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December 1, 2000

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

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

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of the reply brief of St. Joseph Light & Power Company.

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

Sincerely yours,

Gary W. Duffy

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

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the matter of the Application of St. Joseph Light & Power Company for the Issuance of an Accounting Authority Order Relating to its Electrical Operations.	))))	Case No. EO-2000-845

REPLY BRIEF OF

ST. JOSEPH LIGHT & POWER COMPANY

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December 4, 2000

REPLY BRIEF OF
ST. JOSEPH LIGHT & POWER COMPANY
Case No. EO-2000-845

I. Summary

This is still a simple case, despite the arguments from Staff, OPC and AGP set out in their initial briefs. All that has been requested by SJLP is authority from the Commission to defer these costs on its books so that there is the *future opportunity* for them to be examined by the Commission in a rate case. SJLP appreciates the Commission's ruling which allowed the case to be processed in time for an order to be issued before SJLP has to close its books for the year 2000.

Despite the efforts of Staff, OPC and AGP to turn this into a "mini rate case" and to use it as a forum to change how the Commission processes Accounting Authority Orders, this is still just a request for an AAO for an extraordinary event. SJLP has proven beyond any doubt that the Lake Road incident was an extraordinary event, that it is non-recurring in nature, and that the amount involved is material. That is all that is relevant to a request for an AAO. By the very nature of an AAO, issues regarding rate recovery are *deferred* to a future date.

Allegations of "imprudence" or "operator error" should also have no bearing on this case. At best, all that has been shown is that none of the personnel at Lake Road were aware of the trap. SJLP testified to that at the outset. There has been no evidence of any willful or intentional actions by SJLP that led to the incident. It will be difficult for anyone to prove that this is even something that a reasonable person could or should have foreseen. None of the trained and experienced engineers and operators who actually dealt with the situation were aware of the trap.

Of course, after the fact, and with the benefit of 20/20 hindsight, accountants and engineers who have never even been in the Lake Road plant are now offering critical opinions on how the incident could have been avoided. The point is, however, that reasonable people, acting reasonably, took reasonable actions and even with those reasonable actions, an extraordinary event occurred. Nevertheless, it is unnecessary for the Commission to even address that issue in this case. All the Commission will be doing by granting an AAO is providing a future opportunity for the issue to be fully litigated in the context of a rate case.

The Commission is quite capable of segregating the issue of whether SJLP meets the criteria for an AAO from whether there should be rate recovery for the dollars involved. As an analogy, the Staff on several occasions in the past has attempted to get the Commission to rule -- in asset sale cases -- on the rate-making implications of a utility's profit from a sale. The Commission has properly ruled in those situations that the appropriate place to deal with rate-making issues is *a rate case,* not a transfer of assets case.[1] In the same fashion, the appropriate place to deal with allegations of imprudence and operator error is in a future rate case when and if these costs are sought to be recovered from ratepayers, not in the AAO case.

Staff, OPC and AGP have already made SJLP and the Commission go way beyond what was necessary to efficiently process this case. Those parties should have just said at the outset of this case: "We don't oppose the granting of the AAO to defer the costs on SJLP's books, but we

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[1] See, e.g., ***In Re Joint Application of Union Electric Company and the City of Poplar Bluff***, 2 MoPSC 3d 470 (Case No. EM-94-90, December 3, 1993) where the Staff and UE filed "numerous motions and pleadings regarding the ... proper ratemaking treatment of any (financial) gain arising from the sale which is the primary transaction herein." In declining to make any ratemaking findings or even to establish a separate docket to deal with it, the Commission approved the sale of assets and said it "will follow its general practice of not making any specific order as to the ratemaking treatment for this transaction... ." ***Id.*** at 473.

dispute whether they should be recovered from ratepayers and we explicitly reserve the right to contest whether any of the amounts should be recovered in SJLP's rates in the future." Everyone involved in this case could have saved a lot of time and effort if those parties had taken a reasonable position such as that at the very beginning.

