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

INITIAL BRIEF OF AG PROCESSING INC.

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ATTORNEYS FOR AG PROCESSING INC.

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I. INTRODUCTION.

In his opening statement, counsel for St. Joseph Light & Power Company (SJLP) asserted that this was a "simple case."

Ag Processing (AGP) agrees that this is a simple case, though not in the sense in which SJLP counsel intends his statement.

This is a simple case of a utility seeking to recover, or establish a platform to support future recovery, of expenses incurred as a result of its own operational errors and negligence. It is a "simple case" of a perversion of what is an exceptional accounting procedure so that the utility can avoid "muddying the water" surrounding its pending merger.

Accounting authority orders are exceptions to the timing and matching principles surrounding good ratemaking practice. They have historically been used by this Commission (and by numerous others) as a means of responding to extraordinary occurrences *that are beyond the power of the utility to*

control and which do not result from the negligence of the utility. An accounting authority order is **not** properly used to permit a utility to "tee up" for future recovery a cost or expense that was a consequence of a natural disaster or an unanticipated regulatory order.

AGP opposes the relief here sought by the utility. We believe it is entirely inappropriate for this accounting device to be used for the convenience of the utility and so as to permit evasion of the regulatory scrutiny that would result from a full rate case.

II. FACTUAL BACKGROUND.

Generally summarized, on June 7, 2000, Unit 4/6 at SJLP's Lake Road Station "tripped" resulting in an explosion and fire that damaged the unit. Tr. 196. The unit remained off-line through roughly August 31, 2000 during which time SJLP purchased larger amounts of externally generated power from the grid than the normalized level that had been rolled into existing rates.

The cause of the turbine trip was the false detection of excessive vibration by a new control system that had only been installed on the unit days before the explosion. Tr. 251. Had, however, the series of alternating current and direct current lubrication pumps for the turbine not been either deprived of operating power by the same turbine trip (Tr. 199, 200), in the case of the AC pumps, and placed in a control setting from which the DC pump would not automatically come on-line from battery

power (Tr. 200-01), it is unlikely that the trip would have resulted in any damage to the unit at all. Tr. 198-99, 199,

However, contrary to good utility practice, both AC lubrication pumps were supplied power from the same turbine rather than an independent source of power (Tr. 399), and the backup DC pump had been placed in a control setting that amounted to it being turned off. Tr. 200-01.

SJLP now seeks to defer for future recovery what is termed the "incremental" purchased power cost that it asserts was incurred during the period that the unit was off-line and unavailable for service. Tr. 29.

III. ARGUMENT.

A. The Costs That SJLP Seeks To Defer Were Included in the Fuel Adjustment Clause that Was Declared Unlawful in UCCM.

Prior to 1980, Missouri electric utilities had what was termed a fuel adjustment clause or "rider." The clause operated generally in this manner: In a full rate case, a "base" level of fuel cost would be established. The mechanisms to accomplish this were often complex. They involved the generating efficiency ("heat rates") of the various generating units available to the utility, the order in which those units would be brought on line to serve an increasing load ("economic dispatch") and the costs of the various components that were used by the utilities to generate power, the most significant of which was coal, but also

included fuel oil, natural gas, stabilizing limestone (where needed) and purchased power.

The resultant base cost was then built into the energy rates of the respective utilities when their rates were established. Subsequently, as the costs of these various items fluctuated above or below this "base" level, an adjustment to those rates was calculated and automatically allowed to be included in the rates by a corresponding positive or negative per kilowatthour ("kWh") adjustment. The adjustment was calculated on a projected basis, then "trued-up" retroactively after actual data for a period was known.

Originally, the fuel rider was applied only to industrial customers. However, in the late 1970's, the Commission undertook to expand its applicability to all electric utility customers. This resulted in challenges by the Public Counsel and by others to the methodology.

In *In the matter of the investigation of the fuel adjustment method for the recovery of fuel costs, et. al.*, 20 Mo. P.S.C. (N.S.) 563, 1976 MoPSC LEXIS 34 (Commission Case Nos. 17,730 and 18.663) (April 14, 1976), the Commission addressed the then-expiring fuel adjustment clause. The clause explicitly covered purchased power, in fact the combined utility witness, H. Clyde Allen of Union Electric, noted that a utility could affect its fuel costs depending on "whether it opts to purchase power rather than self-generate." *Id.* at *47. Indeed the utilities even argued for preservation of such inclusion asserting that

> a fuel adjustment clause that allowed them to pass on the costs of purchased energy (fuel costs plus incremental maintenance costs) would be an additional incentive to keep total fuel costs to a minimum.

