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Missouri Public Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: Case No. EA-2000-308

Dear Judge Roberts:

Enclosed for filing in the referenced matter please find the original and eight copies of Intercounty Electric Cooperative Association's Initial Brief.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By: Mark W. Comley

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MWC:ab
Enclosure
cc: Office of Public Counsel
Denny Frey
Gary W. Duffy
Michael R. Dunbar
Vernon W. Strickland

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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| In the Matter of the Application of the City of Rolla, Missouri, for an Order Assigning Exclusive Service Territories and for Determination of Fair and Reasonable Compensation Pursuant to Section 386.800, RSMo 1994. | ) ) ) ) ) ) ) | Case No. EA-2000-308 |

**INTERCOUNTY ELECTRIC COOPERATIVE ASSOCIATION'S INITIAL BRIEF**

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**INTERCOUNTY ELECTRIC COOPERATIVE ASSOCIATION'S INITIAL BRIEF**

## *INTRODUCTION*

### *Nature of the Action*

This case is based on an application by the City of Rolla acting by and through its Board of Public Utilities (hereinafter "Rolla" or "RMU" respectively) for an order assigning exclusive service territories and for a determination of fair and reasonable compensation under the provisions of §386.800 RSMo, 1994,[1] specifically §386.800.2-.8. In due course, Intercounty Electric Cooperative Association (Intercounty) was made a party and directed to respond. Although the provisions of §386.800 have been triggered once before in this body,[2] the instant case is the first to have issues pertaining to §386.800 fully joined and heard by the Commission for resolution. As the parties have several times emphasized, this will be a seminal decision for the Commission in interpreting and applying §386.800, and is expected to have long range effects.

Section §386.800 has a close correlation with the law of eminent domain of our state. The authority of many condemning authorities and the procedures for the condemnation of property are

[1]Statutory references herein shall be to RSMo. 1994 unless otherwise indicated.

[2]See, *In the Matter of the Application of the City of Poplar Bluff for an Order Assigning Exclusive Territory and a Determination of Fair and Reasonable Compensation Pursuant to Section 386.800 RSMo.*, Case No. EO-97-348 filed February 27, 1997.

generally set forth in Chapter 523, RSMo. 1994. The condemnation powers of municipalities are found in Chapter 71, RSMo. Absent provisions like §386.800.2-.8, a municipality and a rural electric cooperative are prohibited from condemning the property of the other except under narrow circumstances. Section 523.010.4 provides:

> Except as provided in subsection 5 of this section, nothing in this chapter shall be construed to give a public utility, as defined in section 386.020, RSMo, or a rural electric cooperative, as provided in chapter 394, RSMo, the power to condemn property which is currently used by another provider of public utility service, including a municipality or a special purpose district, when such property is used or useful in providing utility services, if the public utility or cooperative seeking to condemn such property, directly or indirectly, will use or proposes to use the property for the same purpose, or a purpose substantially similar to the purpose that the property is being used by the provider of the public utility service.

A similar proscription applies to municipalities with respect to condemnation of the property of rural electric cooperatives.

> Except as provided in subsection 2 of this section, no city, town or village may condemn the property of a public utility, as defined in section 386.020, RSMo, or the property of a rural electric cooperative, as provided in chapter 394, RSMo, if such property is used or useful in providing utility services and the city, town or village seeking to condemn such property, directly or indirectly, will use or proposes to use the property for the same purpose, or a purpose substantially similar to the purpose that the property is being used by the public utility or rural electric cooperative.

§71.525.1.

Section 386.800 carves out an exception to these statutes and erects a procedure for the taking of a rural electric cooperative's property that is unique to municipal annexation. The Commission cannot adequately interpret §386.800 without reference to its roots in the law of eminent domain, and in subsequent sections of this brief, Intercounty will spotlight the parallels between eminent domain and §386.800.

*History*

The introduction of this brief would not be complete without a narrative of the history of the action. This case can trace its beginnings to Rolla's decision to annex approximately 1320 acres located south of the corporate limits of the city.[3] Mr. Strickland explained in his rebuttal testimony that the process of the Southside Annexation started in 1994. (Ex. 11, Strickland Rebuttal, p. 10) In this process, Rolla was governed by select provisions of Missouri law one of which is §71.015. This section requires a municipality to prepare a "plan of intent" which sets forth the manner in which the municipality shall provide major services presently provided by the city and a proposed time schedule for those services. §71.015.1(4)(a)(b). The plan of intent is not a perfunctory step in this process but rather constitutes the definitive document that describes the city's annexation proposal. The law treats the plan of intent jealously. If a city fails to follow the plan of intent within the statutorily set period after annexation, it is subject to suit for deannexation. Section 71.105.1(7) provides:

> Failure to comply in providing services to the said area or to zone in compliance with the "plan of intent" within three years after the effective date of the annexation, unless compliance is made unreasonable by an act of God, shall give rise to a cause of action for deannexation which may be filed in the circuit court by any resident of the area who was residing in the area at the time the annexation became effective.

To comply with the §71.015, Rolla prepared a plan of intent (Plan of Intent) for the Southside Annexation and revised it several times during the process.[4] The revised Plan of Intent dated

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[3]At hearing, and in prehearing phases of this case, the parties have referred to the annexed area as the "Southside Annexation" or simply the "Area" (Ex. 5, Watkins Direct, p.2)( Ex. 10, Nelson Rebuttal, p. 3); and these abbreviations will be continued in this brief.

[4]See, City of Rolla v. Armaly, 985 S.W. 2d 419 ( S.D. Ct. App. 1999) for a discussion of the plan of intent process.

November 26, 1996 is attached to the testimony of Southside Neighbors witness, Mr. Don Priest, (See Ex. 12, Priest Rebuttal, Schedule C) The version dated October 6, 1997 is attached the rebuttal of. Vernon Strickland, the General Manager of Intercounty. (Ex. 11, Strickland Rebuttal, Schedule VWS-5) At page 9 of the November 26, 1996 revision, and at page 10 of the October 6, 1997 revision, can be found this declaration:

> **The areas within the proposed annexation that are now receiving electric service from a rural electric CO-OP would continue to do so. RMU would not be allowed to serve any of these properties. Any new development within this area would receive electric service from RMU.**

[emphasis added]. Rolla's Plan of Intent and its revisions will be a recurrent subject throughout this brief.

The Southside Annexation was effective on June 8, 1998. Less than 40 days thereafter, on July 15, 1998, Rolla published a notice in the local newspaper that it intended to extend its service territory into the Southside Annexation area and take over service to the Intercounty members in that area. (Ex. 5, Watkins Direct, p. 7, 10) Earlier, on July 13, 1998, Rolla sent a letter to Intercounty advising of the same intention. What ensued thereafter was a series of meetings between Intercounty and Rolla. At those meetings the parties explored whether there was any room to settle the issues separating them, but there was no success. On October 29, 1999, Rolla by and through RMU filed the present application.

A general exposition of the relevant facts supporting Intercounty's arguments will not be added at this point, but instead the facts will be cited as they are needed in the "Discussion" section below.

## DISCUSSION

**I. Is Rolla's request for an assignment of the exclusive territory and transfer of Intercounty's facilities in the public interest?**

*Source of The "Public Interest" Standard*

There are three references to the "public interest" in §386.800, two of which are apposite to this case. Of those two, the first is found in §386.800.6 where the Commission is directed on the manner in which its orders shall be made respecting the assignment of service territories and determination of fair and reasonable compensation:

> The commission shall make such determinations based on findings of what best serves the public interest and shall issue its decision by report and order.