II. RESPONSE TO INITIAL BRIEFS[2]

A. Staff

Before discussing the content of the Staff's brief, there are several topics which are not in the Staff's brief which should be noted. First, there is no discussion about what was previously perceived by the Staff as a vital issue; namely, the issue of an alleged inconsistency between the materiality standard for an AAO in the Uniform System of Accounts, and the discussion of materiality in the merger agreement between SJLP and UtiliCorp United. That appears to have disappeared. Another disappearing topic is the allegation that SJLP was over-earning. The pre-filed testimony of Mr. Broadwater became irrelevant, and the prefiled testimony of Mr. Harris had to be significantly changed after the Staff reviewed SJLP's surrebuttal testimony.

The Staff's initial brief clearly indicates its focus at the outset. Staff says "these costs should not be recovered from SJLP's customers in a future rate case." (Brief, p. 1) Why don't we wait until there is a rate case in which the costs are actually requested to be recovered from ratepayers to litigate that? Why is it so important that it be litigated in this proceeding? The Staff candidly admits on page 11 that it is still "investigating the events at issue here." There has not even been a report issued in the separate "ES" case established by the Commission and a

[2] Where separate parties have made the same argument, SJLP will combine its response.

conclusion brought to that proceeding. Rate recovery is not the issue. SJLP is simply seeking an AAO which provides the opportunity to seek recovery in a future rate case. (Ex 7, p. 3; Tr. 301).

On page 2, Staff asserts that SJLP management essentially knew of the trap and was "indifferent" to it. (¶ 1) The truth is that no one -- including the vendor -- knew of the software problem. There is no evidence anyone knew the problem existed and was indifferent to its presence.

Staff says on page 3 (¶ 1) that the "typical events" for which the Commission grants an AAO include storms, plant life extensions and fuel conversion projects. (It appears to be a contradiction in terms for the Staff to speak of "typical" extraordinary events.) SJLP provided other examples where AAOs have been granted. The salient point, however, is that the criteria for recording to the deferral account does not hinge on the *type* of event giving rise to the deferral, but rather that the event was significant, non-recurring and not now included in rates.

Staff argues on page 3 (first full ¶) that this is the first time, to its knowledge, that any utility has requested an AAO for events created by the utility's own circumstances through its failure to adequately know the systems upon which it relies. That is a doubtful assertion. All of the AAOs issued by the Commission regarding the replacement of natural gas lines since 1989 arguably would fit that description. Those companies were responsible for the condition of their systems. Further, the Commission has allowed the amortization of replacement power and repair costs involving power plants in rates even where there are allegations of "human error" by the Public Counsel. While not an AAO case, the case of ***In Re Kansas City Power & Light Company***, 26 Mo.PSC (N.S.) 104, 118-120 (ER-83-49 et al., July 8, 1983) is instructive because it shows the Commission has allowed rate recovery for the same type of costs involved here under somewhat similar circumstances at another power plant.

In that same paragraph on page 3, the Staff urges the Commission to ignore the established criteria for AAOs and "look beyond merely whether the event is extraordinary and nonrecurring and deny SJLP's application." What a concept! Let's just ignore the rules by "looking beyond" ones we don't like. It is so much easier to make your arguments when you don't have to follow the rules.

Staff claims on page 4 (¶ 2) that "SJLP configured and interfaced the Bailey DCS" system. The Staff is wrong. That work was done by a contractor. (Tr. 161, lines 5-24)

Both Staff (pages 7-8) and OPC (page 12) state that at least Mr. Modlin was aware that the DC oil pump had to be placed in the "automatic" mode due to his observation of the test on May 20, 2000. The testimony has been clear that it was necessary that the DC oil pump control be in the automatic mode for the pump to start upon loss of oil pressure. (Exhibit 5, Svuba direct, p. 7, lines 4-5). It has also been clear that the understanding of the plant personnel, including Mr. Modlin, was that the pump returned to the automatic mode after a stop command. (Exhibit 5, Svuba direct, p. 8, lines 9-15) On the day of that test, the pump had been off for approximately three weeks. (Exhibit 5, Svuba direct, p. 4, lines 9-10) It was not a situation in which the pump was shut off and then monitored to see if it returned to automatic. Rather, it was a *different type* of situation in which an inactive piece of equipment was returned to service by manually changing the operating mode from the off position to the automatic position. The fact that this step was necessary did not raise a concern because it was the expected course of action for the operator. Contrary to the allegations of Staff and OPC, it did not demonstrate to Mr. Modlin or the operator that the control mode did not return to automatic after a stop command. This means that the Staff and OPC's claim that this testing somehow proves that Mr. Modlin was aware of the problem prior to the incident is unfounded.

