

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

July 10, 2000

Jefferson City, Missouri

Volume 3

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) Case No.
with and into UtiliCorp United Inc., and,) EM-2000-292
in Connection Therewith, Certain Other)
Related Transactions.)

MORRIS WOODRUFF, Presiding,
REGULATORY LAW JUDGE.
SHEILA LUMPE, Chair
CONNIE MURRAY,
ROBERT G. SCHEMENAUER,
M. DIANNE DRAINER, Vice-Chair
KELVIN SIMMONS
COMMISSIONERS.

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1 JUDGE WOODRUFF: This is Case No. EM-2000-292
2 in the matter of the joint application of UtiliCorp United
3 Inc. and St. Joseph Light & Power Company for Authority to
4 merge St. Joseph Light & Power and Company with and into
5 UtiliCorp United Inc., and, in connection therewith, certain
6 other related transactions.

7 And we're here today for the start of the
8 evidentiary hearing. Let's start out by taking entries of
9 appearance. And we'll start with the representative for
10 UtiliCorp.

11 MR. SWEARENGEN: Thank you, Judge Woodruff.
12 Let the record show the appearance of James C. Swearengen,
13 Paul Boudreau, Dean Cooper, and Gary Duffy; Brydon,
14 Swearengen and England. Our address is 312 East Capitol
15 Avenue, Jefferson City, Missouri, appearing on behalf of
16 UtiliCorp United Inc.

17 MR. ZOBRIST: Karl Zobrist; Blackwell Sanders
18 Peper Martin, 2300 Main, Kansas City, Missouri, 64108 on
19 behalf of UtiliCorp.

20 JUDGE WOODRUFF: And for St. Joseph Light &
21 Power?

22 MR. COMLEY: Good morning, Judge. Let the
23 record reflect the entry of appearance of Mark W. Comley;
24 Newman, Comley and Ruth, 601 Monroe Street, Suite 301, Post
25 Office Box 537, Jefferson City, Missouri, 65102-0537. And

1 also the entry of appearance of Gary L. Myers, general
2 counsel and secretary for the St. Joseph Light & Power
3 Company, 520 Francis Street, St. Joseph, Missouri.

4 JUDGE WOODRUFF: Now, it's my understanding
5 that Mr. Myers is going to be testifying today also.

6 MR. COMLEY: No. That's not true.

7 JUDGE WOODRUFF: That's changed?

8 MR. COMLEY: Mr. Myers that you see on your
9 list is probably a UtiliCorp witness.

10 JUDGE WOODRUFF: Okay. And for Staff?

11 MR. DOTTHEIM: Steven Dottheim, Dana K. Joyce,
12 Keith Krueger, Dennis Frey, Bruce Bates, Nathan Williams and
13 Robert Franson, P.O. Box 360, Jefferson City, Missouri,
14 65102 appearing on behalf of the Staff of the Missouri
15 Public Service Commission.

16 JUDGE WOODRUFF: And for Public Counsel?

17 MR. COFFMAN: John B. Coffman and Douglas E.
18 Micheel on behalf of the Office of the Public Counsel and
19 the public, P.O. Box 7800, Jefferson City, Missouri, 65102.

20 JUDGE WOODRUFF: Thank you.

21 And for Department of Natural Resources?
22 Anyone here for Natural Resources?

23 MS. NIELD: My name's Cheryl Nield. I'm with
24 the Attorney General's Office for Shelley Woods who will be
25 appearing.

1 JUDGE WOODRUFF: Her issues are coming up
2 later; is that correct?

3 MS. NIELD: I think that's correct. She just
4 asked me to attend this on her behalf.

5 JUDGE WOODRUFF: And for AGP?

6 MR. CONRAD: For Intervenor, Ag Processing,
7 Inc., a cooperative, please show the appearance of Stuart W.
8 Conrad and Jeremiah D. Finnegan; Finnegan, Conrad and
9 Peterson, 3100 Broadway, Suite 1209, Kansas City, Missouri,
10 64111. Mr. Finnegan is not physically present this morning,
11 your Honor, but I did want to enter his appearance as he may
12 be appearing later.

13 JUDGE WOODRUFF: Thank you. And for the City
14 of Springfield?

15 MR. KEEVIL: Appearing on behalf of the City
16 of Springfield, Missouri through the Board of Public
17 Utilities, Jeffrey A. Keevil with the law firm of Stewart
18 and Keevil, LLC. Our address is 1001 Cherry Street, Suite
19 302, Columbia, Missouri, 65201.

20 JUDGE WOODRUFF: Okay. And for Union
21 Electric?

22 MR. COOK: James J. Cook, P.O. Box 66149,
23 St. Louis, Missouri, 63166 appearing on behalf of Union
24 Electric Company.

25 JUDGE WOODRUFF: Thank you.

1 Now, there were a couple preliminary matters I
2 wanted to bring up while we're on the record. First of all,
3 there's an issue regarding cross-examination and whether or
4 not UtiliCorp and St. Joseph Light & Power should be allowed
5 to cross-examine witnesses separately. This was mentioned
6 in Staff's report filed on June 26.

7 Does anyone want to be heard on that question?
8 Yes, Mr. Dottheim.

9 MR. DOTTHEIM: Yes. The Staff had noted that
10 originally in its May 25 filing of the list of issues.
11 UtiliCorp, in particular, had requested that UtiliCorp and
12 St. Joseph Light & Power be shown separately, and no party
13 other than the Staff had been contacted regarding that. And
14 as a consequence, no party other than Staff had agreed or
15 acquiesced in any manner to proceeding as indicated by
16 UtiliCorp's wish.

17 In the statement of positions that were filed
18 on June 26th, the Staff noted that it is opposed to
19 UtiliCorp and St. Joseph Light & Power being treated as
20 separate parties for purposes of cross-examination. The
21 case was jointly filed by UtiliCorp and St. Joseph Light &
22 Power.

23 They do not, that I'm aware of, have adverse
24 positions to each other. Cross-examination by both would be
25 cumulative. And I think it would be of the nature that it

1 would invoke responses that should have been either in the
2 direct or the surrebuttal testimony, because, in particular,
3 I think what they were shown as being separate parties for
4 was cross-examining each others' witnesses when that's the
5 situation.

6 So I don't know what the positions of the
7 other parties are, but the Staff is opposed to UtiliCorp and
8 St. Joseph Light & Power being treated as separate parties
9 for purposes of cross-examination.

10 JUDGE WOODRUFF: Mr. Coffman?

11 MR. COFFMAN: Yes. I'd like to join in
12 Staff's objection and note for the Bench that the definition
13 of cross-examination under Black's Law Dictionary is an
14 examination of a witness upon a trial or hearing by the
15 party opposed to the one producing that witness.

16 And so it does seem like the definition of
17 cross-examination -- that would not be cross-examination
18 unless someone can point to an issue which St. Joe Light &
19 Power and UtiliCorp have different positions.