The second of the two is found in §386.800.7:

> 7. In reaching its decision under subsection 6 of this section, the commission shall consider the following factors:
>
> (1) Whether the acquisition or transfers sought by the municipally owned electric utility within the annexed area from the affected electric supplier are, in total, in the public interest, including consideration of rate disparities between the competing electric suppliers and issues of unjust rate discrimination among customers of a single electric supplier if the rates to be charged in the annexed areas are lower than those charged to other system customers; . . . .

The assignment of exclusive territory and transfer of Intercounty's facilities requested by Rolla is not, in total, in the public interest and its application should be denied.

*The Existing Service Provider*

Intercounty is the existing service provider for the 286 customers who reside in the Area. Its service to the customers in the Area is backed by a strong organization with a history of exemplary service. Intercounty is a Chapter 394, RSMo 1994, Cooperative Corporation which was

organized in 1936 to distribute electric energy and service to its members in all or parts of Crawford, Dent, Gasconade, Miller, Maries, Phelps, Pulaski, Shannon, and Texas counties in Missouri. The cooperative presently serves 28,100 accounts over 5,385 miles of line (5.22 accounts per mile) and covers approximately 2,500 square miles. Intercounty's corporate headquarters is located in Licking, Missouri. In addition, Intercounty has district offices in Mountain Grove and Rolla with service warehouses located in Houston, Salem, Roby, Summersville and St. James.

Intercounty's popularity with its customers is due in part to the way in which the cooperative is controlled. As a cooperative, Intercounty is controlled by its member elected board of directors within the guidelines provided by the state and its mortgage holders. Intercounty's mortgage holders are the Rural Utilities Service of the Department of Agriculture (RUS), National Rural Utilities Cooperative Finance Corporation (NRUCFC or CFC), and the members of the cooperative. Intercounty is a 70% borrower from the RUS and a 30% borrower from the CFC. The members own 41% of the cooperative and RUS & CFC own the remainder proportionately to their loan levels.

In view of Intercounty's asset base, financial support and history of service to the counties in which it operates, there can be no question that Intercounty could continue to serve the Area indefinitely without any compromise in the level of service.

**A. What effect will there be with regard to electric distribution lines in the annexed area if the Commission does not approve the application of Rolla Municipal Utilities (RMU)?**

To address this question, the Commission should have an understanding of major distribution assets which are in service and installed in and around the Area. Mr. Brian Nelson, Manager of Engineering for Intercounty, provided an inventory of those assets in his filed rebuttal testimony.

According to Mr. Nelson, Intercounty uses four (4) three phase feeder circuits which originate from three (3) Sho Me Electric substations. Along with the three phase circuits, there are single phase taps or circuits extended throughout the Area. In addition to the three phase feeder circuits all three substations have other feeder circuits which feed Intercounty territory in and around the Rolla vicinity. The Intercounty designations for these facilities are the East Rolla, South Rolla and Dry Fork substations. (Ex. 10, Nelson Rebuttal, p. 3)

The East Rolla substation is a 10 MVA[5] substation which is located within the city limits of Rolla on Forum Drive. Intercounty has two (2) three phase circuits (Feeders 5 and 6) that feed south from this substation and provide service into and through the Area to provide electrical service to its members within the Area as well as customers outside the Area. The South Rolla substation (10 MVA) is located approximately 2.5 miles southwest of the annexed city limits of Rolla along US Highway 63 and normally serves the western portion of the annexed area from a single three phase feeder (Feeder 1). (Ex. 10, Nelson Rebuttal, p. 3)

The Dry Fork substation is a 7.5 MVA facility located on Highway F approximately 3 miles east of the southeastern corner of the annexed city limit. From this facility a single three phase circuit designated Feeder 7 serves the southeastern portion of the annexed area. The Intercounty system, and in particular, the substations which serve the Area currently have significant capacity for growth and have been constructed and located to provide adequate capacity to serve the current and future needs of the Area.

Mr. Nelson attached a table to his testimony labeled BN-1, which shows peak substation loading for each substation for the past two (2) years and in addition the percent loading of each

[5]Megavolt-amperes (MVA).

substation at these peaks. This table shows that the Intercounty system, and in particular, the substations which serve the Area, currently have significant capacity for growth and have been constructed and located to provide adequate capacity to serve the current and future needs of the Area. (Ex. 10, Nelson Rebuttal, p. 4)

The record amply supports a finding by the Commission that if RMU's request for a transfer of facilities is not approved, Intercounty's distribution lines and main lines that feed its distribution system would remain intact, and service to Intercounty's members would not be interrupted. More than adequate capacity exists in Intercounty's system for the present and future needs of the existing structures served by Intercounty in the Area. Of course, there is the issue of stranding Intercounty's investment in the excess capacity which is present in these facilities, but that will be taken up *infra.*

If RMU's application is denied, RMU would be required to build in, around and through the existing Intercounty lines which serve the Area, in order to provide service to new structures or/residents in the Area. This essentially what is occurring now. As Mr. Bourne testified, RMU is currently extending its lines to serve new structures in the Area (Tr. 198) thus taking advantage of the statutory bar established by §386.800.1 which prohibits Intercounty from supplying energy to new "structures". Although a dual system is the result in some areas, Mr. Bourne testified that this is not necessarily a safety hazard. (Tr. 205).

In sum, denial of RMU's application would serve to preserve the status quo. Intercounty would continue to serve its members at their existing locations, and RMU would extend its lines as needed to meet the new demand of new structures. Although in some areas the electrical facilities may be more dense than if only one supplier were providing service, the congestion would not necessarily mean a decline in service quality or in public safety. This is not to say that public safety

issues would not be present. In some locations within the Area, a dual supplier situation could create service quality and safety concerns. Mr. Nelson addressed those concerns in his testimony. Additionally, Mr. Strickland testified that not transferring the members to RMU would mean that:

> The public safety issue of RMU building through Intercounty facilities, as it exists today, would remain, and require the Commission to establish a boundary between RMU and Intercounty to minimize these types of problems.

(Ex. 11, Strickland Rebuttal, p. 21) The issue of establishing a boundary is discussed *infra.*

**B. What effect, if any, will RMU's acquisition of the facilities within the annexed area have on its operations, rates for service and quality of service?**

Mr. Dan Watkins, general manager of RMU, testified that the cash reserves of the municipal utility were approximately $7.3 Million at the time of hearing. (Ex. 5, Watkins Direct, p. 19) If the Commission enters a order for the payment of fair and reasonable compensation in the amount requested by Intercounty, that cash reserve will be reduced to $2,782,747.00 ($7,300,000 [the amount of the cash reserve] - $4,517,253 [total of the fair and reasonable compensation sought by Intercounty]). RMU apparently intends to fully replenish that reserve, but the income it anticipates to receive from acquisition of Intercounty's members in the first, second and third year will not be the source of funds for that purpose. In questions to Mr. Andrew Marmouget, Commissioner Schemenauer inquired about the cash reserves:

> Q. You said [RMU] could afford to pay [Intercounty four and a half million dollars] because their cash assets are somewhat in excess of 8 million. Their current liabilities are 1.8 million. So they've got enough money to purchase that?
>
> A. Correct.
>
> Q. And then from an accounting viewpoint, how would they recover their investment?

A. They would recover their investment through the revenue that's generated from the purchase of that system. They would build up their cash reserve or the retained earnings balance by the income that's produced.

Q. Do you know how much income would be produced say, in the first, second, third year? It's in somebody's testimony.

A. No, I do not know that.

Q. Based on being an accountant, I think $14,000 gross revenue the first year, 242,000 the second year, 263,000 the third year, and it says gross revenue. So I guess that means that's not net revenue.

A. Correct. That's not net income.

Q. So net income to offset the purchase price would take quite a few years?

A. Yes, if you just look at the net income from the system in question, but RMU for year end September 30th, 1999 had net income of 1.7 million; the year before of 800,000. So the system taken as a whole would be able to replenish that reserve a lot quicker.

Q. So the current customers of RMU would subsidize this purchase; is that correct?

A. No, I would not say they were subsidizing it. I'm just referring to the reserves.

Q. But they --

A. The system itself should produce its own -- I'm sorry.

Q. The income to replenish the reserves would come from the current customers?

A. Correct.

Tr. 113-114.

Intercounty witness, Brian Nelson, added that if the transfer is approved,

RMU will be required to construct new redundant facilities such as substations and feeder circuits required to duplicate our facilities which are already located within the Area. This is clearly evident from a review of Appendix C to the Application in this case in its entirety. Not only will this construction be necessary to provide initial

electrical service to the Area, RMU will be required to invest substantially for the conversion of existing substations to standardize RMU's system voltage in order to provide the same level of reliability provided by Intercounty's existing system.

The costs of reproducing Intercounty's facilities and system will be undoubtedly paid by RMU and its ratepayers by expenditures of existing cash reserves, loans or potential rate increases.

Ex. 10, Nelson Rebuttal, p. 7)

Although Mr. Marmoget and Mr. Watkins have testified that no rate increases for RMU's existing customers are anticipated as a result of the transaction, it is clear that RMU's cash reserve in the next few years will be infused not by the revenue generated by the acquisition requested in this case, but by revenue derived from the rates and charges levied on RMU's customer base as a whole. If Mr. Nelson's predictions are accurate, the cash reserve will be further depleted by RMU's construction of system improvements. Intercounty submits that the depletion of RMU's cash reserves to pay for the transfer, and to finance anticipated system improvements, raises a substantial question about how long RMU can operate without upwardly adjusting its rates for purposes of replenishing the cash reserve to its former level.

**C. What effect, if any, will RMU's acquisition of the facilities in the annexed area have on Intercounty's operations, rates for service and quality of service?**

If the application were granted, consequences to Intercounty would include a significant under-utilization of Intercounty and Sho Me Electric substations that are now serving the area. Mr. Nelson explained:

The existing Intercounty and Sho Me Electric substations and main feeders currently serving the Area will be significantly under-utilized for the function for which they were originally designed and constructed if the Commission approves the applied for transfer of service. These facilities represent a significant investment to the cooperative.

(Ex. 10, Nelson Rebuttal, p. 7-8) Mr. Nelson also quantified the extent to which these investments would be stranded:

> The loss of service to the Area would be most significant to the South Rolla and Dry Fork substations which are located in closest proximity to the Area. I would estimate the peak Intercounty load in the Area to be around 2.5 MW with the load distribution by substation to be South Rolla (50%), East Rolla (30%) and Dry Fork (20%).

(Ex. 10, Nelson Rebuttal, page 4)

Intercounty's membership has grown at the rate of 732 members per year in the past three years and when that growth is compared to the loss of 286 members, that means that Intercounty would lose 39.1% of that recent growth. Under normal circumstances Intercounty's loss of 286 customers would not be considered a minor event, and it should not be here. The Commission is dealing with an area of Rolla where the infrastructure necessary to serve Intercounty's current members, as well as anticipated future growth, has already been constructed. This includes not only the distribution facilities within the Area, but also the substation and distribution circuits constructed outside the Area which feed into the Area.

Moreover, the load density of the Area is a factor which intensifies the effects Intercounty would experience as a result of a transfer to RMU. As Mr. Nelson testified:

> A. . . . . In Mr. Watkins' testimony RMU has estimated that approximately 75% of the Area is currently undeveloped or rural in nature. If that is the case, Intercounty would have expected a much higher load growth within this currently undeveloped portion of the annexed area based on the typical load density which is normally experienced elsewhere within Intercounty's service territory.
>
> Q. You have mentioned the term load density. Could you please provide a brief

definition of this term and explain its importance to this case?

A. The briefest definition of load density which I can give is based on electrical load or number of services/meters served per mile of line. The Cooperative serves an extremely large land area and although it has pockets of high load density within the system, its service territory is predominantly rural in nature therefore its system wide density is low, slightly more than more than five (5) meters per mile of line.

Within an area such as the one in question in this case, I estimate that our current density is closer to **twenty (20) services per mile**. Loss of such an area would lower the overall load density of the cooperative and raise overall operating and maintenance costs to the remaining Intercounty members. Certainly over time Intercounty would grow to replace the members lost within the Area if service were transferred to RMU. However, it is likely that the bulk of this growth would be replaced at a load density more in line with Intercounty's typical load density. This means that Intercounty's construction and maintenance costs would be escalated by a factor of 3 to 4 times its current costs to serve the same number of members. This is one of the primary reasons why I believe that the loss of these services and corresponding service territory will be particularly detrimental to Intercounty and its members. [emphasis added]

(Ex. 10, Nelson Rebuttal, p. 9-10)

Therefore, if the Commission approves RMU's request for transfer, sufficient growth outside the Rolla city limit to make up for Intercounty's loss of the load within the Area is not expected for many years. As a result, Intercounty will be responsible for maintaining a system which is not fully utilized. The burden and cost of that maintenance will be shouldered by the cooperative's other members.

**D. What effect, if any, will RMU's acquisition of the facilities in the annexed area have on Intercounty's existing customers in the annexed area?**

Of all the issues that have been listed by the parties, it is this one which is owed the greatest sensitivity and attention. The "public" to be affected by the transfer of the facilities have not been

silent and if a succinct answer to the issue can be composed it is that the Intercounty members will feel betrayed by a transfer of their service needs to RMU. That was evident at the local hearings which were conducted on October 24, 2000 in Rolla. Excerpts of the testimony of several witnesses follow. These were selected because they were typical of the rest. No witness at the local hearing testified in favor of RMU's application. All of the witnesses asked that Intercounty remain their service provider.

Gustave Mauller: "It seems like the city of Rolla and RMU have forgotten that they're there to serve people. The people are not here to serve them and their government. They're to serve the people. I hope this Commission does the same; . . .My experience is they try to control, dictate and dominate." (Tr. 16-17)

Julian Harrison: "This has been a time of a lot of turmoil and a lot of struggle between the annexed area in the City of Rolla. A lot of things have been said premature, but one thing that stands out to me about the utilities that we were told repeatedly that the –our utility service would not be affected. We would continue to receive utility service from Intercounty Electric." (Tr.19-20).

Alva Branson: "I own Intercounty. I'm a member. They have all member services. They have boards of directors which, if I want to participate on that, I can. We have a say in the matter; with Rolla Municipal, you don't. They control everything." (Tr. 28-29)

Harry Harmes: "As a public school teacher being in the classroom on two occasions within the last few years, we have been without electricity at the high school. On one occasion it lasted, I think, about four hours. On the other occasion, the school was dismissed. So the service has not been very reliable at that particular location because of outages." (Tr. 36)

Diana Henry: "I went to the informational meetings that the City had about the annexation prior to the vote. I specifically asked the RMU representative there about our electric service and whether or not Intercounty would remain our provider, and I was told that it would, that they had no interest it. Obviously, I feel like I was lied to." (Tr. 54)

* * *

"In my time on RMU over the years, I can recall some interruptions for no apparent reason. I recall interruptions, particularly one Christmas just as we

were about to serve our meal during an ice storm where the power went down, which was okay. I mean, it was an ice storm. But we were without service for more than 24 hours at that time."

* * *

"On the same hand, we had an interruption just recently with Intercounty Electric during an electrical storm in August of this year. We were without service for approximately two hours. Didn't have to make any calls, didn't have to let anybody know. Within 15 minutes of our power going out, we saw the trucks out looking for where the interruption was." (Tr. 54-55)

Edward B. Tenes: "They just seem arrogant." (Tr.65)

Tim Brandenburger: "At our previous residence , we were serviced by Intercounty Electric, and our business is serviced by Intercounty Electric. We have been with them for over ten years, and everybody has power outages, both in the City, out of the city. It's a fact of life.

