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August 31, 1992

**FILED**

AUG 31 1992

**PUBLIC SERVICE COMMISSION**

Mr. Brent Stewart  
Executive Secretary  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

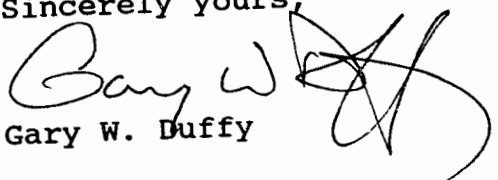
Re: Case No. EX-92-299

Dear Mr. Stewart:

Enclosed for filing with your office please find an original and fourteen copies of the reply comments of St. Joseph Light & Power Company.

If there are any questions about this, please contact me.

Sincerely yours,

  
Gary W. Duffy

GWD:ab  
Enclosure  
cc: Office of Public Counsel

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED**  
AUG 31 1992  
PUBLIC SERVICE COMMISSION

In the matter of proposed Commission )  
rules 4 CSR 240-22.010 through )  
4 CSR 240-22.080; Electric ) Case No. EX-92-299  
Utility Resource Planning. )

REPLY COMMENTS OF  
ST. JOSEPH LIGHT & POWER COMPANY

Comes now St. Joseph Light & Power Company (SJLP or Company),  
and submits the following comments in reply to those filed by other  
parties in response to the rulemaking instituted by the Missouri  
Public Service Commission ("Commission") published beginning at 17  
MoReg 889.

INTRODUCTION

SJLP takes this opportunity to address areas of concern which  
SJLP has identified from comments submitted by various  
participants. While in agreement with some participants, SJLP  
strongly believes there is a need to reply to certain issues raised  
by others. SJLP has categorized its reply comments into specific  
subject areas. A summary follows that discussion.

AREAS OF CONCERN AND SUGGESTED MODIFICATION

Staff's Introductory Policy Comments:

SJLP finds a number of Staff's comments to be fundamentally in  
error.

1. Staff asserts throughout its comments, but specifically on  
pages 3 and 15, that the reason for the existence of these proposed  
rules is not the quality of the plan that results from them, but  
rather to identify the planning process Staff believes should be

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the only model for producing an accurate plan. Staff is, at best, bogged down in defining an ideal "procedure" versus identifying an effective resource purchase plan. There are numerous procedures in place across the United States that result in an effective plan for the local utility. Staff, however, has adopted the narrow position that only its procedure (containing, at a minimum, the steps Staff has outlined) is correct. That is similar to telling two manufacturers with different management styles and procedures that what one is doing is incorrect and inappropriate, even if both have successful operations. SJLP believes that the Commission should require that the results of the process have merit; not just dictate a procedure. The statutes of this state require the electrical corporations to provide safe and adequate service at just and reasonable rates. They allow the Commission to set "standards" for various aspects of service. (§393.140(3) RSMo) Utilities are generally left to find the method that works best for them to achieve those standards. While the Commission could presumably specify the exact metallurgical content of conductors to be used in a transmission line, they have left those decisions to the utility. That is the approach that should be taken with regard to such an imprecise and changeable subject as planning. Goals and general guidelines to ensure that utilities follow some regimen of planning should be sufficient.

2. On pages 10 and 11, Staff asserts that utilities typically do not have information or expertise in influencing customers' decisions about energy usage. Absent an investigation and on-site

analysis of the abilities and skills of the people involved at the utility, such a generalization is presumptuous at best and arrogant at worst. It is stereotyping of the worst sort. Utilizing that as a basis for decision-making will result in incorrect answers.

Utilities have worked with leaders and customers in local communities for decades. That work has resulted in a highly evolved customer communication system and a high quality of customer service. Lacking an on-site management audit and objective quantification of a utility's ability to work effectively in those arenas, SJLP respectfully requests that the Commission must reject Staff's position when it is based upon such a faulty assumption.