20 JUDGE WOODRUFF: Companies want to be heard?

21 MR. CONRAD: Before he speaks, perhaps the
22 rest of us could be heard.

23 JUDGE WOODRUFF: Yes. Go ahead. I'm sorry.

24 MR. CONRAD: Thank you. We also join in
25 Staff's objection for the reason stated by both Staff

1 counsel and Office of the Public Counsel. Recently and
2 numerous times during the some 25 years that I've practiced
3 here at the Commission, I have represented joint
4 intervenors, most recently in the Missouri American Water
5 case, which we had three different companies.

6 I would welcome the opportunity to be able to
7 cross-examine witnesses three different times or have my
8 other two partners come and one represent one party, the
9 other one represent another party and all three of us take a
10 crack at the witnesses. So I'll be very interested in your
11 Honor's ruling on this for the precedent that it may set for
12 my situation in the future. Thank you.

13 JUDGE WOODRUFF: Mr. Keevil?

14 MR. KEEVIL: Yes. I would also like to join
15 in Staff's and Public Counsel's motion. I think as regards
16 cross-examining -- UtiliCorp examining St. Joe's witnesses
17 and vice versa, what Mr. Coffman says is very correct. It
18 would not constitute cross-examination since they are
19 jointly sponsoring the witnesses regarding the pre-filed
20 testimony.

21 And as regards the cross-examination of other
22 parties' witnesses, I think what Mr. Dottheim said was
23 absolutely correct. It would be duplicative and just simply
24 give them a second shot at the apple, so to speak.

25 JUDGE WOODRUFF: Now, for the parties?

1 MR. SWEARENGEN: Thank you, your Honor. It
2 looks like I'm the lone ranger here unless Mr. Comley is
3 going to be allowed to speak in support.

4 I can tell you that we have no intention at
5 this point in time of cross-examining any of the witnesses
6 for the St. Joe Light & Power Company. The request to list
7 the two parties separately for purposes of
8 cross-examination, as I explained to Mr. Dottheim, was
9 simply a defensive mechanism given our concern that the
10 Commission may be inclined to allow what has sometimes been
11 referred to as friendly cross-examination.

12 And given that potential -- I hope it doesn't
13 happen, but given that potential, I think it's only fair
14 that we be allowed to engage in the same practice that might
15 be afforded to others. Thank you.

16 JUDGE WOODRUFF: If I could ask you a question
17 to follow-up, Mr. Swearengen?

18 MR. SWEARENGEN: Yes.

19 JUDGE WOODRUFF: In what context are you
20 talking about friendly cross-examination?

21 MR. SWEARENGEN: Another party, let's say for
22 example, other counsel whose interests on a particular issue
23 are the same as a Staff witness, being allowed to ask
24 questions of that witness which are designed to bring out
25 additional information to support that particular issue

1 which arguably should have been part of that party's, in
2 this case, rebuttal testimony.

3 That's the situation that I'm concerned about.
4 I hope it won't happen. No one has suggested to me that it
5 will, but it is my understanding that there has been some
6 discussion among the law judges to permit this type of
7 practice to take place.

8 And as a result of that, that's why I
9 requested that we be listed as a separate party for purposes
10 of cross-examination with respect to this particular case.
11 As I indicated, I at the present time have no intention of
12 cross-examining any witnesses from St. Joseph Light & Power
13 Company.

14 JUDGE WOODRUFF: Okay. What about witnesses
15 for, say, the Public Counsel? Do you both want to
16 cross-examine witnesses for Public Counsel?

17 MR. SWEARENGEN: I would intend to
18 cross-examine witnesses for Public Counsel, yes.

19 JUDGE WOODRUFF: And St. Joseph Light & Power
20 would also?

21 MR. COMLEY: Yes.

22 JUDGE WOODRUFF: Mr. Dottheim?

23 MR. DOTTHEIM: Again, the Staff would raise an
24 objection to that also on the basis that they are joint
25 applicants, they jointly filed a case and the testimony.

1 I'm not aware of any indication in the testimony of having
2 adverse positions, so I would object on the grounds that it
3 is cumulative.

4 MR. COMLEY: Judge Woodruff, before we end
5 this, can I speak a few moments? I want to echo
6 Mr. Swaengen's remarks. From St. Joe's perspective we
7 have no intention of cross-examination UtiliCorp witnesses.
8 But, again, I think the defensive mechanism that was in
9 place when the issues were listed was prudent.

10 Mr. Coffman has given a rather exemplary
11 definition of cross-examination. Again, the concern that I
12 have is that there will be parties who through the progress
13 of this case have become lined together and, again, make use
14 of what we have labeled in the past friendly
15 cross-examination to try to draw more direct examination
16 from the witness which should have been in somebody's
17 written testimony.

18 If we're in a position where we can use the
19 cross-examination definition that Mr. Coffman had and the
20 Judge is going to be willing to overrule -- rather, listen
21 to objections that this is not cross-examination any longer,
22 the parties are engaging in what we have labeled friendly
23 cross and it has no value, probative or relevant or
24 otherwise to the case, then I think that we'd be content.

25 And as far as the issue of cross-examining

1 Staff witnesses and that kind of thing, I would remind the
2 judge that we're dealing with two independently traded
3 companies. And as the issues have developed in the case,
4 there are issues that are pertinent to St. Joseph that may
5 not be pertinent to UtiliCorp.

6 For instance, the Staff witnesses have talked
7 about revenue deficiencies for St. Joseph Light & Power and
8 addressed that in their testimony. Surrebuttal testimony
9 supplied by St. Joseph Light & Power is directed to that
10 issue alone. And I think in fairness, the court should
11 permit St. Joseph Light & Power the opportunity to
12 independently cross-examine the witnesses who have brought
13 that up in their testimony.

14 JUDGE WOODRUFF: Mr. Coffman?

15 MR. COFFMAN: Yeah. I just wanted to clarify.
16 I think there are two issues involved. One is what is
17 proper cross-examination, and the other is whether it be
18 appropriate for applicants to have two bites at the apple, I
19 guess, when cross-examination would be appropriate.

20 MR. CONRAD: Your Honor, what the comments of
21 the two applicants' counsel suggests to me is that this
22 whole controversy is premature.

23 JUDGE WOODRUFF: I agree with you, Mr. Conrad,
24 and I'm not going to make a ruling at this point. We'll
25 wait and see how things develop throughout the hearing. And

1 if anyone has an objection to what is being offered as
2 cross-examination, at that time we'll make a ruling on it.
3 Thank you.

4 The other couple items we have, Ag Processing,
5 Inc. filed an application for rehearing or reconsideration
6 concerning an order that was issued by the Commission
7 regarding prehearing procedures, and particularly they're
8 objecting to one paragraph.

9 It was paragraph 3, which directed parties
10 filed written objections to pre-filed testimony before
11 July 5th. Ag Processing's objections are well considered
12 and the application for rehearing and reconsideration will
13 be granted. Paragraph 3 of that order of June 27th will be
14 stricken and will have no effect.

