

- 100
10/12/93
2/11/94

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

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.)
)

APPEARANCES

James C. Swaengen and Sondra B. Morgan, Brydon, Swaengen & England, P.C.,
312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri
65102-0456, for Missouri Public Service, a division of UtiliCorp United Inc.

Lewis R. Mills, Jr., Deputy Public Counsel, Office of Public Counsel, Post Office
Box 7800, Jefferson City, Missouri 65102, for the Office of Public Counsel and
the public.

Robert J. Hack, General Counsel, Steven Dottheim, Deputy General Counsel, and
William K. Haag, Assistant General Counsel, Missouri Public Service Commission,
Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the
Missouri Public Service Commission.

Hearing

Examiners: Cecil I. Wright, Anne Wickliffe Freeman.

REPORT AND ORDER ON REHEARING

On July 31, 1992, Missouri Public Service, a division of UtiliCorp
United Inc., (MPS) submitted tariffs designed to increase rates for electric
service to customers in its Missouri service territory. On June 18, 1993, the
Commission issued a Report And Order in this case which approved, among other
things, an increase in revenues for MPS of \$4,865,804. The Commission's decision
was reached after consideration of a nonunanimous Stipulation And Agreement filed
by MPS, the Staff of the Commission, and intervenor, Sedalia Industrial Energy
Association, and consideration of several issues disputed by the Office of Public
Counsel (OPC). After the Report And Order was issued, OPC filed an Application
For Rehearing and Staff filed a Motion For Clarification on August 6, 1993. The

Commission issued an order granting rehearing of the disputed issues and the nonunanimous stipulation. In addition, a prehearing conference was established for the parties to meet and recommend a procedural schedule for the rehearing.

On August 12, 1993, MPS filed an Application For Reconsideration Or Alternatively For Rehearing And Request For Stay. The Commission granted the stay and issued an order on September 17, 1993, in which the Commission denied reconsideration of its rehearing order and rescinded the stayed Ordered Paragraph. In addition, a new date was set for a prehearing conference.

Subsequently, the parties filed a proposed procedural schedule which the Commission adopted. One piece of testimony was filed pursuant to the schedule. The parties filed briefs prior to the hearing date of January 5, 1994, and the hearing was continued. The case is now before the Commission on rehearing.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission granted rehearing in this case to address issues raised by OPC and, in addition, to address issues it had determined upon review of its Report And Order needed to be addressed with regard to nonunanimous stipulations. In this case all parties but OPC settled the contested revenue issues for a total dollar amount of \$8,000,000 (trued-up to \$4,865,804). OPC disputed the issues of (1) Accounting Authority Order (AAO) Deferrals; (2) Integrated Resource Planning (IRP) Compliance Costs; (3) Transmission Capability-Distribution Substations; (4) Postretirement Benefits Other Than Pensions (OPEBs); (5) Return on Equity/Capital Structure; (6) UtiliCorp Headquarters Expense; and (7) Interest on Customer Deposits.

Since the nonunanimous stipulation was agreed to during the hearing, OPC did not indicate which of the settled issues it would dispute until it filed its initial brief and it did not ask for an additional hearing as allowed by 4 CSR 240-2.115. OPC did have the opportunity to cross-examine witnesses during the hearing that was ongoing and to present evidence in support of its position.

Of the issues disputed by OPC, it offered the testimony of a witness on the AAO issue, the OPEB issue, the interest on customer deposits issue and the ROE/Capital Structure issue. For the remaining issues OPC relied on Staff's original position as set out in the testimony of Staff's witnesses. The Commission in its Report And Order considered each issue disputed by OPC and found that the stipulation was reasonable and adopted the stipulation.

Upon reviewing the Report And Order, the Commission determined there were several matters that had not been considered in the Report And Order and which should be addressed. These matters related specifically to the adoption of a nonunanimous stipulation, what evidence could be used to support the nonunanimous stipulation, and what evidence the nonsignatory party must adduce in order to prevail on an issue.

The presentation of a nonunanimous stipulation in a case before the Commission is not a common occurrence. Few if any other nonunanimous stipulations have been filed in a rate case which reflect a total dollar settlement of the revenue requirement. When, as in this case, a nonsignatory party contests specific issues, it raises several unique evidentiary matters since the Commission is required by law to make its findings based upon competent and substantial evidence upon the record. The court cases indicate that it is not enough to merely state what is wrong with the nonsignatory party's position, but the Commission must make appropriate findings which support its resolution of the contested issues. The Commission will address each of the issues contested by

OPC in light of this requirement. These findings replace those made in the Initial Report And Order.

Accounting Authority Order

In 1989 MPS filed an application for an AAO to defer certain costs associated with the Sibley Generating Station life extension and coal conversion projects. The Commission granted an AAO in Case No. EO-90-114 allowing the deferral of costs and consolidated that case with MPS's then pending rate case for consideration of the ratemaking treatment to be afforded the deferrals. In its Report And Order issued in Case No. ER-90-101 the Commission allowed the deferrals to be amortized and included in rate base while ordering certain modifications to the AAO deferral amounts. Since the actual costs deferred from September 30, 1990 to October 17, 1990 were not available, the Commission ordered that those deferral costs be considered in MPS's next rate case. *RE: Missouri Public Service, 30 Mo. P.S.C. (N.S.) 320, 341 (1990).*

Subsequent to the decision in ER-90-101, MPS filed for another AAO in May 1991 to defer additional costs associated with the Sibley projects, which was docketed as Case No. EO-91-358. In that application MPS requested authorization to defer costs, similar to those in EO-90-114, for the Sibley life extension and coal conversion projects after January 1, 1992. The Commission, as it had in Case No. EO-90-114, found that the projects were an extraordinary occurrence and that the costs could be deferred for a definite period of time. The Commission found that the issue of recovery of the deferred costs in rates would be addressed in a general rate case if one was filed prior to December 31, 1992. MPS filed this general rate case on July 31, 1992 and included as part of its proposed increase in revenue requirement the deferral costs from September 30, 1990, to October 17, 1990, and the deferral costs from January 1, 1992 through June 1993.

In this case MPS is requesting recovery of depreciation and carrying costs associated with the Sibley projects. The deferral costs are calculated as follows:

1. Net carrying cost plus depreciation. Carrying costs on depreciation are calculated and removed from the gross carrying costs to determine net carrying costs amount.
2. The carrying costs on the unpaid balances of invoices have been removed from the deferral.
3. The carrying cost rate is compounded semiannually.
4. A half-month convention is utilized for the carrying costs, whereby a half-month's carrying cost is computed during the month an amount is placed in service.
5. Property taxes are excluded from the deferral calculation.
6. These deferral costs are booked into Account 186 as authorized by the Commission in Case No. EO-91-358.

MPS proposed to recover the deferred costs over a twenty-year period. These costs include \$235,466 for the period September 30, 1990 to October 17, 1990, and \$3,069,797 for the period January 1, 1992 through June 30, 1993.

Although Commission Staff initially opposed the deferral of a portion of the costs as proposed by MPS, the nonunanimous stipulation at paragraph 6 indicates that Staff agreed to allow MPS to include the AAO "deferrals authorized in Cases No. EO-90-114 and EO-91-358, as adjusted by MPS, to be reflected in rate base and amortized over a twenty-year period." OPC opposes the inclusion of any of these deferred costs in MPS's revenue requirement.

OPC's position is based upon its contention that recovery of the deferred costs would distort the matching of revenues and expenses for a period in determining just and reasonable rates. OPC contends that MPS's earnings during the deferral period were more than sufficient to maintain MPS's rate of

return during that period and therefore recovery of the deferral costs in this case is unwarranted. OPC asserts that all of the parties agree that MPS's earnings levels during the deferral period were excessive and therefore there is only one possible resolution of this issue.

After a review of the evidence on this issue the Commission is unable to adopt OPC's position or its reliance on one factor to deny the recovery of the deferred costs. Based upon the evidence, the Commission considers this issue as involving two separate amounts of deferral costs. There are the deferral costs left from Case No. EO-90-114 which were carried over from the Commission's Report And Order in ER-90-101, and there are the deferral costs accumulated by MPS pursuant to the AAO authorized in Case No. EO-91-358.

The EO-90-114 deferrals are those from September 30, 1990 to October 17, 1990. These deferral costs were not approved in Case No. ER-90-101 because the actual deferral costs were not available by the operation of law date in that case, October 17, 1990. The Commission finds, though, that the reasoning in that case supporting the recovery of these deferred costs should be adopted in this case. The deferred costs from September 30, 1990 to October 17, 1990 would have been approved if actual costs had been available. Now that the actual costs have been calculated consistent with the Commission's decision in ER-90-101, it is reasonable to allow the recovery of those costs. The findings from Case No. ER-90-101 are as follows:

The Commission determines that Company should be allowed to reflect in rates, as provided hereinafter, costs deferred pursuant to the AAO. The Commission finds that Staff/Public Counsel have provided no substantial evidence to support exclusion of all of these deferred costs. The Commission determines there is ample evidence of the significant impact of this enterprise on Company's financial status. As Company has pointed out, it expects to defer costs in September, 1990, amounting to 23 percent of its electric net income. Although Staff/Public Counsel have raised questions about the relative cost of these projects vis-à-vis other alternatives and the objectivity and depth of Company's study of these alternatives, Staff/Public Counsel do not

contend that Company was imprudent to proceed with these projects.

The Commission finds unpersuasive the contention of Staff/Public Counsel that these costs have already been recovered in rates. Company seeks recovery of these costs from the beginning of 1989 through October 17, 1990. 1989 is the test year and these rates are set prospectively. Since even Staff/Public Counsel admit Company requires some rate increase, the relevance to this issue of passed [sic] overrecovery is nebulous at best.

RE: Missouri Public Service, 30 Mo. P.S.C. (N.S.) 320, 340 (1990).

The Commission finds further that allowing the recovery of the remainder of the EO-90-114 deferral costs does not distort the matching of expenses and revenues since these costs were deferred during a pending general rate case and a rate increase was found to be reasonable in that case. Even though the costs were deferred outside of the test year in Case No. ER-90-101, the only reason they were not included in the revenue requirement calculation was that they were not known and measurable. Now that they are known and measurable, the Commission finds the costs should be recovered on the same basis as the other EO-90-114 deferred costs.

The Commission authorized MPS to defer the additional costs associated with the Sibley rebuild project and the coal conversion project in Case No. EO-91-358 for the period January 1, 1992 through June 30, 1993. In that case the Commission found that it would be unreasonable to deny deferral of the remainder of the costs associated with the two projects. *MPS*, Case No. EO-91-358, Report And Order issued December 20, 1991. The Commission stated that it had already found the projects to be extraordinary events and that determination would be followed in Case No. EO-91-358. By granting MPS the authority to defer these costs, the Commission did not decide the proper rate-making treatment of these costs but found that the proper ratemaking treatment of the costs would be considered in a general rate case, if one was filed before December 31, 1992. The instant case, Case No. ER-93-37, was filed in July 1992.

The Commission recognized in its Report And Order in Case No. EO-91-358 that the deferral of costs from one period to another violates the traditional method of setting rates based upon a test year. As stated in that Report And Order:

Allowable operating expenses are those which recur in the normal operations of a company, and a company's rates are set for the future based upon its past experience for a test year with adjustments for annualizations, normalizations and known and measurable changes. Under historical test year ratemaking, costs are rarely considered from earlier than the test year to determine what is a reasonable revenue requirement for the future. Deferral of costs from one period to a subsequent rate case causes this consideration and should be allowed only on a limited basis.

The limited basis is usually an event found to be extraordinary, as with the Sibley rebuild and coal conversion projects.

The Commission thus agrees in general with OPC that the deferral of these costs does fall outside the traditional matching of expenses and revenues. The Commission finds this is reasonable where events are found to be extraordinary. The Commission withheld the decision on the ratemaking treatment until this case and so can look at all relevant factors to determine whether recovery should occur.

In this case OPC would have the Commission look at actual earnings as the sole criterion for determining recovery of these costs. According to OPC, if a company was earning over its authorized rate of return during the period the costs were being deferred, then no rate recovery should be allowed.

The Commission finds that there are other factors besides earnings which must be considered in reaching a decision on the recovery of deferred costs. Of course, the earnings level of a company is the initial and primary focus. In this case, though, the evidence indicates that the period during which MPS was overearning, 1991, was a period when no AAO was in effect and no deferrals were occurring. This fact alone detracts significantly from OPC's position. The evidence, though, does indicate that MPS's earnings in the early

months of the deferral period were above the return on equity authorized in ER-90-101, while during the remainder of the period earnings fell below that level. In addition, such factors as weather normalization or other adjustments to earnings must be considered if all relevant factors are to be weighed in looking at the earnings level during the deferral period. Staff witness Carver admitted that he had not done the complete analysis necessary to consider whether MPS's earnings were excessive for these periods.

The Commission finds OPC's limited analysis is not sufficient to support a decision not to allow recovery. In addition, the Commission finds that other factors support the recovery of the deferral costs. The innovative approach taken by MPS in completing the two projects is an important factor. The construction of the project was extended over several years and has permitted MPS to return Sibley to service for peak use periods. Also, the projects themselves have extended the life of the Sibley plant by twenty years and have brought the plant into closer compliance with Clean Air Act standards. These factors have benefited ratepayers and will benefit ratepayers into the future. These ratepayer benefits are important factors.

The Commission finds further that the Sibley projects have had a significant effect on MPS's financial status. The outlays associated with the Sibley projects represent nearly ten percent of MPS's estimated 1993 net income. Even though the Commission limited the time period of the deferral to ensure it would not be faced with an amount of deferred costs so large that it could not disallow them, the Commission finds that the effect of total disallowance is a factor to be taken into account. The overall cost of the projects and its effect on MPS's financial activities were factors in finding them to be extraordinary, and are factors in determining whether recovery should be allowed.

Based upon the evidence as discussed above, the Commission finds that the recovery of the deferred costs as proposed by MPS and agreed to in the

Stipulation And Agreement is reasonable. Recovery of these costs recognizes the benefits that the two projects will bring to ratepayers and recognizes MPS's financial situation during the period of the deferral.

