

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
February 21, 2002**

**CASE NO: GO-2001-249**

**Office of the Public Counsel**  
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Missouri Public Service Commission  
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Brydon, Swearngen & England P.C.  
PO 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 that reads "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**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 21st day  
of February, 2002.

In the Matter of an Investigation into Various )  
Issues Related to UtiliCorp United Inc.'s Gas )  
Supply Services Department. )

Case No. GO-2001-249

**ORDER APPROVING STIPULATION AND AGREEMENT  
AND CLOSING CASE**

**Syllabus:**

This order resolves an investigation into alleged wrongdoing by the Gas Supply Services Department of UtiliCorp United, Inc., doing business as Missouri Public Service, by approving the parties' Unanimous Stipulation and Agreement and closing the case.

**Procedural History:**

On October 16, 2000, the Staff of the Missouri Public Service Commission moved the Commission to establish a case in order to investigate certain allegations of impropriety contained in an anonymous letter received by the Chair of the Commission on September 9, 2000. The allegations were that the Gas Supply Services Department of UtiliCorp United Inc., doing business as Missouri Public Service, had engaged in certain improper activities intended to increase corporate profits at the expense of Missouri ratepayers. On October 31, UtiliCorp responded to Staff's motion, denying the allegations of impropriety and supporting Staff's motion to open a case. The Commission issued its order Establishing Case and Directing Notice on November 9, 2000.

On October 1, 2001, the Staff of the Missouri Public Service Commission filed its investigation report in this case. Thereafter, on October 29, UtiliCorp United, Inc., filed its response to Staff's investigation report. UtiliCorp concurred with many, but not all, of the recommendations made by Staff in its investigation report. Therefore, on November 2, the Commission set a settlement conference for November 19. The settlement conference was attended by all parties and resulted in the settlement embodied in the Stipulation and Agreement now before the Commission.

The Unanimous Stipulation and Agreement was filed on January 24, 2002. The Stipulation and Agreement incorporates issues of financial impact, if any, into UtiliCorp's existing Purchased Gas Adjustment/Actual Charge Adjustment proceeding,<sup>1</sup> and adopts and implements recommendations made by Staff in its management audit, conducted as part of its investigation herein. On January 31, Staff filed its Suggestions in Support of the Stipulation and Agreement. Those Suggestions were designated "Highly Confidential" in the entirety.

### **Discussion:**

In reviewing the Unanimous Stipulation and Agreement submitted by the parties, the Commission notes that<sup>2</sup>

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<sup>1</sup> The Purchased Gas Adjustment is universally referred to in the industry as the PGA. The Actual Cost Adjustment, in the same way, is referred to as the ACA. The PGA/ACA embodies a mechanism for dealing with highly volatile natural gas prices outside of a general rate case. In brief, each Local Distribution Company includes a PGA Clause in its Commission-approved tariff. This clause authorizes the company to make one scheduled winter and one scheduled summer PGA filing, and one unscheduled filing. These filings set the numerical values of various factors by which the rate paid by customers is determined. Rates are paid on an "interim, subject to refund" basis permitting adjustment in favor of the company or in favor of the ratepayers after an annual audit.

<sup>2</sup>Section 536.090, RSMo Supp. 2001. This provision applies to the Public Service Commission. *State ex rel. Midwest Gas Users' Association v. Public Service Commission of the State of Missouri*, 976 S.W.2d 485, 496 (Mo. App., W.D. 1998).

[e]very decision and order in a contested case shall be in writing, and, except in default cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. \* \* \*

Consequently, the Commission need not make either findings of fact or conclusions of law in this order.

The Stipulation and Agreement provides that financial issues, including any issue relating to adjustments for capacity release and put and call options, shall be addressed in UtiliCorp's existing PGA/ACA proceedings.<sup>3</sup> The parties are free, in the PGA/ACA proceedings, to advocate or oppose any particular adjustment.

The Stipulation and Agreement further provides that UtiliCorp will implement the recommendations made by Staff in its management audit. UtiliCorp has further agreed to cooperate with Staff's compliance review with respect to these recommendations, including a future site visit by Staff.