15 And Union Electric filed a request to file its
16 statement of position out of time. Their statement of
17 position was simply that they were taking no position. The
18 request to file out of time will be granted.

19 MR. COOK: Thank you.

20 JUDGE WOODRUFF: And, finally, Staff filed a
21 motion to file replacement pages for some of their
22 testimony. I'm not sure I need to make a ruling on that at
23 this time as well. When it comes time to offer that
24 testimony, anyone having any objection to that can make it
25 at that time.

1 Any other preliminary matters we need to take
2 up?

3 All right. Hearing none, at this time we'll
4 go off the record then and I'll go back and get the
5 Commissioners and we'll begin with opening statements.

6 Mr. Dottheim?

7 MR. DOTTHEIM: One other thing occurs to me.
8 The Staff has talked with UtiliCorp, Mr. Swearengen,
9 regarding there are certain UtiliCorp and St. Joseph Light &
10 Power surrebuttal witnesses who did not have direct
11 testimony filed.

12 And, as a consequence, they are not listed on
13 the schedule of issues which sets out what day which
14 witnesses are testifying. Mr. Swearengen, UtiliCorp and
15 St. Joseph Light & Power have made an effort to identify
16 under what issues they should testify.

17 I've had an opportunity to review that and
18 discuss that with Mr. Swearengen, and a copy of a proposed
19 list of additional witnesses was faxed out last Friday. I
20 don't know that that was provided to the Commissioners or
21 yourself.

22 JUDGE WOODRUFF: I have not seen it.

23 MR. DOTTHEIM: I don't know if that's
24 something -- I would expect that to be something that you
25 and the Commissioners would be interested in.

1 JUDGE WOODRUFF: It would. And just during a
2 break sometime if you'd just give us a copy.

3 MR. SWEARENGEN: We'd be glad to do that.

4 JUDGE WOODRUFF: Mr. Cook?

5 MR. COOK: Your Honor, perhaps as indicated by
6 our statement of position, Union Electric Company will not
7 be taking an active role, and I would like to indicate and
8 have it on the record that I may not be here for the entire
9 hearing. Meaning no disrespect, but I hope that is all
10 right.

11 JUDGE WOODRUFF: Mr. Keevil, do you have --

12 MR. KEEVIL: Yes, Judge. As the issues which
13 my client is primarily interested in, according to the
14 schedule, are set to be heard on Friday, like Mr. Cook, I
15 would request leave to be excused at various portions of --
16 throughout various times of the hearing if that would be all
17 right with your Honor.

18 JUDGE WOODRUFF: That's okay.

19 Anything else while we're on the record? Then
20 we're off the record.

21 (Off the record.)

22 JUDGE WOODRUFF: And we'll begin with opening
23 statements for UtiliCorp.

24 MR. SWEARENGEN: Thank you, your Honor. I'm
25 going to yield at this time to Mr. Comley. That doesn't

1 mean that I'm not going to make an opening statement,
2 because I plan to, but he would like to go first.

3 And I see someone has wheeled the podium out,
4 but the mic is here and if it's agreeable, I will just speak
5 from the bench back here.

6 JUDGE WOODRUFF: That's fine.

7 MR. COMLEY: May it please the Commission,
8 Judge Woodruff.

9 Good morning. My name is Mark Comley, and I
10 represent St. Joseph Light & Power, who's a co-applicant in
11 this matter.

12 This case pends on the application of
13 UtiliCorp United Inc. and St. Joseph Light & Power Company
14 for authority to merge their companies into one with
15 UtiliCorp surviving.

16 How did the merger come about? It has been a
17 thorough and long process in a context of an evolving and
18 changing industry. Before 1995, St. Joseph Light & Power's
19 board from time to time studied various strategies for
20 maximizing shareowner value. These studies, which in
21 certain cases involved the retention of outside advisors,
22 stemmed in part from concerns relating to the ability of
23 St. Joseph Light & Power to continue to compete effectively
24 given the relatively small size of its operations compared
25 with many other utility companies, including those in its

1 geographic region.

2 Thereafter, in 1995, St. Joseph Light & Power
3 retained a consulting firm to assist management in
4 developing a strategic plan in light of these concerns.
5 Based on the advice of its consulting firm, the company
6 embarked on a diversification program.

7 Then in early 1998, the strategic planning
8 committee of the board of directors for the company retained
9 another consulting firm to provide strategic planning
10 advice. On March 18th, 1998, that consulting firm delivered
11 a report to the board in which it recommended that
12 St. Joseph Light & Power begin exploring various strategic
13 alternatives, including a potential merger or strategic
14 alliance.

15 On May 19th, 1998, the board begin to
16 interview potential financial advisors to assist in
17 exploring strategic alternatives. And in July of 1998, the
18 board authorized management to negotiate the engagement of
19 an investment banking firm to serve as St. Joseph Light &
20 Power's financial advisor. That firm was Morgan Stanley,
21 Dean Winter.

22 Morgan Stanley was instructed to commence a
23 review of St. Joseph Light & Power and its competitive
24 position in the utility industry and to begin developing
25 potential strategic alternatives for maximizing shareholder

1 value, including a potential merger and strategic alliance.

2 On October 14th, 1998, Morgan Stanley outlined
3 the strategic challenges facing St. Joseph Light & Power and
4 recommended then that the company explore a potential
5 business combination with a larger utility company as the
6 best means of maximizing long-term value for shareholders
7 while also benefiting customers and employees.

8 Soon afterward, the company solicited
9 expressions of interest and a list of possible merger
10 partners was drawn. The list included UtiliCorp. Members
11 of the list were contacted, and by December of that year,
12 1998, three of the listed companies returned an expression
13 of interest. Again, one of those companies was UtiliCorp.

14 Between January 12th and the 21st of 1999, the
15 three interested parties in St. Joseph Light & Power
16 conducted a due diligence review. And conversely, between
17 January 7th and February 17th, St. Joseph Light & Power
18 conducted a due diligence review of the three interested
19 parties.

20 On February 16th, 1999, St. Joseph Light &
21 Power received final binding proposals from two of the three
22 interested parties. These were evaluated between
23 February 17 and 18 and a meeting of the board convened on
24 February 19th to consider each.

25 At that meeting the board instructed Morgan

1 Stanley to encourage UtiliCorp and the other bidder to
2 increase their bids. UtiliCorp complied to a bid of \$23 per
3 share. The definitive merger agreement was reviewed on
4 March 4th, 1999 and it was unanimously approved by the board
5 of directors that same day.

6 The merger between UtiliCorp and St. Joseph
7 Light & Power Company was announced publicly on March 5th,
8 1999. The shareholders of St. Joseph Light & Power approved
9 the merger on June 16th, 1999.

10 There are a colossal number of issues on the
11 issue list. And some of those issues are not related to the
12 merger. For instance, much has been written in the Staff's
13 testimony regarding merger savings and merger costs, but
14 since UtiliCorp has agreed to bear the responsibility and
15 risk of generating merger synergies and quantifying them
16 properly and providing information like that to the
17 Commission in future rate proceedings, this issue has
18 minimal significance, if any relevance at all, in this case.