Integrated Resource Planning (IRP) Compliance

The Commission is of the opinion that there is no need for it to make specific findings on the issue of integrated resource planning costs. This issue is one of the grounds on which OPC objects to the Report And Order which approved the nonunanimous stipulation. However, OPC offered no evidence on the issue to support any particular finding either in the initial part of this proceeding or on rehearing, leaving the Commission with no basis on which to find in favor of OPC. Although Staff and MPS offered evidence on integrated resource planning costs, they settled the case for a negotiated dollar amount, subject to true-up. There is no provision in the nonunanimous stipulation that addresses this issue. Consequently, it is impossible to determine how the issue was resolved between the signatories. The nonunanimous stipulation provides that, unless the stipulation specifies otherwise, neither party has "approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation" underlying the agreement.

Since the Commission will approve the nonunanimous stipulation in this Report And Order, and the signatories have given no guidance in the stipulation, their pleadings, or briefs as to how the issue was resolved between them, the Commission reserves a specific finding on the issue and concludes that the issue of integrated resource planning costs was resolved between Staff and MPS in a way that is consistent with a total increase in revenues of \$4,865,804, after true-up.

Transmission Capability-Distribution Substations

This issue concerns whether ninety of MPS's substations should be classified as transmission or distribution facilities. Transmission facilities are considered to serve all customers; costs relating to transmission facilities are allocated by means of an allocation factor to either retail (under state jurisdiction) or wholesale (under FERC jurisdiction) rate recovery. MPS sought to have the 90 substations classified as distribution facilities, contending they served local, primarily residential, customers. Staff and OPC took the position that all of those facilities should be classified as transmission facilities.

Staff and MPS each offered analyses of the facilities in question. MPS analyzed the facilities individually in order to determine whether each substation is capable of providing transmission functions under any circumstances. MPS asserted that this was consistent with the way the FERC allocates costs and that the FERC has used transmission capability as the primary criterion for such classification. See Case No. ER-85-265, *RE: Arkansas Power and Light Company*, 28 Mo. P.S.C. (N.S.) 435, 462-63 (1986). Based upon its analysis, MPS concluded that 90 of its 123 substations should be reclassified as distribution facilities.

Staff used a four coincident peak analysis to determine the purpose of the facilities, i.e., whether the substations were essential to meet the peak demands of the system as a whole. Staff concluded that the 90 substations in question should continue to be classified as transmission facilities since they met this criterion. Staff indicated that it used a similar analysis in MPS's last rate case in examining the same 123 substations. Staff asserts its analysis and conclusion were approved in that case and should be approved again. *RE: MPS*, at 335.

The Commission agrees with Staff that "the state of the record in this case should not have been held sufficient to upset the Commission's standard adopted in ER-90-101." Furthermore, the Commission would point out to the

parties that, in Case No. ER-90-101, MPS was ordered "to keep transmission services schedule logs by the hour for all transmission services performed for other utilities as suggested by the Commission's Staff and the Office of Public Counsel" beginning November 5, 1990. RE: MPS, at 336. It is clear that had MPS complied with that order, this issue would have been more readily resolved without conflict over the proper method of analysis. The Commission finds that, for purposes of this case only, there is no need for it to make a specific finding on the issue of reclassification of distribution facilities.

This issue is one of the grounds on which OPC objects to the Report And Order which approved the nonunanimous stipulation. However, OPC offered no evidence to support any particular finding, leaving the Commission with no basis on which to find in favor of OPC. Although Staff and MPS offered evidence on reclassification of these distribution facilities, they settled the case for a negotiated dollar amount, subject to true-up. There is no provision in the nonunanimous stipulation that states how these facilities were treated for settlement purposes. Consequently, it is impossible to determine how the issue was resolved between the signatories. The nonunanimous stipulation provides that:

10. Except to the extent specified herein, none of the Signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation underlying this Stipulation and agreement and the rates provided for herein. (Stipulation And Agreement, page 8.)

Since the Commission will approve the nonunanimous stipulation in this Report And Order, and the signatories have given no guidance in the stipulation itself, their pleadings, or briefs as to how the issue was resolved between them, the Commission reserves a specific finding on the issue and finds that the issue of reclassification of distribution facilities was resolved between Staff and MPS,

for the purposes of this case only, in a way that is consistent with a total increase in revenues of \$4,865,804, after true-up.

Postretirement Benefits Other Than Pensions

Other Postretirement Benefits (OPEBs) are benefits, other than pensions, that are paid to an employee after retirement, such as health or dental care, or life insurance. In 1990 the Financial Accounting Standards Board issued Financial Accounting Standard 106 (FAS 106) which requires companies to use an accrual method of accounting for OPEBs after December 15, 1992. MPS requested that it be allowed to recognize its OPEB expenses, for purposes of ratemaking, on the accrual basis in harmony with its accounting procedures under FAS 106. The Commission currently requires utilities under its jurisdiction to continue to recognize OPEBs on a cash basis for ratemaking purposes, i.e., as the benefits are paid out to former employees, rather than on an accrual basis.