Id. at *51. The Commission extended the existing clause with some modifications, imposing an audit requirement and **limiting the inclusion of only the fuel component of purchased power** and removing the fuel component of interchange and nonjurisdictional sales from the calculations. Nuclear generated purchased power was treated with special conditions. *Id.* at *64-65. Without question, the fuel adjustment clause **included** purchased power costs.

In a subsequent case initiated while appeal of the 17,773 case was being pursued, the Commission dealt specifically with SJLP's case in a consolidated series of cases the lead docket for which involved Kansas City Power & Light, under ER-78-196, 22 Mo. P.S.C. (N.S.) 484, 1979 Mo. PSC LEXIS 52 (February 2, 1979). Language in that case is instructive to the current case, viz:

> It is still the position of this Commission that the fuel adjustment clause **should not provide a mechanism for the automatic recovery of increased fuel costs due to abnormal outages of a utility's more economical generating units or increased fuel costs due to a utility not taking advantage of interchange power** which is less expensive than the kilowatt hours which the utility would otherwise have to generate. ***The Commission recognizes that abnormal outages will occur from time to time which could put a severe strain on a utility's earnings, but it is the Commission's position that these situations should be addressed in a rate case proceeding***. . . . Even though this policy could

> well result in a heavier case load, the Commission accepts Public Counsel's position that it is the function of this Commission to regulate regardless of the time it takes to do so.

Id. at *74 (emphasis added). Again, it is clear that the cost of purchased power was included in the fuel adjustment that was presented to the Supreme Court for its ultimate consideration. Note that the above quotation explicitly applies to the **fuel component** of purchased power, since base levels had been included and it would require a double recovery if the utility were permitted to retain the base fuel cost associated with generation that had been supplanted by purchased power **and** recover the incremental cost of the purchased power itself. Moreover, purchased power generated from oil was excluded and nuclear generation remained subject to special rules. It further deserves note in the above quotation that the Commission recognized that those costs that were excluded from the fuel adjustment by reason of abnormal outages that resulted in a different loading or dispatch order and were not to be addressed in the fuel adjustment clause would find their proper forum in a rate case -- ***not in a request for an accounting authority order***.

Culminating in the case of *State ex rel. Utility Consumers Council of Missouri, Inc.*, 585 S.W.2d 41, 49 (Mo *en banc* 1979) ("UCCM"), the Missouri Supreme Court held this methodology unlawful. Among other grounds, the Court determined that by allowing rates to be adjusted automatically, the Commission had failed to comply with Missouri law that required that **all**

relevant factors be examined before rates could be changed. Among other things, the Court held that the Commission had never been granted the power to implement such an automatic adjustment clause by the General Assembly and that, as a creature of the General Assembly, the Commission could not exercise a power than had not been granted. Judge Rendlen concurred in the result and encouraged the General Assembly to amend the Commission's enabling statutes to permit the procedure. The Supreme Court held:

> We have concluded that application of an FAC to residential and small commercial customers, as was done in this case, was beyond the statutory authority of the commission and that the FAC, roll-in, and surcharge were therefore unauthorized and cannot continue in effect. The question of use of an FAC in regard to other customers is not an issue in this case.

Id. at 47.

While the *UCCM* decision was met with cries of alarm and threats of bankruptcy from the utilities, to this date, the General Assembly has not chosen to act to authorize such automatic adjustment clauses. Moreover, the *UCCM* decision has proven beneficial to utilities and customers alike because it has created a substantial incentive for the utilities to control and reduce their fuel costs. In many instances, the absence of an automatic adjustment clause has allowed the utilities to reduce their fuel costs, taking the savings directly to their bottom line until surveillance reports brought potential overearning situations to the attention of the Commission and the matter could be addressed. In other instances, other utilities have

"voluntarily" filed to reduce their rates. All in all, the absence of an automatically adjustment clause may well have been a substantial factor in keeping Missouri's electric rates at lower general levels than in even surrounding states where electric utilities are permitted to pass these costs through to customers automatically and there is far less incentive to control the costs.

1. SJLP Attempts an "End Run" Around the UCCM Decision of the Missouri Supreme Court.

By seeking to establish a platform from which it can recover purchased power costs than exceed the normalized amount in rates, SJLP attempts no less than an "end run" around the UCCM decision. SJLP justifies its attempt by arguing that the amount of these incremental purchased power expenses are "significant," but that misses the point. It is not the size of the amount that is sought to be deferred that makes its deferral appropriate, it is the cause of the incurrence. If the amount were "significant" enough, a full rate case, that would allow consideration of all relevant factors, would be justified.