19 Additionally, some testimony brings up market
20 power issues and transmission access and reliability issues.
21 Clearly these matters are within the jurisdiction of the
22 Federal Energy Regulatory Commission and do not belong in
23 the case.

24 I was in attendance at your agenda meeting
25 last Thursday when Judge Woodruff distributed to you the

1 bench brief for this matter, and silently and discreetly, I
2 think, I noticed its bulk. But I pray that the Commission
3 will not lose sight of a very, very important -- a chief
4 underlying consideration of this matter.

5 And that is, what are the risks of St. Joseph
6 Light & Power standing alone and how do those risks compare
7 to the benefits of this merger?

8 Truly, St. Joseph Light & Power has risks in
9 standing alone, and its small size accentuates those risks.
10 For example, the company is reacting to the change in which
11 wholesale generation is regulated. It is now a competitive
12 service while retail service continues to be regulated.

13 Prior to wholesale competition, the price for
14 purchase power was regulated by the FERC on a cost plus
15 basis. Even during periods of high demand and limited
16 availability, the price would remain reasonably stable since
17 it was tied to actual production costs. But with the advent
18 of wholesale competition, the price of purchase power is now
19 market driven. The price will be whatever the market will
20 bear.

21 And during periods when demand approaches or
22 exceeds availability, the price can be very volatile, rising
23 very rapidly to levels much greater than the cost of
24 energy -- of generating that energy. St. Joseph Light &
25 Power has paid prices for purchased energy ranging from

1 \$8.70 per megawatt hour to \$5,500 per megawatt hour.

2 By merging with a company of better financial
3 strength, St. Joseph Light & Power can, in turn, weather
4 these dramatic fluctuations in a volatile purchase power
5 market.

6 There have been new operating rules
7 promulgated by the FERC governing how energy is purchased,
8 and they are not kind to small companies. Prior to FERC
9 Order 888, St. Joseph Light & Power could arrange for an
10 energy transaction that included transmission service as
11 part of a bundled price for both energy and transmission
12 service.

13 The transaction could be handled by a phone
14 call and implemented in just a few minutes. St. Joseph
15 Light & Power could identify sources of load cost, based
16 load generation for the next hour and rapidly secure them
17 for use. The company's small size in load compared to other
18 systems enabled it to utilize small amounts of hourly excess
19 based load capacity on regional base loads units that were
20 overlooked by other larger systems. This was something
21 unique to the company because of its small size.

22 But now we have the implementation of FERC
23 Order 888. Since the implementation of that Order, energy
24 purchasers and sellers must, in addition to arranging for an
25 energy transaction, also separately arrange for transmission

1 service. This generally takes 20 minutes or more. And, as
2 a result, energy sellers are less willing to accept the
3 burden of separate transmission service for small
4 transactions. What has happened, the market the company had
5 exploited for the benefit of its retail customers has
6 vanished.

7 What then are the benefits of this merger?
8 This merger will mean the consolidations of two companies
9 that properly fit together. You will hear evidence in these
10 next several days about the practical ease with which the
11 union of these two companies can occur.

12 From a distribution standpoint, both of the
13 electric systems of these companies, the one for Missouri
14 Public Service, the other for St. Joseph Light & Power, are
15 very similar. Both have been well maintained. They are
16 geographically dispersed. The operations of each are low
17 cost, they are both centered on their customers and are
18 complimentary in their approach.

19 It is a good fit from this point of view, and
20 UtiliCorp has experienced an easily transitioning existing
21 operation of one company into its own. Particularly where,
22 as here, there is this extent of similarity between the
23 systems and their operational philosophies and
24 characteristics. St. Joseph Light & Power is approximate to
25 the system of UtiliCorp, and that too will make it easier

1 for St. Joseph Light & Power to join with UtiliCorp.

2 There will be benefits for shareholders, for
3 St. Joseph Light & Power employees, the 73 communities in
4 rural territories the company serves and, of course,
5 St. Joseph Light & Power customers.

6 Respecting shareholders, they will receive a
7 fixed price of \$23 per share, which is higher by 36 percent
8 than what the company's trading value as of March 5th, 1999
9 was. And this is all in a tax-free exchange. There is
10 better opportunity for growth and increases in dividends
11 with a company that has better financial stability and
12 strength.

13 As for the employees, which I know is
14 important to the Commission, the company expects that
15 approximately two-thirds will be retained by the merged
16 company in their current positions. Several others will be
17 retained by UtiliCorp in different locations. Sixty
18 employees have gone on already to new careers or retirement.
19 For those employees who are not to be retained by UtiliCorp,
20 severance plans are in place.

21 The employees have had time to prepare for the
22 merger. Is it has now been nearly one and a half years
23 since the announcement. Those employees who will be
24 retained have more opportunity for advancement in a very
25 diverse company that is also attentive to employee training

1 and success.

2 The communities and rural territories served
3 by St. Joseph Light & Power will not be ignored either.
4 They can look forward to stable prices, which I will discuss
5 again, and a reliable supply of energy.

6 Additionally, however, UtiliCorp has committed
7 itself to funding St. Joseph Light & Power's level of
8 charitable giving and community support for at least five
9 years and will have an advisory board of existing St. Joseph
10 Light & Power directors to provide guidance on certain
11 issues for three years. And those issues would include
12 recommendations on charitable contributions and civic
13 support.

14 This merger most definitely has benefits for
15 St. Joseph Light & Power customers. UtiliCorp has
16 considerable financial strength and is better sized for
17 meeting the needs of those customers in the coming century.

18 You will hear assertions that this transaction
19 is not beneficial to the customers, but those assertions
20 must ignore the fact that as part of this merger, UtiliCorp
21 has proposed a five-year rate moratorium for St. Joseph
22 Light & Power customers.

23 St. Joseph Light & Power intends to present
24 testimony of several witnesses. This testimony, in essence,
25 is that in the next five years the company will need to

1 increase its rates for service to eliminate revenue
2 deficiencies that are present now and will continue to
3 widen.

4 The rate moratorium proposed by UtiliCorp will
5 thus bring rate stability for St. Joseph Light & Power
6 customers among other benefits, and that would include a
7 more reliable and secure supply of energy, meaning less
8 business risk, and a wider range of products and services
9 from a company who has the advantage of its size and
10 financial strength in a soon to be ever more competitive
11 environment.

12 The five-year rate moratorium I mentioned is
13 part of a comprehensive regulatory plan which has been
14 explained in detail by UtiliCorp Witness Mr. John McKinney,
15 and I anticipate that Mr. Swearngen will discuss those
16 elements in his opening remarks.

17 St. Joseph Light & Power believes that
18 approval of this merger on the terms of the regulatory plan
19 will certainly not be detrimental to the public interest.
20 In fact, the company submits that there is evidence in this
21 record from which the Commission could easily conclude that
22 the merger is in the public interest, let alone not
23 detrimental to it.

