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October 6, 1998

FILED

OCT - 6 1998

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

RE: Case No. OO-99-44

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of **Stipulation of Facts and Statement of Issues Presented**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

*Wm K Haas*

William K. Haas  
Senior Counsel  
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WKH:sw

Enclosure

cc: Counsel of Record

**SERVICE LIST FOR  
CASE NO. OO-99-44  
October 6, 1998**

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**FILED**

OCT - 6 1998

Missouri Public  
Service Commission  
9-44

Case No. 00-99-44

COME NOW The Empire District Electric Company, St. Joseph Light & Power Company, as Western Gas Company d/b/a Associated Natural Gas Company, Missouri-American Water Company, UtiliCorp United, Inc. d/b/a Missouri Public Service, Laclede Gas Company, Western Bell Telephone Company, Kansas City Power & Light Company, Fidelity Natural Gas Company, Fidelity Telephone Company, Southern Missouri Gas Company, Atmos Energy Corporation, Southern Union Company d/b/a Missouri Gas Energy, Trigen-Kansas City Energy Services Corporation, the Staff of the Missouri Public Service Commission and the Office of the Public Counsel, pursuant to Commission rule 4 CSR 240-2.130(9) and §536.060, RSMo 1994, and submit the following Stipulation of Facts and Statement of Issues Presented in lieu of an evidentiary hearing. The Stipulation of Facts is not intended to preclude the offering of additional evidence by any party as may be directed by the Missouri Public Service Commission at the time of the October 1, 2018, hearing scheduled in this proceeding.

1. The Empire District Electric Company ("Empire") is a Kansas corporation authorized to do, and doing, business in the State of Missouri. Empire has its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Empire is engaged in the business of providing electrical and water utility services in the State of Missouri to residential, commercial and

industrial customers in its service areas.

2. St. Joseph Light & Power Company ("SJLP") is a Missouri corporation. SJLP has its principal office and place of business at 520 Francis Street, St. Joseph, Missouri 64501. SJLP is engaged in the business of providing electrical, natural gas and steam utility services in the State of Missouri to residential, commercial and industrial customers in its service areas.

3. Associated Natural Gas Company ("ANG") is a division of Arkansas Western Gas Company, an Arkansas corporation, which is authorized to do, and doing, business in the State of Missouri. ANG has its principal office and place of business at 1001 Sain Street, P.O. Box 1288, Fayetteville, Arkansas 72702-1288. ANG provides natural gas utility service in the State of Missouri to residential, commercial and industrial customers in its service areas.

4. Missouri-American Water Company ("MAWC") is a Missouri corporation, having its principal office and place of business at 1003 East St. Maartens Drive, P.O. Box 6276, St. Joseph, Missouri 64506. MAWC is engaged in the business of furnishing water and sewer utility services in the State of Missouri to residential, commercial and industrial customers in its service areas.

5. UtiliCorp United, Inc. ("UtiliCorp") is a Delaware corporation, with its principal office and place of business at 20 W. Ninth Street, Kansas City, Missouri 64105. UtiliCorp is authorized to conduct business in Missouri through its Missouri Public Service ("MPS") operating division and, as such, is engaged in providing electrical and natural gas utility service in the State of Missouri to residential, commercial and industrial customers in its service areas.

6. Laclede Gas Company ("Laclede") is a Missouri corporation, having its principal office and place of business at 720 Olive Street, St. Louis, Missouri 63101. Laclede provides natural gas utility services to residential, commercial and industrial customers in the St. Louis Metropolitan

area and surrounding counties.

7. Southwestern Bell Telephone Company ("SWBT") is a Missouri corporation duly authorized to conduct business in Missouri with its principal Missouri offices at One Bell Center, St. Louis, Missouri 63101. SWBT is a "local exchange telecommunications company" and is duly authorized to provide "telecommunications service" within the State of Missouri as defined in Section 386.020, RSMo (1997 Supp.).

8. Kansas City Power & Light Company ("KCPL") is a corporation duly organized and existing under the laws of the State of Missouri, with its principal office at 1201 Walnut Street, Kansas City, Missouri, 64106, and is an electrical corporation and a public utility as those terms are defined in Section 386.020, RSMo (1997 Supp.). KCPL primarily is engaged in the generation, transmission, distribution and sale of electric energy and power in the States of Missouri and Kansas.

