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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 17th  
day of September, 1993.

In the matter of Missouri Public Service, a division of )  
UtiliCorp United Inc., proposed tariffs to increase )  
rates for electric service provided to customers in the ) Case No. ER-93-37  
Missouri service area of the company. )  
)

**ORDER DENYING RECONSIDERATION  
AND SCHEDULING PREHEARING CONFERENCE**

On June 18, 1993, the Commission issued a Report And Order in this case in which it approved a Stipulation And Agreement (hereinafter referred to as the nonunanimous stipulation) entered into between all parties except the Office of Public Counsel (OPC). The Report And Order authorized Missouri Public Service, a division of UtiliCorp United, Inc., (MPS) to file tariffs increasing rates by \$4,865,804. The Report And Order addressed several issues disputed by OPC but did not adjust the revenue requirement agreed to in the nonunanimous stipulation. The original revenue increase agreed to in the nonunanimous stipulation was \$8 million but after a true-up calculation, the amount was adjusted to \$4,865,804.

On June 28, 1993, OPC filed an application for rehearing and Commission Staff filed a motion for clarification of the June 18 Report And Order. MPS filed a response to OPC's application and Staff's motion.

The Commission, after considering OPC's application and Staff's motion, issued an Order Granting Rehearing And Clarification on August 6, 1993. In its order the Commission found there was sufficient reason to grant a rehearing based upon OPC's pleading and its own reconsideration of the Report And Order. In its order the Commission raised certain issues regarding the treatment of the non-unanimous stipulation and the issues disputed by OPC as a nonsignatory party.

settlement based upon that position. The Commission considered the issues based upon Staff's and MPS's prefiled testimony and cross-examination by OPC.

The nonunanimous stipulation was silent as to this issue and even though the Commission found MPS's position to be persuasive, there is no indication in the record that MPS's position is the position agreed to by the signatory parties. In fact, the Commission's discussion of the issue was based entirely on two positions (MPS and Staff), both of which had been compromised by the nonunanimous stipulation. OPC presented no evidence so the only evidence in the record was that of parties supporting the stipulation. If OPC wishes to prevail on an issue and have the Commission adjust the stipulated revenue requirement, it must present evidence to support its position. Since the settled amount or method of calculation on each issue is not known, OPC has no evidence from which the Commission could make an adjustment. The only result OPC could achieve is to convince the Commission the settlement was not reasonable because it did not specifically find that Staff's position was adopted. Of course, there is no evidence that Staff's position was not adopted. The only fact for certain is that Staff and MPS settled the issue and that settlement presumably was within the parameters of their two positions.

For those issues where OPC presented a witness and evidence supporting its own position, the Commission believes in retrospect that it had no basis to support the nonunanimous stipulation. Rate of return (ROR) is a classic example of this problem and of the situation the Court in *Monsanto* described as unlawful. The Commission, based upon the record, was forced to describe why it could not accept OPC's ROR analysis but it had no basis for adopting the settlement amount since there was no indication what ROR was made part of the settlement. MPS would have the Commission find its ROR analysis is appropriate. The Commission could just as easily find Staff's appropriate, but to what end? There is no evidence of what the settled ROR is, let alone any evidence to support the

number. It could be assumed that the settlement was within the parameters of Staff's and MPS's positions. The question remains, what findings could the Commission make to support the nonunanimous stipulation on this issue?

Staff and MPS also dispute the Commission's decision that any issue upon which a nonsignatory party prevails would be reduced from the settled revenue requirement. Staff and MPS argue that any adjustment should be made from MPS's original revenue requirement. The Commission believes this makes any hearing of disputed issues illusory since under this analysis a party would have to prevail on issues totaling more than the difference between the Company's original filed revenue requirement and the settled revenue requirement. There would be no purpose in disputing issues in most cases unless the disputed issues totaled more than this amount. The Commission does not believe the courts intended this result in either the *Monsanto* or *Fischer* decisions.

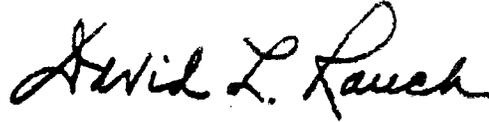
MPS has argued the Commission decision will discourage settlements. This may be true but only of nonunanimous stipulations of entire revenue requirements. Since this does not occur very often, the Commission does not believe the effect of its decision will be disastrous.

Based upon the foregoing discussion, the Commission will deny MPS's application for reconsideration and will set a date for the prehearing conference which was continued pending this order. The parties may decide to either allow the Commission to reconsider its decision based upon the record before it or they may decide to file additional testimony. If additional testimony is proposed, then the parties should file a proposed procedural schedule with hearings in January 1994. Additionally, a request was made for oral argument in this matter. The Commission does not believe oral argument is necessary.

IT IS THEREFORE ORDERED:

1. That the Application For Reconsideration filed by Missouri Public Service, a division of UtiliCorp United, Inc., be hereby denied.
2. That Ordered Paragraph 3 of the Commission's August 6, 1993 Order Granting Rehearing And Clarification be hereby rescinded.
3. That a prehearing conference is set for October 1, 1993 at 10:00 a.m. in the Commission's offices, Floor 5A, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.
4. That this order shall become effective on the date hereof.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins  
and Kincheloe, CC., concur.  
Crumpton C., absent.