24 And on behalf of the company, I respectfully
25 request that the Commission approve the merger application

1 submitted by these joint applicants.

2 JUDGE WOODRUFF: Thank you, Mr. Comley.

3 Mr. Swearengen?

4 MR. SWEARENGEN: Thank you, your Honor. May
5 it please the Commission.

6 As Mr. Comley indicated, this application --
7 this joint application is before the Commission today as a
8 result of a decision of the board of St. Joseph Light &
9 Power Company to sell their company to UtiliCorp. And that
10 decision has been approved by the shareholders of St. Joseph
11 Light & Power Company.

12 As I'm sure you realize, SJLP is one of the
13 smallest, if not the smallest, investor-owned electric
14 utility in the nation. And as Mr. Comley indicated, the
15 company has decided that it must combine with a larger
16 utility as the best means to maximize shareholder value
17 while at the same time benefiting its employees and its
18 customers.

19 The board of St. Joseph Light & Power Company,
20 as Mr. Comley indicated, is concerned about the ability of
21 the company to continue to compete effectively in the new,
22 emerging electric utility environment and to continue to
23 provide high quality service at low rates given the size of
24 its operations. And this is of particular concern when it
25 comes to the market for the generation of power.

1 UtiliCorp, on the other hand, entered into
2 this transaction because it supports -- the transaction
3 supports the overall UtiliCorp strategy of becoming a world
4 class utility in the mid-continent region. As you are no
5 doubt aware, the transaction is a merger to be performed in
6 accordance with a detailed agreement and plan of merger
7 dated March 4, 1999. That document is Appendix 4 to the
8 joint application and also Schedule 1 to Bob Green's direct
9 testimony.

10 The goal is to create a larger and stronger
11 Missouri-based utility with increased operating efficiencies
12 in a better position to deal with the evolving competitive
13 electric utility environment. The result, we hope, will be
14 benefits for all stakeholders and a boost to the long-term
15 economic development of this state.

16 The transaction, however, must be approved by
17 the Commission. Section 393-190 provides that
18 jurisdictional utilities may not merge without your consent
19 and your approval. And, of course, that's why we are here
20 today with this application.

21 We think the law is very clear as to the
22 standard which you are to apply in determining whether or
23 not to approve this merger and this application. And the
24 standard is not detrimental to the public interest. There
25 is a long line of court and Commission cases dating back to

1 1934 which discuss this standard.

2 It was established in a case City of St. Louis
3 versus Public Service Commission; a 1934 Missouri Supreme
4 Court case, I'll give you the citation, 73 S.W.2d 393. And;
5 in my view, this case is perhaps the single most important
6 thing that you all should read in connection with this
7 proposed merger.

8 The case involved the judicial review of
9 Commission decisions which approved the purchase of stock of
10 two Missouri utilities by Utilities Power & Light
11 Corporation. The Missouri Supreme Court in affirming the
12 Commission's orders approving the transactions quoted from a
13 Maryland case and said -- and I'm going to read it to you --
14 To prevent injury to the public in the clashing of private
15 interests with the public good in the operation of public
16 utilities is one of the most important functions of Public
17 Service Commissions. It is not their province to insist
18 that the public shall be benefited as a condition to change
19 of ownership, but their duty is to see that no such change
20 shall be made as would work to the public detriment. In the
21 public interest in such cases can reasonably mean no more
22 than not detrimental to the public.

23 And so I submit this is the standard that you
24 need to apply to this transaction, and I would urge you that
25 throughout the rest of the week and thereafter during your

1 deliberations to please keep this standard in mind.

2 Remember, it's the board of directors of the
3 St. Joseph Light & Power Company which has the prerogative
4 in the first instance to determine who should own the
5 company. That, of course, is not a process in which a
6 regulatory commission should become involved.

7 Once management has made that decision,
8 however, as they have in this case, they obviously must
9 bring the transaction to you for your approval and that's
10 where we are today.

11 But, once again, the only issue here for your
12 consideration is whether or not the transaction will result
13 in a detriment to the public. No public benefit need
14 result. And I'm afraid that this legal standard may have
15 gotten lost in this proceeding. I think we have testimony
16 from 47 or so witnesses. We have over 80 discreet issues
17 that are listed for you to decide. And I'm concerned that
18 maybe in the midst of all that, this fundamental standard
19 may have become lost. So I urge you to keep it in mind,
20 please.

21 Fortunately, I think there is no issue in this
22 case among the parties as to what is meant by the term
23 "detrimental to the public." All parties seem to agree that
24 detriment means higher rates and/or a deterioration in the
25 level of customer service. And, in fact, that is how this

1 Commission has applied and defined that standard in the
2 past.

3 It's also clear that the public which we refer
4 to is the consuming public, the ratepayers. And there are
5 some cases in which you have reached that conclusion.

6 So when you apply the not detrimental to the
7 public standard to this transaction, what do you get? Well,
8 we submit that there's no question that the merger should be
9 approved. There's no evidence in this proceeding at all
10 with respect to any detriment concerning service. In fact,
11 the evidence is that UtiliCorp will be able to provide safe
12 and reliable service.

13 What about rates? Well, as Mr. Comley
14 indicated and I'm sure you are aware, under the regulatory
15 plan we're proposing a freeze in rates for five years. So
16 there's no detriment from that standpoint.

17 In a 1971 Laclede Gas Company case in
18 approving a merger this Commission said, The evidence shows
19 that the proposed merger will not be detrimental to the
20 public interest. The status quo is to be maintained at
21 least for the immediate future with no change in rates or
22 conditions of service and no substantial changes in methods
23 of operation.

24 And I submit that that is really what we have
25 here today. We have status quo or better in terms of

1 service. We have status quo in terms of rates for five
2 years. So is this detrimental to the public? We don't
3 think so. But some parties take a contrary view because of
4 alleged rate reductions which they think will occur in
5 connection with the SJLP operations during the five-year
6 moratorium period.

7 That's something you all are going to have to
8 decide. We think it's speculative. We don't think there's
9 any real evidence to support that. As Mr. Comley indicated,
10 there are St. Joe witnesses who will testify that at least
11 two planned SJLP rate cases over the next five years can be
12 avoided by that moratorium.

13 So given all this, safe, reliable service,
14 rate stability for five years and I didn't mention the
15 guaranteed 1.6 million reduction in cost of service under
16 the regulatory plan in the sixth year after the merger, if
17 it's all that simple, why hasn't this case has settled? Why
18 are we here looking at perhaps 80 issues to try?

19 Well, I think there are two general arguments
20 which the parties have raised against the transaction.
21 First, it is claimed that the cost of the transaction will
22 exceed the benefits. And, second, there's a lot of
23 criticism about the regulatory plan.

24 Let me talk first about costs exceed the
25 benefits. The argument -- that argument, I think, is

1 premised on numbers that the Commission Staff has put
2 together which purport to show the total merger cost for the
3 first 10 years after the closing of the merger will exceed
4 the merger savings.

