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July 3, 2000

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FILED<sup>2</sup>

JUL 03 2000

Missouri Public  
Service Commission

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

**RE: Case No. EO-2000-845 – 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**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF RESPONSE TO APPLICATION FOR ACCOUNTING AUTHORITY AND MOTION TO ESTABLISH DATE FOR STAFF RECOMMENDATION AND OTHER PROCEDURAL DATES.**

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

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim  
Chief Deputy General Counsel  
(573) 751-7489  
(573) 751-9285 (Fax)

Enclosure  
cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**FILED<sup>2</sup>**

**JUL 03 2000**

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     )

Missouri Public  
Service Commission  
Case No. EO-2000-845

**STAFF RESPONSE TO APPLICATION FOR ACCOUNTING AUTHORITY ORDER  
AND MOTION TO ESTABLISH DATE FOR STAFF RECOMMENDATION AND  
OTHER PROCEDURAL DATES**

Comes now the Missouri Public Service Commission Staff (Staff) in response to (1) the Application For Accounting Authority Order (AAO) and (2) Motion To Establish Date For Staff Recommendation And Other Procedural Dates of St. Joseph Light & Power Company (SJLP). In its Motion, SJLP requests that the Commission establish August 1, 2000 as a date for the Staff, and any other interested party, to file a recommendation with the Commission. The Staff does not need until August 1, 2000 to submit a recommendation to the Commission. The Staff is opposed to SJLP's Application for an AAO being utilized as a cost recovery mechanism relating to the unplanned shutdown of Turbine 4 and Boiler 6 at SJLP's Lake Road Power Plant. AAOs are cost deferral mechanisms, not cost recovery vehicles. The Staff recommends that SJLP withdraw its Application and seek interim/emergency and/or permanent relief by filing an emergency/interim rate case and/or a permanent rate case. If SJLP desires to continue to pursue an AAO as a cost recovery mechanism, the Commission should set an intervention period, and schedule a prehearing conference for the purpose of the parties submitting to the Commission a proposed procedural schedule.

The Staff would note that members of the Commission's Electric Department already have visited the Lake Road Power Plant subsequent to the incident on June 7, 2000. These individuals and other members of the Staff also have already met with SJLP regarding its filing

which occurred on June 23, 2000. In fact SJLP asked for a meeting with the Staff, which occurred the day before SJLP filed its Application and Motion. The Staff appreciates having had the opportunity to meet with SJLP, ask questions and indicate its initial reaction. Much of what the Staff indicated to SJLP at the meeting prior to its filing with the Commission is contained in this Staff response.

In support of its recommendation, the Staff states as follows:

1. SJLP states in its Application that the current estimate of the cost of incremental replacement energy respecting Lake Road Unit 4/6 is \$7,105,000, assuming Lake Road Unit 4/6 is back in service by September 1, 2000. (SJLP Application, p. 3., para. 6). SJLP relates in its filing the financial impact of the \$7,105,000 unplanned outage as follows:

- a. it "represents approximately 50% of the Company's 1999 earnings . . ." (SJLP Application, p. 3, para. 6);
- b. "these expenditures are extraordinary and material to the company's earnings and cash flow . . ." (SJLP Application, p. 3, para. 7);
- c. "the Company has no other recourse but to seek recovery of these incremental costs in order to maintain its financial integrity . . ." (SJLP Application, p. 3, para. 8);
- d. "the requested accounting procedures are necessary to enable SJLP to maintain its financial integrity" (SJLP Application, p. 4, para. 10); and
- e. "Approval of this accounting authority request will protect the Company's financial integrity if the merger is not approved by the Commission." (SJLP Application, p. 4, para. 11).

In addition, SJLP alleges that "2000 year-to-date earnings have lagged prior years. . ." (SJLP Application, p. 3, para. 7). The Staff maintains that SJLP should withdraw its Application for an AAO and file an interim/emergency case and/or a permanent rate case.