9. Fidelity Natural Gas, Inc. ("FNG") is a Missouri corporation, having its principal office and place of business at 64 North Clark, Sullivan, Missouri 63080. FNG provides natural gas utility services to residential, commercial and industrial customers in the Sullivan, Missouri, area and its environs.

10. Fidelity Telephone Company ("Fidelity") is a Missouri corporation, having its principal office and place of business at 64 North Clark, Sullivan, Missouri 63080. Fidelity provides basic local exchange and other telecommunications services in nine exchanges in its service area.

11. Atmos Energy Corporation is a corporation organized and existing under the laws of the State of Texas and the Commonwealth of Virginia, with its principal place of business located at Three Lincoln Centre, Suite 1800, 5430 LBJ Freeway, Dallas, Texas 75240. Atmos is authorized to conduct business in Missouri through its United Cities Gas Company ("United Cities") and

Greeley Gas Company ("Greeley") divisions, and is engaged in providing natural gas utility service in the State of Missouri to residential, commercial and industrial customers in its service areas.

12. Southern Missouri Gas Company, L.P. ("SMGC") is a limited partnership organized and existing under the laws of the State of Missouri with its principal place of business located at 301 East 17<sup>th</sup> Street, Mountain Grove, Missouri 65711. SMGC provides natural gas utility service to residential, commercial and industrial customers in various communities in southern Missouri.

13. Missouri Gas Energy ("MGE"), a division of Southern Union Company, which is incorporated under the laws of the State of Delaware, is engaged in the provision of natural gas utility services to residential, commercial and industrial customers in various communities in western Missouri. MGE's principal office and place of business is located at 3420 Broadway, Kansas City, Missouri 64111.

14. Trigen-Kansas City Energy Corporation ("Trigen-KC") is a Delaware corporation authorized to do, and doing, business in the State of Missouri. Trigen-KC has its principal office at 911 Main Street, Suite 2320, Kansas City, Missouri 64105. Trigen-KC is engaged in providing steam heating services in the Kansas City area.

15. The Missouri Public Service Commission ("Commission") is an executive state agency of the State of Missouri within the Department of Economic Development and, among other things, is charged by law with regulating the rates and terms and conditions of service of electric, gas, steam, water, sewer and telecommunications corporations as provided in Chapters 386, 392 and 393, RSMo 1994, as amended.

16. The companies identified in paragraphs 1 through 14 are "public utilities" as that term is defined at §386.020(42), RSMo Supp. 1997, and each is subject to the jurisdiction and supervision

of the Commission as provided by law.

17. The Commission's primary source of funding for payment of expenses incurred by it and attributable to the regulation of public utilities are assessments against public utilities rendered by the Commission on or before the first of July of each year. Generally, and as more specifically provided in §386.370, RSMo Supp. 1997, the Commission is authorized to estimate the amount of such expenses to be incurred by it in the coming fiscal year which are directly attributable to groups of public utilities, as well as the amount of such expenses which are not directly attributable to any such group, and then to allocate said expenses to each group (i.e., electrical, gas, water, heating, telephone, telegraph, sewer corporations and other public utilities). The amount so allocated is then assessed against the public utilities in each group in proportion to their respective gross intrastate operating revenues.

18. In addition to public utility assessments, the Commission receives some small degree of funding from the federal Department of Transportation in connection with administration of gas safety requirements.

19. The public utility assessments are prepared by the Commission's Internal Accounting Department ("IAD") and approved by the Commission. The process followed by the IAD and the Commission is generally set forth in Exhibit A hereto.

20. Public utilities are required to pay the amounts assessed against them when due to the Missouri Director of Revenue who, in turn, remits the payments to the Missouri State Treasurer. The payments are deposited by the Missouri State Treasurer and credited to the Public Service Commission Fund (the "Fund").

21. The Fund is a special fund within the State Treasury devoted solely and specifically

to the payment of expenditures actually incurred by the Commission and attributable to the regulation of public utilities. *See*, §386.480.4, RSMo Supp. 1997, and §33.571, RSMo 1994.

22. The moneys collected as a result of the Commission's public utility assessments are appropriated out of the Fund by the Missouri General Assembly for the payment of expenditures incurred by the Commission attributable to the regulation of public utilities.

23. Any amount remaining in the Fund at the end of any fiscal year does not revert to General Revenues but is subject to appropriation by the Missouri General Assembly to the payment of the Commission's expenditures in the succeeding fiscal year and is applied by the Commission to the reduction of the amount assessed against public utilities in such succeeding fiscal year.

