteworthy that UtiliCorp here cites the regulation that Public Counsel presumably intended to cite, but did not, Rule 4 CSR 240-10.070(2), *Minimum Filing Requirements for General Rate Increase Requests*, which states:

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.

UtiliCorp asserts that this rule merely provides a definition of the term "general rate increase." UtiliCorp goes on to point out, by way of example, that companies providing two or more utility services, such as AmerenUE (electric and natural gas), have never been required to include all services simultaneously in a rate case. Furthermore, and in response to Public Counsel's third argument, UtiliCorp states that this Commission has indeed conducted division-specific rate proceedings in the past. UtiliCorp points to the case of the former Missouri Water Company, which had two operating divisions, the Independence Division and the Lexington Division. On at least three occasions, according to UtiliCorp, this Commission conducted rate increase proceedings involving one of these

divisions, but not both.⁵ Similarly, UtiliCorp states that the Commission permitted Missouri Cities Water Company to pursue a rate increase which did not include its Warrensburg district.⁶ UtiliCorp does not state whether the objection raised here by Public Counsel was raised in any of these cases.

In response to Public Counsel's fourth argument, UtiliCorp contends that Public Counsel misunderstands the "all relevant factors" requirement as explained by the Missouri courts. UtiliCorp states that such independent operating division ratemaking as it has proposed here does not violate the prohibition against single-issue ratemaking because, within its Missouri Public Service division, all relevant factors will be considered, including any allocations to or from the St. Joseph operating division.

In response to Public Counsel's fifth argument, UtiliCorp denies that it would be bad public policy to permit it to proceed with a rate increase proceeding applicable only to its Missouri Public Service division. UtiliCorp contends that all necessary information is available to the Commission in dealing with multiple-jurisdiction utility companies and that regulated entities are thus unable to manipulate financial information as charged by Public Counsel.

UtiliCorp also suggests that, in approving its merger with St. Joseph Light and Power Company, this Commission approved the independent operation of the two divisions

⁵ See *In the Matter of Missouri Water Company for Authority to File Tariffs Increasing Rates for Water Service Provided to Customers in the Independence Division of the Company*, 23 Mo.P.S.C. (N.S.) 451 (1980); *In the Matter of Missouri Water Company for Authority to File Revised Tariffs Reflecting Increased Rates for Water Service and New Rate J to Customers in the Independence Division of the Company*, 22 Mo.P.S.C. (N.S.) 77 (1978); and *In the Matter of Missouri Water Company for Authority to File Tariffs Reflecting Increased Rates for Water Service Provided to Customers in the Independence Division of the Company*, 18 Mo.P.S.C. (N.S.) 203 (1973).

⁶ See *In the Matter of Missouri Cities Water Company for Authority to File Tariffs Reflecting Increased Rates for Water Service*, 18 Mo.P.S.C. (N.S.) 421 (1974).

and that this independence necessarily extends to ratemaking.⁷ UtiliCorp bases this argument upon various statements in the Commission's December 14 *Report and Order*, to the effect that particular issues are best resolved in a general rate case encompassing the St. Joseph division.

As noted previously, UtiliCorp filed a supplemental response on July 11. The purpose of this response was to advise the Commission that it had determined to not pursue a rate increase in its St. Joseph operating division at this time, a possibility referred to in its original response of June 25.

Public Counsel's motion and UtiliCorp's responses raise a matter of significance and the Commission has reviewed the various arguments at length here. If Public Counsel's motion is granted, UtiliCorp's proposed tariff must be rejected. If Public Counsel's motion is denied, Public Counsel suggests that there may be undesirable future ramifications. The Commission would benefit in its consideration and resolution of these points from the advice of its Staff. Therefore, the Commission will direct the Staff to respond to the points raised and arguments made by both Public Counsel and UtiliCorp.

IT IS THEREFORE ORDERED:

1. That the Staff of the Missouri Public Service Commission shall file, on or before July 27, 2001, a response to Public Counsel's motion filed on June 15 and to UtiliCorp United, Inc.'s responses filed on June 25 and July 11. Staff shall respond to each argument and point raised in these pleadings and shall offer a recommendation to the Commission as to the resolution of Public Counsel's motion, including a justification of the resolution it recommends that the Commission make.

⁷ See *In the Matter of the Joint Application of UtiliCorp United, Inc., and St. Joseph Light & Power Company for Authority to Merge*, Case No. EM-2000-292 (*Report & Order*, issued December 14, 2000).

2. That this order shall become effective on July 27, 2001.

BY THE COMMISSION



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 Section 386.240,
RSMo 2000.

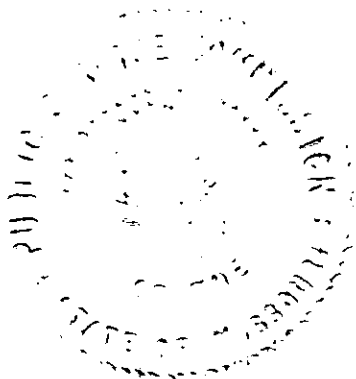
Dated at Jefferson City, Missouri,
on this 19th day of July, 2001.

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 19th day of July 2001.



A handwritten signature in dark ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a horizontal line underneath.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge