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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 16th
day of April, 1998.

In the Matter of Missouri Public Service, a)
Division of UtiliCorp United Inc.'s Tariff)
Designed to Increase Rates for Electric Service) Case No. ER-97-394
to Customers in the Missouri Service Area of)
the Company.)

In the Matter of the Filing of Tariff Sheets)
by Missouri Public Service, a Division of)
UtiliCorp United Inc., Relating to Real-Time) Case No. ET-98-103
Pricing, Flexible Rates/Special Contracts, Line)
Extension Policy and Energy Audit Program.)

The Staff of the Missouri Public Service)
Commission,)

Complainant,)

v.)

) Case No. EC-98-126 ✓

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

Respondent.)

**ORDER DENYING APPLICATIONS FOR REHEARING, GRANTING IN PART AND
DENYING IN PART APPLICATION FOR RECONSIDERATION, GRANTING
MOTION FOR CLARIFICATION AND APPROVING TARIFF**

UtiliCorp United Inc. (UtiliCorp) d/b/a Missouri Public Service (collectively, Company), the Staff of the Missouri Public Service Commission (Staff), the Office of Public Counsel (OPC) and Jackson County, Missouri (Jackson County) have filed various applications and motions following issuance of the Commission's March 6, 1998 Report and Order. For the reasons discussed below, the Commission will clarify its holdings with respect to some of the issues, deny the applications for rehearing, grant in part and deny in part the application for reconsideration, and approve

the tariff filed by Company on March 18 to implement the Commission's Report and Order.

Procedural History

The Staff filed its Status Report and Motion for Clarification (first status report) on March 17. Staff requested clarification regarding the treatment to be given to the depreciation of mass asset accounts. Staff also responded to Ordered Paragraph 5 of the Commission's Report and Order respecting recalculation of depreciation rates by Company, Staff and OPC and attached a schedule of proposed depreciation rates. Staff informed the Commission that the parties were still discussing the revenue requirement figures associated with the mass asset accounts and suggested a number of possible solutions if the Commission were to find that the Staff prevailed on this issue. The Staff also informed the Commission that the computer equipment depreciation issue presented at the hearing was intended to be limited to the embedded costs for computer equipment ("old" computer equipment costs), and that the depreciation rates should differ for such "old" computer equipment and the costs incurred for computer equipment booked after June 30, 1997 ("new" computer equipment costs). Therefore, the Staff suggested a revision to the Commission's Report and Order, which initially set the depreciation rate at zero percent for both "old" and "new" computers.

Also on March 17, Company filed an application for reconsideration or alternatively for rehearing, and Jackson County and OPC filed applications for rehearing. The applications filed by Company and Jackson County sought reconsideration or rehearing of several issues. Although OPC's application was titled as an application for rehearing, OPC actually sought reconsideration. OPC's application addressed only the options

proposed in Staff's first status report for addressing any change in the revenue reduction resulting from the Change in Service Lives issue for mass asset accounts. OPC stated that only one of Staff's proposed options would be the appropriate way to address the discrepancy if the Commission were to find in favor of the Staff on the mass asset account depreciation issue.

On March 18, Company filed a response to the first status report and motion for clarification filed by Staff. Company asserted that the Commission had clearly found in favor of the Company on the mass asset accounts portion of the Change in Service Lives issue, but Company stated that the issue was worth less than originally valued in the revenue summary. Company suggested several options for resolving the discrepancy should the Staff prevail, some of which echoed the options proposed by Staff. Company agreed with Staff that a differentiation needed to be made between the current embedded costs and future booked costs for computer equipment in the final determination of the appropriate depreciation rate for the computer equipment account.

Also on March 18, Company filed proposed tariff sheets to implement the Commission's Report and Order. The tariff sheets have an effective date of April 17. Company filed substitute sheets on March 24.

On March 27, Staff filed its Second Status Report (second status report), informing the Commission that the Company, Staff and OPC had reached agreement on the proper quantification of the Change in Service Lives issue associated with the mass asset accounts. Staff explained that the quantification would differ depending on the Commission's findings, and attached new proposed depreciation schedules for these accounts. Staff addressed Company's arguments on this issue and the various options that had been proposed on March 17 by the parties for addressing discrepancies. Finally, Staff stated that Company, Staff and OPC had reached agreement

concerning the proper depreciation rate for computer equipment booked after June 30, 1997.

Company responded to the second status report on March 31 by stating that it agreed with the Staff's quantification of the Change in Service Lives issue and that it agreed with the first two options discussed in the second status report for resolving revenue requirement discrepancies.

On April 9, the Staff filed a Memorandum that contained its recommendations for resolving the depreciation issues and addressing the tariff sheets filed by Company. Staff recommended that Company's tariff sheets be approved as amended if the Commission decides to reduce Company's annual electric revenues by approximately \$16,898,098 as originally ordered on March 6. However, the Staff also addressed the issue of depreciation rates for computer equipment and the associated revenue requirement impacts of various decisions that the Commission might make with respect to this issue. The Staff recommended that certain of the Company's tariff sheets be rejected if the Commission finds that a revenue reduction different from that originally ordered on March 6 should be imposed.

On April 10, Company filed a supplemental response to the Staff's status reports and to the Staff's Memorandum, indicating agreement with certain statements made by Staff on the quantification of the Change in Service Lives issue and the appropriate depreciation rates for new computer equipment.

The Commission issued a notice on April 14, informing all parties that responses to the filings made by Staff and Company following the March 6 Report and Order on the mass asset account and computer equipment depreciation issues should be filed no later than 5:00 p.m. on April 15. The Commission ensured that this notice was faxed to all parties by noon on April 14. No parties filed responses.

Discussion

The Commission has reviewed all of the filings discussed above, as well as its March 6 Report and Order and the record and, based thereon, makes the following findings of fact and conclusions of law. The issues raised by Company, Staff, OPC and Jackson County are discussed below in the order that they were discussed in the Commission's March 6 Report and Order. In deciding whether to grant the requests for rehearing or reconsideration, the Commission has exercised its judgment regarding whether sufficient cause exists, pursuant to 4 CSR 240-2.160(3) and § 386.500.1, RSMo 1994. Following the discussion of the pending applications and motions is a discussion of Company's implementing tariff sheets.

Findings of Fact

Company and Jackson County assert in their applications that the Commission failed to make sufficient findings of fact on several issues. The Commission disagrees with Company's and Jackson County's assertion, except with respect to certain depreciation issues.

For an agency order to withstand judicial review, the order must contain findings of fact that are sufficiently definite and certain under the circumstances of the particular case to enable the court of review to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence. Cummings v. Mischeaux, 1998 WL 48871 (Mo. App., W.D., Feb. 10, 1998). Courts do not require detailed summaries of testimony in agency findings; they require only what are considered the "basic facts" on which the holding ultimately rests. Friendship Village of South County v. Public Service Comm'n of Missouri, 907 S.W.2d 339, 346 (Mo. App., W.D. 1995). The standard has

been stated as follows: the findings must (1) constitute a factual resolution of the matters in contest before the administrative agency, (2) advise the parties and the circuit court of the factual basis upon which the administrative agency reached its conclusion and order, (3) provide a basis for the circuit court to perform its limited function in reviewing administrative agency decisions, and (4) show how the controlling issues have been decided. Weber v. Firemen's Retirement System, 899 S.W.2d 948, 950 (Mo. App., E.D. 1995). A summary of the testimony or a statement of ultimate conclusions is insufficient. Id. A mere chronology of events is also insufficient. Id.

The Commission acknowledges that its findings concerning the change in service lives issue were incomplete in that the Commission did not clearly address the appropriate treatment to be given to the transmission, distribution and general plant (mass asset) accounts. Moreover, the Commission's finding concerning depreciation of computer equipment costs was applied to "new" computer equipment as well as to "old" computer equipment, even though the parties perceived the issue before the Commission to be restricted to the proper depreciation rate for "old" computer equipment costs. The Commission therefore completes and revises its findings concerning these depreciation issues below. With respect to the remaining issues, the Commission finds that its previous findings were sufficient under the standards set forth in the Cummings, Friendship Village and Weber decisions. Nevertheless, the Commission will voluntarily discuss some of those findings in more detail in this order for the parties' edification.

I. Issues Raised in Applications for Rehearing or Reconsideration and in Motion for Clarification

A. Rate of Return Issues

1. Capital Structure

Company requests reconsideration or rehearing of this issue for a number of reasons already articulated in its briefs. According to Company, the Commission did not make adequate findings in its Report and Order, and the competent and substantial evidence in the record did not support the Commission's order on this issue. Specifically, Company asserts that the Commission has unlawfully changed its position on the issue from its position in Case No. ER-93-37, that the Commission's findings are contrary to the directions of the Circuit Court of Cole County in ordering remand of Case No. ER-93-37 to the Commission, and that the Commission's conclusion results in the inclusion of UtiliCorp debt not available to its Missouri Public Service division in the rate making proceedings for this division. The Commission finds that Company's request should be denied because the Company has not raised any matters or arguments not previously considered by the Commission. Nevertheless, the Commission will explain its findings further for the benefit of Company and the other parties.

Case No. ER-93-37 is not dispositive of the present case on this issue for a number of reasons. First, in its Report and Order on Remand, the Commission limited its decision to the case before it, stating:

Because [Missouri Public Service] must raise capital through UtiliCorp, the use of UtiliCorp's consolidated capital structure may be a valid approach. However, this is not the best approach *for this case* [T]he Commission determines that *in this case* it will not impose a different capital structure on a utility where the management of the company has chosen an appropriate capital structure.

Report and Order on Remand issued April 4, 1997, Case No. ER-93-37, pp. 38-39 (emphasis added). The Commission did not intend to make a decision that would apply to all further rate making proceedings involving Company.

Second, in Case No. ER-93-37, this issue was stipulated to by all of the parties except OPC. Staff had supported using a consolidated capital structure before the case was settled. See Hearing Memorandum filed February 23, 1993, Case No. ER-93-37, pp. 21-23. However, Staff ultimately settled the case. The Stipulation and Agreement filed on March 19, 1993 in Case No. ER-93-37 stated that Company and Staff had agreed not to cross-examine one another's witnesses after they had reached a non-unanimous agreement at the beginning of the third day of the hearing. See pp. 2-3. OPC was not a signatory to the stipulation but had in any event supported a divisional capital structure for Company with a debt to common equity ratio almost identical to Company's. See Hearing Memorandum filed February 23, 1993, Case No. ER-93-37, pp. 21-23. Therefore, the findings made by the Commission on capital structure in Case No. ER-93-37 were not made with the benefit of a record created and briefed by truly adversary parties. While there was sufficient evidence to support approval of the Stipulation and Agreement in that case, the evidence was not countered with strong evidence supporting a contrary finding, as in this case.

Third, the Commission is not bound by the doctrine of *stare decisis*. State ex rel. GTE North v. Missouri Public Service Commission, 835 S.W.2d 356, 371 (Mo. App., W.D. 1992) (quoting State ex rel. Churchill Truck Lines Inc. v. Public Service Commission, 734 S.W.2d 586 (Mo. App., W.D. 1987)). The Commission's membership may change over time and successive Commissioners may draw conclusions that differ from those of their predecessors.

In this case, for example, the Commission disagrees with several of Company's arguments. The Commission finds that Company has failed to show that an allocated capital structure insulates Missouri Public Service ratepayers from UtiliCorp's non-regulated enterprises or protects Missouri Public Service ratepayers from UtiliCorp's riskier foreign investments. From a legal standpoint, Missouri Public Service does not have an identity that is distinct from UtiliCorp, and any bankruptcy proceedings or other financial catastrophes that UtiliCorp might experience would affect UtiliCorp as a whole, including Missouri Public Service. The Commission also agrees with Staff's position because the cost of Missouri Public Service's capital is dependent upon the financial market's view of UtiliCorp as a whole, not any individual operating division such as Missouri Public Service.

The Commission's findings on this issue are not contrary to the Circuit Court Order and Judgment that remanded Case No. ER-93-37 to the Commission. See Order and Judgment issued May 4, 1995, Case No. CV194-461CC, Circuit Court of Cole County,. The Circuit Court did not reach the merits of the case, but merely overruled the form of the Commission's findings and the procedure used by the Commission when presented with a non-unanimous Stipulation and Agreement. Company's argument lacks merit.

Finally, the Commission disagrees with Company's assertion that using a consolidated capital structure will improperly include UtiliCorp's international debt and the debt of its subsidiary Aquila Southwest. Company asserts that, because this debt is not legally available to Missouri Public Service, this debt cannot be considered as "used or useful" by Missouri Public Service. Even if Company is correct that this debt cannot lawfully be used by Missouri Public Service, Company's argument still fails because the Commission is not attempting to make the

international or Aquila Southwest assets a part of the rate base of Missouri Public Service. The "used or useful" analysis employed by Company only applies to the Commission's determination of the assets to be included in rate base, and not to the capital structure issue. Moreover, even if the Commission were to find that this debt should be excluded from its determination of Company's consolidated capital structure, the Commission could not have done so because the parties did not provide the Commission with evidence concerning the assets associated with the debt.

2. Return on Equity

Company requests rehearing or reconsideration of this issue because the Commission allegedly failed to make adequate findings of fact or make findings based on the competent and substantial evidence on record. Company claims that the Commission's choice of a 10.75 percent rate of return is inconsistent with higher rates of return permitted for other electric companies and is therefore discriminatory.

The Commission finds that Company's request for rehearing or reconsideration of this issue should be denied. Company does not bring any new matters or arguments to the Commission that were not considered before the March 6 Report and Order was issued. The Commission found, and still finds, that the rates of return ordered for other utilities are irrelevant to a determination of a proper rate of return for Company. Each utility has unique characteristics that impact the proper rate of return for that utility. Company has not presented any credible evidence that is so similarly situated to Missouri Gas Energy, AmerenUE d/b/a Union Electric Company or Empire District Electric Company that their rates of return can be applied to Company.

In addition, the Commission finds once again that the evidence supports a rate of return on common equity of 10.75 percent. The Commission notes that the evidence presented by Company, Staff and OPC all supported a cost of common equity prior to adjustments, calculated by adding the dividend yield to the growth rate, of between 10.20 and 10.30 percent. Company's pre-adjustment figures were 10.20 to 10.30 percent, Staff's pre-adjustment figures were 9.69 to 10.58 percent, and OPC's pre-adjustment figures were 7.18 to 12.43 percent. Staff and Company both proposed making an upward adjustment of 0.50 percent based on their risk analysis for the Company, which OPC did not support. With this adjustment alone, the cost of common equity supported by Company was 10.70 to 10.80 percent, and the cost of common equity supported by Staff was 10.19 to 11.08 percent, figures still within the range proposed by OPC. The Commission found Staff's arguments and evidence convincing and adopted a figure in the upper part of the Staff's proposed range for a rate of return, accepting the 0.50 percent upward adjustment for risk proposed by both the Staff and the Company. The Commission rejected the additional upward adjustments proposed by the Company because those adjustments were speculative and not based on reliable evidence.

Jackson County also urges the Commission to rehear this issue, but proposes to lower rather than raise the rate of return. Jackson County states that the Commission did not determine a rate of return that would produce an average rate of return on investment, citing § 393.270.4, RSMo 1994, and State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Comm'n, 585 S.W.2d 41 (Mo. 1979) for support. According to Jackson County, the Commission was required to consider past over-recovery by Company in determining the appropriate rate of return. The Utility Consumers decision does not support Jackson County's argument on this

issue, but rather the opposite. In the Utility Consumers case, the Missouri Supreme Court held that the Commission may not set future rates below a company's costs, plus a reasonable rate of return, in order to remedy past over-recovery by the company. State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Comm'n, 585 S.W.2d at 59. This process is referred to as "retroactive rate making" and is prohibited. Id. Jackson County's request for a rehearing of this issue should be denied.

3. Cost of Long-Term Debt

Company requests reconsideration or rehearing of this issue because it asserts that the Commission's March 6 decision does not contain adequate findings and is not based on competent and substantial evidence because Missouri Public Service does not use short term debt to finance its plant and is not kept on a going forward basis. This debt is used by Aquila Southwest.

This argument is not new and was considered by the Commission in rendering its decision on March 6. The evidence clearly supports the Commission's finding that UtiliCorp has consistently maintained a significant percentage of its debt as short term debt rather than long term debt, and that the lower cost of this short term debt should be reflected in the cost of debt to be applied to Missouri Public Service. The Commission has already determined that rate of return issues should be determined on a UtiliCorp wide basis and then modified as appropriate to fit Missouri Public Service as the regulated portion of UtiliCorp's operation. Therefore, whether the debt is actually used by Aquila Southwest or some other subsidiary or operating division of UtiliCorp is irrelevant. Company's request for reconsideration or rehearing should be denied.

B. Revenue Issues (Economic Development Rider Revenue)

Jackson County requests rehearing on this issue because it claims that no evidence was presented by Company to support the conclusion that its economic development rider (EDR) provides a benefit to ratepayers and the Commission fails to state a reason for rejecting the Staff's proposed adjustment to the EDR revenue. Jackson County points out the Company devoted its testimony to attacking the Staff's proposal.

Rehearing of this issue is not warranted because the Commission considered the evidence previously and determined that Staff failed to meet its burden of proof on this issue. Staff bears the burden of supporting its proposed adjustment to test year revenues on this issue, because Company did not propose any changes to the status quo, but Staff did. Therefore, the Company was not required to submit evidence.

The Company successfully rebutted the evidence presented by Staff by exposing Staff's evidence regarding future costs and benefits as speculative and unreliable. (Exhibit 26, pp. 5-10; Exhibit 51, pp. 103-104; Tr. pp. 1099, 1105). Whether short term or long term costs should be used for a cost-benefit analysis of the EDR need not be decided in this case, because Staff's cost estimates were too speculative to rely on even under a long term cost-benefit analysis. The Commission finds that it should deny Jackson County's application for rehearing of this issue.

C. Expense Issues

1. Systems Maintenance

Company requests reconsideration or, alternatively, rehearing of this issue because it provided evidence at the hearing that the Company had actually hired 36 new employees to operate its new information technology, or "client server" systems prior to September 30, 1997. The Company refers

to Exhibit 140 to support this assertion. Also, Company states that the Commission found the Staff's position to be based on actual "historical data" even though the Staff made assumptions in reaching its position. Company states that the Commission made insufficient findings in its Report and Order and that the Commission's decision is not supported by competent and substantial evidence on the record for these reasons.

The evidence of record does not support the Company's position on this issue. It may be true that the Company hired 36 new employees to maintain its new information technology systems before September 30, 1997. However, the Company's rebuttal and surrebuttal testimony filed following that date suggested that the Company anticipated hiring additional employees but had not yet done so. (Kris Paper Rebuttal, pages 5-6; Kris Paper Surrebuttal, pages 24-25). The alleged new hires were not mentioned in the Hearing Memorandum. At the hearing, when Exhibit 140 was offered, the only explanation provided by Company witness Kris Paper was that the second part of the attachment to Exhibit 140 listed new positions created to support the client server environment and that the client server system required more maintenance than the older "legacy" system the Company employed (Tr. 1508, 1513, 1515, 1516, 1524, 1529-1532). Exhibit 140 consists merely of a list of names, without explanation.

Neither the exhibit itself nor the testimony of the witnesses demonstrates that the new hires were necessary or useful for the maintenance of the new technology systems. Moreover, the information should have been included in the rebuttal and surrebuttal testimony if the Company wished to rely on it at the hearing, and no explanation was provided at the hearing as to why the Company's pre-filed testimony discussed the new systems maintenance employees as prospective rather than actual hires. The Commission ordered the parties to include such

information in their pre-filed testimony and in the Hearing Memorandum if they wished to incorporate information following the test year in their proposals when the Commission issued its true-up order on October 9, 1997.

The Commission also rejects Company's argument that Staff's position was not based on historical data. All parties agreed that the actual test year maintenance expenses were abnormally low because of the Company's changes in its systems and that the expense figure for this year was not representative of the expenses likely to be experienced by Company in the future. The Staff developed its adjustment by using the actual expenses for the test year and increasing those expenses based on the average annual actual maintenance expenses experienced by the Company for several years prior to the test year. Thus, the Staff's position was based on historical data.

For the reasons stated above, the Commission finds that its March 6 decision was based on substantial and competent evidence and that its findings were sufficient as to the system maintenance expense issues.

2. Depreciation Expense Issues (Change in Service Lives and Computer Equipment)

Jackson County requests a rehearing of this issue, stating that the Commission's findings with respect to the service lives for Company's production units are insufficient. Jackson County states that the Report and Order "contains a pleasant discussion of the parties' respective positions on this issue" but "merely adopts without explanation the proposed service lives offered by UtiliCorp."

The Commission disagrees with Jackson County's assertion that it did not make sufficient findings concerning the appropriate service lives for the Company's production facilities. The Commission explained that Company provided evidence of its current best estimates of when each of the

generating units would retire, and contrasted Company's evidence with Staff's. The Commission found that Staff failed to prove that its proposed retirement dates were reliable because the documentation relied on by Staff did not support uniform retirement dates of 2020. The Commission finds, once again, that the Company met its burden of proof on the production unit service life issue.

Staff requests clarification of whether the Commission finds in favor of the Company or the Staff with respect to the service lives for Company's mass asset accounts. Staff also recommends that the Commission clarify its findings with respect to depreciation rates for old and new computer equipment. Neither OPC nor the Company requested rehearing or clarification of this issue initially, but both responded to the Staff's motion concerning mass asset accounts and computer equipment depreciation.

The Commission agrees with Staff, the Company and OPC that its original Report and Order did not clearly address the mass asset accounts issue. First, in the second paragraph on page 21 of the Report and Order, the Commission inadvertently omitted the word "Staff" after the phrase "Missouri Public Service Commission." In addition, while the Commission discussed both the production unit and the mass asset accounts, the discussion terminated with a finding relating to production facilities only. The Commission inadvertently omitted its finding that Company's proposed service lives for its transmission, distribution and general plant assets were supported by the evidence and that the service lives proposed by Staff for these assets were not. The Commission agrees with the Company's arguments that Staff conducted no evaluation of the historical experience of the Company and its applicability to the future, that Staff provided no details regarding how the depreciation rates were calculated, and that Staff's modifications to Company's proposed service lives were

unrealistically precise. The Commission finds that Company's proposals were better estimates of the service lives of its mass assets.

With respect to computer depreciation issues, the Commission ordered a zero percent depreciation rate for both "old" and "new" computer equipment costs, which are subaccounts of Account 391. The Commission found the arguments made and the evidence highlighted in the Staff's briefs particularly convincing, and made findings accordingly. However, the Commission was unaware at the time it issued its Report and Order that the computer depreciation issue presented at the hearing and submitted for decision dealt merely with the appropriate depreciation rate for "old" computer equipment costs. The scope of the issue was not clearly defined in the testimony, the schedules, the Hearing Memorandum, the testimony at the hearing, or the briefs of the parties.

Staff brought this mistake to the Commission's attention in its first status report, and the pleadings subsequently filed by OPC and Company clarify that they agree that a zero percent depreciation rate should not be applied to Company's "new" computer equipment costs. Staff, Company and OPC have agreed that the appropriate rate of depreciation for computer equipment booked after June 30, 1997, is 11.11 percent if the Commission finds in favor of Company on the issue of service lives for transmission, distribution and general plant facilities. The other parties have not responded to these assertions after being given an opportunity to do so, and so the other parties may be presumed to agree. The Commission finds that the appropriate depreciation rates for computer equipment are zero percent for assets booked by the Company on or before June 30, 1997 and 11.11 percent for assets booked after June 30, 1997.

3. Amortization of Regulatory Assets

Company requests reconsideration or rehearing of this issue because it claims that the Commission has treated it differently than the Commission treated Kansas City Power & Light Company (KCPL) in Case No. EO-94-199 on July 3, 1996. Company claims that it is being discriminated against in violation of the Missouri Constitution and the United States Constitution.

The Commission decided in Case No. EO-94-199 to approve a unanimous Stipulation and Agreement filed on May 28, 1996 to reduce KCPL's revenue and reallocate revenue sources among customer classes. The Commission expressed the following sentiment in its order:

The Commission has substantial concerns regarding the extremely limited time frame given the Commission in which to analyze and approve or reject the proposed Stipulation and Agreement. In the future, the Commission would strongly advise the parties which appear before it to allow the Commission adequate time for the proper and thorough study of the issues, particularly those which might involve far-reaching policy matters.

See Order Approving Stipulation and Agreement issued July 3, 1996, Case No. EO-94-199, pp. 2-3. The Commission did not make any particular findings with respect to regulatory assets of KCPL. Rather, the Commission merely found the Stipulation and Agreement to be just and reasonable as a whole. The Stipulation and Agreement does not specify what the \$3.5 million annual amortization agreed to by the parties was supposed to represent. The Stipulation and Agreement stated merely that KCPL would not be precluded from requesting that the amortization be directed toward specific plant accounts in the future. See Stipulation and Agreement filed May 26, 1996, Case No. EO-94-199, p. 2. The Stipulation and Agreement also stated that none of the signatories would be deemed to have approved or acquiesced in any "... rate making principle, valuation methodology, cost of service

methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence." See Stipulation and Agreement filed May 26, 1996, Case No. EO-94-199, p. 6.

The Commission finds that Company's request for rehearing or reconsideration of this issue should be denied. It is not clear from the record in the KCPL case that the Commission authorized accelerated recovery of regulatory expenses, as Company requests in this case. Moreover, in this case the Commission was presented with the issue of recovering "transition" or "stranded" costs prior to the advent of competition, outside of the context of Case No. EW-97-245, which the Commission has established for the purpose of exploring this and other issues related to competition on an industry wide basis. The issue was fully contested, and the Company failed to demonstrate that accelerated amortization was appropriate at this time.

4. FAS 87 v. ERISA Minimum Contribution - Pension Expense

Company seeks reconsideration or rehearing of this issue because it claims that the Commission did not make adequate findings and that the Report and Order was not supported by competent and substantial evidence. According to Company, the Commission's findings were inconsistent with its order in Case No. ER-93-37, the Commission should not have granted a credit because Company's pension funds must be held in trust by law and not used for any other purposes, and the Commission should not have accepted Staff's argument that Company was required to be consistent in its use of FAS 87 and FAS 106 because the legislature has chosen to address FAS 106 and not FAS 87.

The limitations of the Commission's order in Case No. ER-93-37 have already been discussed above in connection with the capital structure

issue, and will not be repeated here. As discussed above, the Commission is not bound by the doctrine of stare decisis. The Commission's decision in Case No. ER-93-37 does not bind the Commission's authority to determine the most reasonable approach in this case.

Company's second point is also without merit. While Company may not have intentionally contributed more to its pension fund than was necessary in the past, the fact is that the Company now has a surplus of pension funds, and the ratepayers should be permitted to recognize the benefits of this surplus. Whether the funds can be used by Company is irrelevant, for the surplus benefits the Company by extending the period during which the Company will not be required to make further contributions.

Company's argument relating to § 386.315, RSMo 1994, also lacks merit. This statute does not prohibit the Commission from treating FAS 87 and FAS 106 expenses similarly. The statute's silence on the use of accrual accounting for accounts other than OPEB's cannot be construed to mean that accrual accounting is prohibited for all other accounts.

The Commission found in its Report and Order that accrual accounting for pension benefits, per FAS 87, was the most reasonable approach for the reasons that were enunciated by Staff, and the Commission was not prohibited by law from making that finding. Company's request is denied.

5. FAS 106 - Other Post-Retirement Benefits Expense

Company seeks reconsideration or rehearing of this issue because it claims that the Commission did not make adequate findings and that the Report and Order was not supported by competent and substantial evidence. Company claims that it could not have recovered these expenses in Case No. ER-93-37 during the period from the date of issuance of the Commission's initial Report and Order and the date of issuance of the

Commission's Report and Order on Remand. Company states that recovery for this period is mandated by § 386.315, RSMo 1994.

Company argues that in Case No. ER-93-37, the Commission permitted Company to implement FAS 106 on a going forward basis only. The Commission's decision was not so limited. See Report and Order on Remand issued April 4, 1997, Case No. ER-93-37, pp. 14-15. In fact, the Commission stated that Company "should be permitted to implement FAS 106 for rate making purposes, and to amortize over a 20-year period the transition benefit obligation, in accordance with § 386.315." Id.

In its Report and Order on Remand, the Commission discussed § 386.315.3, RSMo 1994, which permits utilities to file a tariff to recover transition expenses incurred as a result of changing from cash basis ("pay as you go") to accrual (FAS 106) accounting if the Commission has issued a report and order setting rates subsequent to January 1, 1993 and prior to August 28, 1994. The Commission explained that if either its June 18, 1996 Report and Order or its February 25, 1994 Report and Order on Rehearing, had become final, Company could have invoked the statutory tariff procedures for its transition costs during the period between those orders and the Report and Order on Remand, because the Commission had denied use of FAS 106 in the first two orders and then permitted its use in the final Report and Order on Remand. The Commission permitted recovery of the transition expenses because the Company would have been entitled to them if the first two orders had become effective.

The Commission's finding in this case that the transition expenses have already been recovered was based on its Report and Order on Remand in Case No. ER-93-37, as well as on competent and substantial evidence. Company request should be denied.

6. Maintenance Expense Normalization

Jackson County requests rehearing of this issue because the Commission allegedly failed to articulate adequate findings of fact and conclusions of law. The Commission finds that Jackson County's request should be denied because the Commission discussed in detail the arguments and evidence presented by Company that the Commission found convincing.

7. Economic Development Costs

Company seeks reconsideration or rehearing because the Commission's findings were allegedly insufficient and not based on competent and substantial evidence for this issue. Company states that it quantified the benefits to its customers and that the Staff adjustment was therefore not justified. The Company's evidence described the benefits to local communities arising out of the addition of new jobs and Company's contribution to communities, but did not address or quantify the positive effects on its customers. Therefore, Staff's adjustment was justified and the Commission finds that it should deny the Company's request for reconsideration or rehearing of this issue.

8. Corporate Allocations

a. Governmental Affairs

Company would like for the Commission to reconsider or rehear this issue because Company believes that the Commission's findings were insufficient and were not based on competent and substantial evidence. Company makes several specific arguments.

First, Company claims that the Staff's 50/50 split of costs was not based on evidence and that Company put on evidence to quantify its federal and state legislative and lobbying expenses. The Commission has already considered this argument and set forth its findings in the March 6 Report

and Order. The Staff's arguments and evidence that the Commission found persuasive are those discussed in the Report and Order.

Second, Company asserts that if the Commission may disallow lobbying costs, then it may only disallow those costs that qualify as "lobbying" expenses under federal and state lobbying laws. The Company's arguments are based on a faulty premise. The Commission does not have the same goals in setting a utility's rates as state and federal ethics commissions have in governing lobbying activities. While the law enforced by the Commission is designed to ensure that reasonable rates are established based on the benefits inuring to ratepayers as a result of various costs, state and federal lobbying laws are designed to prevent corruption and encourage public disclosure of the special interests that may influence legislative decision making. The definition of lobbying under such laws has no bearing on the determination to be made by the Commission in this case.

Third, Company asserts that the Commission cannot deny recovery of legislative costs in Company's rates when the Commission assesses Company for the Commission's own legislative costs. Company points out that the Commission employs a full time staff member to serve as a liaison with the legislature. Company's arguments are without merit because the Commission is an executive branch agency that must communicate and cooperate with other state and federal agencies to carry out its utility regulation functions properly. Company's role is to provide adequate service to its ratepayers at reasonable rates. Contacts with the legislature may assist the Company in carrying out its functions in some respects, but the benefits to ratepayers should be demonstrated before the costs of such activities may be recovered in rates.

