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September 5, 2000

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: Case No. EM-2000-292

Dear Judge Roberts:

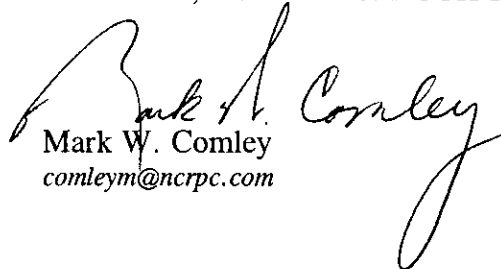
Enclosed for filing in the above referenced matter, please find the original and eight copies of the Initial Brief of St. Joseph Light & Power Company.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


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MWC:ab

Enclosure

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SEP 5 2000
Missouri Public
Service Commission

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

SEP 5 2000

Missouri Public
Service Commission

In the matter of the Joint Application)
of UtiliCorp United Inc. and St. Joseph Light)
& Power Company for authority to merge)
St. Joseph Light & Power Company)
with and into UtiliCorp United Inc. and,)
in connection therewith, certain other)
related transactions.)

Case No. EM-2000-292

INITIAL BRIEF
OF ST. JOSEPH LIGHT & POWER COMPANY

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INITIAL BRIEF
OF ST. JOSEPH LIGHT & POWER COMPANY

I. INTRODUCTION

On October 19, 1999, UtiliCorp United Inc. (UtiliCorp) and St. Joseph Light & Power Company (SJLP or Company) filed a joint application with the Commission for authority to merge SJLP with and into UtiliCorp. Although they are jointly applying for the approval of the merger agreed between them, SJLP and UtiliCorp are undeniably separate corporate entities at this point. Furthermore, it should not be forgotten that SJLP's management, not UtiliCorp's, decided that a change in ownership of the company was in its best interest, and that SJLP, not UtiliCorp, was the propelling force behind the process which led to a definitive merger agreement with UtiliCorp. SJLP's reasons for seeking a merger partner, and its understanding of the benefits which this particular merger will confer upon affected constituencies, are subjects that uniquely belong to SJLP to express. Accordingly, SJLP submits this separate brief and argument to the Commission. Care has been taken to avoid needless duplication of UtiliCorp's brief.

II. STANDARD OF REVIEW

The Commission's standard of review for this application was enunciated in State ex rel. City of St. Louis v. Public Service Commission, 73 S.W.2d 393 (Mo.banc 1934). In that case, two

orders of the Commission were under review. The orders granted the applications of Utilities Power and Light Corporation for authority to purchase, acquire and hold more than ten per cent of the shares of stock at any time outstanding of two Missouri public utility corporations. Although the case scrutinized the reasonableness of a stock purchase application, it also addressed the criteria by which the Commission should evaluate a "change in ownership" of a utility.

In concluding that the Commission committed no error in approving the applications for the sale and purchase of the stock, the court discussed the meaning of the public interest and public policy and reasoned:

The [Commission] found that the public (consumers) would not be affected by the transfer of the stock. The owners of this stock should have something to say as to whether they can sell it or not. To deny them that right would be to deny to them an incident important to ownership of property. *City of Ottawa v. Public Service Commission*, 130 Kan. 867, 288 P. 556. A property owner should be allowed to sell his property unless it would be detrimental to the public.

The state of Maryland has an identical statute with ours, and the Supreme Court of that state in the case of *Electric Public Utilities Co. v. Public Service Commission*, 154 Md. 445, 140 A. 840, loc. cit. 844, said: "To prevent injury to the public, in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefitted, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'"

State ex rel. City of St. Louis v. Public Service Com'n of Missouri, 73 S.W.2d 393, 400 (Mo. banc 1934).

SJLP is confident the evidence establishes without doubt that the proposal before the Commission for the merger of SJLP into UtiliCorp,-- a merger which was preceded by a long and thorough process at the highest levels of SJLP management-- is decidedly not detrimental to the public interest and should be approved.