24. The Commission receives no appropriations out of the State's General Revenues Fund in connection with its regulation of public utilities.

25. In 1996, the 88th General Assembly passed into law Conference Committee Substitute for House Bill No. 1004 ("HB 1004-88"), a copy of which is attached hereto as Exhibit B. HB 1004-88 directed that certain amounts chargeable to specific State funds "as are necessary for refunds required by Article X, Section 18(b), Constitution of Missouri" be transferred out of the State Treasury to the General Revenue Fund ("General Revenues").

26. The amount specified by HB 1004-88 to be transferred out of the Fund to General Revenues was \$262,347.

27. HB 1004-88 was signed into law by Governor Carnahan on June 13, 1996.

28. In 1997, the 89th General Assembly passed into law Conference Committee Substitute for House Bill No. 4 ("HB 4"), a copy of which is attached hereto as Exhibit C. HB 4 directed that the aggregate sum of \$42,284,895 and chargeable to State funds "as are necessary for



refunds required by Article X, Section 18(b), Constitution of Missouri" be transferred out of the State Treasury to General Revenues. HB 4 did not direct that any specific dollar amount be transferred out of the Fund to General Revenues.

29. HB 4 was signed into law by Governor Carnahan on June 27, 1997.

30. On or about February 26, 1998, a representative of the Office of Administration notified fiscal officers of affected State agencies of the amounts to be transferred out of each State fund in order to carry out HB 4's Article X transfer directive. Said notification provided a spreadsheet showing the proportional share of the transfer for each affected State fund, a copy of which is attached hereto as Exhibit D.

31. The amount specified to be transferred out of the Fund to General Revenues pursuant to HB 4 was \$425,871.

32. The total transferred out of the Fund attributable to fiscal years 1995 and 1996 was \$688,218.

33. On June 17, 1998, the \$262,347 attributable to fiscal year 1995 was transferred out of the Fund to General Revenues.

34. On June 22, 1998, the \$425,871 attributable to fiscal year 1996 was transferred out of the Fund to General Revenues.

35. This amount (\$688,218) has been used by the Missouri State Treasurer to make refunds of excess state revenues to the income taxpayers of the State relating to tax years 1995 and 1996 in accordance with the provisions of the Hancock Amendment to the Missouri Constitution.<sup>1</sup>

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<sup>1</sup>*Mo. Const., Art. X, §§16-24.*

36. In 1998, the 89th General Assembly passed Conference Committee Substitute for House Bill No. 1004 ("HB 1004-89"), a copy of which is attached hereto as Exhibit E. HB 1004-89 directed that certain amounts chargeable to enumerated State funds "as are necessary for refunds required by Article X, Section 18(b), Constitution of Missouri" be transferred out of the State Treasury to General Revenues.

37. The amount specified by HB 1004-89 to be transferred out of the Fund to General Revenues was \$534,114.

38. HB 1004-89 was signed into law by Governor Carnahan on June 19, 1998.

39. The amount specified by HB 1004-89 to be transferred out of the Fund to General Revenues is anticipated to take place during the month of January or February of 1999.

40. This amount (\$534,114) will be used by the Missouri State Treasurer to make state revenue refunds to the income taxpayers of the State relating to tax year 1997.

41. On June 29, 1998, the Commission issued its *Supplemental Order No. 52* ("Order 52") in its Case No. 11,110.<sup>2</sup>

42.. The stated purpose of Order 52 was to estimate in accordance with the provisions of §386.370, RSMo Supp. 1997, the expenses to be incurred by the Commission during its 1999 fiscal year commencing July 1, 1998, and reasonably attributable to the regulation of public utilities and to determine assessments for each public utility regulated by it within each group. A certified copy of Order 52, and all attachments, is attached hereto as Exhibit F.

43. Order 52 was sent to each affected public utility under cover of letter of the

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<sup>2</sup>*In the matter of the assessment against the public utilities in the State of Missouri for the expenses of the Commission for the fiscal year commencing July 1, 1998.*

Commission's Executive Director dated June 30, 1998, which set forth the specific amount(s) assessed against each public utility. A copy of each letter relating to the companies identified in paragraphs 1 through 14 is attached hereto collectively as Exhibit G.

44. The Commission's "Estimated Cash Balance June 30, 1998" filed as an attachment to Order 52 includes as a deduction to the cash "carry-over" calculation a transfer of \$688,218 for "Article X."