Finally, Company alleges that the Commission has applied a policy of denying legislative expenses to Company, even though the policy was not

duly promulgated as a rule as required by law. The Commission acknowledges that it used the word "policy" in making its findings on this issue. However, the Commission finds that it should clarify its findings *sua sponte* to make clear that the Commission made a determination on the facts presented in this case that the legislative expenses did not directly benefit the ratepayers of Company. The Commission has not developed or applied a "policy" that prevented it from granting the Company's request. The Commission is open to approving such expenses in the future in any case where the subject utility can demonstrate the direct benefits of such expenses to ratepayers.

b. Common Plant Allocation Factor

Jackson County requests rehearing of this issue on grounds of insufficient findings and a purported lack of evidence to support Company's position. As the Commission stated, Company presented testimony that the common plant allocation factor is more precise than the head count factor and that the head count factor fails to allow for the movement of employees during the year and is inconsistent with the allocation factor used in the remainder of the ESF. The Commission found, and continues to find, this evidence persuasive. Therefore, Jackson County's request should be denied.

c. Mergers and Acquisitions, and International Operations and New Product Development

Company seeks reconsideration or rehearing because it alleges that the Commission did not make sufficient findings and that the Report and Order was not supported by competent and substantial evidence. Specifically, Company argues that there was no quantitative basis for the Staff's and OPC's position.

As the Commission pointed out in its Report and Order, the Company

failed to adequately track its costs for mergers and acquisitions, international operations and new product development and the Staff was therefore required to estimate the expenses allocable to Missouri Public Service. The Commission found, and continues to find, that the estimates of the Staff's witness were more credible than the Company's, for the reasons articulated by Staff in its testimony and briefs. The arguments and evidence of Staff that the Commission found persuasive were discussed at length in the March 6 Report and Order and need not be repeated here. Company's request should be denied.

D. Other Issues

1. Standing

The Company also requests reconsideration or rehearing of the case on the ground that the Commission's Staff allegedly lacked standing to bring the complaint that resulted in the rate reduction ordered on March 6. Company claims that Staff is not one of the entities authorized by § 386.390, RSMo 1994 to make a complaint to the Commission. This statute provides that complaint "may be made by the Commission of its own motion. . . ." § 386.390.1, RSMo 1994. The Commission has interpreted the reference to "Commission" in this provision to mean either the Commission as a whole or the Staff of the Commission. The Commission's rules state that formal complaints may be made "by the commission" either "on its own motion" or "by its general counsel." See 4 CSR 240-2.070(3). When there is doubt and ambiguity as to the meaning of a statute, the courts give consideration to the practical construction placed upon the statute by the agency charged with its administration. Missouri Office of the Public Counsel v. Missouri Public Service Comm'n, 886 S.W.2d 34, 39 (Mo. App., W.D. 1994). Moreover, duly promulgated rules of state administrative

agencies have force and effect of law. State ex rel. City of Springfield v. Public Service Comm'n, 812 S.W.2d 827 (Mo. App., W.D. 1991). The Commission finds that Company's argument on this point unpersuasive.

2. Collateral Attack

Company further challenges the March 6 Report and Order by describing it as an unlawful collateral attack on the Commission's Report and Order in Case No. ER-93-37, in violation of § 386.550, RSMo 1994. Company's argument lacks merit for the reasons described above in relation to the rate of return issues. The Commission's decisions in ER-93-37 were intended to apply only for the period of time between resolution of that case and resolution of the next rate case involving Company.

3. Burden of Proof

Company alleges alternatively that the Staff had the burden of proof with respect to its complaint and failed to meet its burden to show that a rate reduction was warranted. The Company's argument is not specific enough to warrant rehearing or reconsideration, as the Company does not designate the issues to which Company wishes to advance this argument.

II. Tariffs/Revenue Requirement

The Staff recommended approval of Company's tariff sheets, as amended, in the event that the Commission finds that the rate reduction figure should remain at approximately \$16,898,098. Staff states that, in its opinion, the tariff sheets will reduce annual electric revenues by approximately \$16,898,098, implement an energy audit program, change the rate of interest paid on customer deposits, and make minor corrections.

Staff's first and second status reports and Memorandum indicated that if the Commission were to find that Company prevails on the issues of mass asset account service lives and that a depreciation rate of 11.11 percent

should apply to new computer equipment, then the depreciation issue would be valued at \$5,088,350 rather than the \$5,897,705 figure provided by the parties prior to the Commission's Report and Order. Staff stated in its Memorandum that this would result in a \$809,355 overage for Company if the Commission does not change the revenue reduction figure. According to Staff, the Company, OPC and Staff have reached agreement that the \$809,355 overage would not be a material difference warranting a change in revenue requirement. Instead, Staff, the Company and OPC support increasing the depreciation rates for the production plant accounts to cover the difference. No other party objected to this proposed method of resolving the discrepancy.

The Commission finds that the tariff should be approved as amended to become effective on April 17, and that the \$16,898,098 revenue reduction ordered on March 6 should not be revised. Rather, Company should be required to increase the depreciation rates for its production plant facilities to cover the \$809,355 overage created by the parties' revisions to the schedules.

Conclusions of Law

In the Commission's judgment, the applications for rehearing filed by Company, Jackson County and OPC should be denied. Company's application for reconsideration should be granted with respect to the appropriate service lives for mass asset accounts and depreciation rates for new computer equipment as discussed above, and denied with respect to the other issues raised. Staff's motion for clarification of the depreciation issues should be granted.