III. HISTORY

Mr. Terry Steinbecker, the President and Chief Executive Officer of SJLP chronicled the history of this transaction. His testimony returned the Commission to a time before 1995 when SJLP was in the process of considering alternatives for increasing value for its shareholders. He recounted the advice which the SJLP board of directors received from its retained consultants over a half decade, and the ultimate decision of the board to consider a merger partner. Quite apparent is that the merger applied for in this case was not ill conceived or precipitant; extraordinary deliberation has gone before the signing of the agreement, and much consideration was given to a merger far before UtiliCorp became a serious suitor.

Mr. Steinbecker testified that before 1995, SJLP's board of directors, from time to time, studied various strategies for maximizing shareowner value. These studies, which in certain cases involved the retention of outside advisers, stemmed in part from concerns relating to the ability of SJLP to continue to compete effectively, given the relatively small size of its operations compared with many other utility companies, including those in its geographic region. Thereafter, in 1995, SJLP retained a consulting firm, Planmetrics, Inc. (Tr. 97) to assist management in developing a strategic plan in light of these concerns. Based on the advice of its consulting firm, the Company embarked on a diversification program.(Ex. 1, Steinbecker Direct, p. 2).

In early 1998, the strategic planning committee of SJLP's board of directors retained Scott Madden and Associates, Inc. (Scott Madden), another consulting firm, to provide strategic planning advice. (Tr. 99) On March 18, 1998, Scott Madden delivered a report to the board in which it recommended that SJLP begin exploring various strategic alternatives, including a potential merger or strategic alliance. On May 19, 1998, the board began to interview potential financial advisers to assist in exploring strategic alternatives, and on July 15, 1998 the board authorized management to

negotiate the engagement of an investment banking firm to serve as SJLP's financial adviser. That firm was Morgan Stanley & Co. Inc. (Morgan Stanley). (Tr. 100). Morgan Stanley was instructed to commence a review of SJLP and its competitive position in the utility industry, and to begin developing potential strategic alternatives for maximizing shareholder value, including a potential merger or strategic alliance. (Exhibit 1, Steinbecker Direct, p. 3)

On October 14, 1998, Morgan Stanley outlined the strategic challenges facing SJLP, and recommended that the Company explore a potential business combination with a larger utility company as the best means of maximizing long-term value for the shareholders, while also benefitting customers and employees. Soon afterward, SJLP solicited expressions of interest in the Company. A list of possible merger partners was drawn, and the list included UtiliCorp. Members of the list were contacted, and by December of that year, three of the listed companies returned an expression of interest. One of those companies was UtiliCorp. Between January 12th and the 21st, 1999, the three interested parties conducted a due diligence review of SJLP, and conversely, between January 7th and February 17th, SJLP conducted due diligence reviews of the three interested parties. (Ex. 1, Steinbecker Direct, pages 3-4)

On February 16, 1999, SJLP received final binding proposals from two of the three interested parties. These were evaluated between February 17th and 18th, and a meeting convened on February 19th to consider each. At that meeting, the board instructed Morgan Stanley to encourage UtiliCorp to increase its bid, and UtiliCorp did so to \$23 per share. The definitive merger agreement was reviewed on March 4, 1999, and it was unanimously approved by the board of directors that same day. The merger between UtiliCorp and St. Joseph Light & Power Company was announced publicly on March 5, 1999. (Ex. 1, Steinbecker Direct, page 5)

The shareholders approved the merger on June 16, 1999. Of the total shares that voted,

96.3% voted for the merger. (Ex.1, Steinbecker Direct, page 8)

IV. BENEFITS AND EFFECTS OF THE MERGER

The lengthy hearing in this case bears witness to the fact that the parties offered testimony on over 80 separately stated issues, many of which pertain to the alleged effects of the innovative regulatory plan proposed by UtiliCorp. SJLP does not wish to diminish the importance of those issues, but entreats the Commission to train its focus on what is the quintessential consideration of this matter: What are the risks of SJLP standing alone and how do those risks compare to the benefits of this merger?