But one thing that has been to our benefit here in Rolla is we have at least five businesses within the city limits that are our competitors. It is a giant plus for us to be on Intercounty, because many times we are the only business with power that can service the customers because they are on RMU and the power goes out. We have more outages in the City than we do with Intercounty Electric." (Tr. 74-75)

* * *

"If RMU had wanted to take over this electricity, it should have been stated so before the election, that way the people directly affected by it could have voted, Yes, we want this service, No, we don't. In fact instead it was a hidden agenda, or something of that nature, and I think it would have directly affected the outcome of the election if it been brought to the public's attention prior to the election that RMU intended to take over the service area." (Tr. 75-76)

These witnesses testify to the indifference of RMU to customer needs and the arrogance of its staff when those needs are voiced. The witnesses question the reliability of RMU service given the times in their memory when RMU has suffered outages and Intercounty has not. They applaud Intercounty's prompt responses to interruptions in their service, and the benefits of ownership and management they have which are incidents of their membership in Intercounty.

It should be pointed out that Intercounty keeps detailed statistics on its outages, and RMU does not. (Ex. 10, Nelson Rebuttal, p. 6) RMU's outage records show the time the outage was reported, but do not identify the number of locations which were affected by the outage, the person who responded and when that person was dispatched. Those records show the cause of the outage only "to the extent it was discovered." (Tr. 262) Its record keeping shows that time when a repair person begins to solve the outage is not important to RMU, and neither is the determination of the cause.

RMU pays little attention to its customers' complaints. According to Mr. Watkins, if people are dissatisfied with the management of the utility, they can contact their elected officials or the management or indirectly, they can replace the elected officials. (Ex. 7, Watkins Surrebuttal, p. 12) RMU does not have a policy in place by which a customer can file a written complaint, and it keeps no formal complaint file. (Tr. 263-264) For customers who have immediate service problems or a pressing issue regarding service representatives or billings, waiting until the next election for a solution seems to be little or no consolation. Intercounty submits that there is little surprise in the number of witnesses who testified at the public hearing against RMU; neither is there any surprise in the number of participants at the public hearing, none of which rose to RMU's defense.

Another matter of significance to the impact on Intercounty's existing members in the Area is RMU's position on the condition of Intercounty's easements. According to RMU, because of the condition of Intercounty's easements, RMU can foresee contests developing with property owners in the Area when or if RMU decides to vary from the existing rights of way or add new facilities on

new property.[6] (Ex. 3, Bourne Direct, p. 21-22) Although as a standard practice, RMU would normally acquire easements or other rights in property it might need for a nominal or no consideration, it does not think it can count on that procedure when dealing with property owners in the Area after the transfer. Intercounty can explain this concern very easily. RMU knows that Intercounty members will be highly resistant to RMU; that is the product of its relations so far with this group. If what RMU anticipates comes true, a number of Intercounty members in the Area will endure negotiations with RMU involving rights across their property, and if those fail, then those members will be joined as defendants in condemnation suits. This is behind RMU's estimate of approximately $400,000[7] as a deduction to the fair and reasonable compensation amount in this case. The degree to which RMU's requested transfer of facilities will engender collateral litigation against Intercounty members is an important element of the public interest for the Commission to evaluate.

### E. Will RMU's new wholesale electric supplier agreement, and related wheeling agreements, if any, have any effect on customer rates or on service reliability?

RMU's witness, Mr. Watkins, has testified that RMU's rates for service have remained stable

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[6]RMU witnesses blame Intercounty for this problem, labeling the manner in which Intercounty acquires its right of way and records easements as an intentionally bad business practice. (Ex. 7, Watkins Surrebuttal, p. 21) RMU implies that Intercounty should have designed its right of way program and easement or right of way inventory so that it would be easier for RMU to take over the system. The Commission will observe that there is no evidence in the record suggesting that Intercounty's right of way acquisition policy has been anything other than successful and efficient. There is nothing "bad" about it. Just as importantly, there is nothing in §386.800 requiring a cooperative or other electric supplier to conform any of its practices or procedures to facilitate the take over by an annexing municipality. RMU must at some time acknowledge that the issue it raises with respect to Intercounty's right of way is one of its own making in that RMU could have 1) complied with its Plan of Intent, thus obviating the need for this application; or 2) developed a better reputation for customer service and quality service.

[7]RMU's estimate contemplates that it will spend $1,400 per customer ($400,000 ÷ 286) in right of way costs in securing itself as the exclusive service provider in the Area pursuant to its application.

since 1988. (Ex. 5, Watkins Direct, p 19) He also testified that as of December 31, 2000, RMU would sever its nearly 50 year relationship with AmerenUE (f/k/a Union Electric) for wholesale power needs. (Tr. 252) RMU has entered a new wholesale power agreement with MOPEP, the Missouri Public Energy Pool (Tr. 253) the rates for which Intercounty has not seen. RMU's accountant has considered the terms and conditions of the new wholesale power agreement in arriving at his conclusion that RMU's rates for service will not rise as a result of the transfer and acquisition of Intercounty's facilities. (Tr. 83) The rates for RMU's new wholesale power contract have been withheld from disclosure and are not of record. RMU's conclusions about future rate increases have gone unchallenged by cross examination to the extent they rely on the rates of that wholesale power agreement.

Before it can be conclusively said that RMU's rates will not increase as a result of the transfer, the rates, terms and conditions of the new wholesale power agreement with MOPEP, and any related wheeling arrangement, must be independently verified under the procedures of a contested case. Intercounty was foreclosed from effectively cross examining Mr. Marmouget and Mr. Watkins on their opinions and conclusions on future rate impact and reasserts and incorporates by reference herein its Application For Rehearing And Motion to Reconsider Order Regarding Motion to Compel And Motion to File Supplemental Rebuttal Testimony.

RMU claims that the rates and other conditions of the wholesale power agreement and wheeling arrangement will have no effect on future rates. RMU has refused to disclose the rates as part of this proceeding. Intercounty submits that the Commission can draw a negative inference from RMU's failure to disclose this information, and conclude quite the contrary.

Finally, the Commission cannot render an adequate finding that RMU's requested transfer

and assignment of territory will have no detrimental effect, or no effect, on customer rates or service reliability until it has fully reviewed the rates, terms and conditions of both RMU's new wholesale power contract and wheeling arrangement.

**F. What effect, if any, will RMU's lease/purchase of trailer mounted generation equipment have on customer rates, or service reliability?**

On August 23, 2000, the Rolla City Council approved the acquisition of trailer mounted generator units by RMU. The units are to be acquired under a long term lease of ten years. The annual lease payment is $802,000. (Tr. 256) Mr. Watkins was hesitant at first to discuss some of the details of the lease and the purposes for the acquisition of the units, but he confirmed much after being shown RMU's earlier answers to Intercounty's data requests about the units. Mr. Watkins testified that the acquisition of the trailer mounted units is part of RMU's plan to address future energy demand. (Tr. 257) The units might be used for peaking periods. (Tr. 258) There will be fourteen units and they will be deployed by truck. (Tr. 258) Each unit is apparently the same size and will be leased at the same price. The per unit rental cost is approximately $57,000 a year. (Tr. 260) Although no formal studies have been conducted to verify the impact the trailer units will have on voltages, power flows and duty faults, or their compatibility with the RMU system (Tr. 259), RMU intends to connect them in parallel with RMU's present system for various purposes including emergency and back up power. RMU also intends to use the units to offset power purchases from other sources, and to generate revenue. (Tr. 259-260)

As Intercounty pointed out in its Motion to Compel, which was the subject of the Commission's order dated December 1, 2000, the trailer mounted generation units are part of a "business plan" which RMU at one time referred to in its case in chief, and which has not been

disclosed. The business plan should be the source of additional information about the trailer mounted generation units including, cost projections of fuel costs to operate them, the terms and conditions of the lease/purchase agreement (including costs/buyout price, term, default, etc.), hours of operations, location of operations, ability of generation units to synchronize with the RMU grid, expertise in operating the generators, projected schedules of operations, cost/benefit analysis, analysis of the spot market conditions that RMU would expect and what type cost verses benefits RMU could expect. This information is relevant to an inquiry into whether RMU will be able to meet the needs of Intercounty members in the Area now and in the future. The Commission's order of December 1, 2000 prevented Intercounty from evaluating these factors for itself. There is no assurance that RMU's lease/purchase of trailer mounted generation equipment will have neutral effects on its future operations. Any finding by the Commission that RMU can provide service to Intercounty members without compromise of quality and reliability will not be adequately supported.