Staff (at page 8), Public Counsel (at pages 12 and 14) and AGP (at pages 13-15) all attack the alleged lack of training of the plant operators. Staff claims that SJLP was "indifferen[t] to assuring that its operators were adequately informed." The record clearly shows that SJLP took the training of its operators quite seriously. Training was included in the initial purchase order for the system, not as an after-thought. SJLP went to considerable effort to set up a computer-equipped training room for the General Electric simulation. The SJLP project manager elicited immediate feedback from the trainees and provided that feedback to the GE trainer. SJLP took the appropriate steps to correct the deficient training from GE, both for the purposes of start-up and short-term operation, as well as long-term operation. These actions by SJLP refute Staff's argument that it was "indifferent" to training. To the contrary, they show SJLP considered training to be very important. (*See*, Exhibit 6, Svuba surrebuttal, page 6, lines 5-12; Exhibit 9, Schedule JK-11, [Modlin deposition] page 144, line 4 through page 145, line 17)

Staff has the view that the Lake Road plant operators' "assumption and lack of understanding were unwarranted, imprudent and resulted in costs that ratepayers should never bear." (Brief, page 9) Upon examination, this strident statement disintegrates. A significant group of competent people -- operators and engineers -- who had successfully performed their respective roles in producing electricity for many years, were in a set of circumstances in which they all believed that a piece of equipment operated in a particular way. There were no "red flags" or other warnings that were ignored. Their understanding, although flawed when viewed in hindsight, was "warranted" under the circumstances.

Staff (at page 10) and Public Counsel (at page 13) both speak of an alleged need for training and inquiries to outside parties regarding the DCS "after June of 1999." SJLP fails to understand the alleged significance of that date. It was first raised in cross-examination of Mr.

Svuba. (Tr. 170, lines 22-24) There has never been any evidence to demonstrate its relevance. There is nothing in the record to show that anything pertinent to the issues in this case occurred in June of 1999.

On page 12, Staff attempts to refute SJLP's statement that GE had responsibility to perform detailed engineering design regarding the project. Staff says SJLP's "implication" of GE responsibility "is meritless." (¶ 2) Staff then concludes that "General Electric merely selected a location for placement of the Mark V cabinet and arranged to make that space usable." This is absolutely false and unsupported by evidence. Mr. Svuba testified that GE had the responsibility to prepare "drawings and other instructions used to remove the replaced equipment, install the new system, and integrate the new system with existing plant controls." (Exhibit 5, Svuba direct, page 9, lines 20-22). Furthermore, the GE purchase order states that this includes "detailed engineering" and the construction documents provided by GE demonstrate that GE understood that this responsibility included necessary changes to the DCS. (Exhibit 9, Schedule JK-11, ([Modlin deposition], page 104, line 23-24, errata sheets)

Staff discusses its proposed new guidelines for evaluating AAO requests on pages 14-15. In its initial brief, SJLP discussed why these should not be adopted, so there is no reason to repeat the discussion here.

The Staff discusses when a rate case should be filed after an AAO is granted on pages 17-18. SJLP agrees that a rate case must be filed within a reasonable time. What is a reasonable time is subject to the circumstances, but it is unlikely that 90 days, as advocated by Staff, would ever be reasonable. In the quoted Missouri Public Service case, 12 months was determined by the Commission to be a reasonable time. There was no "moratorium" in place in that situation. SJLP agrees that 12 months is a reasonable time in this situation, assuming there is no conflicting

order as a result of the merger case.

On page 18 (¶ 3), the Staff quotes from a Commission case to the effect that "it is not reasonable to defer costs to insulate shareholders from risks." There is no "insulation from risks" going on here. SJLP's shareholders are now paying, and will continue to pay, the carrying costs of a deferral. This amounts to a cost of $333,000 per year, assuming a 10% return on equity on the amount SJLP has requested permission to defer.