SJLP witness Rush recalled SJLP's original fuel adjustment clause and that it covered purchased power. Tr. 279-80. While he was uncertain if there were limits on the clause that would have applied to events claimed to be "extraordinary," he reconfirmed that the clause covered the cost of purchased power. Tr. 282.

This net purchased power recovery was part of the fuel adjustment clause that was invalidated by the Missouri Supreme Court in the UCCM case.

2. SJLP Could File A Full Rate Case, and Permit Consideration of All Relevant Factors, But Has Chosen Not To Do So.

At any time following the explosion, SJLP could have chosen to file a full rate case encompassing the period or anticipated period of the outage. Were its financial condition sufficiently imperiled, SJLP could have coupled such filing with a request for interim relief. SJLP witness Rush confirmed SJLP's familiarity with this process. Tr. 283. This approach would have allowed the Commission to not only evaluate the claim for additional revenue in context, it would have permitted the consideration of "all relevant factors" as required by UCCM.

As SJLP witnesses testified, SJLP chose, however, **not** to file such a case, asserting that it did not wish to "muddy the water" surrounding its pending merger with UtiliCorp. Tr. 330.

What water would be muddied? If SJLP is as confident that it is currently in a revenue shortfall condition (Tr. 293) **without consideration of these incremental costs**, there would be no mud to swirl. As is typically the case, such confidence is lacking and the past track record for SJLP is not good in this regard.

Additionally, assertions were made in the pending merger case that, were that merger and regulatory plan to be

approved, the amount of the deferral would be "written off," apparently by UtiliCorp.[1/]

3. Use of An Accounting Authority Order Would Violate the Rule in the UCCM Case by Selectively Transferring One Cost Item Only to a Future Period.

The second problem with use of an accounting authority order in this context is that it permits SJLP to "duck" consideration of all relevant factors in a test year time-frame coincident with its claims of increased costs, and selectively transfers those costs to a future period when they cannot be matched thereby frustrating the consideration of costs on a timely test year basis. Not only does this violate the matching principle, it also results in the violation of the UCCM decision in that the Commission is forced to selectively consider costs from differing periods. In such a circumstance, consideration of all relevant factors *on a time-coincident basis* is impossible.

[1/]The terminology of "write off" is something of a misnomer. What would actually happen is the amount of the acquisition premium in that case would grow by the amount of the deferral, since the retained earnings account of SJLP as a disappearing entity would shrink. This would simply expand the amount that the combined entity would seek to obtain from the ratepayers as a result of retained merger savings, plus the shared savings approach to retire the residual amount of the acquisition premium.

B. SJLP Should Not Be Allowed to "Tee Up" Recovery from the Ratepayers of Increased Costs Caused by its Own Management and Operational Errors, Oversights and Negligence.

The record in this case reveals that the chain of events leading to the explosion and damage to Unit 4/6 was similar to a line of dominos stood on end with an occasional domino or two missing. One domino is pushed and one by one they begin to fall. Although several gaps in this line occurred that could have avoided the damage, at each point the hand of SJLP is again inserted to restart the falling line of dominos. The errors, omissions and oversights leading to the damage are numerous.

1. Good Utility Practice Would Have Provided "Three Lines of Defense" for the Unit's Lubrication.

Good utility practice requires "three lines of defense" for the lubrication systems of a turbine-generator. SJLP effectively had one.

Turbines turn rapidly under load, often as high as 3,600 RPM. Modlin Depo, p. 45.[2/] Continuous lubrication is essential. Tr. 165, 374. An AC-operated oil pump was connected to the unit itself. Tr. 362 This should have been the first line of defense -- and was. Good utility practice would require a **second** AC pump was to be powered **not** from the unit on which it

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[2/]The Modlin Deposition was attached as a exhibit to Mr. Kumar's testimony.

was installed, but rather from some independent source of AC power. Modlin Depo. 130-31.

The reason for this should be obvious. If the primary AC lube pump is powered by the generating unit it lubricates, tripping that unit will deprive the primary lube pump of power to continue to supply oil to the turbine bearings as they powered down. Thus the second, and backup, AC oil pump must receive its power from an independent source, otherwise it is useless. SJLP's secondary AC oil pump, contrary to good utility practice, was powered from the same source as was the primary AC oil pump, namely the very unit to which it would have provided lubrication. Tripping the unit thus took both AC oil pumps off-line.