45. The Commission's "Calculation of PSC Assessment" filed as an attachment to Order 52 includes in the calculation of the Commission's fiscal year 1999 assessment a cost of \$534,114 attributable to "Article X transfer."

46. As a consequence of those facts set forth in paragraphs 44 and 45, the Commission's calculation of \$14,776,876 for the fiscal year 1999 Commission total assessment includes the sum of \$1,222,332 associated with Article X transfers out of the Fund to General Revenues as directed by HB 1004-88, HB 4 and HB 1004-89 to facilitate state revenue refunds required by *Mo. Const.*, Art. X, §18(b), of the Hancock Amendment for tax years 1995, 1996 and 1997.

47. Order 52 was the first actual notice any of the public utilities received that monies from the Commission's public utility assessments had been or were to be used for state revenue refunds required by the Hancock Amendment.

48. The estimated incremental amount of the Commission's assessment on each of the public utilities identified in paragraphs 1 through 14 which is attributable to the 1995, 1996 and 1997 Article X transfers from the Fund to General Revenues are set forth in Exhibit H

49. Neither the Commission's proposed budget for the fiscal year commencing July 1, 1997, or the proposed budget for the fiscal year commencing July 1, 1998, as submitted, contained

any line item or other indication showing that the moneys relating to Article X transfers were intended to be recouped or returned to the Fund by means of an appropriation by the General Assembly or through assessment.

50. Neither the House Bill containing the Commission's appropriation for the fiscal year commencing July 1, 1997 (House Bill No. 7 - 89th General Assembly), or the fiscal year commencing July 1, 1998 (House Bill 1007 - 89th General Assembly), as enacted into law, contained any line item or other indication showing that the moneys relating to Article X transfers were intended to be recouped or returned to the Fund by means of an appropriation by the General Assembly or through assessment.

51. Exhibits A-H are incorporated by reference as if fully set forth herein.

#### Statement of Issues Presented

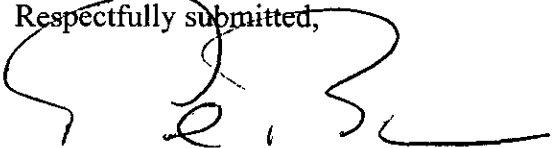
1. Whether the Article X transfers from the Public Service Commission Fund to the General Revenues Fund for fiscal years 1995, 1996 and 1997 are authorized by law?

2. Whether the Article X transfers for fiscal years 1995, 1996 and 1997 (which are included in the Commission's calculation of assessments against public utilities for the fiscal year commencing July 1, 1998) represent expenses to be incurred by the Commission that are reasonably attributable to the regulation of public utilities?

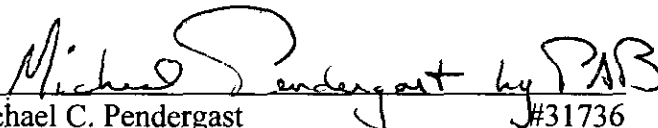
3. Whether the Commission may recover Article X transfers from the Public Service Commission Fund to the General Revenues Fund in the calculation of public utility assessments?

4. Whether the assessment process followed by the IAD and Commission, as described on Exhibit A, is in compliance with Section 386.370, RSMo?

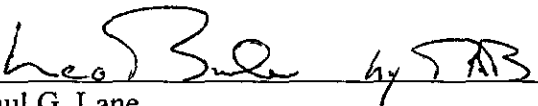
Respectfully submitted,

  
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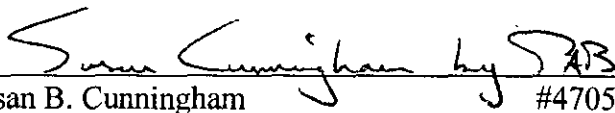
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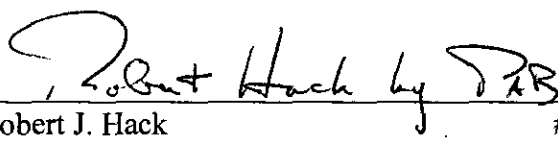
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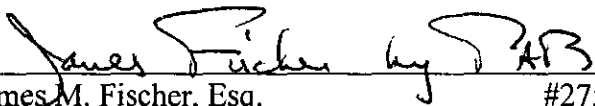
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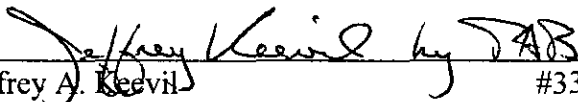
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