1. Standing Alone

SJLP is one of the smallest, if not the smallest, investor owned electric utility whose stock is publicly traded. (Tr. 126) For SJLP the rising tide of competition does not necessarily mean more opportunity for growth. Instead, smaller utility companies must evaluate whether they can continue to offer quality services in a climate of customer choice. As Mr. Steinbecker said,

The momentum [toward customer choice] recently picked up at the federal level. And so we're committed to doing the best job we can in an industry that's headed to customer choice. (Tr . 125)

As the history of this merger attests, the board of directors of SJLP was concerned, probably as early as 1995, that SJLP could not continue to compete effectively and to provide high quality service at low rates because of the relatively small size of its operations. This was particularly true with respect to the market for generation of power. These issues prompted the retention of financial and investment consultants, and the visualization of the company's foreseeable future in an unregulated environment. Mr. Steinbecker has testified,

Ultimately this size disadvantage will result in higher prices for our customers than would otherwise have been the case. Additionally with respect to future deregulated markets, SJLP is also at a disadvantage as it lacks the mass, scope or unique market

niche which will allow it to compete effectively in the evolving competitive environment on a long term basis.

(Exhibit 1, Steinbecker Direct, page 6-7).

Stephen L. Ferry, Manager, Systems Operations and Planning for SJLP, gave examples of how the company's small size could translate into higher prices for customers. He illustrated how SJLP is reacting to the change in which wholesale generation is deregulated. He testified that it is now a competitive service while retail service is regulated. Prior to wholesale competition the price for purchased power was regulated by the FERC on a cost plus basis. Even during periods of high demand and limited availability, the price would remain reasonably stable since it was tied to actual production cost. With the advent of wholesale competition, the price of purchased power is now market driven. The price will be whatever the market will bear, and during periods when demand approaches or exceeds supply the price can be very volatile, rising very rapidly to levels much greater than the cost of generating the energy. SJLP has paid prices for purchased energy ranging from \$8.77/MWH to \$5,500/MWH, all within the same day. (Ex. 22, Ferry Surrebuttal, page 4) By merging with UtiliCorp, SJLP can in turn withstand these dramatic fluctuations in the volatile purchased power market.

Another example offered by Mr. Ferry concerned new operating rules for energy purchases by utilities. The new operating rules promulgated by the FERC are not kind to small companies. Prior to FERC order 888, SJLP could arrange for an energy transaction that included transmission service as part of the bundled price for both energy and transmission service. The transaction could be handled by a phone call and implemented in a few minutes. SJLP could identify sources of low cost baseload generation for the next hour and rapidly secure them for use. The Company's small size and load, compared to other systems, enabled it to utilize small amounts of hourly excess

baseload capacity on regional baseload units that were overlooked by other larger systems. This was something unique to SJLP because of its small size. Mr. Ferry then testified that,

Since implementation of FERC order 888, energy purchases and sellers must, in addition to arranging for an energy transaction, also separately arrange for transmission service using an Open Access Same-time Information System ("OASIS"). Arranging for transmission service on an OASIS takes at least 20 minutes, usually longer. As a result energy sellers are less willing to accept the burden of OASIS administration for small transactions. Accordingly, SJLP's previous niche market of access to low-cost economy energy has virtually disappeared.

(Ex. 22, Ferry Surrebuttal, pages 5-6). The rules have been tilted in favor of the larger companies in this market. SJLP's merger with UtiliCorp would permit SJLP customers to take advantage of those rules.

There can be little debate on whether SJLP has pursued the wisest course. Clearly, the preferred strategy for SJLP is to be acquired by a larger organization that commands economy of scale to the extent that it can be successful in an environment of increasing deregulation and competition. (Tr. 126). In this case, the limited auction process engaged in by SJLP netted a merger partner of sufficient size and strength to weather the adversities competition engenders. For SJLP, UtiliCorp is the right merger partner. (Exhibit 1, Steinbecker Direct, page 6). It has the characteristics which will define the industry as this century progresses, specifically, it has financial strength; an impressive size, and a commitment to growth. Furthermore, UtiliCorp leads in energy marketing and distribution and is also an advocate for customer choice. All of these characteristics combine to better provide competitive returns to SJLP shareholders and quality service at competitive prices to SJLP customers. (Ex.1, Steinbecker Direct, page 6).

