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July 13, 2000

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Missouri Public Service Commission

Mr. Dale Hardy Roberts
Executive Secretary
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. EO-2000-845
St. Joseph Light & Power Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of the Reply of St. Joseph Light & Power Company to a Staff pleading, an OPC pleading, and a pleading from AG Processing that were filed in this case.

If you have any questions, please give me a call.

Sincerely yours,

Gary W. Duffy

Enclosures
cc w/encl:
Doug Micheel, Office of Public Counsel
Nathan Williams, General Counsel's Office
Stuart W. Conrad
Tim Rush

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the application of St. Joseph Light & Power Company for the issuance of an accounting authority order relating to its electrical operations.	))))	Case No. EO-2000-845

REPLY OF SJLP TO STAFF RESPONSE, OPC'S MOTION TO DISMISS, AND AGP'S APPLICATION TO INTERVENE

COMES NOW St. Joseph Light & Power Company ("SJLP" or "the Company"), by and through its counsel, and for its reply to (a) "Staff Response to Application for Accounting Authority Order and Motion to Establish Date for Staff Recommendation and Other Procedural Dates," (b) "Public Counsel's Motion to Dismiss St. Joseph Light & Power Company's Application for Accounting Authority Order, Or In the Alternative, Request for Hearing," and (c) "Application to Intervene, Request for Inquiry or Hearing of AG Processing Inc.," respectfully states as follows:

1. The three referenced documents (comprising 21 pages of text) oppose the relief sought in SJLP's application filed on June 23, 2000. Of the three, only the Office of the Public Counsel's document is styled as a motion to dismiss. Pursuant to 4 CSR 240-2.080(16), SJLP is allowed up to ten days to respond to a motion.

2. In this document, SJLP will demonstrate briefly why there is no basis for OPC's motion, that OPC's reasoning in its motion is faulty, why the Staff's comments about an emergency rate case are misplaced, and why, although SJLP does not oppose the intervention of AG Processing Inc. (AGP), some of the statements made in its pleading are incorrect.

3. In summary, SJLP simply seeks an Accounting Authority Order ("AAO") from the Commission which finds that the costs relating to the Lake Road Power Plant incident of June 7, 2000 are extraordinary and allows SJLP to defer those costs on its books until the Commission can examine them in a subsequent rate case. Contrary to some assertions in the pleadings filed in response to the application, SJLP does ***not*** seek any "recovery" of dollars in this case. It simply seeks the same type of order the Commission has issued in the past in similar situations when extraordinary events have occurred. The permission sought from the Commission merely allows SJLP to record the expenses on its books as a deferral rather than expense them in the year in which they occurred. Thus, it provides SJLP's external auditors with some assurance that the costs will be considered by the Commission at some future time in a subsequent general rate case. At that later time, the Commission can determine whether some, all or none of the costs may be included in future rates for SJLP.

4. Both the Staff and OPC suggest that SJLP should abandon its request for an AAO and simply file a general rate case coupled with a request for emergency rate relief. SJLP appreciates the advice, and it considered such a filing, but Staff and OPC overlook the fact that a rate case will not likely produce the relief SJLP seeks either in the form it is needed, or in the time it is needed. SJLP needs the order from the Commission authorizing the special accounting treatment before it closes its books for the year 2000. A rate case is not the best remedy for that problem since a rate case filed today would not likely produce an order from the Commission before June 2001, given the 30 day notice requirement in the statute and the Commission's ability to suspend such tariffs for ten months. On the other hand, an AAO has been an appropriate remedy in the past in similar situations, and it remains the appropriate remedy for this situation. By granting the AAO, the Commission preserves the issue so that it can deal with it later in the context of a rate case. In other words, SJLP realizes that the Commission, in

granting an AAO, does not rule on the merits of whether the amounts will ever appear in rates. Having provided this brief summary of its response, SJLP will now respond in detail to the various pleadings.