Staff takes some liberties with the facts at the bottom of page 18 where it discusses the time between some previous AAOs and the onset of amortization. First, those were *settled* cases where months of litigation were not involved just to obtain the AAO. It is not appropriate for the Staff to cite a settled case as precedent for its argument here, since those settlements recited that no party had agreed to any principle of rate-making in agreeing to the settlement. Second, in the case of the ice storm AAO, the Staff's reckoning of time is not accurate. The effective date of the order was January 24 and amortization was ordered to begin on March 1. That is not a difference of "a week or less" as Staff says. As stated in its initial brief and in the testimony of Mr. Stoll, SJLP's position clearly follows the Uniform System of Accounts that the amortization of the deferral should match the recovery of the funds in rates. Starting an amortization before rate recovery is certainly a mismatch which the Commission routinely[3] says it will not countenance.

On page 22, Staff implies that SJLP has the option to record these expenses as a deferral under Account 186. As correctly noted by Staff in its initial brief, page 23, SJLP's outside auditors (Arthur Andersen & Co.) would not provide SJLP with an unqualified opinion without

[3] See recent suspension orders in rate cases in the discussion of true-ups.

an order from the Commission authorizing SJLP to defer the costs, regardless of the account to be charged with the deferral.

B. Public Counsel

Public Counsel mis-characterizes SJLP's position in stating that the "only" criteria to be used is "the financial impact the event has on SJLP's operations." (Page 3, ¶ 3) Mr. Stoll testified that the Commission should continue to utilize the criteria it has used in the past, which follows the USOA definition of "extraordinary." (Exhibit 2, Stoll surrebuttal, p. 5, lines 12-20) Mr. Stoll explained there, and on cross-examination, that the USOA definition not only speaks to the financial impact on the utility, but also to whether the event was not typical, not expected to recur frequently and not in current rates. (Tr. 63, lines 10-16)

Public Counsel's reference on page 4 to the AAO involving United Missouri Water[4] is misplaced. Certainly, no reasonable person would compare a nationally-known statement of accounting principles such as FAS 106 to an unknown trap in some software in a power plant in St. Joseph, Missouri. Further, the actual language in the case does not support Public Counsel's statement that the Commission rejected the water company's request for an AAO because of "management acts or omissions." Although that was discussed by the Commission, the reason the AAO was rejected was the costs were not extraordinary, unusual or unique as the following quotation demonstrates:

> The expenses for which UWM seeks an Accounting Authority Order are not extraordinary, unusual or unique and do not qualify for an Accounting Authority Order under the Commission's standards. Therefore, UWM's request for an accounting authority order will be denied.

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[4] ***In Re United Water Missouri, Inc.***, Case No. WA-98-187, April 30, 1999.

Report and Order, p. 7 of 8. That express finding of the Commission was repeated in an order denying rehearing (at p. 2 of 3) issued May 18, 1999 in the same case. There is no mention of management acts or omissions there, either. Therefore, Public Counsel has mis-characterized the holding in the United Water case.

In its effort to accuse SJLP of "management acts or omissions," Public Counsel makes several references to the computer logic error involving the DC oil pump as being "recognized in SJLP's own internal documents." (Brief, p. 9, ¶ 1; p. 11, ¶ 1) The "internal documents" referred to by Public Counsel are the notes Mr. Modlin made when he was charged with investigating the probable cause of the incident. Rather than being some "smoking gun" that shows SJLP knew of the situation beforehand, these are documents created *after the fact* as part of the effort to fix the problem so that it never occurs again. This is not evidence of "management acts or omissions" on the part of SJLP. It is post-accident investigation and remediation which, in a civil litigation context, could never be used to prove negligence.

Public Counsel claims on page 13 (and Staff makes the same claim on page 8 of its brief) that SJLP was negligent because it failed to check the logic to see that the pump control mode would return to automatic. Clearly, if SJLP had returned the system to service without performing any checks, negligence might be an issue. However, the fact is that SJLP did recognize that changes had been made to the DC oil pump controls that could affect the operation of the pump and did perform testing to verify that these changes made were in accordance with GE's design. Public Counsel includes quotations from the deposition of Mr. Modlin on page 11 of its brief which demonstrate this to be true. The testing performed was the reasonable action to be taken, based upon the changes that were made and the information that was known at the time.

