STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
October 2, 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. Swearengen/Dean L. Cooper
Brydon, Swearengen & 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 Kincheloe, Attorney
2407 West Ash Street
Columbia, MO 65203

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

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
Jefferson City, MO 65102-0537

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

Sincerely,

Dale Hardy Roberts

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 2nd day of October, 2001.

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

ORDER REGARDING MOTION TO REJECT TARIFF AND MOTION TO DISMISS

Syllabus:

In this order, the Commission denies Public Counsel's Motion to Reject Tariff and Motion to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted. The Commission explains that a rate case can be initiated by the filing of less than all of a company's tariffs. The Commission further explains that it may treat the service areas of a company differently for ratemaking purposes in appropriate circumstances, particularly where, following a merger, the formerly independent companies are not yet fully integrated.

Procedural History:

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 operating

division.[1] UtiliCorp's other Missouri operating division, St. Joseph Light & Power, was not included in the rate increase request.[2] 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.[3] UtiliCorp responded twice to Public Counsel's motion, first on June 25, 2001, and again on July 11, 2001.[4] None of the other parties, including Staff, responded. On July 19, the Commission directed Staff to respond to Public Counsel's motion by July 27. On the same day, Public Counsel filed its Supplemental Suggestions in Support of its Motion to Reject Tariff, stating therein an alternative motion to dismiss for failure to state a claim upon which relief may be granted. Staff filed its response on July 27 as directed. On July 30, UtiliCorp responded to Public Counsel's Supplemental Suggestions and to its alternative motion to dismiss.

On August 3, the Commission advised the parties that it would hear oral argument for and against Public Counsel's motions on August 14. The oral argument was convened as scheduled and all parties appeared by counsel. The transcript was filed on August 28. Immediately following the oral argument, the Commission advised the parties that additional written arguments could be filed by August 24, with any replies to be filed by August 31. Accordingly, Public Counsel, UtiliCorp, Staff, and Jackson County filed

[1] Missouri Public Service is also referred to as MPS.

[2] St. Joseph Light & Power Company is also referred to as SJLP.

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

[4] The purpose of UtiliCorp's supplemental response, filed on July 11, 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.

additional suggestions on August 24 and Public Counsel, UtiliCorp, and Jackson County filed reply suggestions on August 31. Jackson County filed revised suggestions on August 27; Staff submitted a letter on August 31 rather than reply suggestions.

The Arguments of the Parties:

Public Counsel's Motion to Reject Tariff

Public Counsel asserts that UtiliCorp chose to purchase and merge with St. Joseph Light & Power Company and that it is now bound by the ratemaking consequences of that business decision. Public Counsel makes several arguments in support of its motion to reject tariff. First, Public Counsel contends that the various sections in Chapter 393, RSMo 2000,[5] 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 4 CSR 240-2.065(1) and 4 CSR 240-2.070(2) "require that a general rate increase be made 'company-wide.'"[6] 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. This statute requires that the Commission consider all relevant factors in setting just and reasonable

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

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

utility rates.[7] Fifth, Public Counsel contends that rates based on a consideration of only one service area may result in a violation of Section 393.130.2, which forbids discrimination in utility rates. 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. To permit UtiliCorp to proceed in this manner would, Public Counsel warns, "open the floodgates."

UtiliCorp states that this is a legal question, "whether or not UtiliCorp has the lawful right to initiate a rate case for a distinct operating division." UtiliCorp responds to Public Counsel's first argument by suggesting that the sections in Chapter 393 cited by Public Counsel nowhere explicitly 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 all tariffs related to all of its operations if it only desires to propose a change for certain operations of one of its divisions" and that "the public utility may file, and the Commission may consider, something less than all of the tariff sheets and all of the rates and charges involving all of the service provided by a public utility."

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

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[7] It is the source of the prohibition on single-issue ratemaking. *See State ex rel. Utility Consumers Council of Missouri v. Public Service Commission,* 585 S.W.2d 41, 49 (Mo. banc 1979).

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.[8] 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.[9] Similarly, UtiliCorp states that the Commission permitted Missouri Cities Water Company to pursue a rate increase which did not include its Warrensburg

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[8] UtiliCorp does not state whether the objection raised here by Public Counsel was raised in any of these cases.