The Stipulation and Agreement also provides that UtiliCorp shall implement a particular reporting format to document its gas supply allocation procedures. Staff and Public Counsel will review the allocation procedures and the resulting cost impact and propose such modifications and adjustments as they deem necessary. Staff, in particular, has the option of requesting additional documentation.

The Stipulation and Agreement also provides that the Commission will close its investigation into the allegations made by the anonymous letter and that UtiliCorp will share with Staff and Public Counsel any documents resulting from anonymous letter investigations in other states, subject to applicable Missouri statutes and Commission protective

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<sup>3</sup> Case Nos. GR-99-435, GR-2000-520 and GR-2001-461.

orders. In doing so, UtiliCorp will not waive any privileges, objections, defenses or positions that it might have respecting such documents.

The Stipulation and Agreement provides that it will become effective as directed by the Commission or within 30 days of the Commission's order approving it. The Stipulation and Agreement also includes various reservations, waivers, and the like as commonly found in such documents.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.<sup>4</sup> The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.<sup>5</sup> Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation and Agreement.

**IT IS THEREFORE ORDERED:**

1. That the Unanimous Stipulation and Agreement filed on January 24, 2002, is approved. A copy of the Unanimous Stipulation and Agreement is attached hereto as Attachment A.
2. That UtiliCorp United, Inc., is ordered to comply with the terms of the Unanimous Stipulation and Agreement.

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<sup>4</sup> Section 536.060, RSMo Supp. 2001.

<sup>5</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

3. That this Order shall become effective on March 3, 2002.
4. That this case may be closed on March 4, 2002.

**BY THE COMMISSION**



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

( S E A L )

Simmons, Ch., Murray, Lumpe,  
Gaw, and Forbis, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge

JAN 24 2002

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**Missouri Public  
Service Commission**

In the Matter of an Investigation into various )  
issues related to UtiliCorp United Inc.'s ) Case No. GO-2001-249  
Gas Supply Services Department. )

**UNANIMOUS STIPULATION AND AGREEMENT**

COMES NOW UtiliCorp United Inc. d/b/a Missouri Public Service ("UtiliCorp," "Company," or "MPS"), the Staff of the Missouri Public Service Commission ("Staff") and the Office of the Public Counsel ("OPC"), and submit this Unanimous Stipulation and Agreement ("Stipulation and Agreement") for approval by the Commission. This Stipulation and Agreement is a result of numerous discussions and investigation of issues contained in this proceeding. This Stipulation resolves all issues related to the investigation of allegations contained in an anonymous letter received by the Commission in October 2000, by incorporating issues of financial impact, if any, under existing Actual Charge Adjustment ("ACA") proceedings and by adopting and implementing recommendations of a management audit conducted by Staff as described more fully below.

**BACKGROUND**

During the month of September 2000, the Commission received a letter filed anonymously. The anonymous letter writer alleged, among other allegations, that UtiliCorp's Gas Supply Services Department had engaged in certain described inappropriate activity. The Commission subsequently opened the instant case at the request of Staff and concurrence of UtiliCorp to allow Staff to investigate the allegations contained in the letter. A more detailed explanation of the anonymous letter investigation and subsequent informal management audit is contained within the Staff Report

and UtiliCorp's Response thereto, which need not be repeated here but are incorporated by reference herein as necessary for this Stipulation.

After an examination of the issues by Staff and the OPC, in cooperation with UtiliCorp and its managers, the parties have agreed to conclude the investigations and resolve any and all remaining issues. A chronology of the Staff's investigation and information provided by the company is summarized within the comments of the Staff and the response filed by MPS in this case.

On November 19, 2001, the Commission convened a Prehearing Conference for purposes of discussing settlement. The parties therein reached a complete settlement of the issues in principal that resulted in the instant Stipulation and Agreement. On November 21, 2001, the Commission issued an Order Directing Filing requiring the parties to file a status report or a signed settlement agreement by January 11, 2002. This Stipulation and Agreement is intended to comply with that Order.