3. On page 17, Staff says "For none of the five utilities is it obvious that those who make the final resource decisions have a clear understanding of what is driving the forecasts." Essentially, the Staff is saying that the management of all of the electric utilities in this state is ill-informed and incompetent when it comes to resource planning. Incredibly, Staff makes this assessment based solely upon a written questionnaire. SJLP submits, based upon its record, that the Staff's opinion lacks any factual basis. It ignores the fact that decision making at any well-managed utility is the result of multi-disciplinary discussions and analyses.

Staff's statement is offensive to those in management who are accountable to shareholders and customers and have participated in long term analysis and grappled with complex real-world issues.

The management structure is supported by a staff with significant training, ability, and experience with the real-world problems encountered in keeping the lights on for customers. To unabashedly allege that a management group is incapable of understanding its own systems and what is driving forecasts is a totally false assumption. More detailed comments on load forecasting will be presented later.

These Staff comments are so erroneous and egregious that they required separate response. They highlight a fundamental Staff belief in the inability and incompetence of a utility to operate its business and to make decisions about its future. They give the impression that somehow the Staff is possessed of the only correct view of the future and the rules they have drafted are the only path to salvation. Society in this country has entrusted utility management with those decisions rather than have them be dictated by the government.

**Competitive Analysis:**

Some participants in this case propose that it is the responsibility of the electric utilities to prepare an analysis of the impact that demand-side management (DSM) programs will have upon competing businesses. Most proponents of that are in a competitive energy business, namely the provision of natural gas service.

In order for SJLP to prepare any sort of useful analysis under that concept, SJLP would necessarily need access to the records and forecasts of its competitors. SJLP submits that such a proposed

process should not be its responsibility. Several years ago, a similar proposal was made in Florida. Re Conservation Activities of Electric and Gas Utilities, 110 PUR 4th 221 (Fla. PSC, 1990). There, it was proposed that electric utilities would either develop programs for the use of natural gas or explain why they could not be developed.

The Florida electric utilities objected on several grounds. One of those grounds was that requiring them to develop a market for their competitors violated both state and federal antitrust statutes because of its inherently anticompetitive activity. The proponents of this concept have not convinced SJLP that problem does not exist.

Another basis for objection was that if the electric utilities were forced to promote the use of natural gas for space and water heating, their First Amendment rights of commercial speech would be violated. The Florida electric utilities relied upon the United States Supreme Court cases of Central Hudson Gas and Electric Corporation v. Public Service Commission of New York, 447 U.S. 557, 34 PUR 4th 178, 65 L.Ed.2d 341, 100 S.Ct. 2343 (1980) and Pacific Gas and Electric Company v. Public Utilities Commission of California, 475 U.S. 1, 72 PUR 4th 634, 89 L.Ed.2d 1, 106 S.Ct. 903 (1986). Central Hudson held that a utility commission's ban on promotional advertising violated the First Amendment even where the state's interest in conservation was compelling. In PG&E, the court held that the electric utility's constitutional rights were violated when it was forced to allow a consumer group to have space

on its billing statements to voice opinions hostile to that of the utility.

The Florida PSC did not confront those constitutional issues directly. Instead, it found that it did not have the statutory authority "to require electric utilities in the first instances to develop cost-effective conservation programs for the promotion of the use of natural gas" Id. at 225. However, both these Supreme Court cases demonstrate that what one group considers to be an enlightened "public-interest" approach to government can constitute a direct violation of some other group's fundamental constitutional rights.

Setting all of those flaws aside for purposes of argument, SJLP submits there are other more practical problems. One is the absence of any provision to compel the production of materials and information from natural gas providers to perform such as analysis. While that might be possible with regard to natural gas companies which are regulated by the Commission, it is highly suspect that it could be effective on those that are not. Further, the whole issue of preparing an analysis of a perceived impact on other corporations can, and potentially would, become an unending process of study. Beyond analysis of impact on major traditional energy sources such as natural gas, fuel oil, and propane, there are also alternative energy sources, including solar and wind, that could be required under this recommendation.