2. *The Merger and its Beneficiaries*

A. *Shareholders*

The law in this state has been clear for many years that

“[t]he officers and directors of a corporation occupy a fiduciary relation to the corporation and to the stockholders; their position is one of trust and they are bound to act with fidelity and subordinate their personal interest to the interest of the corporation should there be a conflict.” (citation omitted)

Johnson v. Duensing, 351 S.W.2d 27, 32 (Mo. 1961). Although our courts have not yet fully classified the fiduciary duties of corporate officers and directors, the general extent of those duties has emerged from the case authorities. One such case is Forinash v. Daugherty, 697 S.W.2d 294 (Mo.App. S.D. 1985) in which the Commission will find an excellent discussion of the fiduciary duties of corporate directors and officers, a portion of which is apposite here:

As a matter of general law, it may be said that the officers and directors of a corporation owe fiduciary duties to their corporation and to the other shareholders.

* * *

Dean Ruder, in his recent discussion of the fiduciary duties of corporate managers--which he describes as a "duty of loyalty"--extends the fiduciary duty of corporate officers and directors to eight types of transaction. We need not discuss his enumeration in detail, but it is worth while to note **that the sale of control at a premium and insider trading are classified as transactions in which corporate officers and directors owe a duty of loyalty--a fiduciary duty--to the shareholders.** Ruder, 40 Bus.Law. at 1386-1401.

(emphasis added) *Id.* at 301-302.

As a result of the merger, SJLP shareholders will receive a fixed price of \$23 per share--which is higher by 36% than the share's trading value as of March 4, 1999-- in a tax free exchange. Some opponents of this transaction have portrayed it as a merger strictly for the benefit of the shareholders, and presumably argue that if the shareholders benefit too much, the merger should be disapproved. The Commission should reject such an argument. If "a benefit to the shareholders" were a cause to disapprove a merger between regulated entities, no merger applications would be approved. In this case especially, the Commission should not fashion a doctrine which would penalize a board of directors for performing its duty well. As a matter of law, once the decision was

made to enter sale negotiations, the board of directors of SJLP was under a duty to sell control of the company at a premium, and the body of Missouri regulatory law should not be interpreted to bar or restrict that duty. Irrespective of the benefits conferred on the shareholders in this proposed transaction, the Commission still must answer whether the merger will be detrimental to the public. If the public experiences no detriment, the magnitude of the benefit to the shareholders is not relevant.

To repeat, UtiliCorp will pay the equivalent of \$23 for each share of SJLP's stock. That price per share for SJLP stock is fair and reasonable. The SJLP board of directors had the benefit of independent advice on the value of the company. The manner in which the company was evaluated was outlined in detail by Mr. Lyle Miller, of Morgan Stanley, in his surrebuttal testimony. (Ex. 25, Miller Surrebuttal) SJLP's acceptance of the price per share offered by UtiliCorp was based upon the evaluation and recommendations of Morgan Stanley. The overwhelming level of approval by the SJLP voting shares is further representative of the reasonableness of the share price. In addition to the value paid for the shares, the shareholders will benefit from the better opportunity for growth and expected increases in dividend that will come with a company that has better financial stability and strength such as UtiliCorp.

The board of directors fulfilled its duties to the shareholders, and in the process the public has not been disadvantaged. To the contrary, SJLP submits that the public interest will be served in this merger.