The Commission concludes that the Company's proposed service lives should apply to its transmission, distribution and general plant accounts.

The Commission concludes that a depreciation rate of zero percent should apply to computer equipment booked on or before June 30, 1997 and a depreciation rate of 11.11 percent should apply to computer equipment booked after June 30, 1997. The Company should reduce its revenues by approximately \$16,898,098 as originally ordered and the Company's tariff sheets should be approved as amended. The \$809,355 overage resulting from the Commission's findings and conclusions should be covered by an increase in the Company's depreciation rates for its production plant accounts. The Company should be required to file proposed depreciation rates for the production plant accounts to effectuate the Commission's order.

THEREFORE, IT IS ORDERED:

1. That the applications for rehearing filed by UtiliCorp United Inc. d/b/a Missouri Public Service and Jackson County, Missouri are denied.

2. That the application for reconsideration filed by UtiliCorp United Inc. d/b/a Missouri Public Service is granted with respect to the issues of the appropriate service lives for mass asset accounts and depreciation rates for new computer equipment, and is denied as to all other issues.

3. That the motion for clarification filed by the Commission's Staff is granted.

4. That UtiliCorp United Inc. d/b/a Missouri Public Service shall file a complete set of depreciation schedules for all of its accounts no later than May 1, 1998, to implement the findings and conclusions of the Commission as set forth in the Commission's March 6, 1998 Report and Order, as modified by this order.

5. That the tariff filed by UtiliCorp United Inc. d/b/a Missouri Public Service on March 18, 1997 is approved as amended to become effective on April 17, 1998. The tariff sheets approved are:

P.S.C. MO. No. 2 Consolidated

5th Revised Sheet No. 1	Cancelling 4th Revised Sheet No. 1
2nd Revised Sheet No. 2	Cancelling 1st Revised Sheet No. 2
2nd Revised Sheet No. 3	Cancelling 1st Revised Sheet No. 3
2nd Revised Sheet No. 4	Cancelling 1st Revised Sheet No. 4
2nd Revised Sheet No. 6	Cancelling 1st Revised Sheet No. 6
2nd Revised Sheet No. 9	Cancelling 1st Revised Sheet No. 9
2nd Revised Sheet No. 10	Cancelling 1st Revised Sheet No. 10
2nd Revised Sheet No. 12	Cancelling 1st Revised Sheet No. 12
2nd Revised Sheet No. 13	Cancelling 1st Revised Sheet No. 13
2nd Revised Sheet No. 15	Cancelling 1st Revised Sheet No. 15
2nd Revised Sheet No. 16	Cancelling 1st Revised Sheet No. 16
2nd Revised Sheet No. 17	Cancelling 1st Revised Sheet No. 17
2nd Revised Sheet No. 19	Cancelling 1st Revised Sheet No. 19
2nd Revised Sheet No. 21	Cancelling 1st Revised Sheet No. 21
2nd Revised Sheet No. 22	Cancelling 1st Revised Sheet No. 22
2nd Revised Sheet No. 23	Cancelling 1st Revised Sheet No. 23
2nd Revised Sheet No. 24	Cancelling 1st Revised Sheet No. 24
2nd Revised Sheet No. 25	Cancelling 1st Revised Sheet No. 25
2nd Revised Sheet No. 26	Cancelling 1st Revised Sheet No. 26
2nd Revised Sheet No. 27	Cancelling 1st Revised Sheet No. 27
2nd Revised Sheet No. 28	Cancelling 1st Revised Sheet No. 28
2nd Revised Sheet No. 29	Cancelling 1st Revised Sheet No. 29
2nd Revised Sheet No. 30	Cancelling 1st Revised Sheet No. 30
3rd Revised Sheet No. 31	Cancelling 2nd Revised Sheet No. 31
2nd Revised Sheet No. 32	Cancelling 1st Revised Sheet No. 32
1st Revised Sheet No. 33.1	Cancelling Original Sheet No. 33.1
2nd Revised Sheet No. 34	Cancelling 1st Revised Sheet No. 34
2nd Revised Sheet No. 35	Cancelling 1st Revised Sheet No. 35
2nd Revised Sheet No. 36	Cancelling 1st Revised Sheet No. 36
3rd Revised Sheet No. 37	Cancelling 2nd Revised Sheet No. 37
1st Revised Sheet No. 37.1	Cancelling Original Sheet No. 37.1
2nd Revised Sheet No. 39	Cancelling 1st Revised Sheet No. 39
2nd Revised Sheet No. 40	Cancelling 1st Revised Sheet No. 40
2nd Revised Sheet No. 41	Cancelling 1st Revised Sheet No. 41
4th Revised Sheet No. 44	Cancelling 3rd Revised Sheet No. 44
2nd Revised Sheet No. 56	Cancelling 1st Revised Sheet No. 56
2nd Revised Sheet No. 58	Cancelling 1st Revised Sheet No. 58
2nd Revised Sheet No. 61	Cancelling 1st Revised Sheet No. 61
Original Sheet No. 64	
3rd Revised Sheet No. R-7	Cancelling 2nd Revised Sheet No. R-7

6. That this order shall be effective on April 27, 1998.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crompton, Murray, and Drainer, CC., concur.
Lumpe, Ch., and Schemenauer, C., not participating.

Randles, Regulatory Law Judge