2. The most recent Commission statement respecting AAOs can be found in its March 23, 2000 Order Concerning Non-Unanimous Stipulation And Agreement, Denying

Motion To Modify Procedural Schedule, Granting Reconsideration As To Accounting Authority Order And Denying Motion To Compel in Case No. WR-2000-281, which is the Missouri-American Water Company pending rate case. Among other things, the Commission related at pages 12 - 14 of its Order that:

... AAOs should be used sparingly because they permit ratemaking consideration of items outside the test year ...

... The Commission, pursuant to its authority to prescribe uniform accounting methods at Section 393.140(4), RSMo, has adopted the Uniform System of Accounts (USOA) and required public water utilities to comply with it. Rule 4 CSR 240-50.030(1).<sup>1</sup> The USOA authorizes utilities to defer extraordinary and non-recurring expenses without prior permission of the Commission. State ex rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806, 810 (Mo.App., W.D. 1993); In the Matter of Missouri Public Service, 1 Mo.P.S.C.3d at 203. ...

The only benefit from seeking prior Commission approval for deferring costs is to remove the issue of whether those are extraordinary from the case. *Id.*, at 203-204. ...

State ex rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806, 810 (Mo.App., W.D. 1993) was the Public Counsel's appeal of the Commission's Report And Order in In the Matter of Missouri Public Service, Case Nos. EO-91-358 and EO-91-360, 1 Mo.P.S.C.3d 200 (1991), in which the Commission granted an AAO to Missouri Public Service (MPS) to defer depreciation expenses and carrying costs associated with the life extension construction and coal conversion project at MPS's Sibley Generating Station. (The Commission denied MPS's request to defer certain costs associated with two purchase power contracts. MPS did not seek judicial review of this decision of the Commission.). The Western District Court of Appeals affirmed the Commission's Report And Order.

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<sup>1</sup> 4 CSR 240-20.030(1) Uniform System Of Accounts – Electrical Corporations is comparable to 4 CSR 240-50.030(1) Uniform System Of Accounts – Water Companies.

In Case Nos. EO-91-358 and EO-91-360, MPS presented to the Commission four considerations which it asserted were the benefits of allowing deferral of the costs of which it requested deferral: maintaining the financial integrity of the utility, rate stability, lessening the effect of regulatory lag and avoidance of rate case expense. The Commission held that the most significant inquiry in a deferral case is the determination whether the event is extraordinary, i.e., unusual and nonrecurring. 1 Mo.P.S.C.3d at 206-07. The Commission further stated that although each of the four considerations identified by MPS is a reasonable goal, none of them is particularly relevant in determining whether an event is extraordinary. Id. Respecting financial integrity, the Commission said that “[i]f a utility’s financial integrity is threatened by high costs so that its ability to provide service is threatened, then it should seek interim rate relief.” Id. at 207.

The Commission has never authorized an AAO that at the same time included recovery of the costs in question. While the Staff is uncertain whether SJLP’s request will meet the appropriate criteria after the Staff has had an opportunity to review SJLP’s representations, SJLP’s present effort is misdirected since SJLP is seeking cost recovery through the vehicle of an AAO.

3. An interim/emergency case and/or a permanent rate case is the appropriate procedure for SJLP to seek cost recovery of the costs in question. Pre-dating the creation of UtiliCorp United Inc. and the establishment of MPS as a division of UtiliCorp, there is a Missouri Public Service Company (MoPub) interim rate increase case involving an outage at the Sibley Generating Station Unit No. 3 in August 1980. On September 5, 1980, MoPub filed revised tariffs designed to increase rates to its Missouri retail customers on a permanent basis. MoPub sought to increase annual electric revenues on a permanent basis by approximately

\$29.25 million, exclusive of franchise taxes. Re Missouri Public Service Co., Case No. ER-81-85, Report And Order, 24 Mo.P.S.C.(N.S.) 332 (1981).