### **RESOLUTION OF ISSUES**

1. **Financial Issues** Any issue related to adjustments for "capacity release", "put and call" options, and any other financial matters as set forth in prior pleadings in this case will be addressed in Cases No. GR-99-435, GR-2000-520 and GR-2001-461. Nothing contained in this Stipulation hereby precludes Staff, the OPC, or MPS from pursuing or defending any adjustments, if any, that are deemed necessary or appropriate to the investigation of the allegations contained in or arising from the anonymous letter. In other words, Staff or the OPC are free to recommend adjustments and is free to oppose any such adjustment, if necessary, related to "capacity release" or "put and call" activity.



2. **Gas Supply Service Management Process and Practices Issues** Staff's report to the Commission contained several recommendations resulting from an informal management audit conducted by Staff during 2001. Among the recommendations within Staff's October 1, 2001, report are the following recommendations:

- a. Complete an internal review of the GSS function initiated by UtiliCorp's Risk Assessment and Audit Service Department;
- b. Require company management to respond to the findings and conclusions of the internal review within sixty (60) days of the report;
- c. Formalize the development of general guidelines, policies, procedures, business strategies, employee compensation, education and compliance manual for Gas Supply Services;
- d. Require gas buyers to include their names on a "portfolio managers review" report;
- e. Develop procedures for each employee to record their actual time on a daily basis;
- f. Require all gas supply procurement personnel to submit time sheets for each pay period;
- g. Develop written job descriptions for gas supply procurement employees and provide copies of the descriptions to their respective employees; and
- h. Develop a process by which to keep job descriptions current.

UtiliCorp agrees to implement the recommendations set forth by Staff related to implementing its recommendation from the management audit contained in Staff's report and UtiliCorp's response thereto. UtiliCorp also agrees to cooperate with Staff's review of UtiliCorp's compliance with the implementation of these recommendations. This cooperation will include a future site visit by Staff to UtiliCorp.

3. **Gas Purchase Allocation Detail** MPS agrees to the reporting procedure/format attached hereto as **Exhibit A** for the purpose of documenting the procedures MPS uses to allocate its various gas supply packages to MPS's Missouri customers. The Staff and Public Counsel reserve the right to review the attached allocation procedures, along with the resulting cost impact, and propose modifications and adjustments if necessary. In addition, it may be necessary for Staff to request additional documentation including but not limited to sales for resale reports to help ensure that the Missouri jurisdiction receives a fair allocation of gas costs in appropriate ACA cases.

4. **Anonymous Letter Investigation** The parties further agree that this case and the investigation of the anonymous letter should be closed, subject to the following conditions:

a. UtiliCorp is directed to provide and agrees to provide Staff and OPC with reports, orders, or other materials from state anonymous letter issues in Iowa, Minnesota, and Michigan, subject to applicable Missouri statutes and protection orders issued in this and other applicable cases for the purpose of review and action, if any, within ongoing ACA or other proceedings.

b. UtiliCorp preserves all lawful rights and arguments including, but not limited to privilege, relevance, or other objections and positions related to such reports, orders, or other material from investigation of the anonymous letter issues in other states.

5. **Effectiveness** This Stipulation shall become effective upon Commission approval without modification by final Commission order. Such order becomes "final" either by issuance of a Commission order on rehearing or, if no rehearing request is filed, thirty (30) days after issuance of the Commission's order approving the Stipulation, or such other effective date as selected by the Commission.

6. **Reservations**

a. This Stipulation and Agreement has resulted from extensive negotiations among the Parties and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no Party shall be bound by any of the the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Parties to take other positions in other proceedings. All parties agree that, unless this Stipulation becomes effective as provided herein, this settlement and any and all discussion related hereto shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed in any proceeding.

b. It is specifically understood and agreed that this Stipulation represents a negotiated settlement of the issues in these proceedings settled in a manner that is in the public interest. Neither MPS, the Commission, its Staff, the OPC, nor any other party shall be deemed to have approved, accepted, agreed, or consented to any accounting principle, ratemaking principle or cost of service determination underlying, or supposed to underlie any of the issues related to capacity release or puts and calls provided for herein.

c. All parties further understand and agree that the provision of this Stipulation relate only to the specific matters referred to in the Stipulation and no party or person waives any claim or right which it otherwise may have with respect to any matters not expressly provided for in this Stipulation. Nothing in this settlement shall preclude UtiliCorp from filing changes in its Missouri Public Service Gas, a division of UtiliCorp United Inc., gas tariff which are not inconsistent with the specific obligations under this Stipulation.