The Commission has addressed the issue of whether to adopt FAS 106 for ratemaking purposes in several recent cases. These cases include:

TC-93-224	--	Southwestern Bell Telephone Company
EO-92-179	--	Union Electric Company
EO-93-35	--	The Empire District Electric Company
GO-93-201	--	Western Resources, Inc.
ER-93-41	--	St. Joseph Light & Power Company
TR-93-181	--	United Telephone Company of Missouri
WR-93-212	--	Missouri-American Water Company

The Commission has consistently refused adoption of the FAS 106 accrual methodology for ratemaking because the actuarial studies are too speculative and because of the unknown effects of the expected national health care plan. In Southwestern Bell Telephone Company's (SWB's) recent case, the Commission did not adopt the accrual method for ratemaking despite provision by SWB of external funding and cost controls. *Staff v. SWB*, Case No. TC-93-224, Report And Order issued December 7, 1993.

Although Staff and MPS offered evidence on OPEB costs, they settled the case for a negotiated dollar amount, subject to true-up. There is no provision in the nonunanimous stipulation wherein the parties agreed to a change in MPS's recovery of OPEBs for ratemaking purposes. The absence of such a provision on a significant ratemaking matter indicates that the issue was resolved in favor of the status quo, which is recovery of these benefits on a pay-as-you-go-basis for ratemaking purposes. In any event, the record in this case supports the Commission's view of the conditional nature of OPEB benefits in that MPS's witness testified that the availability of OPEB's has been reduced in recent years as a cost cutting measure. MPS's witness also explained that the availability of these benefits is subject to the negotiation process when labor contracts come up for renewal. MPS is under no legal obligation to provide or fund these benefits as it is required to fund its pension plan.

The Commission is of the opinion that OPEB costs as presented in this case are too speculative to be recovered for ratemaking purposes on an accrual basis. OPC's position on the matter of Other Post Employment Benefits is identical to that of Staff, and OPC supported Staff's calculation of OPEB costs. Since no change in the standard method of recognition of these expenses is to be made and OPC proposed no other adjustment, no adjustment to the stipulated revenue requirement is required. The Commission finds that the Staff and OPC's position is the one supported by the record. The Commission finds it is appropriate and reasonable for MPS to continue to recover OPEB costs on a pay-as-you-go basis.

Return on Equity/Capital Structure

The nonunanimous stipulation is silent as to the capital structure and return on equity (ROE) agreed to by the signatory parties. OPC adduced evidence on these issues in the initial case but did not file additional testimony on rehearing. Staff did not file any additional evidence but MPS filed the

supplemental testimony of Bradley R. Lewis. MPS claims that Lewis's testimony does not provide additional evidence on the issues, but provides a way to calculate an ROE from the Commission's decision in the initial Report And Order and using the \$8 million settlement amount. Based upon Lewis's testimony, MPS also suggests the Commission needs to resolve the Turbine Maintenance issue to adopt its calculation of an ROE for this case. The Commission will mark Lewis's testimony as Exhibit 90 and receive it into the record in this Report And Order.

Since MPS has presented the Commission with additional testimony, although not evidence, the Commission believes it must first address that testimony before reconsidering its decision on MPS's capital structure and ROE.

Lewis's calculations, of which there are five, are based upon two assumptions which the Commission believes are not valid. First, Lewis assumes that the issues before the Commission retain the same values that are shown in Exhibit 2, the Updated Reconciliation, and that these values are unaffected by the stipulation. The second assumption is that the Commission can make a calculation concerning the value of issues resolved by the signatory parties based upon its decision in the initial Report And Order, which obviously was issued after the nonunanimous stipulation was agreed to. Neither of these assumptions can be supported logically since the stipulation recites that the settlement is a total dollar settlement and "no ratemaking principle or method or any method of cost of service determination or cost allocation underlying or allegedly underlying the Stipulation and Agreement and the rates provided for herein ..." is a part of the settlement. Since the Commission is unable to place any value on each issue, it cannot, in hindsight, determine the value of the ROE in the stipulation. The Commission finds that Lewis's testimony is not a solution to the issues concerning ROE or capital structure.

When this case was originally presented, there were three positions on the cost of capital and ROE of MPS. Since MPS and Staff have settled on a dollar

amount for the case, neither of their positions is adopted in the nonunanimous stipulation. OPC has disputed the total dollar settlement in the stipulation and the Commission must therefore determine whether OPC's evidence supports a capital structure and ROE different from either Staff or MPS.

Capital Structure

The evidence indicates that both MPS and OPC arrived at approximately the same percentages of debt and equity for purposes of the capital structure of MPS, but they used different methods. OPC's proposed capital structure is 50 percent long term debt, 5.85 percent preference stock, and 44.15 percent common equity. MPS's proposed capital structure is 49.65 percent long term debt, 5.08 percent preference stock and 45.28 percent common equity. Staff's proposed capital structure, by comparison, is 50.85 percent long term debt, 7.34 percent short term debt, 5.38 percent preference stock and 36.43 percent common equity.