Public Counsel makes the baseless and inflammatory claim on the top of page 15 that there was an economic incentive to place Unit 4/6 back in service prematurely. Public Counsel cites no evidence to support this claim, it has no facts to support its argument , and the facts are contrary to the allegations. Oversight of the turbine start-up and check-out of the new equipment was the responsibility of the GE start-up engineer, who had no incentive to bring the plant back on line prematurely or at any particular time. SJLP did not override the start-up engineer's recommendations, so basically the GE start-up engineer was in complete control of the start-up. All of the work for which the outage occurred had been completed, so there is no evidence that the plant was being hurried back into operation with things left undone. (Exhibit 9, Schedule JK-11 [Modlin deposition], page 119, lines 2-18; page 180 line 14 through page 181, line 2; Exhibit 6, Svuba surrebuttal, page 9, lines 4-17) There was no apparent evidence of a problem on June 2, 2000 that indicated that the start-up of the unit should be delayed for any reason. (Exhibit 6, Svuba surrebuttal, page 11, line 26)

OPC states that the explosion and fire were not the result of an "unforeseen mechanical failure" (page 16), while AGP states that "a very careful person" would have discovered the problem (page 16). To support these claims, these parties blur the lines between what was known prior to the incident and what was discovered during the subsequent investigation. This is a part of their effort to hold SJLP to impossible standards; standards higher than what an ordinarily careful person would be held to. SJLP hired what appeared to be the most qualified contractor -- General Electric -- to perform the work since SJLP obviously did not have the in-house capability of doing it. SJLP was certainly entitled to rely upon the expertise of an internationally-known and respected company to perform the detailed engineering necessary to make the changes to the plant in an appropriate manner. SJLP admitted that "we all know now

what could have been done differently to prevent the accident." (Exhibit 6 NP, Svuba surrebuttal, page 2, line 13). The question is, in light of what was known and understood by everyone involved at the time, and the expectations of SJLP that General Electric would do its work properly and professionally, can SJLP really be charged with "management acts or omissions?" First, it is not something that has to be decided in this proceeding, since the granting of the AAO does nothing with regard to whether the dollars will ever be recovered in rates. Second, it should not be decided in this proceeding because if it is, this case will become precedent for prudence investigations to take place in the context of AAO cases. Those cases will become much more complex in the future than they ever have in the past, when there is no need for that to occur.

On page 16, Public Counsel contends that granting an AAO here will "relegate captive ratepayers to the role of insurers for the company's negligent acts." There are two things that are incorrect about that allegation. First, the granting of an AAO here will not have any impact on ratepayers. Second, Public Counsel acts as though ratepayers paying for a negligent act would be a unique situation. Public Counsel conveniently overlooks the fact that the Uniform System of Accounts calmly recognizes "injuries and damages" as an expense every utility encounters. It is a cost of doing business that is in the rates of every major utility in this state, and it has been since the inception of the Public Service Commission. No human enterprise is error-free. Errors occur all the time whether they are misread meters, auto accidents, or someone coming into contact with an energized line. Those are normally allowed to be recovered in rates. The costs of errors in other situations are recognized in every one of the products and services every person purchases, and in the taxes we pay when the mistakes are made by the government.

On page 17, Public Counsel contends that forced outages are normal and recurring

events. Forced-outages at power plants are indeed recurring events, and a certain level of forced-outage is assumed in the rate-making process. However, the amount of forced-outage assumed in SJLP's current rates is *much less* than that which occurred as a result of the Unit 4/6 incident. SJLP and Staff assumed forced-outage rates in SJLP's previous rate case (ER-99-247) in the range of 3% to 4.4%. (Exhibit 3, Ferry direct, p. 10, lines 5-7). This is equivalent on an annual basis to 263 hours and 385 hours of outages, respectively. Further, these assumed outage hours were spread over the entire year. In stark contrast to those assumed levels of normal forced outages, the 1,473 hours of forced-outage associated with the Unit 4/6 incident all occurred during the summer months of June, July and August when electrical loads and the costs to serve them were high. (Exhibit 4, Ferry surrebuttal, p. 5, lines 6-20). "Clearly, an outage of the magnitude of the Unit 4/6 incident was not contemplated by any party to the settlement of ER-99-247." (Exhibit 3, p. 10, lines 10-12) The fact that the outage hours for the incident (not even considering the associated dollars) were almost four times what the Staff and SJLP considered to be "normal" in a settlement clearly qualifies the Unit 4/6 incident as an extraordinary and non-recurring event. It also demonstrates that the Public Counsel's claim here is disingenuous. The Commission has granted AAOs in the past involving forced outages. That was the basis for the AAO granted to SJLP involving the flood in 1993. (Tr. 97, lines15-18) That AAO wasn't granted for the cost of sandbags.

