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January 17, 2002

Mr. Dale Hardy Roberts
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³

JAN 17 2002

**Missouri Public
Service Commission**

RE: UtiliCorp United Inc. - Case No. ER-2001-672

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of UtiliCorp's Objection and Motion to Strike Certain Aspects of Staff's Direct Testimony. Please stamp the enclosed extra copy "filed" and return same to me.

If you have any questions concerning this matter, then please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean L. Cooper
Dean L. Cooper *ug lg*

DLC/rhg
Enclosures

cc: Mr. Nathan Williams, PSC
Mr. John Coffman, OPC
Mr. Stuart Conrad
Mr. Duncan Kinchloe
Mr. Mark Comley
Mr. Jeremiah Finnegan
CPT Robert C. Cottrell, Jr.

FILED³

JAN 17 2002

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the tariff filing of Missouri)
Public Service, 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

**UTILICORP'S OBJECTION AND MOTION TO STRIKE
CERTAIN ASPECTS OF STAFF'S DIRECT TESTIMONY**

Comes now UtiliCorp United Inc. ("UtiliCorp") d/b/a Missouri Public Service ("MPS"), by counsel, and, for its objection and motion to strike, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

I. PURPOSE

1. UtiliCorp objects to, and moves to strike, certain Commission Staff ("Staff") depreciation testimony proposing to change certain Commission ordered lives and rates for UtiliCorp based upon the results of a Staff depreciation study rejected by the Commission in Case No. ER-97-394. Said testimony is improper and unlawful hearsay in that there is a lack of proper foundation for such testimony and study under Section 536.070(11), RSMo 2000 and because the Staff's approach represents an unlawful collateral attack on the Commission's Report and Order and Depreciation Order in Case No. ER-97-394 in violation of Section 386.550, RSMo 2000.

II. BACKGROUND/FACTS

2. On December 6, 2001, the Staff filed its direct testimony in this case. Included in this filing was testimony concerning UtiliCorp's depreciation rates, depreciation expense and salvage expense. This testimony was found in the Direct

Testimony of Staff witness Jolie M. Mathis, a part of the Direct Testimony of Staff witness Cary G. Featherstone and a part of the Staff Accounting Schedules.

3. Staff witness Mathis proposes a new depreciation rate schedule for UtiliCorp, to include the elimination of net salvage from depreciation calculations (Mathis Dir., p. 2). She states that the Staff has not conducted a depreciation study for the purposes of this case in order to establish the depreciation rates, but relied on an earlier depreciation study presented by the Staff in Case No. ER-97-394. (Id.). This earlier depreciation study was performed by Staff witness Mr. Guy C. Gilbert, P.E., P.G., who at the time of his testimony was an engineer in the Staff's Depreciation Department. (McKinney Reb., p. 9; Case No. ER-97-394, Exh. 89, Gilbert Dir., p. 3 (Appendix A); Case No. ER-97-394, Exh. 92, Roff Reb., Sch. DSR-4, p. 6-7 (Appendix B)). Staff witness Mathis neither performed that earlier depreciation study, nor supervised the preparation of said study. (Id.). Mr. Gilbert stated at the time "I performed a broad group - average service life depreciation study" and , in answer to whether he did all the work himself stated "I believe I did it all myself. I may have asked a question on occasion to someone about something, but no, the computation was all mine." (Id.).

4. UtiliCorp's currently ordered depreciation lives and rates were contained in the Depreciation Order issued by the Commission on August 4, 1998, effective April 17, 1998, in Case No. ER-97-394. (McKinney Reb., p. 8).

5. The depreciation rates and lives which are represented in Staff witness Mathis' Schedule 3 as the "Ordered" rates for "Production-Steam" and the "Production Plant-Other" are not the rates and lives prescribed by the Commission's Depreciation

Order in Case No. ER-97-394. (McKinney Reb., p. 9). Instead, the Schedule 3 rates and lives are the rates and lives *recommended* by the Staff in Case No. ER-97-394, but which were rejected by the Commission. (Id.). Concerning the depreciation issue, the Commission stated in its Case No. ER-97-394 Report and Order that "The Commission does not find competent and substantial evidence to adopt the position of the Staff. The Commission finds that the Staff has failed to prove that its proposed retirement dates are reliable. The Commission finds that the service lives for the above-stated generation facilities are established as proposed by UtiliCorp." (Case No. ER-97-394, Report and Order, p. 24).

6. Additionally, the depreciation rates ordered in Case No. ER-97-394 do not include associated service lives or net salvage figures. (McKinney Reb., Sch. JWM-1).