Response to OPC's Motion to Dismiss

5. OPC styles its pleading as a "motion to dismiss" SJLP's application. For such a motion to be successful, there has to be some recognized legal basis for such dismissal, such as failure to state a claim upon which relief can be granted, failure to comply with some statutory or regulatory procedure, or a statute of limitations which would bar the action. Significantly, OPC provides no *legal* basis for its argument for dismissal of the application. Instead, OPC attacks whether any costs of this nature should ever be considered in rates. OPC's opposition to recovery of extraordinary amounts in rates is neither surprising nor new. Indeed, seventeen years ago the OPC opposed the amortization of repair and replacement power costs at several Kansas City Power & Light Company plants that had experienced unplanned outages. In ***Re Kansas City Power & Light Co.***, 26 Mo.PSC (N.S.) 104, (Mo.PSC, July 8, 1993) the OPC claimed there should be no recovery for the "unrecovered cost of repair and replacement power" arising from the outages because they were due to negligence and management failures, and, separately, that recovery of such costs would violate the rule against retroactive rate-making. ***Id.*** at 118-119. The Commission wisely rejected the OPC's argument, saying the following:

> As pointed out in the Staff's reply brief this Commission has a long history of allowing reasonable amortization periods of expenses connected with extraordinary casualties, commencing with ***Re: Kansas City Power & Light Company***, 8 Mo.PSC. Reports 223, 279 (Aug. 13, 1918). The practice has continued as recently as a decision in ***Re: Missouri Public Service Company***, Case No. ER-81-85 (May 27, 1981).
>
> The Staff's reply brief also cites extensive authority from other jurisdictions which permits utilities to recover extraordinary costs associated with casualty losses. ... .

Id. at 120.

6. In rejecting the OPC's contentions then, the Commission cited and relied upon the reasoning found in the seminal case of ***Narragansett Electric Co. v. Burke***, 415 A.2d 177 (R.I. 1980). In that proceeding, the Rhode Island Commission was faced with the question of amortizing expenses incurred by the utility in response to an ice storm that caused outages on its system. The Rhode Island Supreme Court said:

> ... Because of the unpredictable and severe nature of the storm, it is unlikely that company officials, in planning their operational expenses, could take into account the cost of repairing the widespread damage that occurred .... . The existing rates, moreover, as the commission indicated in its decision, were 'not in any fashion [based on] the extraordinary expenses of restoration of service after the ice storm.' Since the company incurred highly extraordinary expenses not covered by existing rates in combating this freakish storm, it is difficult to perceive how the future efficiency of the utility would be furthered by the application of the rule [against retroactive ratemaking] in this instance.
>
> We have also noted that the rule serves to protect present customers from paying for a utility's past operating deficits. This aspect of the rule must be weighed against the interest of providing immediate service to customers when a destructive, unexpected storm occurs. On such an occasion the public interest in quickly restoring heat and electricity to the homes of customers must prevail.

Id. at 120. This reasoning by the Rhode Island Supreme Court, adopted by the Commission in 1983 in ***Re Kansas City Power & Light Co.***, 26 Mo.PSC (N.S.) 104, is as applicable today as it was twenty years ago. As long as insurance costs are not built into rates to cover extraordinary events, amortizing the expenses resulting from that are a reasonable and prudent exercise of the Commission's jurisdiction. Thus, the Commission concluded in ***Re Kansas City Power & Light Co.***: "The Commission finds the practice of amortization, over a reasonable period of time, of the costs of accidents or extraordinary events should be utilized in this case and the Staff's proposed amortization period in this matter is reasonable and proper for establishing a permanent level of rates." *Id.* at 120.

7. OPC's motion in this case apparently is based on a prior Commission case under totally different circumstances in which the Commission refused to grant a deferral relating to "purchased power costs" even though it did grant a deferral for costs related to "life extension construction and a coal conversion project"arising out of the same situation.[1] ***See, Re Missouri Public Service***, 1 MoPSC 3d 200 (Mo.PSC, Dec. 20, 1991). OPC takes that situation out of context and elevates it to the mistaken belief and erroneous assertion that purchased power costs can *never* be considered "extraordinary." In the case cited by OPC in paragraph 2 of its motion, the electric utility planned ahead for several outages at its power plant as a part of a "life extension" of the plant. There was no sudden and unforeseen event – with flames – that caused the Sibley plant of Missouri Public Service to go off line in that situation. The outages were planned months in advance. Therefore, the Commission could have reached the conclusion that purchased power costs *in that situation*[2] did not qualify as "extraordinary, unusual and unique, and not recurring." There also may have been other factors leading to the Commission's decision, including the magnitude of the impact of those costs on that particular utility. Nevertheless, it is disingenuous for OPC to compare the planned shutdown of Sibley for major structural changes to the starkly contrasting untimely and unexpected shutdown of SJLP's Unit 4/6 in which personal injuries to plant personnel were narrowly averted. The situation of an unexpected outage at a power plant and the eventual recovery of the associated purchased power expenses presented by this application by SJLP is more closely related to the situation in ***Re***