In short, the position is not only fraught with potential legal complication, it is unreasonable, ineffective, and not cost

justifiable.

**Load-Building Programs:**

The Staff and others have argued for inclusion of a detailed analysis of every load building program. This was an issue discussed in depth throughout the informal "workshop" process. The interpretation problems are numerous and the long term impact is a "no-growth" scenario in this state.

During the meetings there were frank discussions on this matter but there was intense difficulty with defining what is and is not a "load-building program". The question which SJLP has posed previously in this docket has not been answered in the initial comments of other parties: When is the fine line crossed between helping customers understand their energy efficiency options and encouraging them to utilize the product?

The Staff made the following comment on page 31:

However to the extent the increased loads persist, they hasten the need for additional capacity. Thus the short term benefits may be offset by long term costs.

This quote indicates a Staff belief that freezing electrical usage at the same level as it was in 1950 would have been good for Missouri since the long term costs have resulted in increased kilowatthour costs because of added generation capacity. That position smacks of an anti-economic development, no-growth position. SJLP believes this approach is contrary to the good of the State of Missouri. To mandate an examination in detail of every development program without recognizing the long term societal benefits of the jobs, education and a more vibrant



community is narrow-minded and contrary to the public good.

SJLP believes long term load growth forecasting information is adequate for purposes of designing and making resource acquisition decisions. Unless the Commission and Staff are willing to take upon themselves the societal responsibility of judging economic development benefits (something obviously beyond their statutory authority), over both the short term and long term, SJLP suggests that the load-building information will be only an interesting, intellectual exercise with no cost-justifiable benefit in designing a resource acquisition plan.

**Fuel Substitution:**

A number of participants, the majority of whom are natural gas companies, have submitted comments arguing that fuel substitution needs to be separately broken out as a demand-side management alternative. This matter was discussed vigorously within the public meetings and rejected by Staff and electric utility companies. SJLP urges the Commission to maintain that position.

Fuel substitution is not a recognized and mandated tool of integrated resource planning within the United States. Only two states (Vermont and Oregon) have formally endorsed requirements that utilities include inter-utility fuel switching as a DSM measure, or explain why such measures should not be included in their plan. Numerous states have analyzed this complex and difficult issue and are, at present, generally maintaining a position of neutrality. The decision of each utility to voluntarily analyze fuel substitution is the position taken in the

majority of the states today.

States such as Oregon that have adopted a position are finding that it is potentially a Pandora's box. For example, when entering fuel substitution analysis, one gets into the issue of the long term societal and economic costs of utilizing a limited fossil fuel to replace electricity. Further, SJLP believes the Commissions in Vermont and Oregon are inserting themselves in what should be a customer decision on preferred type of energy supply.

Finally, SJLP concludes that fuel substitution, carried to its final degree, would require the Commission and Staff to start mandating what type of end-use loads a utility should or should not furnish for decades into the future. That would require that the operational decision-making of a utility be replaced by a governmental body. America has built the highest quality, most productive electrical system in the world when contrasted with other government-run monopolies. We have done that by working together with regulatory bodies with each entity recognizing its own strengths and areas of responsibility. Artificially manipulating this system by entering into fuel substitution would put that at risk.

SJLP does not believe it is the Commission's intent or responsibility to start mandating and assigning load types. Should the Commission wish to enter into that field, then typical decisions which immediately are presented are:

- Should SJLP get the electric-heating load?
- Should natural gas companies get the gas air-conditioning

load?

- Should SJLP get outdoor parking lot lighting?
- Should natural gas get post lanterns in front yards?

SJLP does not believe that this is either the Commission's wish or its statutory responsibility. DSM concerns using an energy source more efficiently, not just switching from one source to another.