C. AGP

AGP starts its brief with the claim that SJLP is trying to evade regulatory scrutiny that would result from a full rate case. (Brief, p. 2, ¶ 1) This claim of AGP, as with much of its brief, is simply unfounded and inflammatory rhetoric. What "evasion" of regulatory scrutiny is taking

place? SJLP answered data requests, participated in a deposition, and underwent cross examination in this case. There is the separate, previously-mentioned and pending investigatory case before the Commission; the ES case. If the dollars associated with the AAO are ever sought to be recovered in a general rate case, they will undoubtedly undergo more scrutiny than they have in this proceeding. AGP's claims are therefore baseless and provide nothing of either importance or relevance to a rational discussion of the issues.

AGP presents an historical discussion of the fuel adjustment clause on pages 2 through 8 of its brief. That discussion has about the same relevance to this case as the weather forecast for Peoria. AGP then claims on page 8 that SJLP is making an "end run" around the ***UCCM*** decision on fuel adjustment clauses. Presumably, this means that AGP thinks SJLP has somehow discovered a method to automatically change the electric rates of customers, as the fuel adjustment clause did, simply by seeking an AAO. This claim makes absolutely no sense. AGP neglects to explain how such an "end run" is even *possible* since an AAO does not change the rates charged to customers. AGP's argument is totally without merit.

AGP claims that SJLP could have filed for a rate increase to recover the Unit 4/6 incident costs, but has chosen not to. This is stating the obvious. SJLP explained that it chose not to file a rate case in the middle of the Commission's decision on the merger because it perceived that it would "muddy the issues" in the merger case. (Tr. 294, lines 1-6) Whether SJLP can file a rate case now is not the issue. It is pointless to argue about it because one has not been filed, even though Mr. Stoll indicated one would be justified. (Exhibit 2, Stoll surrebuttal, p. 9 lines 21-23) The issue is whether the Unit 4/6 incident meets the criteria for the issuance of an AAO so that it can be dealt with in a future rate case. As Mr. Stoll testified, the company's outside auditors have told it that it would not be appropriate to book the costs as a deferral without an order from

the Commission so authorizing it. (Tr. 89, lines 7-10)

AGP indicates its opinion on page 10 that the AAO violates the matching principle. This claim is without merit. Mr. Stoll explained at length how the AAO actually allows the matching to take place. (Exhibit 2, Stoll surrebuttal, pp. 17-18) AGP's baseless claim flies in the face of FAS 71 and the requirements under account 182.3 of the USOA.

The remainder of AGP's brief largely duplicates arguments of Staff or Public Counsel that have been previously addressed.

III. CONCLUSION

The evidence shows that the application of SJLP for an Accounting Authority Order should be granted because it meets the criteria the Commission has utilized in the past. It was an extraordinary event. It is not expected to recur. The costs were significant. Questions regarding "operator error" or "prudence" are not a part of the criteria for a simple reason. The issuance of an AAO does not affect rates. It merely provides for the opportunity for the issues to be considered in a future rate case. The Commission will not be changing rates or setting precedent if it merely grants permission to SJLP to defer the costs on its own books, as requested. No party will have forfeited the right or ability to make any argument in a future rate case. The Commission will have the ability to deal with the costs in the manner it sees fit in such a future rate case. If the Commission denies the request, however, it will be setting the stage for full-blown prudence investigations in future AAO proceedings.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served this 4th day of December, 2000, by either hand delivery or placement of same with the United States Postal Service in Jefferson City, Missouri, first class postage prepaid, to the counsel listed below.

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