**G. Should Intercounty's position on payment of a gross receipts tax or payment in lieu of tax, and other services, and any reliance of the City of Rolla on Intercounty's position, be considered with respect to the interest of the public in this case?**

**H. Should the City's Revised Plan of Intent be considered with respect to the interest of the public in this case?**

Pursuant to §71.015, the City of Rolla developed a plan of intent as part of the mandated process to annex the Area. That plan of intent was revised at least two times. Each time the Plan of Intent was revised, the City of Rolla represented that,

> The areas within the proposed annexation that are now receiving electric service from a rural electric CO-OP would continue to do so. RMU would not be allowed to serve any of these properties. Any new development within this area would receive electric

service from RMU.

Intercounty submits that unquestionably, the City of Rolla's Plan of Intent and the representations made therein to perfect the City's right to annex, are matters which the Commission must consider in determining whether in total, the requested application should be granted. The Plan of Intent is an official communication of the city of Rolla upon which the voting public relied in making judgments about whether annexation was appropriate. This was the document which was designed to show to the public the reasonableness of the proposed annexation. Its significance in the annexation process cannot be over-emphasized.

Intercounty did not participate in the creation of the City of Rolla's plan of intent. It was created exclusively by the city with the assistance of professional consultants. (Tr. 236). Mr. Watkins however declares that it was an understanding with Intercounty that led to the statement in the Plan regarding who would be the electrical provider in the future. (Tr. 267) He stated in his surrebuttal testimony that:

> The City's understanding was that Intercounty would voluntarily provide services and make contributions to the City similar to what RMU does. It was only after the annexation when the City discovered the "understanding" it had was not to be honored, which left the city no recourse but to utilize the provisions of section 386.800.

Ex. 7, Watkins Surrebuttal, p. 15).

It was learned during Mr. Watkins' cross examination that the understanding he referred to was rather one-sided, one which Mr. Watkins and the city administrator had but which had not been confirmed with Intercounty. As the evidence at hearing unfolded the "understanding" turned into more of an "assumption." Mr. Watkins explained the basis of that understanding to Public Counsel in this exchange:

Q. Can you tell me first of all, what was the basis of that understanding?

A. I'd have to take you back several years, and I guess my recollection is that shortly after Mr. Strickland was hired with Intercounty, I believe it was in 1992[8], I called him. RMU hosted a lunch meeting. He brought, I think, some staff with him. And it was for the express purpose of discussing territorial issues and those kinds of things.

From that, shortly after that, and I guess the next thing that I remember was a document that was proposed by Intercounty to the City of Rolla. It was a territorial agreement, and it even proposes, it actually says, as I remember it, it says that Intercounty agrees with the City that the City has the right to impose a franchise fee or gross receipts tax.

Q. Was there anything in your understanding that they had agreed to pay such a tax or franchise fee?

A. There was nothing in writing. It was just it was a conceptual understanding in discussions with the City. And like I said, it started back as early at '92, '94, and continued right on up to the time of the annexation.

Q. And would it be fair to say that you personally thought that that's what those discussions meant?

A. That is an accurate statement. Also, it is accurate that I -- that I balanced that with the question to city administration that we currently have, and he agreed with me as to my understanding.

(Tr. 238-239).

The "document that was proposed by Intercounty" is attached to Mr. Strickland's rebuttal testimony as part of Exhibit VWS-10. It is a draft territorial agreement (plainly marked as a DRAFT) which was covered by a letter dated November 8, 1994 to the then Mayor of Rolla, Mr. Elwin Wax. The draft agreement contains as only one of its provisions a paragraph on the payment of a franchise fee. Mr. Strickland testified that discussions with the City of Rolla on the subject of

[8]Mr. Strickland was hired by Intercounty in September 1993 (Ex. 11, Strickland Rebuttal, Ex. VWS-1).

territorial agreements ended shortly after they began. Rolla was not interested in negotiating anything that would establish designated service territories. (Ex. 11, Strickland Rebuttal, p. 19) Furthermore, Intercounty's payment of a franchise fee was dependent upon the entering of the broader territorial agreement. None of the provisions in the territorial agreement were stand alone. At no time before the annexation election had there been anything resolved between Intercounty and RMU or the City of Rolla regarding Intercounty's payment of a franchise fee. (Tr.488). For Intercounty, the Plan of Intent contained no hidden conditions on its continued role as a service provider in the Area.

Mr. Watkins testified that he learned that the "understanding" was incorrect was from one of Intercounty's staff. Mr. Watkins identified Mr. Dwayne Cartwright as the Intercounty representative who told him that the cooperative would not pay a franchise fee, thus leading to the filing of the present application. Mr. Cartwright is not the general manager of Intercounty. He is the manager of member services. (Tr. 317-318) At his meeting with Mr. Cartwright, Mr. Watkins discovered that the understanding "was not to be honored or was just incorrect, and either way the only recourse that the City had was to make a 386.800 filing after the effective date of the annexation." (Tr.272)

According to Mr. Watkins, the City of Rolla composed that portion of its official Plan of Intent on the subject of electric supplier merely on the basis of a paragraph in a proposed territorial agreement which was never entered into by the parties. The understanding about that paragraph was never independently confirmed with Intercounty either orally or in writing.[9] What Mr. Watkins'

[9]On page 38 of his surrebuttal testimony marked as Exhibit 7, Mr. Watkins accuses Intercounty of poor management since it based its decision to build a district office building in the Area on the city's Plan of Intent. If turnabout is fair play, Intercounty notes that RMU based the representations of its Plan of Intent on an intangible,

testimony means is that the Plan of Intent was incomplete. Apparently, the City intended for Intercounty to continue serving members in the Area only if it agreed to pay a franchise fee or something similar to what RMU pays the City. However, the City did not explain this understanding during the public hearing phases of this annexation, or in subsequent revisions to the Plan of Intent.

For example, at a special city council meeting held on March 20, 1995, the clerk reported in the minutes remarks made by Steve Hargis, the Public Works Director. He advised:

> [u]nder the "Flip-Flop" law[10] the City cannot take any of Intercounty Electric's present customers. However, any new homes would be provided electric service through Rolla Municipal Utilities.

(Ex. 12, Priest Rebuttal, p.3 of Schedule/Exhibit 3, p. 3). He did not add that Intercounty would be paying a payment in lieu of tax or a franchise fee as a condition of continued service in the Area. At another special city council meeting held November 26, 1996, the minutes record that:

> City Administrator Merle Strouse along with Rolla Municipal Utilities General Manager Dan Watkins explained that within three years the City will run electric throughout the whole system and as new homes are constructed, they would make connections to the City's system.
>
> * * *
>
> Gus Mauller, owner of Mauller Cabinet Shop located on Highway 63 South, stated that currently his shop is serviced Intercounty Electric. If this area is annexed and another building is constructed near the present cabinet shop, Mr. Mauller asked what company would provide the electricity. Rolla Municipal Utilities General Manager Dan Watkins stated that RMU's decision is that they will not "hostilely shove" its services.