5 We disagree with those conclusions, but we
6 really think for the most part it's not critical for you to
7 decide that issue now because of the regulatory plan. And
8 I'm not certain how you would decide it in any event except
9 with respect to one or two issues which I will mention later
10 in my comments and which we have some testimony on.

11 Let me talk a minute about the regulatory
12 plan. What do we mean by that? That's a term that we have
13 used in this proceeding to describe to the Commission how
14 UtiliCorp plans to operate the acquired properties after the
15 merger is closed. And let me just touch on that briefly, if
16 I may.

17 The plan is that after closing St. Joseph
18 Light & Power Company, the former St. Joseph Light & Power
19 Company will be maintained as a separate operating unit of
20 UtiliCorp just as the Missouri Public Service division is
21 now a separate operating unit of UtiliCorp.

22 Second, rates will be frozen for five years.
23 We mentioned that. In the fifth year, UtiliCorp will file
24 rate cases for the gas, electric and steam operations. Then
25 we get to what I think is probably the most controversial

1 aspect of this regulatory plan, and that is this. In the
2 post-moratorium rate cases, UtiliCorp wants to seek recovery
3 of the unamortized balance of the premium which it's agreed
4 to pay for the St. Joseph Light & Power company stock.

5 The portion for which recovery is sought or
6 will be sought is referred to in company testimony as the
7 assigned premium. The assigned premium. Is this an
8 unreasonable request and a radical departure from regulatory
9 practice in Missouri? We don't think so.

10 We think that prior pronouncements of this
11 Commission on the issue of premium recovery are clear and
12 show a willingness on the part of the Commission and an
13 open-mindedness on the part of the Commission to consider
14 premium recovery on a case-by-case basis.

15 And there are two principal cases that lead us
16 to that conclusion. The first is a 1991 Commission case
17 involving a Kansas Power & Light and Kansas Gas & Electric
18 Company merger. In that case you said, and I quote, The
19 Commission does not wish to discourage companies from
20 actions which produce economies of scale and savings which
21 can benefit ratepayers and shareholders alike.

22 Then in 1995 in a rate case involving Missouri
23 American Water Company you again said, and I quote, That on
24 a policy basis, it is not necessarily opposed -- "it" being
25 the Commission -- to consideration of an acquisition

1 adjustment.

2 And more recently, just four months ago, on
3 March 16th of this year in case WM-2000-222, which was a
4 stock acquisition case involving Missouri American Water and
5 United American Water, the Staff in that proceeding urged
6 you to declare that premium recovery was off limits as a
7 matter of policy. And you declined to do that.

8 So with those three cases in mind, we think
9 our request is consistent with your policy. And, in fact,
10 we think there's evidence in this case that even the Staff
11 agrees that a sharing of benefits is appropriate, and that
12 even perhaps the indirect recovery of premium is also
13 appropriate.

14 Well, others say you have never, ever approved
15 the direct recovery of premium through rates. And that's
16 true. You never have done that, to my knowledge. But as
17 far as I can tell, that's an issue that's only been really
18 contested one time in the 1995 Missouri American Water case,
19 which I referred to earlier.

20 And it's my understanding from a reading of
21 that case that you declined to allow premium recovery
22 because you found the company had not met its burden of
23 proof. You didn't say premium recovery directly through
24 rates is per se a bad thing and we're never, ever going to
25 allow it. You said the company failed to meet its burden of

1 proof.

2 So what we're really asking you to do in this
3 case today, this week, is to continue your policy which you
4 have set out in these prior cases that I discussed and
5 continue to have an open mind on this subject.

6 We're asking you to say that you will continue
7 to look at the issue of premium recovery on a case-by-case
8 basis when the issue is raised in a rate proceeding. But it
9 doesn't stop there. We're also asking for one other thing.
10 And this is where we are perhaps pushing the limits somewhat
11 on what the Commission has done in the past.

12 We want you to tell us now in this merger case
13 that if, in that future rate case that we will file in year
14 five, we prove our merger savings equal to 50 percent of the
15 unamortized balance of the assigned premium, that we will
16 get that assigned premium in rate base and the annual
17 amortization of the assigned premium will be included in
18 expenses for rate-making purposes.

19 In other words, re-affirm your policy that
20 you've annunciated in these prior cases, but go one step
21 further. Say that if we meet our burden of proof in those
22 post-moratorium rate cases of demonstrating merger savings,
23 we will get the requested rate treatment of the assigned
24 premium. We're asking you to set up the rules now so that
25 we know exactly what it is that we are getting into in the

1 future.

2 There are several other parts of the
3 regulatory plan that I need to mention as well. We're also
4 asking that in addition to the five-year rate moratorium and
5 the assigned premium recovery, in the post-moratorium rate
6 cases for rate-making purposes the return that we want
7 allowed on the assigned premium be based on UtiliCorp
8 capital structure of 60 percent debt and 40 percent equity,
9 and the return on the balance of the rate base be based on
10 an SJLP operating unit capital structure of 47 percent debt
11 and 53 percent equity. All of that is spelled out in the
12 application and testimony.

13 We're also requesting in the post-moratorium
14 rate case the allocation of UtiliCorp's corporate and
15 intrabusiness unit costs for UtiliCorp's MPS operating
16 division exclude the SJLP factors.

17 And, finally, as I indicated, we are
18 guaranteeing in that post-moratorium rate case a
19 \$1.6 million reduction in cost of service.

20 Now, I've been practicing over here for --
21 maybe not as long as Mr. Conrad, but over 20 years, and I
22 recognize that these items in this regulatory plan are
23 traditionally the type of issues which you all defer to rate
24 cases. But I'm telling you, we need these decisions on
25 these matters now in order to determine whether or not the

1 transaction makes economic sense.

2 And some argue that you can't do this here.
3 You cannot make these types of decision in this case, that
4 you can't make a rate case type decision in a non-rate case
5 proceeding, which this is.

6 Well, my answer to that is, you have done this
7 on at least one occasion with which I am familiar. You've
8 done this very thing. And you did it for UtiliCorp and it
9 wasn't really that long ago. Back in 1994 in Case
10 GA-94-325, you granted UtiliCorp a certificate of public
11 convenience and necessity to provide natural gas service in
12 the City of Rolla, Missouri. At that time Rolla was without
13 natural gas service and those people who were using gas were
14 using propane.

15 In that certificate case, UtiliCorp argued it
16 couldn't provide service, that it wouldn't make economic
17 sense for it to provide service unless it got approval on
18 the front end for the subsequent rate-making treatment for
19 its costs to convert the Rolla customers from propane to
20 natural gas. And it was estimated that those costs would be
21 about \$300 per customer on the average.

22 You granted the certificate and you also
23 granted the rate-making treatment. You said in your order
24 granting the certificate that UtiliCorp through its
25 operating company is authorized to account for the \$300 per

1 customer conversion costs above the line and include those
2 costs in rate base.