[9] *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).

district.[10] UtiliCorp points out that Public Counsel's attempt to distinguish these cases as "the non-interconnected operations of water companies" is not founded on any statutory distinction.

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. The law requires the Commission to consider all *relevant* factors, UtiliCorp asserts, not *all* factors. 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 any event, UtiliCorp argues, whether or not the Commission has considered all relevant factors in setting rates is a factual question and is not jurisdictional.

UtiliCorp further points out that the Commission is authorized to examine any matter it chooses, including the operations of its SJLP division. UtiliCorp states, "Presumably the Staff, OPC and other parties will be able to address these matters through the discovery and evidentiary process in this case." UtiliCorp agrees with Public Counsel that the Commission is required to consider all relevant factors when setting rates and denies that it has requested anything less in this case. If this case is permitted to proceed, UtiliCorp expects that the Commission will develop a total Missouri jurisdictional revenue requirement for its electric service operations.

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[10] *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).

In response to Public Counsel's fifth argument, UtiliCorp states that Public Counsel appears to be taking the position that single-tariff pricing is required for all multi-district utility operations. UtiliCorp points out that the Commission recently rejected this point of view.[11] UtiliCorp further states that the different costs of serving different customers may permissibly be reflected by different rates; it is only "undue" discrimination that is unlawful.[12] UtiliCorp quotes the Missouri Supreme Court, "We are able to discern no legitimate reason or basis for the view that a utility must operate exclusively either under a system wide rate structure or a local unit rate structure . . . ."[13]

As to Public Counsel's sixth 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 & Power Company, this Commission approved the independent operation of the two divisions and that this independence necessarily extends to ratemaking.[14] UtiliCorp bases this argument upon various statements in the Commission's December 14 *Report and Order,* to

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[11] See *In the Matter of Missouri-American Water Company,* Case No. WR-2000-281 (*Report & Order,* iss'd Aug. 31, 2000), *relying on State ex rel. City of West Plains v. Public Service Commission,* 310 S.W.2d 925, 933 (Mo. banc 1958).

[12] *See State ex rel. Capital City Water Co. v. Missouri Public Service Commission,* 850 S.W.2d 903, 911 (Mo. App., W.D. 1993); *In the Matter of Missouri Utilities Company,* 20 Mo. P.S.C. (N.S.) 294 (1975). UtiliCorp also cites federal decisions for this proposition.

[13] *State ex rel. City of West Plains v. Public Service Commission,* 310 S.W.2d 925, 933 (Mo. banc 1958).

[14] *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 and Order,* issued December 14, 2000).

the effect that particular issues are best resolved in a general rate case encompassing the St. Joseph division.

In reply, Public Counsel argues that UtiliCorp's purpose in pursuing a rate case limited to only its MPS division is to "deny its ratepayers the 'merger synergies' that it touted as justification for its recently approved merger with St. Joseph Light & Power Company in Case No. EM-2000-292." Public Counsel notes that Section 386.020 distinguishes between electric corporations and gas corporations, thus permitting a utility engaged in both lines of business to seek rates for each operation separately. Public Counsel also seeks to distinguish the examples of ratemaking by divisions that UtiliCorp points to by noting that these were "the non-interconnected operations of water companies" and that these cases were decided before the Missouri Supreme Court issued its decision in *Utility Consumers Council* in 1979.[15] Public Counsel further explains that, in each of those cases, the Commission first determined a total Missouri jurisdictional revenue requirement and then allocated it among the various divisions/service territories as an exercise in rate design.

Staff filed its response on July 27 as ordered. Staff supports UtiliCorp in this matter. Staff states that the "consequence of Public Counsel's proposed procedure is the relitigation in a refiled UtiliCorp rate case [of] large portions of the St. Joseph Light & Power Company—UtiliCorp United, Inc., merger case."

With respect to Public Counsel's first argument, that the statutes do not authorize ratemaking by divisions, Staff states that "Public Counsel cites no express statutory

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[15] *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979). *See supra*, note 5. This case articulated the requirement that the Commission consider "all relevant factors" when setting rates.

language [and no case law] that prohibits the Commission from proceeding with a general rate case on a division of operation basis when the divisions of operation are formerly separate and distinct electrical corporations that have not been fully integrated, as is the instant case, and have different costs of service and rate designs." Staff notes that the Commission, historically, has not required consolidated rate cases for utilities engaged in more than one line of utility business. With respect to Public Counsel's second argument, that the Commission's rules require a general rate case to proceed on a "company-wide" basis, Staff states that the phrases in certain Commission rules relied upon by Public Counsel are undefined and need not be construed as Public Counsel has construed them.