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unilateral assumption, if not just a hope or dream. It was not confirmed in any form of writing, let alone an official Intercounty publication. Could prudent management by RMU–for instance, a simple written confirmation with Intercounty of the "understanding,"–have averted the present application to this Commission, the outcome of which could mean a multi million dollar expenditure?

[10]This name has been given several statutory provisions which govern the relationship between competing utilities. Mr. Hargis also adds the "flip-flop" moniker to §386.800. According to Mr. Watkins, persons who refer to §386.800 as a "flip-flop" law were supplied bad information. (Ex. 7, Watkins Surrebuttal, p. 36) Mr. Watkins' thought notwithstanding, the Commission will find "flip-flop" provisions in §386.800.1.

(Ex. 11, Strickland Rebuttal, Schedule/Exhibit VWS-4, pgs. 6-7). Moreover, Mr. Watkins admitted that the 286 customers within the Area had never been informed of a potential for a franchise tax or a payment in lieu of tax by Intercounty to the City of Rolla during any of the four to five public hearings that were conducted on the annexation initiative. (Tr. 331-332)

What is evident from the foregoing account of the development and presentation of the city's Plan of Intent is that the language used by the City gave the public and Intercounty the justified belief that Intercounty would unconditionally continue to serve its existing members in the Area and RMU would serve new structures as they were built. Votes were cast on the strength of that representation, and, as will be discussed later, so was a million dollar structure. Mr. Watkins has testified that this part of the Plan of Intent was formed on the basis of what turned out to be an incorrect understanding, and for purposes of argument only, Intercounty will give Mr. Watkins the benefit of the doubt. However, the issue is not how the parties to the application may have constructed or perceived the Plan of Intent, but rather the public's perception of that Plan.

If it is possible to believe that an innocent mistake may have caused an erroneous statement in the Plan of Intent, it is just as possible to believe that it was intentionally misleading. Is it unreasonable for the public to suspect that RMU and the City consciously made the representation about Intercounty's continued service in the Area so that the voters and Intercounty would be less resistant to the idea of annexation and would curb their opposition? Is it unreasonable for the public to believe that after the measure passed, RMU revealed its true intentions and showed the real agenda, an agenda which called for the acquisition of Intercounty's facilities, and which had up to that point been purposefully "hidden" from view? Intercounty submits that it is entirely reasonable for the citizens in the Area to form these beliefs, and to believe that they were tricked by their own

government. Commission approval of the application in this matter would only compound that belief.

Intercounty asserts that the Plan of Intent is entitled to the greatest weight on the scale used by the Commission in evaluating public interest in this case. Irrespective the basis upon which the City of Rolla relied in writing the Plan of Intent, whether on its carelessness or on the actions of Intercounty, that Plan was nonetheless a crucial document in a municipal election that was designed to educate the voter and to influence choices. If RMU is now to act inconsistently with that Plan of Intent and the statements made at public hearings about that Plan, it should have a reason more compelling and urgent than "we thought we understood that Intercounty would pay a franchise fee after annexation." RMU owes that much to the public who had only the Plan of Intent to read and understand.

If the Commission approves Rolla's application in this matter, it will give encouragement to similarly situated municipalities to prepare plans of intent that are less than truthful. It is in the public interest, and a matter of public policy, for the Commission to insist that applications brought to it under §386.800 are preceded by annexation procedures, and particularly plans of intent, which are accurate, truthful and confidently clear.

It is for the reasons above that Intercounty suggests that RMU's application can be denied in its entirety in that the acquisition or transfers sought by RMU within the annexed area from the Intercounty are not, in total, in the public interest.

**II. Should the Commission assign the annexed area, in whole or in part, to the City of Rolla as its exclusive territory?**

If the Commission is inclined to approve an assignment of territory and a transfer of facilities

to RMU, the Commission's next decision is whether to assign all or just a part of the territory known as the Southside Annexation.

**A. The Commission has the authority to assign exclusive territory between Intercounty and RMU inside the annexed area and allow Intercounty to serve new structures in its exclusive territory.**

At hearing, the Commission requested the parties to brief the issue of whether it had the authority to draw a boundary between RMU and Intercounty within the annexed area, and whether Intercounty could serve new structures within its boundary. (Tr.73) Intercounty's position is that the Commission has such authority and it is clearly expressed in the statute. Section 386.800.6 provides:

> The commission shall hold evidentiary hearings to assign service territory between affected electric suppliers inside the annexed area and to determine the amount of compensation due any affected electric supplier for the transfer of plant, facilities or associated lost revenues between electric suppliers in the annexed area.

When read as a whole, §386.800 primarily addresses the manner in which municipal utilities and electric suppliers with operations within annexed areas can share territory in the annexed area. One way is by agreement, and the other is by application to this Commission for an order that substitutes for an agreement. Service territory has generally been regarded in this Commission as having "exclusive" characteristics and nothing in the statute indicates that the legislature intended to change that custom. Therefore, pursuant to §386.800, the Commission has alternatives with respect to the making of territorial divisions:

> 1. The Commission may assign an exclusive territory to Intercounty and an exclusive territory to RMU all within the annexed area. In their exclusive territories, the electric suppliers may serve existing structures and new ones as they appear.
>
> 2. The Commission may assign an exclusive territory to one electric supplier in which all existing customers and new structures shall be serviced by the supplier, and

assign the municipality and the other electric supplier complementary rights to service in another territory, i.e., the existing electric supplier may serve its existing customers and the municipality may serve new structures.

Other combinations are possible and Intercounty believes the statute does not forbid them.

Intercounty must point out however that the record before the Commission lacks any treatment by the parties of a way in which to split the annexed area into separate exclusive territories. Although there is evidence of the density of customers in certain areas within the annexed area, other factors (such as how to best minimize the duplication of electric systems in an environment of two or more territories within the annexed area) which may be involved in efficiently drawing a boundary have not been explored[11]. RMU's application is a request for all the annexed area as an exclusive territory and Intercounty's testimony to date confined itself to rebutting that request. If the Commission is inclined to split the annexed area in some way between Intercounty and RMU, Intercounty is prepared to file additional testimony for Commission consideration.

However, Intercounty will argue against any assignment of the annexed area which would mean the transfer of any Intercounty members to RMU. Intercounty is not opposed to the limited transfer of some Intercounty facilities to promote safety and discourage duplication of services, but it is opposed to a Commission order that would assign any member from Intercounty to RMU.

**III. If the Commission determines that the annexed area, in whole or in part, should be assigned to the City of Rolla as its exclusive territory, what is the amount of "fair and reasonable compensation" to be paid Intercounty for its facilities?**

It is Intercounty's position that the total of the "fair and reasonable compensation" due Intercounty is $4,888,353.40. This represents the total found at page 16 of Mr. Vernon Strickland's

[11] Although duplication of electrical systems may not necessarily involve a safety hazard, a means to reduce that duplication is still an important objective. Setting aside service territories between Intercounty and Rolla within the annexed area has the potential of substantially reducing duplication and minimizing any safety concerns.

rebuttal testimony ($4,517,253.40) (Ex. 11) plus the amount of the wholesale power cost increases ($371,100) explained at page 4 of his supplemental rebuttal testimony which was part of an offer of proof to the Commission. If the Commission holds fast to its ruling that Mr. Strickland's supplemental rebuttal is inadmissible, then the total of the "fair and reasonable compensation" due Intercounty is $4,517,253.40.

**A. What is the present day reproduction cost, new, of Intercounty's properties and facilities, serving the annexed area?**

In brief, the present day reproduction cost , new, of Intercounty's facilities, exclusive of its offices facilities at 1310 South Bishop Ave, is $1,046,115.06.