MPS developed its proposed capital structure by using an assigned capital structure reflecting the actual capital structure of MPS as shown on MPS's books. OPC arrived at its very similar proposed capital structure by developing a hypothetical capital structure based upon a group of what it considered to be comparable companies.

If the Commission eliminates Staff's proposed capital structure from consideration because of the stipulation, there appears to be no real conflict in the evidence concerning capital structure. Since MPS is not publicly traded and does not issue capital, it does not have an independent capital structure and is therefore theoretically hypothetical. Thus, both OPC's and MPS's proposed capital structures are hypothetical. Even though OPC contends its hypothetical is the more reasonable because OPC claims it is readily reproducible and not subject to manipulation, it is still a hypothetical capital structure. In addition, the Commission is not convinced that OPC's method is any less subject

to manipulation than MPS's. The use of comparable companies to arrive at a capital structure is always open to the judgment of the analyst as to which companies are comparable and what final percentage to use for each component.

Since Staff settled this issue, the Commission's focus is on whether any adjustment should be made based upon OPC's proposed capital structure. Based upon the similarity between OPC's analysis and MPS's assigned capital structure, the Commission finds that no adjustment is appropriate. OPC, using its own analysis, arrived at substantially the same capital structure as MPS and MPS's proposed common equity component falls within the range of ratios found to be reasonable by OPC. Since both are hypothetical, neither lends itself to any greater certainty than the other. The Commission therefore finds that no adjustment should be made to the nonunanimous stipulation because of this issue. There is no significant distinction between the capital structures supported by MPS and OPC, and MPS's proposed structure is the one actually assigned to MPS.

Return on Equity

The Commission has consistently found that the discounted cash flow (DCF) method of calculating a reasonable ROE for a regulated utility is the preferable method to be followed. The DCF analysis is a forward-looking financial approach that discounts future cash flows for dividends and future stock price changes. This method is described by Staff witness Moore in Exhibit 48.

Since OPC, Staff and MPS each utilized the DCF method for preparing their evidence concerning a reasonable ROE for MPS, the Commission can readily compare their proposed ROEs. The three recommendations are:

Staff:	10.59% - 11.07%
MPS:	13.05%
OPC:	10.27%

Since MPS and Staff settled this issue within the nonunanimous stipulation, there is no indication what ROE was finally agreed to; in fact, it can be assumed, based upon the language in the stipulation, that no specific ROE was specifically agreed to. OPC attacks the stipulation on this issue and asserts that the ROE for MPS should be 10.27 percent. OPC's DCF analysis, though, has been shown to have a fatal flaw in the adjustments made by its witness in calculating the growth rates utilized in the witness's DCF calculations. This flaw results in a substantial understatement of the growth component of OPC's DCF analysis. This error appears from the evidence to result in at least an 85 basis point understatement. This 85 basis point adjustment would increase OPC's recommended ROE to at least 11.12 percent, which is within the range Staff found reasonable for MPS's parent, UtiliCorp United Inc. That range was 10.59 percent to 11.55 percent. Staff recommended the lower one-half of this range because of what it perceived to be the lower risk of MPS than its parent.

The Commission has reviewed the evidence concerning a reasonable ROE for MPS and finds that a reasonable ROE would fall within the upper half of the range calculated by Staff for UtiliCorp United Inc. This upper half of the range incorporates some recognition of increased risk for MPS that may occur in the near future. It also takes into account that interest rates may fluctuate upward, although not to the degree anticipated by MPS. The range calculated by Staff is also a company-specific DCF, which the Commission finds preferable to DCFs based upon comparable companies where, as in this case, the regulated company does not issue stock. The Commission believes use of a DCF analysis of the parent company is appropriate in most circumstances. The Commission can find no reason in the evidence to not utilize a UtiliCorp United DCF for MPS in this case.

Since the evidence indicates OPC's proposed ROE is based upon flawed calculations, it will not be adopted. Since MPS and Staff have agreed to a total dollar settlement, the Commission does not believe it is necessary to set a specific ROE. The Commission, though, finds that the evidence would support an ROE for MPS of at least within the range of 11.07 percent to 11.55 percent.

UtiliCorp Headquarters Expense

This issue concerns certain costs accrued by the parent company, Utilicorp United Inc. (UtiliCorp), for administrative and general expenses allocated by Utilicorp to MPS. OPC's position is that certain of these expenses, particularly costs associated with merger and acquisition activities should be disallowed.