B. *Communities*

The seventy-three communities and large rural area served by SJLP will benefit from this merger. Of course, the residents of these areas can anticipate stable prices for power, a subject explored *infra*. UtiliCorp has made additional commitments in the merger agreement and has bound

itself to maintaining at substantially the same levels SJLP's charitable giving and community support:

Section 6.17. *Charitable and Economic Development Support.* The parties agree that provision of charitable contributions and community support in the service area of the Company serves a number of important goals. For a period of at least five years following the Effective Time the Surviving Corporation shall provide charitable contributions and community support within the service area of the Company at levels substantially comparable to and no less than the levels of charitable contributions and community support provided by the Company and its Subsidiaries with the Company's service area within the two year period immediately prior to the Effective Time.

(Ex. 2, Green Direct, Schedule. RKG-1, page 36).

UtiliCorp has agreed to the establishment of an Advisory Board, whose duties are described in Section 1.04 of the Merger Agreement:

Section 1.04 *Advisory Board.* The Surviving Corporation (and any successor or assign of the Surviving Corporation) shall maintain an advisory board (the "Advisory Board") for a period of three years following the Closing Date. The Advisory Board shall be comprised of up to nine persons designated in writing by the Company and selected from among the present directors of the Company on or prior to the Closing Date ("Company Designees").

* * *

The Advisory Board shall meet no less frequently than quarterly, and shall review and consult with the Surviving Corporation with respect to the business operations of the Surviving Corporation in the Company's current service area (including reviewing and making recommendations consistent with Section 6.17 with respect to the civic, charitable and business and customer development activities of the Surviving Corporation in such area.)

SJLP believes that these are not idle words in the agreement and fully expects and anticipates that UtiliCorp will be serious about the recommendations of the Advisory Board. (Tr. 166). Quite plainly, the communities served by SJLP will not be harmed by the merger and indeed, should anticipate benefits after the closing.

C. *Employees*

At hearing, questions were not few about the effect the merger would have upon the employees of SJLP. In particular, several parties questioned whether employees would lose their jobs. At the outset of this discussion about its employees, SJLP deems it an appropriate time to emphasize the “not detrimental to the public” standard which this merger transaction must satisfy for approval. “The public” referred to in that standard means the ratepayer, and hence the impact on customers is the chief concern of the Commission in this contest. Although SJLP employees are still vitally important, their interests, for the purposes of the Commission’s analysis of the transaction, are not truly involved. This notwithstanding, there is ample evidence in this record showing the joint applicants’ high regard for the employees and their concern for the future of those employees post-merger.

Parties to a merger would certainly be naive to assume that the ranks of the merged corporation’s employees would go unchanged. Naturally, the surviving corporation will attempt maximum consolidations in order to trim payroll expense. The news for SJLP was not entirely bitter however, and now, that over eighteen months have passed since the announcement of the merger, SJLP and UtiliCorp are better informed in forecasting the breadth of the changes in employment positions.

SJLP has approximately 340 employees. Mr. Steinbecker testified that UtiliCorp plans to retain about two-thirds of SJLP’s employees in their current positions. (Tr. 113) The remaining one third of SJLP’s employees are not without alternatives. One is to consider retirement or the pursuit of another career. (Tr. 113) Sixty of SJLP’s employees have already made that decision. (Tr. 113). The other alternative is to apply to UtiliCorp for a position at another location in the company. (Tr. 114) Although there is no guarantee that a former SJLP employee will have a job at another

UtiliCorp division, the qualifications of that employee would certainly merit every consideration and Mr. Steinbecker believes UtiliCorp will treat the SJLP applicants as highly qualified members of the pool. (Tr. 115) The Commission will recall that all of the three SJLP employees who were called as witnesses in this matter testified that their respective positions would be eliminated as part of the merger; however, Lois J. Liechti verified that she and UtiliCorp were discussing a position for her in UtiliCorp's load research area (Tr. 498); Stephen Ferry and UtiliCorp were also discussing a job opportunity (Tr. 492); and Janet Pullen had already been offered a position by UtiliCorp. (Tr. 495) Quite evidently, UtiliCorp is conducting itself in this interim with respect to SJLP employees as Mr. Steinbecker had expected.