7. **Waiver of Rights to Cross-Examination, Etc.** In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo (2000) to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo (2000); their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo (2000); their respective rights to seek rehearing pursuant to Section 386.500, RSMo (2000); and their respective rights to judicial review pursuant to Section 386.510, RSMo (2000). If this Stipulation and Agreement is not approved by the Commission, the Parties request that a procedural schedule be established which provides for the filing of testimony and a hearing, to include the opportunity for cross-examination.

8. **Staff's Rights** The Staff shall file suggestions, testimony or a memorandum in support of this Unanimous Stipulation and Agreement and the other parties shall have the right to file responsive suggestions or prepared testimony within five (5) days of receipt of Staff's memorandum. All memoranda submitted by the Parties shall be considered privileged in the same manner as are settlement discussion under the Commission's rules, shall be maintained on a confidential basis by all Parties, shall not become a part of the record of this proceeding, and shall not bind or prejudice the Party submitting such memorandum in any future proceeding or in this proceeding, whether or not the Commission approves this Unanimous Stipulation and Agreement. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Unanimous Stipulation and Agreement, whether or not the Commission approves and adopts this Unanimous Stipulation and Agreement.

The Staff shall also have the right to provide, at any agenda meeting at which this Unanimous Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

9. **Provision of Additional Information** To assist the Commission in its review of this Unanimous Stipulation and Agreement, the Parties also request that the Commission advise them of any additional information that the Commission may desire from the parties relating to the matters addressed in this Stipulation and Agreement, including any procedures for furnishing such information to the Commission.

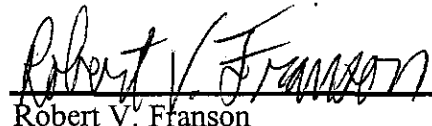
### **CONCLUSION**

WHEREFORE, the undersigned Parties respectfully request that the Commission issue its Order:

- a) Approving all of the specific terms and conditions of this Unanimous Stipulation and Agreement;
- b) Closing this case; and,
- c) Granting such further relief as the Commission should find reasonable and just.

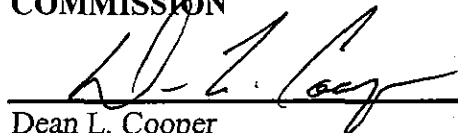
Respectfully submitted,

DANA K. JOYCE  
General Counsel



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**ATTORNEY FOR OFFICE OF THE  
PUBLIC COUNSEL**

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 24th day of January 2002.

Robert V. Francon

Atty/Secretary: Thompson / Page

Date Circulated 2-19 G.D. 2601-249  
CASE NO.

CLS  
Simmons, Chair

LM  
Murray, Commissioner

JS  
Lumpe, Commissioner

7/16 e. Please call off's findings?  
Gaw, Commissioner

OK  
Forbis, Commissioner

OK

2-21  
Agenda Date

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

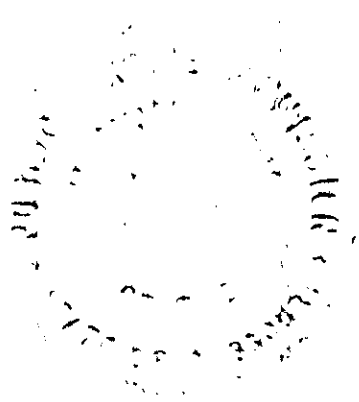
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 21<sup>st</sup> day of Feb. 2002 .

Dale Hardy Roberts

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge





**Exhibit A has been deemed highly  
confidential in its entirety.**