On November 5, 1980, MoPub filed interim tariffs with the Commission to recover costs, including purchased power, associated with the failure of the Sibley Generating Station Unit No. 3. MoPub sought to increase annual electric revenues on an interim basis by approximately \$15 million, exclusive of franchise taxes. MoPub also requested authority to defer and recover in future rates certain extraordinary purchased power and maintenance costs incurred as a result of the outage. A hearing was set for February 23, 1981 and other procedural dates were scheduled by the Commission by Order dated December 4, 1980. A prehearing conference was requested by the Staff and scheduled by the Commission for January 26, 1981. The Staff and MoPub entered into a Stipulation And Agreement in which certain issues, but not all issues were resolved. A hearing for February 3, 1981 was requested in order to submit the Stipulation And Agreement for Commission approval because an Order from the Commission effective on or before February 13, 1981 was being sought in order to provide MoPub and its independent auditors with a basis for accounting and ratemaking treatment of the costs associated with the outage for purposes of the MoPub's 1980 and future financial statements. Re Missouri Public Service Co., Case No. ER-81-154, Report And Order, 24 Mo.P.S.C.(N.S.) 150, 150-51 (1981); State ex rel. Fischer v. Public Serv. Cmm'n, 670 S.W.2d 24, 25 (Mo.App. 1984).

In a Report And Order dated February 3, 1981, the Commission, in accepting the Stipulation And Agreement, directed that MoPub would be allowed to recover in rates for electric service all costs, including purchased power costs, associated with the generator failure in the amount of \$6.825 million; these costs were to be recovered through MoPub's cost of service over a reasonable period of time, which was to be determined by the Commission in its

Report And Order in MoPub's permanent rate case Report And Order in Case No. ER-81-85; and the hearing previously scheduled for February 23, 1981 in Case No. ER-81-154 for MoPub's interim rate increase request would occur. The Commission noted in its February 3, 1981 Report And Order that MoPub had agreed to reduce its request for interim rate relief from \$15 million to \$6.088 million annually, exclusive of franchise tax. Re Missouri Public Service Co., Case No. ER-81-154, Report And Order, 24 Mo.P.S.C.(N.S.) 150, 151-52 (1981); State ex rel. Fischer v. Public Serv. Cmm'n, 670 S.W.2d 24, 25 (Mo.App. 1984).

On February 20, 1981, the Staff in the interim rate increase case, Case No. ER-81-154, filed a Motion To Dismiss And Request For An Order Disallowing Any Additional Interim Relief, based primarily on the Staff's position that no emergency or immediate need for additional funds existed. The Commission identified the standard for interim rate relief as follows:

One of the Commission's earliest considerations of an interim rate request resulted in a denial on the grounds that the company's property was not being confiscated and the fact that earnings were below that previously authorized should be fully explored in a proceeding involving permanent rates. *In Re Southwestern Bell Telephone Company*, 2 Mo.P.S.C.(N.S.) 131 (1949).

More recently the Commission has announced the following standards for interim relief:

"Therefore, it is incumbent upon the Company to demonstrate conclusively that an emergency does exist. The Company must show that (1) it needs the additional funds immediately, (2) that the need cannot be postponed, and (3) that no other alternatives exist to meet the need but rate relief."

*In Re Missouri Public Service Company*, Case No. 18,502.

The Commission has generally assessed those conditions by looking to the adequacy of a company's cash flow and its interest coverage for the purpose of borrowing money. In the instant case, it appears that none of these conditions are present sufficiently to dictate interim relief.

Re Missouri Public Service Co., Report And Order, Case No. ER-81-154, 24 Mo.P.S.C.(N.S.) 245, 247 (1984).

Supplemental testimony offered by MoPub disclosed that as a result of the February 3, 1981 Commission Report And Order in Case No. ER-81-154, which prevented the charging to 1980 expenses of all of the costs related to the outage, the emergency or severe crisis had been alleviated although MoPub still had a revenue deficiency. At the hearing held on February 23-24, 1981, the MoPub witness agreed that MoPub's interest coverage, as a result of the February 3, 1981 Report And Order, was above the level required by its Indenture of Mortgage to permit the issuance of long-term debt and its ability to continue to render service was not seriously impaired. The Commission held that evidence did not reflect a situation proper for the granting of an interim rate increase. Re Missouri Public Service Co., Report And Order, Case No. ER-81-154, 24 Mo.P.S.C.(N.S.) 245, 246 (1981). The Commission, thus, did not allow any interim rates in Case No. ER-81-154. Id. at 248; State ex rel. Fischer v. Public Serv. Cmm'n, 670 S.W.2d 24, 25-26 (Mo.App. 1984).