III. OBJECTION AND MOTION TO STRIKE

7. Because of a lack of foundation for the depreciation lives and rates and salvage expense proposed by the Staff in this case, and the unlawful collateral attack in violation of Section 386.550, RSMo, UtiliCorp objects to, and moves to strike, the following testimony, along with the related Staff adjustments:

Jolie L. Mathis	Direct, p. 2, line 9 (from "2)" though p. 2, line 12; Direct, p. 2, line 19 (from "Due") through line 22; Direct, p. 9, line 18 through p. 11, line 3.
-----------------	--

Cary Featherstone	Direct, p. 6, ;line 13 through 20.
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A. LACK OF FOUNDATION

8. Commission Rule 4 CSR 240-2.130(1) states that "[i]n any hearing, section 536.070, RSMo shall apply, a supplemented by these rules."

9. Section 536.070(11), RSMo 2000 states, in part, as follows:

The results of statistical examinations or studies, or of audits, compilations of figures, or surveys, involving interviews with many persons, or examination of many records, or of long or complicated accounts, or of a large number of figures, or involving the ascertainment of many related facts, shall be admissible as evidence of such results, if it shall appear that such examination, study, audit, compilation of figures, or survey was made by or under the supervision of a witness, who is present at the hearing, who testifies to the accuracy of such results, and who is subject to cross-examination, and if it shall further appear by evidence adduced that the witness making or under whose supervision such examination, study, audit, compilation of figures, or survey was made was basically qualified to make it.

(Emphasis added).

10. "In order to meet the requirements of this subsection, it is necessary that the person [performing the study] be present at the hearing and testify as to the accuracy of the figures." *Lenzini v. Columbia Foods*, 829 S.W.2d 482, 486 (Mo.App.W.D. 1992).

11. Staff witness Mathis bases her recommendations on, and is essentially providing for Commission consideration, the results of a depreciation study which was made neither by, nor under, her supervision and to which she cannot personally testify as to the accuracy. The person who could testify to the accuracy of such study, is not scheduled to be present at the hearing and will not be subject to cross-examination. This testimony cannot be admitted into evidence and must, therefore, be stricken, along with the related Staff adjustments.

B. IMPROPER COLLATERAL ATTACK

12. Section 386.550, RSMo 2000 states that "[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." In other words, "[i]f a statutory review of a PSC order is unsuccessful,

the order is final and cannot be attacked in a collateral proceeding." *State ex rel. Mid-Missouri Tel. Co. v. PSC of Missouri*, 867 S.W.2d 561, 565 (Mo.App.W.D. 1993).

13. "This statute is indicative of the law's desire that judgments be final." *State ex rel. Ozark Border v.*, 924 S.W.2d 597, 601 (Mo.App.W.D. 1996) citing *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 184 (Mo.App. 1980). "If a complaint does not allege a change in circumstances it would be in conflict with this section providing for finality." *Ozark Border* at p. 601.

14. Staff has utilized the depreciation study that was rejected by the Commission in Case No. ER-97-394 in an attempt to modify the depreciation rates and lives established in Case No. ER-97-394. No underlying change in circumstances can exist.

15. Here, the Staff is not only making a collateral attack on a very clear Commission decision relating to a specific issue ruled upon in a final Commission order, it is doing so utilizing the exact same study that the Commission rejected in Case No. ER-97-394. To reopen this issue based upon these facts would be a blatant violation of Section 386.550, RSMo 2000. Therefore, the testimony furthering this attempt must be stricken, along with the related Staff adjustments.

WHEREFORE, UtiliCorp respectfully requests that the Commission issue its order sustaining UtiliCorp's objection to the identified Staff testimony, striking the same Staff testimony and the related Staff adjustments based upon this testimony and

granting such further relief as the Commission deems appropriate.

Respectfully submitted,


James C. Swearengen #21510
Dean L. Cooper #36592
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312 E. Capitol Avenue
Jefferson City, MO 65102-0456
(573) 635-7166
(573) 635-3847 fax
dcooper@brydonlaw.com

Attorneys for UtiliCorp United Inc.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by facsimile transmission and U.S. Mail, postage prepaid, or hand-delivered, on this 17th day of January, 2002, to:

Mr. Nathan Williams
Missouri Public Service Commission
Governor State Office Building
P.O. Box 360
Jefferson City, MO 65102-0360

Mr. John Coffman
The Office of the Public Counsel
6th Floor, Governor State Office Building
P.O. Box 7800
Jefferson City, MO 65102-7800

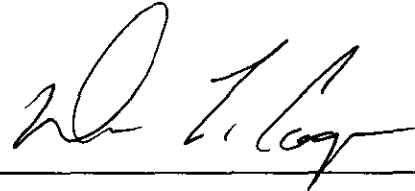
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General Litigation Division
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319



JCS

Ex. 89

17.767

Exhibit No.:	
Issue:	Depreciation of Plant
Witness:	Guy C. Gilbert, P.E., P.G.
Type of Exhibit:	Direct Testimony
Sponsoring Party:	MO PSC Staff
Case No.:	ER-97-394

MISSOURI PUBLIC SERVICE COMMISSION
UTILITY OPERATIONS DIVISION

MISSOURI PUBLIC SERVICE
CASE NO. ER-97-394

DIRECT TESTIMONY

OF

GUY C. GILBERT, P.E., P.G.

