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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.)
)

UtiliCorp United Inc. d/b/a Missouri Public Service (MPS or the company) submitted proposed tariff sheets to the Missouri Public Service Commission on March 21, 1997, designed to implement a general rate increase for electric service provided to customers in the company's Missouri service area. The Commission suspended the tariff sheets until March 18, 1998. MPS's tariff sheets, and direct testimony filed concurrently, were designed to support an across-the-board rate increase of approximately 5.12 percent, or \$13.5 million. In direct testimony, MPS's witness Arnall made reference to a class cost-of-service study then under way, and to the company's intention to move itself and its customers into the new competitive electric restructuring environment by taking up the following rate design issues:

1. unbundling of rates
2. eliminating the base-seasonal nature of the rate structure
3. changing the definition of the seasons
4. real time pricing
5. eliminating several rate classes
6. eliminating interclass subsidies
7. flexible rate tariff/ special contracts
8. green power pricing
9. street and private area lighting

10. line extension policy
11. energy audit program
12. social policy surcharge
13. time-of-day rates

MPS filed supplemental direct testimony on May 1 along with illustrative tariff sheets (tariff sheets carrying no issue or effective date) designed to implement some, but not all, of the above rate design issues.

The Staff of the Commission (Staff) filed a motion on May 15 asking the Commission to strike all the direct testimony filed in March that referred to these issues, and all the supplemental testimony and the illustrative tariffs filed in May. Staff submitted verified statements by witnesses Pyatte and Proctor supporting the motion to strike. Staff argues that these rate design changes and tariff sheets should have been submitted as part of the original rate case in order for parties to receive proper notice of the company's intentions. Staff states that MPS's introduction of new issues 41 days after the case was initiated unfairly reduces the time Staff has to analyze the evidence. In addition, Staff points out that supplemental testimony may only be filed with permission of the presiding officer or the Commission and that MPS has not requested permission to supplement.

Staff argues that the rate design testimony and tariff sheets present substantial changes to MPS's current method of operating and present entirely new issues for Commission consideration. Staff is concerned that the Commission's decisions on these issues could have an unintended effect on the electric restructuring process which is just now underway in Case No. EW-97-245. Staff argues, for instance, that a Commission decision on rate unbundling would be premature when the Commission has not yet determined what services should be unbundled in a competitive market. Finally, Staff argues that it is inappropriate to include

significant innovations in rate design in a rate case with an operation of law date. Staff has no objection to taking up all these rate design issues in a separate docket.

The Office of the Public Counsel (OPC) filed a motion supporting Staff's motion to strike on May 27, stating that MPS should have waited to file the rate case until the rate design component was ready rather than filing supplemental testimony. OPC stated that it strongly supports Staff's motion and the reasons for not considering rate design in this case as discussed by Pyatte and Proctor.

Intervenor Sedalia Industrial Energy Users Association filed suggestions in opposition to Staff's motion on May 23, stating that a party should be allowed to present all rate design proposals.

MPS filed a response to Staff's motion on May 27 stating that the motion is an attempt to deny MPS the opportunity to try its case and to prevent the Commission from considering important public policy issues regarding competitive changes in the electric industry. MPS also argued that rate design changes can be made in MPS's "competitive filing case" and the Staff does not have the power to veto which issues MPS may present. Finally, MPS argued that the motion represents form over substance and that MPS's filing does not violate any Commission rule. MPS also stated that Staff had notice that MPS would be making a "competitive filing" through conversations between company and Staff representatives over the past six months.

Staff filed a reply to MPS's response on June 5; MPS filed a reply on June 18.

The Commission has reviewed the pleadings and arguments of the parties, and finds that Staff's motion is reasonable and should be granted.

Even if it were correct that Staff had prior notice of MPS's intention to make a "competitive filing," informal meetings and negotiations do not constitute factors the Commission can properly take into consideration in a contested case. At the very least, MPS should have waited to file its general rate case until the rate design component was ready for filing as well. MPS argues that it has violated no Commission rule but, in fact, 4 CSR 240-2.130(8) does require the permission of the presiding officer or the Commission for a party to supplement its testimony. Although this rule violation would not necessarily be fatal to MPS's rate design filing, the company has technically violated a Commission rule by failing to ask permission to supplement. The Commission's primary concerns, however, are two-fold: 1) the effect that any Commission decision on the more innovative aspects of MPS's rate design proposal might have on assuring a level playing field in any future electric restructuring in Missouri; and 2) the need for adequate time to review a rate design proposal that presents multiple issues, some of which have not been previously considered by this Commission. Striking the testimony that is the subject of Staff's motion will not prejudice the company's revenue requirement request. Therefore, the Commission will grant Staff's motion to strike.

IT IS THEREFORE ORDERED:

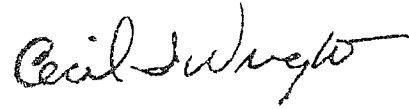
1. That the following testimony is stricken and shall not be admitted at the evidentiary hearing of this case:

- a) the direct testimony of Maurice L. Arnall filed on March 21, 1997, commencing at page 20, line 12, and concluding at page 36, line 9; and
- b) all of the supplemental direct testimony and schedules filed by MPS on May 1, 1997.

2. That testimony which has been stricken shall nevertheless be preserved for the record in accordance with Section 536.070, RSMo 1994.

3. That this order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Cecil I. Wright", with a long horizontal flourish extending to the right.

**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., Drainer,
Murray and Lumpe, CC.,
concur.
Crumpton, C., absent.

ALJ: Wickliffe