At the time of the incident, the unit was also deprived of what good utility practice would have required as a "third line of defense," an independently battery-powered DC oil pump, because that pump had been turned off by SJLP plant operators and its controls left in a position in which it would not be activated should both AC pumps lose power (as they did, since they were powered from the same source). Through what is almost a comedy of errors, SJLP either removed, participated in the removal of, or allowed the removal of a manual "pistol grip" control switch that plant operators had utilized since the installation of the unit to control and monitor the setting of the DC oil pump. Tr. 364.

The installation of the Bailey Distributed Control System (DCS) in 1995 gave the plant operators redundant or

duplicative control paths for the DC oil pump. Tr. 215. The pump settings could be controlled through either the DCS computer system or the manual pistol grip switch that had been there since the unit was constructed. Tr. 178. Between the 1995 period and late May, 2000, SJLP testified that the plant operators nevertheless used the manual switch to control or test the DC pump. Tr. 178. That manual switch, they stated, returned to a position identified as "auto" from which the DC pump was "armed" and ready to provide a third line of defense should the two AC pumps fail. Tr. 163.

In late May, 2000, during the installation of another system, the "Mark V Turbine Control System" ("Mark V"), the manual switch was removed leaving only the DCS in control. Tr. 170, 364. Inconsistent with good utility practice, SJLP failed to give its operators any instruction on the removal of the manual switch (and its indicator lights) and the relationship of the DCS controls under which a setting called "local" meant that control was transferred to the now non-existent manual switch with the result that the DC oil pump was set not to run. Tr. 367-68.

These obvious errors on the part of SJLP created an "accident waiting to happen" when the Unit tripped on June 7.

2. These Errors and Omissions Were the Responsibility of SJLP, Not General Electric.

Throughout this proceeding, SJLP has sought to thrust blame on General Electric ("GE"). See, e.g., Tr. 146-47, 150. GE manufactured the Mark V system and contracted regarding its installation during the supposedly scheduled outage that started on May 23. SJLP points to GE's claimed expertise, dissatisfaction with GE training and the like. Tr. 168. However, SJLP cannot avoid responsibility for its own failure to recognize the effect that removal of the manual switch would have, its failure to analyze that effect, and its failure to properly train its operators regarding the removal of their preferred method of control for the DC oil pump. Tr. 381-82.

SJLP was the principal in the transaction. It and it alone bears responsibility for selecting GE as its contractor. Exhibit 21, a packet of relevant SJLP job descriptions, SJLP's management personnel were unquestionably responsible, not only for GE's selection, but also for the supervision and control of the contractor's performance of its job. In cross-examination, Mr. Svuba agreed, one by one, that SJLP's job descriptions were aligned with the actual functions of the individual occupying that position. Tr. 180-193. SJLP even confirmed, though in a backhanded way, its control over contractor GE by its complaints about GE's training. Tr. 149-50. Responsible SJLP management personnel knew, virtually as it was occurring, that GE was failing in critical aspects of its mission with the result that

the Mark V control system was brought on line without personnel having been adequately trained to operate it. Tr. 149-150.

In law, a principal cannot hide behind its contractor who acts as the agent of the owner. OSHA makes the principal employer on the job site, as well as any other employer, responsible for the health and safety of employees. The legal principle of respondeat superior makes clear that principals are responsible -- legally responsible -- for the actions of their agents. This principle is not in the least altered by the principal being a public utility, nor that the scope of contract concerns installation of a control system on a turbine generator.

As was pointed out, GE may well be responsible to SJLP for its failures and breach of its obligations, but that is a course that SJLP does not appear to want to follow because it is easier for SJLP to come to the trough of the ratepayers. Indeed, while blaming GE for the incident, SJLP personnel appeared almost dismissive regarding any attempts to recover from GE. AGP would submit that, if the only means of recovery was from GE, SJLP would suddenly become very aggressive about that recovery.

C. Utilities Should be Denied Ratepayer Recovery of Costs Caused by Their Negligent or Reckless Acts.

SJLP personnel appeared to assert that a utility should be permitted to obtain recovery of costs that were incurred as a result of its negligence, and even the utility's reckless conduct. Tr. 285-87. Only if the utility has been wilful in its

conduct, should ratepayers be protected. AGP submits that this is neither the law nor should it be.

Utilities are held to a standard of prudent conduct. This is a far higher standard than even negligence would permit. It stands to reason that if one is negligent, they cannot have been prudent.