APPENDIX A

Jefferson City, Missouri
September 1997

1 DIRECT TESTIMONY

2 OF

3 GUY C. GILBERT, P.E., P.G.

4 UtiliCorp United

5 d/b/a Missouri Public Service

6 CASE NO. ER-97-394

7
8 Q. Please state your name and business address.

9 A. Guy C. Gilbert, P.O. Box 360, Jefferson City, Missouri, 65102.

10 Q. By whom are you employed and in what capacity?

11 A. I am employed by the Missouri Public Service Commission (Commission) as
12 an engineer in the Depreciation Department.

13 Q. What are your duties as an engineer in the Depreciation Department?

14 A. I have the responsibility for performing studies regarding depreciation and for
15 reviewing plant property records, utility property sales and other similar issues that may come before
16 the Commission.

17 Q. Would you please state briefly your qualifications, educational background and
18 experience.

19 A. I have received degrees in Economics and Engineering from the University of
20 Missouri. I was a National Science Foundation Research Grant participant (NSF GY 9841) and a
21 student research assistant at Cloud Physics Space Sciences Research Center. After graduation, I was
22 employed by General Dynamics' Freeman United Coal Mining Company as Assistant to the

Direct Testimony of
Guy C. Gilbert, P.E., P.G.

regulated electric, gas, water, sewer and telephone utilities operating in the State of Missouri.

Q. Please state the purpose of your testimony in this case.

A. The purpose of my testimony is to make recommendations for Missouri Public Service (MPS or Company) concerning depreciation rates.

Q. When were depreciation rates for MPS last revised by a Commission order?

A. Depreciation rates were last revised for MPS electric plant accounts by a Stipulation and Agreement signed on March 19, 1993 and approved by the Commission in Case No. ER-93-37. Common general plant account rates were last ordered in Case Nos. GR-88-171 and -GR-88-194.

Q. Has Staff conducted a depreciation study of the electric utility and common property of MPS in this case?

A. Yes, I performed a broad group - average service life depreciation study. Under the broad group (BG) procedure, all units of plant within a particular depreciation category, usually a plant account or subaccount, are considered to be one group. The average service life (ASL), in years, is the average expected life of all units of the group regardless of the placement date. The ASL is determined by actuarial analysis of records of annual additions, retirements by vintage and balances. The net salvage dollars used in the following calculation are the average net salvage (NS), in percent, for each dollar of plant investment retired. These factors are then incorporated into the formula where:

$$\text{Depreciation Rate} = (1 - \text{NS}\%) / \text{ASL}$$

Q. What were the results of your depreciation study?

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Missouri Public)
Service, a Division of)
UtiliCorp United Inc.'s Tariff)
Designed to Increase Rates for)
Electric Service to Customers in the)
Missouri Service Area of the Company.)

Case No. ER-97-394

AFFIDAVIT OF GUY C. GILBERT, P.E., P.G.

STATE OF MISSOURI)
) SS
COUNTY OF COLE)

Guy Gilbert of lawful age, on his oath states: that he has participated in the preparation of the foregoing written testimony in question and answer form; consisting of 8 pages and 3 schedules to be presented in this case; that the answers in the foregoing testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

Guy C. Gilbert
Guy C. Gilbert, P.E., P.G.

Subscribed and sworn to before me this 15th day of
September, 1997.

Beverly S. Lehman
Notary Public

My commission expires _____

BEVERLY S. LEHMAN
NOTARY PUBLIC STATE OF MISSOURI
CALLAWAY COUNTY
MY COMMISSION EXP. MAR. 9, 1998

Exhibit No.:
Issue: Depreciation
Witness: Donald S. Roff
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Missouri Public Service
Case No.: ER-97-394

Before the Public Service Commission
of the State of Missouri

Rebuttal Testimony

of

Donald S. Roff

APPENDIX B

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Filing of)
Tariff Sheets by Missouri Public)
Service, a Division of UtiliCorp)
United, Inc., Relating to)
Real-Time Pricing, Flexible)
Rates/Special Contracts, Line)
Extension Policy and Energy)
Audit Program.)

Case No. ET-98-103

In the Matter of Missouri Public)
Service, a Division of UtiliCorp)
United, Inc. Tariff Designed to)
Increase Rates for Electric)
Service to Customers in the)
Missouri Service Area of the)
Company.)