SJLP respectfully requests that the Commission reject the mandatory fuel substitution position presented and leave this issue to each utility and, ultimately, to the preference of the individual customers.

#### **Cost Benefit Analysis:**

To SJLP, no item is of more importance in analyzing the proposed integrated resource planning rules than the cost of implementing them. SJLP read, with great interest, the comments of all participants. SJLP submits that nowhere did Staff, Public Counsel, or any other party purport to show a quantifiable cost benefit relationship associated with the adoption of these rules.

By the best available published number, over nine million dollars will be spent to implement these new rules. No data have been submitted indicating that adopting these procedures will result in a plan that is better than the plans in use today, much less nine million dollars better.

The only support in the comments is Staff's opinion that the theoretical process embodied in the proposed rules is better than the actual process utilized by utilities in 1990 when the Staff sent out its questionnaire. (This position apparently assumes that

utilities have not refined their process, or taken advantage of new tools, since the 1990 survey.) What we have then in these proposed rules is a purely hypothetical, idealistically proposed planning resource allocation process that has not been empirically demonstrated to even equal in quality the process used by utilities today. We have, for lack of better terms, a Field of Dreams, planning proposal; i.e., if we spend the money, the benefits will come.

SJLP submits, for a utility of its size, without some demonstration and quantification that the increased dollars are cost beneficial to it in particular, spending that amount of money is simply not justified. SJLP does not want to be a part of a mandated process it considers inappropriate, wasteful, and a detriment to its customers and reiterates its earlier request to be exempted from the process completely, or to be granted authorization to file under a significantly modified planning process that addresses its concerns stated in this docket.

SJLP submits that the waiver or variance provision is not feasible due to the fact that it is both expensive and time-consuming for implementation. SJLP is willing to work with the Commission and its Staff, but it is the Company's belief that the results are the important issue, not the process. Expressed in different terms, this proposed process does not guarantee the desired results.

It is SJLP's understanding that the process proposed has not been implemented anywhere else in the United States. It appears to

be an untested, theoretical hybrid created in the hope that it will result in a better product. In that regard, it may produce the same disastrous results as "New Coke", Algerian LNG import facilities, and coal gasification plants.

Without any empirical cost/benefit analysis which can be subjected to scrutiny, these proposals should not be mandated. They should remain nothing more than suggestions which can be followed or disregarded as deemed appropriate by each utility as a part of general standards to ensure that some formal planning process is followed and reasonably documented. If that process is shown to be deficient at some future time, then perhaps there will be a justification for a more precisely mandated procedure.

The Commission should be wary of acting hastily, or implementing procedures which constitute "regulatory overkill." Underground residential electric service was perceived as a great thing in the late 1970's before most of the present commissioners were serving on the Commission. It was mandated by PSC rule. Then the requests for variance started coming in because it was costing more than originally perceived and wasn't functioning as originally predicted, either. The rules were rescinded in 1983. They were a great theory that did not pan out.

There is no great urgency on this issue, and the "energy sky" will not fall in if these proposed rules are not implemented immediately or even at all. The Commission should remember the motto of this state, "Sho-Me", and require more in the way of cost/benefit analysis, subjected to the scrutiny of a contested

case proceeding, before mandating the expenditure of millions of dollars that will then have to be collected from customers.

**MoPIRG Proposal:**

MoPIRG has proposed "that the Commission require electric utilities to provide 4.5% of gross revenues yearly for DSM,..." As with the Staff, this position emanates from, and is based upon, an unswerving belief in a theory.

Although some utilities may spend 4.5% of gross revenue on DSM, a flat amount dedicated only to DSM is not reasonable. Demand-side management expenses should occur when demand-side management is shown to be cost effective. The flat 4.5% requirement could actually lead to less efficiency due to the requirement to spend electric utility customer dollars on non-cost effective demand-side management programs. The criteria used to determine the number of dollars spent on DSM should be based on the cost effectiveness of the demand-side management activity.

**Load Analysis and Forecasting:**

The Staff presents excerpts from a document prepared after it had reviewed the load analysis and forecasting methods of the five largest electric utilities.

Critical observation by Staff about the proposed rulemaking is on page 17. It reads:

For none of the five utilities is it obvious that those who make the final resource decisions have a clear understanding of what is driving the forecast. Even though the questions were separated between management and technical staff, the documentation given the Project Team is of such a technical nature that decision makers would find it difficult or impossible to do anything more than a cursory evaluation of the load forecast. There is therefore a need for better load

forecast documentation which will make transparent the underlying assumptions and causal relationships that drive the forecast. Such a goal needs to be combined with the highest possible level of analysis which considers the impact of key variables on the decisions that affect customers' demand for electricity.

This section of the proposed rulemaking is based on this premise and is why Staff states "the primary goal in load forecasting is to have a set of information and analysis available which will allow decision makers to evaluate the risks (costs and likelihoods) which an inaccurate forecast will cause."

The Company does not agree that information now provided to decision makers is of such a technical nature that the decision makers would find it difficult or impossible to do anything more than a cursory evaluation of the load forecast. To the contrary, SJLP's forecasting area provides decision makers information which can and has been used in making sound decisions. Additionally, assumptions used in preparing the forecast and the risks associated with the forecast are presented, approved, and evaluated at the highest level.

It is interesting to note that no utility meets the requirements which Staff believes are needed for an effective forecasting program. This premise is throughout the Staff's comments and implies that the utility industry in Missouri is not doing an adequate job. As a result, it is the intent of the Staff to establish guidelines which will make the decision makers see the information Staff believes is important for making decisions. However, it ignores the fact that the Company's forecasts are now reviewed by decision makers in detail through both oral and written

presentations.

The Company submits that its current forecasting methods and conclusions are reasonably documented, understandable and provide decision makers sufficient information to deal with the critical decisions they face. In lieu of the proposed rules, the Company requests it be allowed exemption status from the requirements or, in the alternative, the Company submit instead its plans for review by this Commission and Staff.

**Cost Recovery:**

No Comments were filed, except the Company's, pertaining to the significant investment and ongoing costs of compliance with this rule. The impact of this rule will be in excess of 1% of annual revenues during the first year of the proposed rules and over 2% in the following years. SJLP requests recognition of these high costs and, should the Company be required to implement these rules, authorization to recoup expenses immediately.

**Size:**

The Staff described the various sizes of the utilities as a foundation for determining the appropriateness for filing requirements by the utilities. The conclusions were based on a review of the megawatthour sales made in Missouri for the utilities that Staff believes may fall under this rule. They further, propose to look at "megawatthours to retail electric customers for calendar year 1991 as identified in its annual report on file with the Commission." However, the annual report of a utility identifies megawatt-hour sales for the whole company, not just



Missouri jurisdictional. The annual reports the Company has reviewed did not include or indicate Missouri Jurisdictional sales.

While SJLP is uncertain where Staff got its numbers shown below in the right column, the number in the left column come from the utilities' published annual reports. By reviewing the top five utilities' annual reports, the following sales are indicated for 1991.

	1991 Annual Report MWH Sales	MWH Sales Reported by Staff on Page 36
Union Electric Company	31,610,000	25,193,680
Kansas City Power & Light Company	11,052,269	7,326,152
Utilicorp United	7,072,000	3,354,237
Empire District Electric Company	3,233,978	2,372,893
St. Joseph Light & Power Company	1,393,793	1,393,793
Citizens Electric Corp.		620,135
Cuivre River Electric Service Co.		68,711
Sho-Me Power Corp.		0 <sup>1</sup>

One can see these sales levels vary considerably from those mentioned in Staff comments on page 36, also shown in the above table in the right column. SJLP's position is that the size of the Company should be considered as a foundation for implementing or exempting utilities from reporting under this rule. As noted by Staff, these rules will cost the same to implement for each utility, regardless of the size of the Company. As can be seen by the table above, SJLP is over two times smaller than Empire

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<sup>1</sup>Sho-Me Power, prior to its purported conversion to a rural electric cooperative, the status of which is still open to question, did provide wholesale electric service, regulated by the PSC, to several Missouri municipalities. Therefore, SJLP questions the accuracy of the figure "zero" utilized by Staff.

District Electric, the second smallest utility to come under the proposed rule, and over twenty-two times smaller than the largest utility under the proposed rule.

It appears to the Company that the logical break point for the utilities would exclude both Empire and SJLP, if one were trying to determine a ranking by size for exclusion from this rule. SJLP supports its initial comments, which recommend criteria which exclude utilities which account for less than five percent of the state's retail sales. Total energy use information can be found in a publication by the Department of Energy -- Energy Information Report 0540. For 1990, the latest information, published in February 1992, shows Missouri retail sales accounted for 53,925,000 megawatthours, investor-owned utilities accounted for 38,636,000 megawatthours, publicly-owned utilities accounted 6,984,000 megawatthours, and cooperatives accounted for 8,304,000. St. Joseph Light & Power Company accounts for 1,336,147 megawatthours. This is less than 2.5 percent of the state's total and 3.5 percent of the investor-owned total.

St. Joseph Light & Power respectfully requests exemption.

#### SUMMARY AND CONCLUSION

There are a multitude of issues that have been commented on and many more that could have been. However, the following are what the Company sees as the essential points for the Commission to consider in weighing whether to implement the proposed rules, whether to modify them, or whether to utilize them only as

guidelines without the force of law:

- Staff's initial analysis and comments are based totally on theory and not reflective of real-world environment.

- Competitive analysis of program impacts performed on a business that the Company does not run or have the records for, is not only unrealistic but impossible absent direct access to said records. The process itself may be fundamentally flawed when antitrust and First Amendment considerations are weighed.

- Load-building data and requirements to be submitted are vague, non-economic development oriented, and unnecessary to perform long term resource acquisition planning.

- Fuel substitution has been mandated only in two states; the rest, at this time, have held the issue in abeyance. In the majority of states, utilities may, on a voluntary basis, analyze the feasibility of fuel substitution but are not mandated to do so. Further, entrance into this arena leads to the inevitable steps of mandating fuel types, the final result being the requirement by Staff and Commission to define what types of lighting are good, what types of cooling are good, what types of motors are good, etc.

- A cost/benefit analysis of implementing these rules is not available. A high cost (particularly when applied to smaller companies, as acknowledged by Staff) and hypothetical process is being proposed with no direct benefit correlation being analyzed and submitted. No prudent private individual would invest this magnitude of dollars without some kind of analysis of risk and a forecasted return on investment. It is doubtful that this type of

expenditure would survive a rate case type analysis if it were the utility proposing it.

- The size of utilities selected for compliance with these rules shows no relationship to size and/or costs that will be incurred.

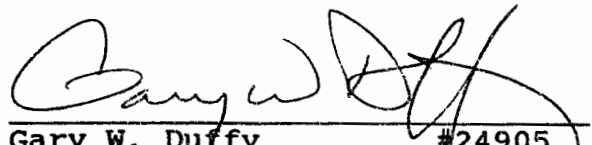
- Load forecasting today is being done efficiently, effectively, and is comprehensible to top management.

- No mechanism has been established to deal with cost recovery of increased planning expenses or DSM costs incurred.

- Requiring a utility to devote substantial resources, both financial and human, to this type of proposed process may actually reduce efficiency.

The above positions are a summary of SJLP's concerns and support the Company's request for the Commission to either exempt it entirely, allow it to follow a modified procedure, or defer implementation as to SJLP until there is more experience with the mandated procedure and it has clearly demonstrated its worth with regard to a utility the size of SJLP.

Respectfully submitted



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