3 And you went on to say, The Commission makes
4 no finding as to the prudence of rate-making treatment to be
5 given any costs or expenses incurred as a result of granting
6 of this certificate except those costs and expenses dealt
7 with specifically in the body of this Report and Order. And
8 you also commended UtiliCorp in that case for its candor in
9 stressing the make or break nature of the rate-making
10 treatment it needed to have for those conversion costs.

11 So based at least on that case, I would submit
12 to you that the rate-making request that we have in this
13 merger case isn't really a radical departure from what you
14 have been asked to do and from what, in fact, you have done
15 in the past. So those are the components of the regulatory
16 plan.

17 UtiliCorp entered into this transaction with
18 the expectation that based on your prior actions, which I've
19 just discussed, UtiliCorp would have an opportunity -- an
20 opportunity for premium recovery. By approving this merger
21 application and the regulatory plan, are you guaranteeing
22 direct premium recovery? No. I don't think so.

23 In the future post-moratorium rate cases
24 UtiliCorp will have the burden to prove up the benefits
25 which are equal to the assigned premium for which recovery

1 is sought. UtiliCorp will get the assigned premium in rates
2 only to the extent that it can prove up those merger
3 savings. It's not going to happen automatically.

4 How's the public harmed by this? Well, I
5 don't think it is. As I indicated earlier, service is
6 maintained, rates are frozen for five years and then in that
7 post-moratorium rate case, there's a guaranteed cost of
8 service reduction of \$1.6 million.

9 Are we asking you to bind future Commissions?
10 Well, I certainly understand that you probably can't do
11 that. But UtiliCorp obviously would take a great deal of
12 comfort in a decision approving this proposed regulatory
13 plan. Now, we recognize that five years from now all or
14 some of you may be gone. A new Commission may not consider
15 itself bound by your decision. Other parties may want to
16 re-litigate these issues in the rate case and perhaps will
17 be allowed to do that.

18 We'll take that chance. We'll take that
19 chance. Just like we did in the Rolla certificate case.
20 We're certainly better off -- UtiliCorp is certainly better
21 off with a decision approving this regulatory plan on the
22 front end as opposed to a decision which rejects it. Just
23 as in the Rolla gas certificate case, we need some
24 reasonable assurance now that the merger transaction will
25 make economic sense to UtiliCorp.

1 So in the final consideration, what are we
2 asking to you decide? First, obviously approve the merger.
3 Second, approve the regulatory plan. Then there are several
4 other issues which are set out in John McKinney's
5 surrebuttal testimony beginning on page 12 that we need
6 decisions on in this case. And I'm just going to give you a
7 couple of examples of those.

8 First, if you agree with the Commission's
9 Staff that it is impossible under any circumstances for us
10 to track and later prove up merger savings in that
11 post-moratorium rate case, we need to know that now.
12 Obviously if you don't think we can track and prove up
13 merger savings five years from now, we'll never be able to
14 meet that burden of proof and the plan can't possibly work.

15 There's another important issue that you need
16 to decide. We need to know now if you will allow us to use
17 the \$100 million of potential energy cost savings which we
18 believe will take place as, quote, merger related, end
19 quote.

20 If you agree with the Staff that most of these
21 savings can now be generated by St. Joseph Light & Power
22 company as a stand-alone utility and could never be
23 considered merger-related savings, we need to know that. If
24 we can't use that \$100 million of savings to meet our burden
25 of proof, the regulatory plan won't work. We need to know

1 that.

2 Also, the amount of the premium to be
3 considered for recovery is an issue. We think it's
4 \$92 million. Others say it's less than that. We need an
5 answer on that issue.

6 Finally, we think we have a good plan. It's a
7 just and reasonable plan and will provide a fair sharing
8 of the benefits for all concerned. We certainly hope you
9 will see it that way, and if do you, we hope your successors
10 in five years will continue to see it that way.

11 In summary, I would urge you to please once
12 again, keep the standard in mind. This is a no detriment
13 state. Even with the premium recovery, which we will
14 request in those rate cases five years in the future,
15 nothing will happen in those cases unless you or your
16 successors let it happen.

17 At that time the Commission can consider the
18 premium issue in conjunction with other aspects of the
19 merger and the rate case including the guaranteed
20 \$1.6 million cost of service reduction. If the synergies do
21 not develop as estimated, then UtiliCorp will not recover
22 all or possibly any of the assigned premium. But in the
23 meantime, SJLP's former customers will have experienced rate
24 stability and quality service. They certainly would not
25 have experienced any detriment.

1 Finally, in closing, I would say we believe
2 this is a merger between Missouri utilities which will
3 benefit all Missouri stakeholders and the long-term economic
4 development of this state. We urge you to look beyond the
5 minute details of this transaction and focus on that end
6 result.

7 By approving this application, we submit that
8 you will help create a larger Missouri-based utility which
9 will be in a stronger competitive position and thus better
10 able to face the future. Thank you very much for your time.

11 JUDGE WOODRUFF: Thank you, Mr. Swearengen.

12 For Staff?

13 MR. DOTTHEIM: Thank you. May it please the
14 Commission.

15 In the instant merger case and the Empire
16 District Electric UtiliCorp merger case, the Staff finds
17 itself in an unprecedented situation. In prior merger cases
18 the Staff has determined that excluding consideration of the
19 merger premium sought to be recovered from the ratepayers,
20 merger savings have exceeded merger costs.

21 As a consequence, the Staff recommended
22 approval of the merger with conditions. The principal
23 condition being no recovery from ratepayers of the merger
24 premium.

25 For this merger and the Empire/UtiliCorp

1 merger, total merger costs exceed total merger savings of
2 the proposed merger without consideration of the merger
3 premium acquisition adjustment. This is true for each of
4 the 10 years of the regulatory plan proposed by the joint
5 applicants.

6 As a consequence, the Staff cannot recommend
7 that the Commission approve the merger of UtiliCorp and SJLP
8 even if the Commission were to accept all of the conditions
9 proposed by the Staff. The Staff has proposed conditions on
10 the basis that if the Commission is disposed to approve the
11 proposed merger, the Staff's conditions will mitigate but
12 not eliminate the detriment to the public interest.

13 Given the low level of merger savings
14 associated with this transaction relative to the level of
15 identified merger costs as well as UtiliCorp's very high
16 level of corporate costs and the possible exposure of SJLP
17 to excessive corporate cost allocations, the Staff cannot
18 recommend that this proposed merger be approved by the
19 Commission.

20 This case also revealed a very fundamental
21 difference in the definition of not detrimental to the
22 public interest between the joint applicants and the Staff.
23 This difference in definition is also seen in the Empire
24 shareholder rights plan, which is a case that is presently
25 pending before the Commission, Case No. EF-2000-764.

1 The St. Joseph Light & Power/UtiliCorp merger
2 case is unique in an additional aspect. The joint
3 applicants are asking that the Commission make certain
4 rate-making findings in this merger proceeding rather than
5 in a rate increase or an excess earnings complaint case.

6 Among the rate-making determinations which the
7 joint applicants seek are the following: One, rate recovery
8 treatment in future SJLP rate proceedings of 50 percent of
9 the acquisition adjustment resulting from the merger; two,
10 setting SJLP's capital structure at a pre-merger stand-alone
11 level in future rate proceedings.