Intercounty retained the services of James E. Ledbetter to prepare the technical estimate of "fair and reasonable compensation" for Intercounty's facilities. Mr. Ledbetter is a highly experienced and seasoned professional who regularly estimates the construction costs for electric utilities. It is his business. He is the president of Ledbetter, Toth & Associates, Springfield, Missouri. (Tr. 422). Ledbetter, Toth & Associates is a 45 person firm of consulting engineers. The firm was started in 1978 and offers its services to electrical utilities. The firm has performed services for investor owned utilities, municipal electric utilities and electric cooperatives. Mr. Ledbetter is responsible for providing engineering services in the areas of electrical system design, planning, job estimates and general consulting to Rural Electric and Municipal clients in Missouri, Arkansas, Oklahoma, Kansas and Illinois. He has approximately 33 years of experience as an engineer and is one of the original founders of Ledbetter, Toth & Associates, Inc. Before that time he was employed by Allgeier, Martin & Associates as a professional engineer working with Rural Electric and Municipal clients. (Ex. 9, Ledbetter Rebuttal, p.1)

Mr. Ledbetter graduated from the University of Missouri, Rolla, with a Bachelor of Science Degree in Electrical Engineering in 1967 and with a Master of Science in Engineering Management in 1977. He obtained his Professional Engineering License #E-14963 from the State of Missouri in 1973. (Ex. 9, Ledbetter Rebuttal, p. 1)

He was the only consulting engineer to testify at the hearing.

He explained the manner in which he calculated the reproduction cost, new, of the facilities within the annexed area. Intercounty provided him with a series of staking sheets and an inventory which were both used as the basis for this calculation.[12] (Ex. 9, Ledbetter Rebuttal, p. 3) These staking sheets were prepared over a period of several weeks by Intercounty employees who performed an on site inventory of the facilities located in the Area. During this inventory all of the Intercounty facilities were identified and recorded on staking sheets. Upon completion of the inventory the results were entered on a staking sheet software program which allowed Intercounty to itemize and group materials by type and quantity. (Ex. 10, Nelson Rebuttal, p.11) The staking sheets were prepared under the direction of Mr. Strickland and Brian Nelson, Manager of Engineering. (Ex. 11, Strickland Rebuttal, p. 4-5)

Mr. Ledbetter made a random sample check of the staking sheets in the field and deemed them an accurate representation of the facilities located in the annexed area. He then used average unit prices for similar facilities that were derived from a contractor's bid on a project for which Ledbetter, Toth & Associates prepared the request for proposals. This project was bid in 1999 and concerned work in Shawnee Bend at the Lake of the Ozarks, an area which, in his opinion, had

[12]These same staking sheets and related information were supplied to RMU pursuant to data requests. (Ex. 11, Strickland Rebuttal, p. 4).

similar terrain and population density for estimating purposes. These unit prices were then applied to the inventory obtained from the staking sheets and extended to provide a reasonable estimate of the cost to duplicate these facilities in the annexed area. Mr. Ledbetter then added reasonable cost of engineering, staking, right-of-way acquisition and right-of-way clearing that would be required to build the project. The last three items were estimated from costs on similar current projects that Ledbetter, Toth & Associates, Inc. had handled for other clients. (Ex. 9, Ledbetter Rebuttal, p. 3) The cost breakdown was attached to Mr. Ledbetter's testimony as Exhibit JEL-2.

Mr. Ledbetter's calculation of the reproduction cost, new, of the facilities also takes into account the special circumstances which Intercounty would face in the Area because of its density. He did not use Intercounty's unit prices for the various items on the inventory because Intercounty's prices include data for mostly rural lines and understates the costs to build a project in a more congested area like that represented by the Southside Annexation. Mr. Ledbetter calculated the present day reproduction cost, new, of the facilities at $1,046,115.06. (Ex. 9, Ledbetter Rebuttal, p. 4). This figure does not include Intercounty's office building located on South Bishop in Rolla.

Witnesses for RMU criticized Mr. Ledbetter's approach and disagreed with his opinion. The Commission should recognize that neither Mr. Bourne nor Mr. Watkins claim to have the depth of experience that Mr. Ledbetter has with respect to the estimating of construction and material costs for electrical lines and related projects. Mr. Bourne testified that he sometimes estimates the cost of projects for RMU but that task is apparently quite infrequent. (Tr. 151) Mr. Watkins knew of recent RMU line extensions known as the South Rolla and Highway 72 extensions, and even though those lines may already be listed on RMU's property inventory, he was unable to state the cost of constructing those lines. (Tr. 325-326). The information is not kept by RMU for determining the

exact cost of those lines.

Staff witness James Ketter did not fully accept Mr. Ledbetter's approach to the calculation of this figure, but like RMU, ultimately added to his estimate the reasonable cost of engineering, right-of-way acquisition and clearing that would be necessary and are traditionally capitalized as part of the facilities. This was a recommendation of Mr. Ledbetter in his rebuttal testimony and which Mr. Ketter had not originally included in his own.

Intercounty submits that the superior experience and education that separates Mr. Ledbetter from the other witnesses who testified on this subject, and others later to be addressed , entitles Mr. Ledbetter's opinions and conclusions to greater weight. His calculation of the reproduction costs is well supported in data and professional judgment.

**B. Should Intercounty's district office building located at 1310 South Bishop Ave. (Highway 63), Rolla, Missouri, be included in the calculation of fair and reasonable compensation, and if so, in what amount?**

**C. Should Intercounty's reliance, if any, on the City's Plan of Intent be considered in determining whether Intercounty's district office building should be included in the calculation of fair and reasonable compensation?**

Intercounty will address both of these issues together. Mr. Strickland testified that based on the assurances given by the officials of Rolla in the plan of intent and at the public meetings Intercounty built a district office within the area considered for annexation. (Ex. 11, Strickland Rebuttal, p. 11-12) No evidence has been submitted to contradict him. The office facilities were built to provide service to Intercounty's consumers in the Area and service to the annexation Area was a major factor in locating the office. (Ex.9, Ledbetter Rebuttal, p. 9) Mr. Ledbetter was again called upon for calculation of the reproduction cost , new, of the facility. The amount to be included

in the calculation is $1,000,229.16, which represents the reproduction cost of the office, new, less depreciation. (Ex. 9, Ledbetter Rebuttal, p. 9) This amount should be included because the office is a facility in the Area, and was built on the basis of the Plan of Intent.

**D. What particular approach should be adopted by the Commission in order to calculate depreciation in this case?**

Section 386.800.5 states that an element of "fair and reasonable compensation" is the present-day reproduction cost, new, of the properties and facilities serving the annexed areas, less depreciation computed on a straight-line basis. Intercounty, RMU and Staff have each developed an approach to depreciation and each party claims that it complies with the requirements of this statute.

First, it should be settled by now that Intercounty uses straight line depreciation for purposes of accounting. All the exhibits offered by Intercounty show that it uses straight line depreciation for its distribution assets, and it has been acknowledged by RMU's accounting witness, Andrew Marmouget, that Intercounty uses a depreciation rate of 2.8% (Ex. 1, Marmouget Surrebuttal, p. 6). Mr. Ledbetter made use of that depreciation rate in establishing a figure reflecting the average age of the facilities involved in this action. Mr. Marmouget was cross examined about how straight line depreciation could be used to derive an average age for a specific facility (Tr. 85-92) and Intercounty submits that the example discussed with Mr. Marmouget is a simple example for what Mr. Ledbetter has done in his testimony respecting the proper depreciation to apply to Intercounty's facilities.