As to Public Counsel's third argument, that UtiliCorp's single-division rate request is "unprecedented," Staff points to the same examples as does UtiliCorp, in which water companies with multiple divisions sought rate increases in less than all of their service areas. Contrary to Public Counsel's position, Staff points out that at least one of these cases was decided *after* the Missouri Supreme Court issued its decision in *Utility Consumers Council*. Staff also identifies additional examples where, following a merger, the Commission set different rates for different parts of what was legally a single entity.[16] Staff also notes that Union Electric Company has three different PGA schedules, each applicable to a region reflecting one of the three subsidiaries that merged into Union Electric in 1983.[17]

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[16] *See In the Matter of the Joint Application of the Companies Comprising the Union Electric System,* 26 Mo. P.S.C. (N.S.) 418 (1983); *In the Matter of Union Electric Company, Arkansas Power & Light Company and Sho-Me Power Corporation,* 1 Mo. P.S.C.3d 96 (1991).

[17] Missouri Power & Light Company, Missouri Edison Company and Missouri Utilities Company. Each region is, however, also served by a different pipeline.

In response to Public Counsel's fourth argument, that ratemaking by division would violate the prohibition against single-issue ratemaking, Staff states that the Commission will consider "all relevant factors" as required by law if this case proceeds, including the specific concerns raised by Public Counsel. Staff points out that, although UtiliCorp has not filed new tariffs for its SJLP division, nor for its MPS division operations other than electric service, Staff will gather and analyze information regarding all aspects of UtiliCorp's Missouri jurisdictional operations. Staff further states that it will file excessive earnings complaints with respect to UtiliCorp's operations other than its MPS electric service operations if the information it collects warrants such an action.

In response to Public Counsel's fifth argument, Staff responds that Section 393.130.2 does not forbid different rates where the cost of service or other relevant conditions are in fact different. Staff points out that the Missouri Supreme Court has held that the Commission has discretion, in a merger case, to set separate rates for the customers of what were formerly two separate companies "[u]ntil the unification of the two systems are accomplished or the effect thereof is reasonably discernable[.]"[18]

Finally, in response to Public Counsel's argument concerning public policy, Staff suggests that full and complete discovery in this matter will meet Public Counsel's public policy concerns.

Intervenor Kansas City supports Public Counsel in this matter and asserts the same arguments and concerns. Intervenors Jackson County and the Sedalia Industrial Energy Users Association also support Public Counsel. These intervenors contend that

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[18] *State ex rel. McKittrick v. Public Service Commission,* 175 S.W.2d 857, 866 (Mo. banc 1943). It is noteworthy that this case contemplated the continuation of the separate rates indefinitely.

only the Commission's Staff has the resources to pursue an overearnings complaint and that, in view of Staff's alignment with UtiliCorp, the degree of protection afforded by a potential complaint appears to be greatly reduced. Intervenor Jackson County also criticizes Staff's reliance on *McKittrick.*[19] That case was a *merger* case, not a *rate* case like the present proceeding. Jackson County asserts, "Now, however, we are in a rate case and the effect of the unification of the two systems 'is accomplished or the effect thereof is reasonably discernible.'"

Public Counsel's Motion to Dismiss

In its Supplemental Suggestions, filed on July 19, Public Counsel asserts that "[t]o the extent that UtiliCorp is requesting increased rates for a mere selected portion of its service territory, and essentially asking the Commission to hypothetically assume that the merger did not take place, it is requesting relief that cannot lawfully be granted." Public Counsel, in the alternative, moves the Commission to dismiss because UtiliCorp has failed to state a claim upon which relief can be granted.

UtiliCorp responds that it has done everything necessary to initiate a rate case under Section 393.150 in that it has filed a "schedule stating a new rate or charge."[20] Therefore, UtiliCorp asserts, Public Counsel's motion to dismiss should be denied.

At oral argument, Public Counsel conceded that "a rate case can be initiated by filing less than all of your tariffs."[21] Public Counsel went on to state, however, that regardless of what tariffs were filed or not filed to initiate a rate case, all of the company's

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[19] *Id.*

[20] *See State ex rel. Jackson County v. Public Service Commission of Missouri,* 532 S.W.2d 20, 28 (Mo. banc 1975).