12 Ordering -- excuse me. Three, ordering a
13 10-year amortization of transaction costs and costs to
14 achieve; and, four, freezing Missouri Public Services
15 corporate allocation factors at pre-SJLP merger levels.

16 For the Commission to adopt the approach
17 proposed by the joint applicants may raise a number of legal
18 questions, some of which may be similar to those that were
19 first heard by the Commission in last summer's AmerenUE
20 experimental alternative regulation sharing credit case.

21 I'm very happy this morning that Mr. Cook from
22 Union Electric Company/AmerenUE is here, because I feel
23 compelled to mention that case. And I'm not sure that
24 Mr. Cook or Mr. Sincar would agree with Mr. Swearngen that
25 this Commission cannot bind future Commissions.

1 I think a year ago the Commission heard and
2 the Circuit Court of Cole County will hear and I suspect the
3 Missouri Court of Appeals Western District will hear an
4 argument that this Commission can bind future Commissions by
5 creating a contract. So I think this case is unprecedented
6 for an additional reason.

7 I think you have seen in the testimony and
8 even heard this this morning, a constant refrain of
9 non-recovery of merger premium discourages mergers. There
10 is an assumption by UtiliCorp and St. Joseph Light & Power
11 that the Commission should be encouraging mergers.

12 Why in particular should the Commission be
13 encouraging this merger? The understated theme is that this
14 merger should be encouraged because the surviving company is
15 a Missouri-based company. The Staff continues to believe
16 that the Commission should maintain a neutral stance towards
17 mergers in general, neither seeking to encourage utilities
18 to combine or taking steps to discourage potential
19 combinations.

20 Based upon a Commission Report and Order dated
21 September 24, 1991 in Case No. EM-91-213 regarding then
22 Kansas Power & Light, now Western Resources, and Kansas
23 Gas & Electric, and based upon a Commission Report and Order
24 dated November 21, 1995 in Cases WR-95-204 and SR-95-206
25 respecting an acquisition adjustment arising from Missouri

1 American Water Company's acquisition of Missouri City's
2 Water Company and an additional case mentioned this morning
3 by Mr. Swearngen, mentioned for the first time, UtiliCorp
4 asserts that this Commission believes that merger savings
5 can be tracked and can be proven.

6 UtiliCorp is looking for an affirmation of
7 that position from this Commission. UtiliCorp is also
8 saying that so long as this Commission believes that merger
9 savings can be tracked and proven, it is not necessary for
10 UtiliCorp and SJLP to determine and present any specific
11 tracking system to the Commission at the present time.

12 UtiliCorp assures the Commission that it is
13 not necessary for UtiliCorp to determine and present to the
14 Commission any specific tracking system now because
15 UtiliCorp will have the burden of proof in the
16 post-moratorium rate case to demonstrate a method of
17 tracking merger savings, and that the method has adequately
18 tracked merger savings.

19 The joint applicants want the Commission to
20 commit up front to setting rates to recover merger costs
21 from customers. However, the part of the regulatory plan
22 that in effect purports to hold customers harmless, the
23 minimum revenue requirement benefit, is premised upon
24 development of a merger savings tracking system that has yet
25 to be proposed by UtiliCorp in detail and has never

1 successfully been implemented anywhere. The Staff believes
2 that development of a workable merger savings tracking
3 system is essentially impossible to do.

4 In addition to seeking direct recovery of
5 50 percent of the acquisition adjustment in rates in years
6 six through ten following the merger, the joint applicants
7 seek to recover even more of the merger premium through
8 indirect means, primarily through its frozen capital
9 structure proposal which would deny SJLP customers any
10 benefits in rates for merger-related reductions in the cost
11 of capital.

12 It is UtiliCorp's position that a significant
13 portion of merger savings are to occur in the areas of joint
14 dispatch and off system sales. The Staff's position is that
15 only \$6.8 million of a purported \$100 million in 10-year --
16 in 10-year energy savings are related to the merger; that
17 is, UtiliCorp and St. Joseph Light & Power have not shown
18 that the increased sales opportunities estimated for the
19 merged company are likely to occur or would not be available
20 to the companies on a stand-alone basis.

21 To off set the shortage of merger savings
22 otherwise available to provide to St. Joseph Light & Power
23 customers, the joint applicants propose to assign to SJLP
24 customers almost all savings ordinarily applicable to the
25 Missouri Public Service division customer. The Staff

1 believes that this is inappropriate.

2 Further assignment of almost all of the merger
3 savings to SJLP under the joint applicant's regulatory plan
4 would unfairly serve to maximize UtiliCorp's retention of
5 merger savings because SJLP is proposed to undergo a
6 five-year rate moratorium. Meanwhile, almost no savings are
7 proposed to be assigned to the Missouri Public Service
8 division for which future rate increase cases are likely
9 planned and will likely occur.

10 The joint applicants' own witnesses have made
11 clear that the opportunities for non-regulated benefits are
12 an important reason for the merger. Nonetheless, the joint
13 applicants have not proposed to allocate any of the
14 acquisition adjustments to non-regulated operations which
15 opens the possibility of regulated customers
16 cross-subsidizing UtiliCorp's non-regulated operations as a
17 result of the regulatory plan.

18 In the last several weeks there has been
19 another case filed at the Commission that bears upon the
20 merger case. And that is the St. Joseph Light & Power
21 application for an Accounting Authority Order. That's Case
22 No. EO-2000-845.

23 That case involves the June 7, 2000 unplanned
24 outage of Unit 46 of St. Joseph's Lake Road power plant.
25 SJLP's application indicates that it does -- that it will

1 need to seek to recover \$7.15 million in replacement energy
2 above the energy costs of Unit 46 and the repair cost net of
3 insurance proceeds.

4 Nonetheless, in that application, St. Joseph
5 Light & Power indicates that if the merger is approved by
6 the Commission as set out in the regulatory plan -- that is
7 the Commission cannot vary the regulatory plan, if the
8 merger is approved by the Commission as set out in the
9 regulatory plan filed by UtiliCorp United, it is St. Joseph
10 Light & Power's understanding that at the closing of the
11 merger, St. Joseph Light & Power will write off the amounts
12 incurred as a result of the June 7, 2000 incident as a rate
13 moratorium would be in place for five years under the
14 regulatory plan.

15 I've mentioned in passing a couple of times
16 the Empire District Electric/UtiliCorp merger case which is
17 pending before the Commission. The Staff would suggest to
18 the Commission that it not issue its Report and Order in the
19 St. Joseph Light & Power UtiliCorp merger case until it has
20 had the opportunity to hear the Empire District
21 Electric/UtiliCorp merger case. The Staff would suggest
22 that would be the prudent thing to do.

23 Finally, I would mention a bit of braggadocio
24 by UtiliCorp, which I think that the Commission should be
25 aware of. One instance is cited in the Staff's testimony