[1] According to the Commission's Report and Order, the total costs were "over 23 percent of MPS's electric net income." ***Id.*** at 209.

[2] Indeed, the Commission noted that the MPS situation involved a request to defer increased costs under previously entered contracts for purchased power. 1 MoPSC 3rd at 210. "As the Commission has discussed earlier, only costs associated with extraordinary, nonrecurring events should be deferred since they are not part of the normal operating expenses of a company. Power purchases of this nature are not extraordinary events." ***Id.*** at 210-211.

Kansas City Power & Light Co., 26 Mo.PSC (N.S.) 104 than to the one described in ***Re Missouri Public Service***, 1 MoPSC 3d 200.

8. The loss of Unit 4/6 to SJLP represents the loss of a generating unit that produced ***more than one-fourth of the electric system requirements*** for SJLP in 1999. That is undisputable. Unit 4/6 is also a relatively low-cost unit, in that fuel costs for Unit 4/6 were in the range of $12 per megawatt hour, while power on the open market to replace that generated by Unit 4/6, as revealed by the bids SJLP received for replacement power in this situation, can be ***more than ten times more expensive***. It is the cost and magnitude of the open-market replacement power that is largely driving this application. **Remember, SJLP has lost more than one-fourth of its generating capacity due to this unplanned turbine shutdown.** To fulfill its statutory requirement for safe and adequate service, and more basically, its mission to serve its customers during some of the hottest periods of the year, SJLP has had to quickly attempt to find relatively large amounts of power to take the place of the capacity lost with Unit 4/6. Attached to its application, SJLP provided its best estimate of the cost of that replacement power. After taking into account offsetting amounts, the costs from this turbine failure are expected to be of a magnitude comparable to approximately ***fifty percent*** of SJLP's 1999 earnings, excluding merger-related expenses.

9. Under the reasoning in ***Re Missouri Public Service***, 1 MoPSC 3d 200, since the amount is *ten times* more than the five percent that is needed under the Uniform System of Accounts to defer such costs, SJLP does not need the Commission's authority to defer the amount on its books. However, the Commission has said that

> if an item thought to be extraordinary did not meet the five percent requirement or a company felt there remained too much uncertainty of deferring these costs without Commission approval, a utility could file an application ... for a Commission decision on whether the deferral should be made. By seeking a Commission decision the utility would be removing the issue of whether the item

> is extraordinary from the next rate case. All other issues would still remain, including, but not limited to, the prudency (sic) of any expenditures, the amount of recovery, if any, whether carrying costs should be recovered, and if there are any offsets to recovery.

Id.. at 203-204. There apparently is an issue as to whether these costs are extraordinary, at least in the mind of the Public Counsel, since it maintains they are not. (OPC motion, p. 2, ¶ 2) The Commission can therefore resolve this issue through the issuance of the order. As noted in ***Re Missouri Public Service*** at 204, the Commission is not required to set the matter for hearing.

10. In paragraph 3 of its motion, OPC makes the incredible assertion that the incident at Lake Road was not "extraordinary" or "nonrecurring" as "such outages occur from time to time." While outages unfortunately do occur at power plants, one of this magnitude (wiping out over one-fourth of the company's generating capacity for the entire summer) is hardly an annual event which would be treated as a "ho-hum" matter of course in a rate case. OPC then attempts to bolster its argument by noting that Kansas City Power & Light Company (KCPL) has not sought an AAO for its outage at the Hawthorne Plant. SJLP is not privy to the reasons why KCPL has not sought an AAO. Perhaps KCPL did not lose more than one-fourth of its generating capacity or stand to lose half its 1999 net income as a result of the Hawthorne incident. Perhaps the fact that KCPL's residential electric rates are 32 percent higher[3] than SJLP's has some bearing on the situation. Nevertheless, whether KCPL should or should not have sought an AAO is not an issue presented by *this* case. The fact that KCPL has not sought one does not mean that SJLP should not receive an AAO and does not make the June 7, 2000 incident at Lake Road any the less extraordinary.