Mr. Steinbecker also advised the Commission that SJLP has decided to provide assistance to all employees, upon request, regarding career placement. He explained that many of the company's employees have been with the company for some time, and lack experience in seeking and interviewing for other employment. SJLP expects to provide that training to its employees so that they are better prepared to locate a job or pursue another career. (Tr. 143).

Furthermore, UtiliCorp has also committed itself to assisting affected SJLP employees in locating employment. This promise is found in Section 6.13 of the Agreement and Plan of Merger:

(e) UCU agrees to use reasonable efforts to make available to each Person who shall be a Company employee at the Effective Time and shall thereafter, during the eighteen months following the Effective Time, be displaced as a result of the Merger, the opportunity to participate in the job opportunity employment placement programs offered by UCU to its current employees.

(Ex. 2, Green Direct, Schedule RKG-1, page 35 of 43).

With regard to the SJLP employees who are retained by UtiliCorp, they should look forward to greater opportunities for advancement and personal growth within a large international company. UtiliCorp also offers an outstanding benefits packages, similar to that already offered by SJLP. (Ex.

1, Steinbecker Direct, page 8).

D. Customers

Inasmuch as the parties have, without exception, identified SJLP's customers as the "public" for purposes of the "not detrimental to the public" standard, the effect of the merger on those customers will unmistakably be the Commission's central inquiry in this case. The process of evaluating the merger's effect on SJLP's customers is a simple matter and SJLP submits that it requires the Commission to review only one aspect of the regulatory plan proposed by UtiliCorp. That one aspect is the rate moratorium.

The seven elements of the regulatory plan were stated by John W. McKinney, Vice President-Regulatory Services for UtiliCorp, in his direct testimony. The first one on his list was:

1. UtiliCorp will not file any case with the Commission requesting a general increase or decrease in electric, gas or steam rates for the SJLP operating unit for a period of **5 years after the closing of the merger**. [emphasis added]

(Ex. 4, McKinney Direct, page 6)

Mr. Steinbecker testified that the rate moratorium will bring about rate stability for SJLP's customers without sacrificing service. (Ex. 1, Steinbecker Direct, page 7) He re-emphasized this with the Commission at hearing during this exchange with Commissioner Drainer:

Q. And do you also believe that it will be in [your customers'] interest to have this merger?

A. Yes, I do. As I look ahead and see what this merger brings, again, the two most prominent things in my mind – will, I guess I'd cite three things. One, the stable prices. There's evidence that you will see later in the week where we expect rate increases to occur within the next five-year period if we're left as a stand-alone company compared to a rate freeze. Obviously that's better for the customer.

Again, given the deregulated wholesale marketplace that we're in today as well as where we're headed with a totally deregulated industry, I think the economy of scale that UtiliCorp brings to our customers is in their best interest regarding a more reliable and price effective supply of energy. (Tr. 129)

The evidence "later in the week" to which Mr. Steinbecker referred was the testimony of SJLP witnesses Larry Stoll, Janet Pullen, Lois Liechti and Stephen Ferry, who sponsored SJLP's long range forecast.

1) **The Long Range Forecast**

The testimony of the SJLP witnesses was offered mainly in rebuttal to a contention of the Staff witnesses that SJLP's cost of service, and hence its rates, would assuredly continue to decline as they have historically declined in the recent past¹. Janet Pullen, Supervisor-Treasury and Accounting for SJLP, refuted this contention as one of the first subjects of her testimony. Ms. Pullen recounted SJLP's rate history over the last ten years noting that during that period, the Company reduced rates in 1993 and 1999, but had been granted rate increases in 1994 and 1995. She rightly stated that SJLP's history of electric rate increases or reductions for that period of time did not lend support to Staff's implication that rate decreases for SJLP were a "sure thing." In fact the forecasts she prepared, even with conservative operations and maintenance expense increases, indicate that rate increases will be needed in 2002 and 2004. (Ex. 24, Pullen Surrebuttal, page 2) The electric rate increases would be in the amount of Two Million Dollars in each of 2002 and 2004. She attributed the forecasted rate increases to system requirements, unit fuel and purchased power costs, and the cost of capital (Ex. 24, Pullen Surrebuttal, page 3). She cautioned though that conditions had changed even since her forecast had been prepared. One change was an incident that occurred at SJLP's Lake Road Power Plant involving one of the generating turbines.²