In Missouri law, negligence is defined as follows:

> [T]he failure to use that degree of care that an ordinarily careful person would use under the same or similar circumstances.

Missouri Approved Instruction No. 11.02 I.

In the operation of its system, a utility is charged, not with mere prudence such as ordinarily careful persons would utilize, but rather the highest degree of care. The definition language is similar to that quoted above, but modified to refer to a "very careful person." *Id.*, 11.02 II.

The question in this matter is not whether a "trap" was constructed for the SJLP operators, but rather whether SJLP, by exercising that degree of care that a very careful person would use in the same or similar circumstances would have discovered the problem. Rather clearly, it would have, as noted later in this brief.

D. SJLP's Request for "Rate Action" From the Commission On Which It Seeks to Build a Platform to Recover These Imprudently Incurred Costs Should Be Denied.

SJLP clearly seeks rate action from this utility. Based on a hearsay "oral" opinion from an accounting firm, SJLP

asserts that such action is required to defer these costs. Obviously SJLP wants to entice this Commission into the creation of a regulatory asset which it would then, in some future rate case, claim as an entitlement. The Commission should not forget that only a few months ago, Missouri Gas Energy, represented by the same attorney as SJLP, asserted that the Commission was contractually bound not only to a recovery but to a particular percentage accrual rate on allowed deferrals, a view, by the way, that was rejected by the Court of Appeals.

Mr. Harris of Staff testified that the utility has the ability to book these asserted incremental costs in any deferral account that it wishes. Tr. 388, 381. SJLP witnesses were uncertain, but did not deny that Account 186 was also available. Tr. 337-38. What SJLP obviously seeks is rate action to establish a platform for future recovery from ratepayers.

E. Neither An Act Of God Nor a Natural Disaster Occurred in This Case; Rather Only Negligence or Reckless Conduct on the Part of SJLP.

The Commission has historically allowed accounting authority orders as exceptional ratemaking procedures only in limited circumstances. In two settled cases involving SJLP, SJLP was allowed to accrue for future recovery the costs associated with the 1993 flood and its encroachment on the Iatan generating station. Exhibit 15. As settled cases, the Commission still was called upon to consider whether deferral was in the public interest. Costs associated with an ice storm were permitted in another settled case. Exhibit 16.

In neither case was any question raised that SJLP had failed in its obligation of prudence; both cases concerned circumstances that were well beyond the control of anything that could have been reasonably anticipated by the utility -- and that is, AGP believes, the point on which this "simple" case should turn. In this case, the very circumstance that caused the damage **had been anticipated by SJLP.** Evidence of that is seen directly in the **existence** of the two AC lubrication pumps, the back-up DC pump constituting "lines of defense" for the unit. Moreover, as the witnesses testified, good utility practice provided "three lines of defense" for exactly this situation. Tr. 362; Modlin Depo., p. 131. Those three lines of defense were originally not designed into this unit or were disabled by SJLP actions such that there were, at the time of the occurrence NO lines of defense for the unit.

A unit trip is not an unexpected nor extraordinary event. Turbines periodically trip for various reasons. Even the redoubtable Mr. Svuba acknowledged that "turbines do trip occasionally." Tr. 206.[3/] The occurrence that a unit may trip but still require lubrication while it is being brought down is neither unanticipated, unplanned nor beyond the scope of expected occurrences. Indeed, in good utility practice it is planned for

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[3/]Tr. 206:

A. I don't know Mr. Modlin's testimony or deposition that clearly, but do -- **turbines do trip occasionally.**

Emphasis added.

in the construction of the unit. Modlin Depo. p. 131. It was SJLP's failure to properly maintain (and train its personnel in) protective systems for its investment in this equipment that caused this damage. GE is not responsible for operating SJLP's systems and equipment; SJLP is. SJLP may have a claim against GE, but SJLP's ratepayers have not agreed to indemnify SJLP against its operational or management errors or mistakes.

Consider that in the case of the ice storm, had SJLP been negligent in failing to trim trees, or had it abandoned tree-trimming activities several years before the ice storm occurred, there doubtless would have been a dispute about the causation of the resulting damage. It was because the ice storm and the flood were both **well beyond normal expected limits** that they fell within the penumbra of extraordinary events. Unfortunately, in this case, the circumstance of a unit trip was clearly anticipated.