The Commission finds that there is no need for it to make specific findings on the issue of allocation of Utilicorp costs. This issue is one of the grounds on which OPC objects to the Report and Order which approved the nonunanimous stipulation. However, OPC offered no evidence on the issue to support any particular finding either in the initial part of this proceeding or on rehearing, thus leaving the Commission with no basis on which to find in favor of OPC. Although Staff and MPS offered evidence on Utilicorp costs, they settled the case for a negotiated dollar amount, subject to true-up. There is no provision in the nonunanimous stipulation that addresses this issue. Consequently, it is impossible to determine how the issue was resolved between the signatories. The nonunanimous stipulation provides that, unless the Stipulation specifies otherwise, neither party has "approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation" underlying the agreement. Since the Commission will approve the nonunanimous stipulation in this Report And Order, and the signatories have given no guidance in the stipulation, their pleadings, or briefs as to how the issue was resolved between them,

the Commission reserves a specific finding on the issue and concludes that the issue of Utilicorp administrative, general, and merger and acquisition costs was resolved between Staff and MPS in a way that is consistent with a total increase in revenues of \$4,865,804, after true-up.

Interest on Customer Deposits

Staff and MPS have agreed, pursuant to the nonunanimous stipulation, that MPS will continue to pay nine percent interest on customer deposits. OPC argues for an increase to an interest rate of twelve percent. After reviewing this issue the Commission finds that the nine percent agreed to by Staff and MPS should be approved for this case. It is appropriate to consider OPC's proposed rate in light of current low market interest rates. In addition, where the rate of interest on an obligation is not specified the statutory rate is nine percent. Section 408.020, R.S.Mo. 1986. Nine percent, on customer deposits, is a reasonable rate of interest when considered in conjunction with current interest rates and Section 408.020, R.S.Mo. Further, imposing a higher amount of interest on customer deposits could ultimately result in an increase in MPS's revenue requirement which would be a detriment, and not an advantage, to customers.

In its initial brief OPC argued that the rate of interest on customer deposits should be tied to the rate of return allowed shareholders. Although customer deposits constitute funds which are held by MPS, they are not funds made available for the purpose of investment in plant and equipment. Customer deposits are held in trust for return to the customer when service is ended or for the settling of unpaid amounts due for service. Further, a linking of these two issues would guarantee that customer deposit interest rate becomes a contested issue in every rate case. The Commission finds no rationale to support a linking of the interest rate for customer deposits with rate of return to stockholders.

The Commission is of the opinion that a twelve percent rate of interest would be unreasonable and finds that nine percent is a reasonable rate of interest in this case for customer deposits.

Turbine Maintenance Accrual

Because OPC takes no position on this matter, and the signatory parties have settled the issue, nothing remains for the Commission to decide in regard to turbine maintenance accrual.

Stipulation And Agreement

The Commission has considered each of the disputed issues and the evidence presented to support those issues by OPC as well as the nonunanimous stipulation and the evidence received supporting the positions of Staff and MPS on the contested issues. Based upon its consideration, the Commission has found that OPC's evidence is not convincing and has found that the adjustments proposed by OPC are not reasonable.

Since the Commission has found that no adjustments are supported by OPC's evidence, it will then consider the stipulation entered into by Staff, MPS and Sedalia Industrial Energy Association. The stipulation involves three substantive issues which are set out in the agreement. First is the agreement to allow recovery of the deferred costs associated with the Sibley projects. The Commission has found that this recovery is reasonable, and thus, the Commission finds this part of the stipulation is reasonable. Second, the stipulation contains an agreement that the interest on customer deposits should be nine percent. The Commission has found in this case that nine percent is a reasonable interest rate to be paid on customer deposits. Therefore, it finds that this part of the stipulation is reasonable.

The third substantive part of the stipulation is the overall revenue requirement agreed to of \$8,000,000 which has been trued-up to \$4,865,804. The Commission finds that this total dollar settlement is reasonable and will result in just and reasonable rates for MPS customers. The initial request by MPS was \$20,951,000, which was reduced to \$16,520,000 during the prehearing conference. Staff's proposed revenue requirement was \$1,707,000. As can be seen, the settlement amount falls within this range and after true-up results in only a small increase in rates for MPS customers. Although MPS would not have recovered the full \$16,520,000 because of the Commission findings on return on equity, the potential is that the increase approved by the Commission would be greater than the final trued-up revenue requirement. The Commission finds that the settlement to ensure that the increase was no greater than \$8,000,000 is reasonable in light of the potential for a greater increase. Based upon this finding, the Commission will approve the Stipulation And Agreement as a reasonable settlement of the issues in this case and the total revenue requirement to be recovered by MPS.