Ms. Pullen's forecast was a collective effort. She relied on the calculations of several

¹This was the contention of Staff witnesses Cary Featherstone at page 79 of his rebuttal, (Ex.704) and Michael Proctor at page 16 of his rebuttal (Ex.714).

²This incident is the subject of an Application for Accounting Authority Order, Case No. EO-2000-845, of which the Commission took administrative notice. (Tr. 548).

colleagues in its preparation. Lois J. Liechti, Supervisor, Pricing and Market Research for SJLP, supplied the support for the electric unit sales, sales revenue, system requirements, and peak forecasts. (Ex. 22, Liechti Surrebuttal, page 4). Stephen L. Ferry supplied the support for the fuel and purchased power expense. (Ex. 23, Ferry Surrebuttal, page 2). Larry J. Stoll, Vice President--Finance, Treasurer and Assistant Secretary of the Company explained the cost of capital figure used in the forecast. (Ex. 21, Stoll Surrebuttal, pages 7-8).

Mr. Ferry pointed out that SJLP now faces higher costs for fuel and purchased power. As mentioned earlier in this brief, the high prices for power which SJLP experiences are in part due to the Company's relatively small size, but Mr. Ferry also emphasized that increased demand during a time of static supply was also causing increases in purchased power costs. These factors combined to produce an increase in SJLP's average cost of fuel and purchased power of 15.1% compared to 1995. (Ex. 23, Ferry Surrebuttal, page 6).

Mr. Stoll addressed the cost of capital for SJLP and took issue with several of the assumptions made by Staff Witness David Broadwater. At hearing, Mr. Broadwater made several corrections to his rebuttal testimony, presumably as a result of reading Mr. Stoll's testimony. Mr. Broadwater's corrections were made of record in Exhibit 724. Critical at this point however is Mr. Stoll's finding about the impact of correcting Staff's cost of capital.

- Q What is the impact of correcting Staff's cost of capital on SJLP's electric revenue requirement as calculated by the Staff?
- A. Staff's Accounting Schedule 1-1, sponsored by Steve Traxler, shows that SJLP has excess revenues of \$60,000 to \$1,635,000 with a mid-point of \$836,000. Correcting Mr. Broadwater's errors would result in the need for a rate increase of \$250,000 to \$1,850,000 with a mid-point of \$1,050,000.
- Q. Would the results be similar for the Natural Gas and Steam operations of SJLP?

- A. Yes, The Natural Gas operations, when corrected for Mr. Broadwater's errors, would result in the need for a rate decrease of \$23,000 to a rate increase of \$27,000 with a mid point of \$2,000. The Steam operations would need a rate increase of \$57,000 to \$105,000 with a mid-point of \$81,000.

(Ex.21, Stoll Surrebuttal, page 8).

Not surprisingly, the Staff did not agree with all of the corrections Mr. Stoll proposed for Mr. Broadwater's testimony and therefore did not incorporate those corrections into Mr. Traxler's revised accounting schedules which were admitted into the record as Exhibit 730. However, even with the few corrections Staff deemed appropriate, Staff's revised Accounting Schedule 1-1 shows that SJLP is entitled to rate increases designed to collect revenue of \$233,686 at a rate of return of 9.43%.