Case No. ER-97-394

The Staff of the Missouri Public)
Service Commission,)

Complainant,)

vs.)

UtiliCorp United, Inc., d/b/a)
Missouri Public Service,)

Respondent.)

Case No. EC-98-126

October 9, 1997

Jefferson City, Mo.

DEPOSITION OF GUY C. GILBERT,

a witness, produced, sworn and examined on the 9th day
of October, 1997, between the hours of 8:00 a.m. and
6:00 p.m. of that day at the law offices of Brydon,
Swearengen & England, 312 East Capitol, in the City of
Jefferson, County of Cole, State of Missouri, before

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SCHEDULE DSR-4

1 KELLENE FEDDERSEN, CSR, RPR
2 ASSOCIATED COURT REPORTERS, INC.
3 714 West High Street
4 P.O. Box 1308
5 JEFFERSON CITY, MO 65109
6 (573) 636-7551

7 and Notary Public within and for the State of
8 Missouri, commissioned in Cole County, in the
9 above-entitled cause, on the part of UtiliCorp United,
10 Inc., d/b/a Missouri Public Service, taken pursuant to
11 agreement.
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A P P E A R A N C E S

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FOR THE STAFF:

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Assistant General Counsel
Public Service Commission
Truman State Office Bldg., Room 530
301 West High Street
P.O. Box 360
Jefferson City, MO 65102

SIGNATURE INSTRUCTIONS:

Presentment waived; signature requested.

EXHIBIT INSTRUCTIONS:

None marked.

I N D E X

Direct Examination by Mr. Swearengen	4
Cross-Examination by Mr. Woodsmall	30

1 GUY C. GILBERT, being sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. SWEARENGEN:

3 Q. Would you state your name and business
4 address, please.

5 A. Guy C. Gilbert, Post Office Box 360,
6 Jefferson City, Missouri.

7 Q. Okay. And you're the same Guy C. Gilbert
8 who has filed certain direct testimony in Missouri
9 Public Service Commission Case No. ER-97-394; is that
10 correct?

11 A. I am.

12 Q. And do you have a copy of that direct
13 testimony with you today?

14 A. I do.

15 Q. And am I correct in understanding that it
16 consists of eight pages of testimony in question and
17 answer form?

18 A. And schedules.

19 Q. Yes. I'll get to that, but the testimony --

20 A. Yes.

21 Q. -- eight pages of the testimony?

22 And then, in addition to that, you have
23 three schedules attached; is that right?

24 A. Yes, two pages each.

25 Q. Okay. Thank you. Am I correct in

1 A. Yes.

2 Q. Now, on those three cases you actually got
3 on the stand and testified. Were there other cases
4 that you may have participated in by filing direct or
5 rebuttal or surrebuttal testimony on the subject of
6 depreciation but you actually did not have to get on
7 the witness stand?

8 A. Yes, I believe so.

9 Q. Can you tell me what those are?

10 A. Kansas City Power and Light, EO-94-264.

11 Q. Okay.

12 A. Missouri Public Service, EO-97-144.

13 Q. Okay.

14 A. Missouri Public Service, GA-97-132 and 133.

15 I believe I filed testimony in both of those.

16 GM-94-152. That's listed as a transfer of assets, but
17 for some reason the year doesn't look right on that to
18 me. I believe that's all.

19 Q. Okay. Now, in all those cases your
20 testimony did involve the subject of depreciation?

21 A. I believe so.

22 Q. Okay. Turning to page 3 of your direct
23 testimony in this case, beginning down there on
24 line 12, you start an answer to a question, and there
25 you describe what you did for purposes of this case.

1 The depreciation work you did in this case,
2 did you do it all yourself or did you have others
3 working with you on it, other staff people?

4 A. I believe I did it all myself. I may have
5 asked a question on occasion to someone about
6 something, but no, the computation was all mine.

7 Q. Okay. Can you briefly describe -- and I
8 don't want you necessarily to go into a great deal of
9 detail, but can you just kind of describe generally
10 your depreciation study process that you used in this
11 case?

12 A. I received the data from the Company. I
13 sorted it by account and age. I reconciled the data
14 with the plant balances in Mr. Roff's testimony.

15 Q. Just let me interrupt you there. For the
16 record, who is he?

17 A. He is MoPub's consultant concerning the
18 matters of depreciation in this case.

19 Q. Thanks. Go ahead.

20 A. I reconciled the data with Mr. Roff's plant
21 balances. I also looked at the plant balances with
22 respect to the filed annual report and our accounting
23 department's schedules of the plant balances by
24 account.

25 Once I had a true-up of those dollars, I