Nor are the AMFM Mapping AAO (Exhibit 17) nor the Commission's generic SLRP AAO (Tr. 354) of precedental value here because both concern orders of the Commission and a response to a regulatory-imposed cost. In the case of the SLRP AAO, the process was brought about by a significant drought condition and the need to protect life and property against potentially fatal explosions. Tr. 355-56. The SLRP AAO was joined with a Commission order directing the replacement of certain types of high-risk service lines over a ten-year period. In this case, however, SJLP did not install either the DCS system nor the Mark V

system in response to Commission orders, nor was either project spread over an extended period of time.

1. SJLP's Own Records Show That Required Operational Testing Was Not Done.

Public Counsel provided witness Svuba with a large chart that listed the various tasks that SJLP operators were to do each Monday (and other days as well). Mr. Svuba agreed that a test of the DC oil pump had been scheduled to be done, but had not been done, just two days before the incident. Tr. 240-41. Mr. Svuba actually then seemed to want to justify this omission by noting that this was not the only thing that the operators hadn't done as scheduled! This is like a driver defending his failure to stop at a stop sign by arguing that he never stops at such signs or stops at them only when he has time to do so.

Performance of such a test -- ***which would have been the first such test to have been performed following the removal of the manual "pistol grip" DC oil pump control switch***, certainly would have "highlighted" the problem to the operators who would then have been at least aware of the change and placed on notice as regards the change in their control systems. Mr. Modlin and Mr. Svuba wanted to argue that GE's actions created a "trap" for their operators. Modlin Depo. p. 101, Tr. 171, 178, 223. While we understand these witnesses' desire to defend their subordinate employees, the fact remains in this "simple" case that SJLP had allowed the removal of the control device that the operators had used for the past 33 years (Tr. 178) and did not inform them of

that removal. If a "trap" was created for the control operators, SJLP management allowed the creation of that "trap," held its key in their hands, and failed to provide it to the plant operators.

"Trap" is, in fact, a mischaracterization. As one witness properly characterized the situation:

A. I read Mr. Svuba's testimony and the reference to Mr. Modlin's deposition about Mr. Modlin's statement that somehow the removal of Mark V created a trap for the company. I don't understand why he used the word "trap." It was a very simple situation.

Prior to Mark V, there were two interfaces through which the operator -- company's operator could initiate the control of these three pumps -- the DC pump basically. One was the manual switch, which was, I think, situated on a wall right in front of the operator. It was visible to him. And there was a light indicator whether that switch was in off position or auto position, and it was an indicator to him.

And then there was DCS control, which is a computer control -- simply speaking, a computer control system which was installed in 1995. The manual control interface was installed in 1960 when the plant was -- mid-60s, I think, when the plant was initially installed.

Then in 1995, the company added computerized control. They call it distributor control system, which is basically computer-based software system. And it also had a mechanism through which the operator could initiate the control of the DC pump. It also had three positions: On, auto, and local. In that local means that you go to the manual switch. So in a sense, if manual switch is in off, it -- or is gone, that would be off.

So what happened -- Mark V had nothing to do with the -- this interface later to the DC pump control. They took out that manual switch and placed on that wall the Mark V cabinet. And now the operator, who was relying on this manual switch and manual indicator -- the physical indicator to see in what position the DC pump was, whether it was in on, off or auto position, and that was gone.

So logical thing would have been, look, you know, we took away your switch, now you had to check through the DCS. And DCS where it says local, it means off so you have to put it in auto position.

The manual switch used to come to auto position automatically because of spring, which did not happen in the DCS system. And this was very simple thing. Should have said, Look, this is what you have been using since 1966 and that manual switch is gone.

And that should have been emphasized more when you -- out of two pumps -- out of three pumps, two pumps depended on getting power from the same source, so DCS was the only back-up in real sense. So when you took away the switch, you tell, Look, now you cannot rely, go to DCS, look at the status.

And they might have found it when -- if they had tested the pump -- which I believe they did not test after May 24. And the pump was left in the off position and the circuit control was left in the off position. And unless you go to DCS, put in auto, the pump was not supposed to start.

So it was not pump's failure or anybody's failure, it's the operator -- or any mechanical failure.

It's the operator -- or the company, which did not tell the operator what to do. And that created the problem. That's the difference I'm discussing. And I don't think it's a trap or created intentionally or unintentionally by anybody.

Kumar, Tr. 366-68.

IV. CONCLUSION.

For the foregoing reasons, the request for an accounting authority order to defer these costs in Account 182.3 should be denied.

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ATTORNEYS FOR AG PROCESSING INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application for Leave to Intervene by facsimile and U.S. mail, postage prepaid addressed to all parties by their attorneys of record as provided by the Secretary of the Commission.

Stuart W. Conrad

November 21, 2000