2) **The Lake Road Power Plant Incident**

On June 7, 2000, a turbine failed and a fire erupted at SJLP's Lake Road Power Plant which resulted in the unplanned shutdown of Turbine 4 and Boiler 6. (Unit 4/6). Unit 4/6 is a 97 megawatt base-load coal-fired unit that provides approximately 27.5% of SJLP's system requirements. SJLP estimated that the cost of incremental replacement energy above the cost of Unit 4/6 and repair costs, net of insurance proceeds, would be \$7,105,000,³ approximately half of the Company's 1999 earnings. Although the estimate has been reduced by half, this is still no small expense. The costs resulting from the turbine failure have not been accounted for in Ms. Pullen's forecast and when considered in conjunction with that forecast, it can easily be concluded that if the merger with UtiliCorp is not closed, SJLP will seek an immediate rate increase.

SJLP and UtiliCorp have discussed the relationship of the turbine failure, and its costs, to the

³Since the filing of the Application for Accounting Authority Order in Case No. EO-2000-845, SJLP has re-estimated these costs. The Company's current estimate of the cost of incremental replacement energy above the cost of Unit 4/6 and repair costs, net of insurance, is \$3,500,000.

pending merger, and have reached an agreement on how to account for it if the merger is approved.

(Tr. 147) The application for the accounting order contains the substance of the agreement:

12. If the merger is approved by the Commission as set out in the regulatory plan filed by UtiliCorp United Inc., however, and this application is also approved, it is SJLP's understanding that at the closing of the merger, SJLP will write off the amounts incurred as a result of the June 7, 2000 incident, as a rate moratorium would be in place for five years under the regulatory plan.

At hearing of this matter, Mr. Steinbecker reconfirmed that the write off referred to in the application would be made by SJLP and not UtiliCorp, (Tr. 167) and would not have a direct impact on the ratepayers. The write off would reduce the book value of SJLP, and, at the time of closing for the merger, would be considered in the determination of the premium. (Tr. 145).

Mr. Steinbecker accurately summed up the SJLP's position as he answered Commissioner Drainer at hearing:

Q. So do you believe then that if this merger is not approved, that it could be detrimental to the customers of St. Joseph because their rates will go up.

A. Well, that would certainly—that is my expectation and that is what our testimony is about, yes. That if this merger is not approved, we would expect to file for price increases in the next five-year period as often as a couple of times.

And given . . . the incident at Lake Road regarding our [4/6] unit, you know, it's possible that would result in a price increase that is not included in our five-year forecast, because obviously it was unexpected. (Tr. 130).

SJLP submits that as competition in the electric markets increases, SJLP and its customers will be tormented by its small size as it endeavors to effectively serve its customers without increases in rates for service. The testimony of the Company's witnesses cannot be ignored. SJLP is facing and will continue to face higher costs in purchasing the power it needs to meet an ever rising demand for energy , and will be second in line for many competitively marketed services. Its current forecasts indicate that rate increases are now justified, a fact which the Staff itself is not far from

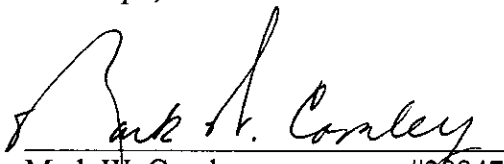
admitting. For the customers of SJLP, the rate moratorium of UtiliCorp's regulatory plan is first, a "no impact" feature of the proposed merger with UtiliCorp. This alone should support a Commission finding that the merger will not be detrimental to the public. Yet, the evidence will equally uphold a finding that the merger and its rate moratorium are beneficial to the public interest in that expected rate increases will be forsaken for a period of five years. SJLP submits that the merger should be approved.

V. CONCLUSION

On the basis of the above and foregoing, SJLP respectfully requests the Commission to approve the application for merger with UtiliCorp.

Respectfully submitted,

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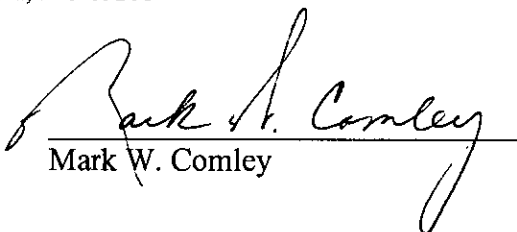
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