MoPub and the Staff reached a Stipulation And Agreement in the permanent rate increase case, Case No. ER-81-85, and on May 18, 1981 an evidentiary hearing was held in Case No. ER-81-85. Consistent with the Stipulation And Agreement and the evidentiary hearing the Commission directed that MoPub be allowed to amortize the extraordinary purchased power costs associated with the outage over a period of two years and amortize the extraordinary maintenance costs associated with the outage over a period of 18 years. Re Missouri Public Service Co., Report And Order, Case No. ER-81-85, 24 Mo.P.S.C.(N.S.) 332, 334-35 (1981); State ex rel. Fischer v. Public Serv. Cmm'n, 670 S.W.2d 24, 25-26 (Mo.App. 1984).

It has been judicially determined that "the Commission has power in a proper case to grant interim rate increases within the broad discretion implied from the Missouri file and suspend statutes and from the practical requirements of utility regulation." State ex rel. Laclede Gas Co. v. Public Serv. Cmm'n, 535 S.W.2d 561, 567 (Mo.App. 1976); State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Cmm'n, 585 S.W.2d 41, 48 (Mo.banc 1979)(citing the Laclede case). The Court noted that the Commission's standard for interim rate relief is an emergency standard:

. . . the Report and Order expresses the view that an interim increase should be granted only "where a showing has been made that the rate of return being earned is so unreasonably low as to show such a deteriorating financial condition that would impair a utility's ability to render adequate service or render it unable to maintain its financial integrity." . . .

Id. at 568-69. The Court held that it may be possible for some applicant to show beyond a reasonable doubt that its rate structure has become unjustly low without any emergency, as defined by the Commission having as yet occurred, but Laclede had not done so. Id. at 574.

It also should be noted that the Commission has held that an interim rate increase request cannot be entertained by the Commission without a general rate increase case pending before the Commission. Re Empire District Electric Co., Case No. ER-97-43, Order Regarding Request For Interim Rate Relief, 5 Mo.P.S.C.3d 101, 101-02 (1996). The Western District Court of Appeals in the Laclede case held that "[i]n its very nature, an interim rate request is merely ancillary to a permanent rate request . . ." 536 S.W.2d at 565. Eighteen years later, the Western District Court of Appeals held that "the interim rate case in issue, although assigned a number different from that assigned the permanent case by the Commission, has no independent status but is simply a part of the company's permanent rate request." State ex rel. Fischer v. Public Serv. Cmm'n, 670 S.W.2d 24, 27 (Mo.App. 1984).

Finally, on the point that SJLP should withdraw its Application for an AAO and file a rate case, the Staff would note the surrebuttal testimony of SJLP witnesses' Janet K. Pullen (page 11, lines 1- 4) and Larry J. Stoll (page 8, lines 18-19), wherein they indicate that absent the merger, SJLP would seek an immediate rate increase.

4. SJLP in its Application equates the Lake Road Unit 4/6 outage to "unforeseen significant events, such as floods and ice storms." (SJLP Application, p. 4, para. 9). The nature of the event in question is another significant difference between typical events resulting in AAO's and the instant request for an AAO. Floods and ice storms are acts of God and generally do not require a prudence investigation as to causation of the costs for which recovery is being sought. The Lake Road Unit 4/6 outage will require an investigation as to the causation of the event for which cost recovery is being sought.