[21] Tr. 2:59, at lines 6-8.

operations and all of its rates were thereby put at issue. In the same way, Public Counsel stated in response to Staff that all of the issues pertaining to the UtiliCorp-St. Joseph Light & Power merger are necessarily at issue in this rate case.

UtiliCorp, in turn, denies that its rates in its St. Joseph division are at issue in this case. UtiliCorp asserts that the Commission "can't disturb those rates unless one of two things happened: they are either put at issue by the company or a complaint is brought, as a matter of law."[22] Instead, UtiliCorp suggests that, by not filing proposed tariffs for that division, the company has elected to take the risk that it will not recover its entire revenue requirement.[23] UtiliCorp states that, while it intends eventually to "bring the rates closer together," it does not presently wish to impose any rate increase upon its SJLP division. In the present case, UtiliCorp contends, "the only customers who will be affected . . . will be the MPS electric customers, because those are the only rates that are at issue." Thus, in the present case, UtiliCorp argues that, should the Commission determine that certain costs should be allocated to the SJLP division, the company will simply not recover those costs. UtiliCorp points out, as an example, that in its past electric rate cases, some costs might be assigned to its steam operation and those costs would not be recoverable.

Intervenor Jackson County agrees with UtiliCorp that the Commission "cannot do anything in this proceeding to change such rates [i.e., of SJLP] even if it is discovered during the investigation of all factors that such rates produce overearnings to UtiliCorp." The reason is that "[t]here has been no notice to the public as to such rates." Jackson County asserts that, given the passage of three months, the Commission can only reject

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[22] Tr. 2:103, at lines 21-25.

[23] Tr. 2:71.

UtiliCorp's tariffs and dismiss this proceeding, for sufficient time does not remain to cure the deficiency by giving notice to UtiliCorp's St. Joseph ratepayers. The Staff, as well, has indicated that the present procedural schedule would not permit it to fully audit both UtiliCorp's MPS and SJLP electric service operations.

Discussion:

UtiliCorp contends, in view of the Public Counsel's two motions questioning the Commission's jurisdiction to proceed, that the only question properly before the Commission is whether or not its initial filings were legally sufficient to initiate a rate case. The Commission concludes that they were sufficient. The law states that a rate case is initiated "[w]henever there shall be filed with the commission by any . . . electrical corporation . . . any schedule stating a new rate or charge[.]"[24] Thus, the filing of even a single proposed tariff is legally sufficient to initiate a general rate case under the "file and suspend" method.

Public Counsel argues that UtiliCorp's initial filings are insufficient under the relevant Commission rules.[25] The only insufficiency cited by Public Counsel is that those rules both speak in terms of "a company-wide increase in rates" while the tariffs filed by UtiliCorp seek an increase only in its MPS service area. However, the Commission understands that phrase as merely a reformulation of the statutory proposition cited above, that the filing of even a single proposed tariff is sufficient to invoke the Commission's ratemaking authority. Therefore, Public Counsel's motion to reject tariff must be denied because the tariffs in question are sufficient under the relevant statutes and rules.

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[24] Section 393.150.1, RSMo 2000.

[25] Rules 4 CSR 240-2.065(1) and 4 CSR 240-10.070.

Public Counsel's alternative motion to dismiss for failure to state a claim upon which relief may be granted, however, is a different matter. Because Public Counsel's argument is that the Commission lacks authority to grant the relief sought by UtiliCorp, the Commission will treat Public Counsel's motion as a motion to dismiss for lack of subject matter jurisdiction rather than as a motion to dismiss for failure to state a claim. "A motion to dismiss for failure to state a claim upon which relief can be granted attacks the legal sufficiency of the petition by claiming that, even if the facts in the pleading are true, the facts do not constitute legal grounds for any relief."[26] The legal sufficiency of UtiliCorp's initial filing has already been reviewed. A motion to dismiss for lack of subject matter jurisdiction, on the other hand, questions the authority of the tribunal to grant the requested relief.[27]

Public Counsel argues that the Commission cannot conduct a rate case for less than all of the Missouri-jurisdictional electric service operations of UtiliCorp. Its primary arguments are that such an undertaking would violate both Section 393.130.2, which prohibits discrimination, and Section 393.270.4, which requires consideration of all relevant factors. The Commission concludes that neither of these statutes prohibits the present proceeding.