The Commission has continued the hearing scheduled in this matter pending a review of the issues to determine if a hearing is necessary. The Commission has determined that no hearing is necessary on rehearing and so the hearing will be canceled.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission has jurisdiction pursuant to Chapters 386 and 393, R.S.Mo. 1986, as amended, over the operations and rates charged by MPS. The Commission suspended the tariffs designed to increase revenues by \$20,951,000 pursuant to Section 393.150, R.S.Mo. (Supp. 1993), and set the matter for hearing. After a hearing, the Commission issued a Report And Order which adopted

a nonunanimous stipulation and agreement agreed to by all parties except OPC. Upon reviewing the Report And Order in light of the requirements for adequate findings as set out in the *Fisher* and *Monsanto* decisions and OPC's application for rehearing, the Commission granted rehearing for all of the issues contested by OPC. *State ex rel. Fischer v. PSC*, 645 S.W.2d 39 (Mo. App. 1982); *State ex rel. Monsanto Company, et al., v PSC*, 716 S.W.2d 791 (Mo. banc 1986). In accordance with the provisions of Section 393.500, R.S.Mo. (Supp. 1993), the Commission found that there was sufficient justification to rehear the contested issues. The Commission has made the above findings of fact based upon a review of the record and the additional testimony and briefs filed by the parties.

The Commission has expressed its concerns in its orders issued August 6, 1993, and September 17, 1993, about the evidentiary support needed when issues agreed to in a nonunanimous stipulation are disputed. The findings made in this Report And Order On Rehearing are consistent with the Commission's interpretation of the *Fischer* and *Monsanto* decisions and place the burden of supporting the contested issues on the proper party. Based upon its findings, the Commission concludes that the stipulation entered into by MPS, Staff and Sedalia Industrial Energy Association is reasonable and results in just and reasonable rates. The rates which result from the stipulation have been approved and the Commission concludes that no additional tariff filing is necessary.

Even though the Commission has concluded that the stipulation should be adopted, it believes it is necessary to discuss the AAO issue in further detail. The Commission order authorizing the deferral of the costs of the two Sibley projects in Case No. EO-91-358 was appealed by OPC to the Western District Court of Appeals. That Court issued a decision which upheld the Commission's order. *State ex rel. Office of Public Counsel v. PSC*, 858 S.W.2d 806 (Mo. App. 1993).

The Court in the above case held that deferral of costs to Account 186 was not single-issue ratemaking since no ratemaking determination was being made and other relevant factors besides costs were not precluded from being considered in any ratemaking proceeding concerning recovery of the costs. The Commission has addressed the recovery of the deferred costs and, after weighing the relevant factors, has found that the stipulation allowing recovery is reasonable. By considering all relevant issues presented by the parties, the Commission has met its responsibility and is not engaging in single-issue ratemaking.

Based upon the Commission's findings on the disputed issues, the Commission concludes that the settlement reached with regard to the overall revenue requirement is reasonable. Since the Commission did not find in favor of OPC on an issue where OPC had proposed an adjustment, the revenue requirement agreed to is supported by the record. Where OPC had no proposed adjustment different from a Staff adjustment, the Commission concludes that there is no support for any dollar value to these issues other than that upon which the settlement is based. If Staff agrees to a different dollar amount through settlement than that presented in its testimony and no other party offers a different adjustment, the Commission concludes there is no evidence from which to order a change in the settled amount. If a party supports Staff on an issue and Staff settles, then that party's position is settled and the party, to prevail, must adduce additional testimony or show the overall settlement amount is unreasonable.

The Commission has found that the nonunanimous stipulation is reasonable, which is the same result reached in its initial Report And Order. Since this result is the same result reached in the initial Report And Order, there is no need to order any change in MPS's tariff, nor should MPS be required to file additional tariffs.

IT IS THEREFORE ORDERED:

1. That this Report And Order is issued on rehearing of the contested issues in this case.
2. That the adoption of the nonunanimous Stipulation And Agreement in the initial Report And Order is hereby affirmed.
3. That Exhibit 90 is received into the record.
4. That the hearing in this matter is canceled.
5. That this Report And Order On Rehearing shall become effective on the 8th day of March, 1994.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

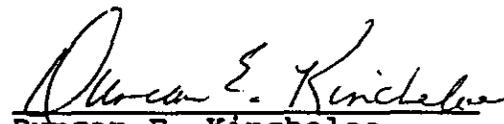
Mueller, Chm., McClure and Perkins,
CC., concur.
Kincheloe, C., dissents with separate
opinion.
Crumpton, C., absent.

Dated at Jefferson City, Missouri,
on this 25th day of February, 1994.

DISSENTING OPINION OF COMMISSIONER DUNCAN E. KINCHELOE
Missouri Public Service, a division of UtiliCorp United, Inc.
Case No. ER-93-37

Upon reconsideration, I am not convinced that the evidence presented in this case is sufficient to support certain findings of the original and the current Report and Order. The failure of all parties to take advantage of their most recent opportunity to file additional evidence leads me to believe that a hearing should be held to elicit adequate evidence to make findings on those issues. For this reason, I respectfully dissent.

Respectfully submitted,


Duncan E. Kincheloe,
Commissioner

Dated at Jefferson City, Missouri,
on this 25th day of February, 1993.