5. As previously noted, SJLP asserts in its Application that the current estimate of the cost of incremental replacement energy respecting Lake Road Unit 4/6 is \$7,105,000, assuming Lake Road Unit 4/6 is back in service by September 1, 2000, and attaches as Appendix B a worksheet showing the elements of the cost in the estimate. (SJLP Application, p. 3, para. 6). A rate case will allow the Commission to address actual costs, rather than the estimates submitted by SJLP. A utility has the incentive to estimate costs on the high side to show an extraordinary or emergency situation, and in this case to overstate an indicated benefit from the proposed merger with UtiliCorp. The cause of the outage must be addressed in order to determine whether there should be any cost recovery from ratepayers.

6. SJLP states that absent an AAO, an alternative method of recovery would be necessary and suggests that the Commission could approve a temporary energy surcharge. (SJLP Application, p. 4, para. 10). SJLP's mentioning of this method of recovery is curious

given its reference to "the absence of an energy adjustment clause in the State of Missouri." (SJLP Application, p. 3, para. 8). The absence of an energy adjustment clause in Missouri is due to the 1979 decision of the Missouri Supreme Court that the Commission is not empowered to authorize a fuel adjustment clause. State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Cmm'n, 585 S.W.2d 41, 56-57 (Mo.banc 1979). The Supreme Court noted the lawful alternative of interim relief:

. . . If the electric companies are faced with an "emergency" situation because of rising fuel costs, they can take advantage of the method set up by the legislature to deal with such situations and file for an interim rate increase on the basis of an abbreviated hearing, *State ex rel Laclede Gas Co.*, 535 S.W.2d at 566-67.

585 S.W.2d at 57.

7. SJLP expresses concern that "the Company has no other recourse but to seek recovery of these incremental costs" and that "[i]n the absence of such authority [i.e., accounting procedures], or an alternative method of recovery of these costs, SJLP will be deprived of an opportunity to recover these costs through its rates." (SJLP Application, p. 3, para. 8 and SJLP Application, p. 4, para. 10, respectively; Emphasis added). An AAO is a cost deferral mechanism, not a cost recovery mechanism.

8. Finally, the Staff notes that SJLP is trying to use the Lake Road Unit 4/6 outage to bootstrap approval of the pending SJLP-UtiliCorp proposed merger and regulatory plan, which do not meet the statutory standard of "not detrimental to the public interest" on their own merit or when combined with the proposed \$7.1 million write-off mentioned in SJLP's Application, pages 4-5, paragraph 2. In addition, SJLP surrebuttal witness Janet K. Pullen indicates at page 3 of her surrebuttal testimony that absent the merger, SJLP would request a rate increase in 2000 to address items such as the Lake Road Unit 4/6 outage. She refers to page 11 of the surrebuttal testimony of SJLP witness Larry J. Stoll where Mr. Stoll indicates that if the proposed

acquisition of SJLP is not consummated, it is likely that SJLP will seek an immediate rate increase. Although the surrebuttal testimonies of Ms. Pullen and Mr. Stoll are not clear on the matter, the Application of SJLP in the instant docket at pages 4-5, paragraph 12 is clear: in addition to approving the proposed merger, the Commission must approve the regulatory plan filed by UtiliCorp in Case No. EM-2000-292 in order for SJLP to write-off the costs of the June 7, 2000 Lake Road Unit 4/6 outage.

SJLP's "offer" may prove illusory for, among other things, a prudence review of the outage may result in a Commission determination that ratepayers should not fund any of the cost of incremental replacement energy because of the imprudence of SJLP or others involved in the outage. An examination of the outage also may show that the actual costs arising from the event are significantly less than the \$7.1 million requested for recovery by SJLP.

Wherefore the Staff is opposed to the AAO requested by SJLP being utilized as a cost recovery mechanism relating to the unplanned shutdown of Turbine 4 and Boiler 6 at SJLP's Lake Road Power Plant. The Staff recommends that SJLP withdraw its Application and seek interim/emergency and/or permanent relief by filing an emergency/interim rate case and/or a permanent rate case. If SJLP desires to pursue its request for an AAO, the Commission should set an intervention period and schedule a prehearing conference for the purpose of the parties submitting to the Commission a proposed procedural schedule.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 3rd day of July 2000.



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July 3, 2000

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