UtiliCorp and Staff have both cited ample cases to demonstrate that Section 393.130.2 only prohibits *undue* discrimination, that is, discrimination not based on facts demonstrating that the ratepayers in question are not in some respect similarly situated. "The purpose of the Public Service Commission Law, Sections 386 through 394,

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[26] J.R. Devine, Missouri Civil Pleading & Practice, Section 20-3 (1986).

[27] *See* J.R. Devine, *supra,* Section 9-1.

RSMo 1978, is to secure equality in service in rates for all who need or desire these services and who are similarly situated."[28] Typically, differences in rates are based on facts demonstrating differences in cost of service.[29]

As UtiliCorp points out, Section 393.270.4 requires that the Commission consider all *relevant* factors, not *all* factors. UtiliCorp and the Staff have cited ample examples of cases in which the Commission has set rates on a basis that is less than the total Missouri jurisdictional operations of a company with respect to a given line of service. The Commission is equipped with broad discretion in ratemaking and "it is not methodology or theory but the impact of the rate order which counts in determining whether rates are just, reasonable, lawful, and non-discriminating."[30]

Staff has cited a case in which the Missouri Supreme Court approved the Commission's authority to engage in ratemaking on a separate service area basis where one utility had purchased another and the two were not yet integrated.[31] The Court stated, "Until the unification of the two systems is accomplished or the effect thereof is reasonably discernible, we think and hold the Commission in its reasonable discretion is justified in treating the two systems as separate units for rate purposes, notwithstanding the ownership and control of both have come into the same hands."[32] Intervenor Jackson County is too quick to maintain that this holding in a merger case has no relevance in this

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[28] *Reinhold v. Fee Fee Trunk Sewer, Inc.*, 664 S.W.2d 599, 604 (Mo. App., E.D. 1984), *cert. den.*, 469 U.S. 832, 105 S.Ct. 121, 83 L.Ed.2d 63.

[29] *See e.g. State ex rel. Dyer v. Public Service Commission*, 341 S.W.2d 795, 799 (Mo. 1961).

[30] *State ex rel. Associated Natural Gas Co. v. Public Service Commission of Missouri*, 706 S.W.2d 870, 879 (Mo. App., W.D. 1985).

[31] *State ex rel. McKittrick v. Missouri Public Service Commission, supra*, at footnote 18.

[32] *Id.* at 866.

rate case. It is noteworthy, in this regard, that the *McKittrick* case contemplated separate treatment for an indefinite period.[33]

In the present case, two formerly independent utilities have become one upon the purchase of one by the other and their consequent merger. The two had separate and distinct, contiguous electric service areas with separate and distinct transmission and distribution systems and generating assets. They are evidently linked today by a single transmission line. While a joint dispatch agreement exists, it has evidently not yet been fully implemented. The books of the two companies were necessarily maintained separately in the past and are still, even after the merger. Testimony has been filed to the effect that it will take at least a year to fully integrate the two.[34] Under these circumstances, and purely as an interim measure, the Commission may treat the service areas of the formerly independent companies separately for ratemaking purposes.

As a final note, UtiliCorp has the burden of adducing sufficient competent and substantial evidence to support the Commission's preliminary conclusion that the degree of integration of MPS and SJLP is such that the Commission may treat the formerly independent service areas separately for ratemaking purposes. That evidence must be adduced at hearing and be subject to cross-examination.

IT IS THEREFORE ORDERED:

1. That Public Counsel's Motion to Reject Tariff, filed June 15, 2001, is denied.

2. That Public Counsel's Motion to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted, filed July 27, 2001, is denied.

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[33] *Id.*, at 858-859.

[34] Direct Testimony of Gary L. Clemens, p. 3.

3. That this order will become effective on October 12, 2001.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Murray, and
Lumpe, CC., concur.
Gaw, C., absent.

Thompson, Deputy Chief Regulatory Law Judge

ALJ/Secretary: Thompson / Pope

Date Circulated 10-1 CASE NO. ER-2001-672

Simmons, Chair KS

Murray, Commissioner

Lumpe, Commissioner

Gaw, Commissioner

Commissioner

Agenda Date 10-2

Action taken: 3-0 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 2nd day of Oct. 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge