

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
November 7, 2001**

CASE NO: ER-2001-672

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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 REGARDING MOTION TO COMPEL DISCOVERY
AND REVISING PROCEDURAL SCHEDULE**

On October 26, 2001, the Staff of the Missouri Public Service Commission filed its Motion to Modify Procedural Schedule, for a Commission Order Compelling Missouri Public Service, A Division of UtiliCorp United, Inc., to Answer Data Requests Issued by the Staff, to Shorten the Time to Respond to Data Requests, and for Expedited Treatment. Together with its motion, Staff filed the supporting testimony of Cary G. Featherstone, Steve M. Traxler, and Jolie L. Mathis, for a total of 54 pages of sworn testimony in question-and-answer format.¹ In its motion and the attached testimony, Staff complained that late data request responses by UtiliCorp have left it "unable to perform an audit . . . for the test year ordered by the Commission under the standards it normally employs." Other data requests, Staff complained, remain unanswered, although the mandatory date for response has long since passed. Still other information, relating to depreciation, has been received from UtiliCorp in an unusable format. Fast approaching, Staff points out, is the deadline for its Direct Testimony on November 15. Staff seeks relief in the form of an amended procedural schedule; an order requiring that all overdue data requests be answered by

¹ Not counting several pages of attached schedules.

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November 5; that other outstanding data requests be answered within the 20-day limit imposed by Commission rule; and that future data requests be answered on an expedited basis.

Pursuant to Commission Rule 4 CSR 240-2.090(8)(B), which requires a conference with the presiding officer prior to the filing of a motion to compel, and in view of Staff's request that the Commission act by November 1, a prehearing conference was set for November 1. The purpose of this prehearing conference was to provide an opportunity for the prompt resolution of the discovery dispute in order to permit this case to proceed without delay.

The prehearing conference was convened as scheduled and was attended by representatives of all parties. At the prehearing conference, Staff provided an oral summary of its motion and supporting testimony. UtiliCorp responded by acknowledging that a problem existed and stated that it was agreeable to most of the relief sought by Staff. Thus, UtiliCorp consented to the proposed amended procedural schedule set out in Paragraph 1 of the prayer of Staff's motion; stated that it could provide "most" of the overdue data request responses by November 5; stated that it would respond to current data requests within the 20-day period set by Commission rule; and stated that it would make a "good faith, best effort" to respond to future data requests on an expedited basis as requested by Staff. UtiliCorp further asserted that the present situation was not entirely its fault, but was partly the fault of Staff. Finally, UtiliCorp requested that Staff withdraw its motion and supporting testimony inasmuch as they suggested that UtiliCorp was not acting in good faith. Otherwise, UtiliCorp stated, it would file a written response to Staff's motion.

Staff refused to withdraw its motion and supporting testimony. Accordingly, UtiliCorp filed its written response on November 1, in order to respond to "certain allegations" made by Staff that are, according to UtiliCorp, "misleading, inflammatory and fail to point out that [UtiliCorp] has heretofore made a good faith effort to cooperate fully and to respond to Staff's discovery as promptly as possible under the circumstances." Therein, among other things, UtiliCorp asserts that only ten of over 550 data requests were unanswered as of November 1, and that all of these would be answered by November 10. UtiliCorp confirmed that it accepts the modified procedural schedule proposed by Staff in Paragraph 1 of its prayer; that all data requests referred to in Paragraph 2 of the prayer will be answered by November 5; that all pending data requests will be answered within the time limit imposed by Commission rule as requested in Paragraph 3 of the prayer; and that UtiliCorp will make a "good faith effort" to comply with the expedited time limits for responding to data requests set out in Paragraphs 4 and 5 of Staff's prayer.

Public Counsel and certain intervenors made statements at the prehearing conference. In general, these statements addressed the possibility that UtiliCorp's accounting system does not comply with Commission rules requiring that its books be kept according to the Uniform System of Accounts. With one exception, none of these parties expressed any objection to any of the relief requested in Staff's motion and agreed to by UtiliCorp. That exception was a concern raised by counsel for the Sedalia Industrial Energy Users Association, who stated that he did not like to prepare position statements and the issues list for simultaneous filing.

UtiliCorp consents to all of the relief sought by Staff. None of the other parties object, with the minor exception noted above. Therefore, the Commission will grant the relief requested by Staff, with certain modifications.

IT IS THEREFORE ORDERED:

1. That the Motion to Modify Procedural Schedule, for a Commission Order Compelling Missouri Public Service, A Division of UtiliCorp United, Inc., to Answer Data Requests Issued by the Staff, to Shorten the Time to Respond to Data Requests, and for Expedited Treatment filed by the Staff of the Missouri Public Service Commission on October 26, 2001, is granted.

2. That the procedural schedule previously adopted for this matter is modified as follows:

Direct Testimony All Parties, all issues	December 6, 2001 4:00 p.m.
Prehearing Conference	December 12-14, 17-18, 2001 10:00 a.m.
Rebuttal Testimony All Parties, all issues	January 8, 2002 4:00 p.m.
Joint Issues List	January 17, 2002 4:00 p.m.
Surrebuttal Testimony All Parties, all issues	January 22, 2002 4:00 p.m.
Position Statements	January 23, 2002 4:00 p.m.
Evidentiary Hearing	January 25, 28-31, February 1, 4-8, 2002 9:00 a.m.

The prehearing conference and evidentiary hearing will be held at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a facility

which meets the accessibility standards of the Americans with Disabilities Act (ADA). If any person needs additional accommodations to participate in the prehearing conference or evidentiary hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) prior to the prehearing conference or hearing.

3. That any of the Data Requests set out in Schedule SMT-3 attached to Appendix B to Staff's Motion of October 26, 2001, which have not yet been fully answered, must be answered by 4:00 p.m. on November 9, 2001.

4. That all pending Data Requests must be answered or objected to within the time set by Commission Rule 4 CSR 240-2.090(2).

5. That UtiliCorp United, Inc., shall answer or object to all Data Requests issued between the issue date of this order and January 8, 2002, within ten days of receipt.

6. That UtiliCorp United, Inc., shall answer or object to all Data Requests issued after January 8, 2002, within seven days of receipt.

7. That this order shall become effective on November 17, 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 to Section 386.240,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 7th day of November, 2001.

FYI: To Be Issued By Delegation

ALJ/Secretary: Thompson/Pope

11-6 Date Circulated 11-7 Return by 3:00pm, 10 a.m.

CASE NO. ER-2001-672 Please Expedite!

about

Simmons, Chair

Murray, Commissioner

Lumpe, Commissioner

Gaw, Commissioner

Commissioner

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 7th day of Nov. 2001.

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