11. In paragraph 4 of its motion, OPC implies that an "Act of God or unforeseen natural disaster" is a requirement for an AAO. This is incorrect. According to the Uniform

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[3] Source: EIA/Electric Sales and Revenue, 1998.

System of Accounts, as quoted in ***Re Missouri Public Service*** at 203, the definition covers "events and transactions ... which are not typical or customary business activities of the company... ." OPC then alleges the possibility of "improper maintenance, employee error or numerous other factors." As SJLP has already informed the Staff and OPC, several investigations are ongoing as to the cause of the turbine malfunction. SJLP does not, at this time, know the cause of the event. This is something that the Commission can inquire into in a subsequent rate case in which the deferred amounts are considered. In any event, there is no requirement that the costs result only from "Acts of God" or nature. They only have to be "extraordinary." The Commission has never created a test such as that suggested by OPC. Indeed, the Commission has previously granted AAO's for the replacement of natural gas lines due to a change in regulations by the Commission and for post-retirement benefits. See, e.g., ***Re Missouri Gas Energy***, 3 MoPSC 3d 201 (1994) and ***Re Missouri Gas Energy***, 3 MoPSC 3d 203 (1994). Neither of those were an "Act of God" or an "unforeseen natural disaster."[4]

12. In paragraph 5 of its motion, OPC erroneously asserts that SJLP "could have been better insured and thus mitigated such "incremental" costs. OPC includes no facts whatsoever to support its assertion. SJLP was fortunate to have some limited business interruption insurance to cover some aspects of the costs[5] in this situation, but it is SJLP's belief that such insurance coverage is extremely rare in its type of business. Further, SJLP is not aware of any issue raised by OPC in any recent electric rate case at the Commission where the OPC has either demonstrated that such insurance is either (a) available or (b) affordable for Missouri electric utilities, or even where OPC has argued that rates should be increased to include the costs of such

[4] Black's Law Dictionary defines an act of God as "an act occasioned exclusively by violence of nature without interference of any human agency."

[5] These proceeds are already reflected in the cost estimate provided with the Application.

insurance. Instead, as noted earlier in the discussion of ***Re Kansas City Power & Light Co.***, 26 Mo.PSC (N.S.) 104, the Commission and many other public utility commissions have traditionally used the approach of amortizing extraordinary costs in rates on an after-the-fact basis, made possible sometimes by an AAO if the extraordinary event did not happen to occur within a test period for a rate case.

13. OPC also erroneously asserts in paragraph 6 that SJLP is requesting "recovery" of dollars through its AAO application. OPC is flatly mistaken and failed to read SJLP's pleading carefully. No "recovery" of dollars is sought via the AAO application. What is sought is permission to account for the expenses as a deferral for later examination by the Commission in a rate case. In that later rate case, SJLP has said it would seek recovery of the costs over an amortization period of five years. If OPC did not understand the phrasing in the application, it should at least have been obvious to OPC that since there was no tariff filing accompanying the application which would change SJLP's rates for service, there can be no "recovery" of expenses emanating from this application.

14. In paragraph 7, OPC claims SJLP has provided no information to support its claim that its financial integrity has been threatened. SJLP believed that making the assertion that the costs of the June 7, 2000 incident amounted to approximately half of its net income for 1999 would make that obvious. Nevertheless, if the Commission wishes more financial information, SJLP will respond to any such inquiries. Also in paragraph 7, OPC says that SJLP is free to file a rate case. As noted earlier in paragraph 4 of this response, a rate case does not accomplish the same thing in the same time as an AAO, especially in the present circumstances of a pending merger.

Reply to Staff's Response

15. Because the Staff's Response raises some of the same issues as OPC, SJLP will attempt to incorporate some of its previous responses by reference in order to shorten this document.

16. At the end of paragraph 2 of its Response (and in a different form in paragraph 7), Staff makes the same mistaken assertion as OPC as to whether this application seeks "cost recovery" of the amounts involved in the June 7, 2000 Lake Road incident. SJLP assumes this mistake emanates from language in paragraph 9 of SJLP's application. In the first sentence of that paragraph, SJLP told the Commission exactly what it sought in this application, namely, authority to defer the costs until the effective date of SJLP's next rate case. In the next sentence, SJLP sought to make the Commission aware that "in such rate case" it would seek to recover those costs over a five year period in a manner similar to that utilized by the Commission for other such events. Therefore, the application does not seek "recovery" of the deferred costs *in this proceeding*. Recovery of the costs is beyond the scope of this proceeding.

17. In paragraph 3, Staff argues that SJLP should file a rate case instead of requesting an AAO. Staff then includes a lengthy recitation of the events surrounding an outage at a Missouri Public Service (MPS) facility in 1980 and an emergency rate case that ensued. What that discussion has to do with the facts or issues presented in this case is not apparent (other than the obvious fact that SJLP could file a rate case if it desired to do that) since the financial situation of MPS in 1980 has not been shown by the Staff to be directly comparable to the financial situation of SJLP in July 2000. Of course, MPS was also not in the late stages of a merger case in 1980. As indicated earlier, SJLP needs assurance by the time it closes its books for 2000 that there is at least some prospect for recovery of the costs in a future rate case. SJLP realizes that there may never be such a rate case if the pending merger and regulatory plan as

filed by UtiliCorp and SJLP is approved by the Commission and accomplished. As noted earlier in this document, there is no assurance and little likelihood that if SJLP filed a rate case tomorrow, it would obtain the type of relief it seeks in the AAO application within the time required. Further, filing a rate case during the pendency of a merger proceeding would give some parties the opportunity to argue that the merger proceeding should be delayed for a year or more while the rate case is investigated.

18. In paragraph 4, Staff makes the same allegation as OPC that the incident at Lake Road was not an act of God. As noted earlier, an act of God is not a prerequisite for the Commission to issue an AAO. An AAO being issued by the Commission also does not prevent the Commission from conducting a prudence investigation in the rate case when the costs are sought to be included in rates. SJLP notified the Staff of the incident, and as the Staff has noted, the Staff has had its people on site to view the situation. SJLP has cooperated fully in Staff's attempt to investigate the matter. Simply put though, the fact that the turbine failure was not the result of a flood or storm is *irrelevant* for purposes of this proceeding.

19. In paragraph 5, the Staff apparently takes issue with SJLP's estimate of costs, implying that SJLP "has the incentive to estimate costs on the high side." *They are just estimates* because that is all that was available at the time the application was filed. A major electric turbine failure is not like hail damage to your car where an insurance adjustor comes out and gives you a check. It is likely to be several months before all the costs are known. This criticism by the Staff is unfounded. More than one-fourth of SJLP's generating capacity has been rendered useless during the hottest period of the summer when it is needed the most and when the cost of power to replace the loss on the open market will be the highest. SJLP has given the Commission its best estimate of the impact. Even if SJLP has overstated the costs by half, it is still an extraordinary event at a level where the Commission has previously granted the type of

relief SJLP seeks. Finally, if and when the Commission considers the costs from the incident in a future general rate case, it will not be dealing with estimates. It will be dealing with the known and measurable costs. Therefore, Staff's unwarranted aspersion that SJLP has over-estimated the costs is not only unnecessary and irrelevant, it is inappropriate.

20. In paragraph 7, the Staff discounts the possibility of a temporary electric surcharge, citing the Supreme Court's decision in 1979 eliminating the fuel adjustment clause. That case is not a total ban on surcharges *per se* or a requirement that rates be changed only in the context of general rate cases. The recent judicial endorsement of the Commission's purchased gas adjustment procedure stands for the proposition that a utility can have separate components to its rate for service. ***See, State ex rel. Midwest Gas Users' Association v. Public Service Commission***, 976 S.W.2d 470 (Mo.App.W.D. 1998). The Commission therefore could properly craft a surcharge giving proper consideration to all relevant factors.

21. In the same tone as its inappropriate charges about inflating estimates, the Staff in paragraph 8 alleges that SJLP "is trying to bootstrap approval of the pending SJLP-UtiliCorp proposed merger and regulatory plan." SJLP included a brief discussion (see paragraphs 11 and 12 of the Application) of its perception of the impact of the merger on the AAO application. It did this because SJLP thought it was reasonable to assume that the Commission would ask a question such as: "What effect does this AAO have on the pending merger?" The application sought to briefly explain the impact in either the situation of the merger being approved or denied. If making the Commission aware of how a particular action is likely to affect other pending actions at the Commission is "bootstrapping" then SJLP is guilty as charged. In similar fashion, the Staff on page 11 refers to an SJLP "offer" as being "illusory" because a prudence investigation may determine that there was imprudence or the actual costs are less than predicted. As indicated earlier, the approval of an AAO as sought here by SJLP does not serve to insulate

SJLP from a future prudence investigation, or alter in any way the results of such investigation. It merely allows the deferral of the costs on the company's books until a rate case when the costs can be examined for prudence. The Staff knows that and knew it when it wrote its response.

Reply to AGP's Application to Intervene

22. In paragraph 3, AGP claims that the granting of an AAO constitutes "preemptive rate relief." At best, this assertion is mistaken and at worst, it is a false statement of the law. In ***Missouri Gas Energy v. Public Service Commission***, 978 S.W.2d 434 (Mo.App.W.D. 1998), a case involving an AAO issued by the Commission, the Court of Appeals referred to ***State ex rel. Office of the Public Counsel v. Public Service Commission,*** 858 S.W.2d 806 (Mo. App. 1993), a previous case involving the effect an AAO issued by the Commission has on rates. It said that an AAO is not the granting of rate relief:

> This court specifically stated [in ***Office of Public Counsel***] that by allowing a deferral under an AAO, the PSC was not granting "rate relief" to the utility, and was not determining the "actual amount of the deferred costs" that would be recovered. Instead, the rate decision would "be determined in a later rate case... ."

978 S.W.2d at 437.

23. In other paragraphs, AGP makes assertions similar to those of Staff or OPC, such as possible imprudence, insurance coverage, and the fact that KCPL has not sought an AAO for the outage at its Hawthorne plant. AGP's assertions are not significantly different from those previously responded to, so SJLP's responses are incorporated by reference for the sake of brevity.

Summary

The arguments of OPC that the application should be dismissed are without legal basis. The application was properly filed and seeks relief similar in nature to relief which the

Commission has granted numerous times in the past. There is no lawful basis on which the Commission can dismiss the application as OPC requests.

OPC and Staff's suggestion that SJLP withdraw the AAO application and instead file a rate case will not be followed by SJLP because it is not designed to produce the needed result in the appropriate time period.

AGP's arguments mostly duplicate those of Staff and OPC. SJLP does not oppose the intervention of AGP in this proceeding.

The Commission should issue an order granting the application as filed. It essentially gives some measure of financial protection to SJLP in the event the pending merger and regulatory plan does not take place by preserving the issue of recovery of the dollars. The only determination to be made by the Commission is whether the event was extraordinary. The Commission reserves the right to take any other position when it examines the costs in a rate case. The Commission should allow SJLP a reasonable time in which to file a general rate case in which the deferred costs would be examined, e.g. two years. In the order, the Commission should make a determination that the costs are extraordinary since OPC has contested that question. The Commission has previously determined that it is not required to have a hearing to issue such an order.

If the Commission nevertheless determines that a hearing is appropriate in this situation, then, as previously noted in SJLP's pleadings, the hearing should be set before the end of this year to allow the Commission time in which to issue an order providing (or denying) the relief SJLP has requested within the time requested. If the relief is not received prior to SJLP closing its 2000 books, that will essentially constitute a denial of the application. Given Commission precedent, that would be an unreasonable and arbitrary action by the Commission. If a hearing is

set before the end of this year, any procedural schedule in this case would have to be expedited in order to receive an order by year end.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing document was served on the parties listed below by either hand delivery or placement of same with the United States Postal Service, first class postage prepaid, this 13th day of July, 2000.

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