Yet another matter which should be confirmed is that Intercounty does not use an accounting or depreciation method that is designed with the provisions fo §386.800 in mind. Like many other

major business and industries, its accounting methods are prescribed by agencies of government that demand compliance with distinct accounting rules and regulations. Specifically, Intercounty must follow the accounting regulations of its lenders, Rural Utilities Services (RUS) and National Rural Utilities Cooperative Finance Corporation (CFC). (Ex. 9, Ledbetter Rebuttal, p. 4)

Rodney Bourne testified to the approach taken by RMU in calculating the depreciation on Intercounty's facilities. In his surrebuttal testimony Mr. Bourne offered a different approach to this calculation, the foundation of which was objected to by Intercounty.[13] Basically, Mr. Bourne reviewed plat data concerning subdivision development in the annexed area and from that data estimated that 70% of Intercounty's facilities were originally installed prior to 1965. This means that under RMU's theory that 70% of the present day reproduction cost would be fully depreciated by 2000 or 2001 presuming a 35 year useful life. RMU estimated that the remaining 30% of Intercounty's facilities were constructed prior to 1976 and concluded that only 11 years of useful life remained for those facilities. RMU's depreciation amount was calculated on this basis.

RMU's depreciation approach should be rejected. First and foremost, the approach fails to account for additions or upgrades made to the facilities since installation. Mr. Ledbetter testified that:

> Mr. Bourne uses the plat data as the basis for aging in this area. I can see absolutely no correlation between plat dates and the actual age of Intercounty's facilities. Intercounty normally would install main facilities sometime after a subdivision is platted and the developer decides to proceed and then most of the required facilities are installed as each house is built and this may be years after the area is platted. Mr. Bourne's procedure also ignores facility additions made to upgrade the system, service extensions, transformer replacements, pole replacements, etc. that are made to provide capacity to a growing area and to extend service life. Many lines have been relocated to provide for construction of streets and consumers and extend

[13]The Commission has reserved ruling on that objection.

service life. In accordance with RUS guidelines, most items that provide additional capacity or extend useful service life are capitalized.

(Ex. 9, Ledbetter Rebuttal, p. 5) Mr. Ledbetter's point was illustrated during Mr. Bourne's cross examination by Mr. Frey:

Q. Let's just take a pole. If it were to be installed -- that's not a good example. That's take another asset, perhaps a transformer, an asset that is subject to capital improvement. If it were to be installed, let's say it was installed in 1960 and let's say religiously, whatever asset we're talking about, it always dies after 35 years. And then we do a capital improvement on it and all of a sudden we get to year 35 and it's not dead but it looks like it says maybe another 10 or 15 years of life left on it. Under your analysis and theory, at the end of year 35 would not the value to be attributed to that asset be zero?

A. I believe that's correct.

(Tr. 145) RMU's approach would treat recent capitalized improvements to the distribution assets as if they were as old as the asset they improved. That cannot be consistent with the requirements of the statute. That would be a unfair reduction in the value of the assets being transferred which was conceded by Mr. Marmouget during his examination by Commissioner Schemenauer:

Q. I'm asking you, do you think it would be a fair and reasonable compensation for RMU to pay to Intercounty Electric Cooperative an amount of zero if that is the book value that's determined by using the straight line depreciation formula?

A. That portion, Mr. Commissioner, yes.

Q. So you think that would be a fair compensation?

A. On that portion of determining what the compensation is, yes.

Q. So you would say from an accounting standpoint there's no value for some of those assets that have been fully depreciated?

A. Correct. But that doesn't include improvements.

(Tr. 115-116)

Staff witness, James Ketter, did not agree with RMU's depreciation approach. He preferred an approach which calculated depreciation on the average age of the facilities. He describes the approach on page 10 of his rebuttal as follows:

> Based on review of the information on transformer installation dates provided by Intercounty, the average number of years that the transformers have been in service is 19.74 years, using June 8, 1998 as the reference date. I considered this to be the average of all facilities.

Ex. 13, Ketter Rebuttal, p. 10) Mr. Ketter then multiplied the average age of 19.74 by the yearly depreciation rate of 2.8% to calculate his depreciation figure. Although Intercounty disagrees the average age which Mr. Ketter has used for the facilities, Intercounty believes Mr. Ketter's approach is correct in theory.

Since Intercounty does not keep a record of each asset's date of installation and any improvements which extend service life, it is impossible for any party to this case to arrive at an ironclad calculation of the age of each asset in service in the Area on an item by item basis. For the Commission, the objective is to select the approach which best estimates average age of the facilities and applies the 2.8% rate of depreciation.

Intercounty has proposed the use of a system wide depreciation rate in this case in the manner calculated by Mr. Ledbetter because out of all the approaches sponsored in this case, it is best representative of the average age and physical state of the facilities which RMU seeks to have transferred. This approach is not contrived for purposes of this case, but rather is the required method by which Intercounty continuously reports the value of its assets to its mortgage holders. Even though he disagrees with Intercounty's depreciation approach, Mr. Ketter believes that Intercounty's accounting and the manner in which the system wide depreciation rate is used is

reliable enough for financial sheets. (Tr. 529) Intercounty adds that if it is reliable enough for its federal mortgage holders, it should be reliable enough for a calculation of depreciation in this matter.

The Commission should adopt the approach to depreciation outlined in Mr. Ledbetter's testimony. The rate of depreciation employed should be a system wide depreciation rate. That rate more accurately estimates the age and physical state of Intercounty's facilities.

**E. What is the amount of depreciation to be deducted from the calculation of present day reproduction cost, new, of the properties and facilities serving the annexed area?**

The amount of depreciation to be deducted from the calculation of present day reproduction cost, new, of the properties and facilities, not including the district office, is $296,155.20, leaving a value of those facilities at $749,959.89. (Ex. 9, Ledbetter Rebuttal, p. 4-5)

**F. What are the reasonable and prudent costs of detaching Intercounty's facilities in the annexed area, and what are the reasonable and prudent costs of reintegrating Intercounty's system outside the annexed area after detachment?**

Intercounty calculated these costs as follows:

| | |
|---|---|
| Relocation of Main Tie Lines | $593,120.00 |
| Maintaining Service to Stranded Customers | 146,000.00 |
| Transfer of facilities, including meter reading final bills and crew time | 24,000.00 |
| Reintegration of telephone, fiber optics, computers and communications | 53,000.00 |
| Total | $816,120.00 |

*Relocation of Main Tie Lines*

Mr. Ledbetter testified that Intercounty has made a considerable investment in facilities required to serve the Area for the future and to provide backfeeds to facilitate system reliability and maintenance. When building new facilities it is standard practice to consider the future land use and electrical load in an area so that the new facility will not become obsolete too early. This is considered in Intercounty's system planning and most lines, substation location and other facilities are designed to serve the anticipated future load in the expected service area. Intercounty presently uses four (4) three phase feeder circuits originating from three substations to serve the Area. The ends of these feeders have been tied together or looped to provide backfeeds for reliability and maintenance. If a transfer of facilities is ordered in this case, these lines would be severed which in turn would result in a substantial reduction in reliability to all members both within and outside the Area. Intercounty has just recently rebuilt the north distribution feeder from its South Rolla Substation to 477 MCM to provide for backfeeds, reliability and future growth in the Area.

Mr. Ledbetter estimated the costs to relocate the main lines that pass through the Area to provide for the reliability and future growth of the annexed area and surrounding area at $593,120.00 as outlined on his Exhibit JEL-3. He selected routes of the new lines in what would be the adjusted Intercounty service area to try and maintain an equivalent backfeed capacity for Intercounty and its consumers. (Ex. 9, Ledbetter Rebuttal, p.6-7)

*Maintaining Service to Stranded Customers*

Intercounty serves members that are located outside the Area that receive energy through facilities located within the Area. An estimate was needed for the cost of maintaining service to these members if a transfer is ordered. Mr. Ledbetter explained that the effort will require some new tie

lines from Intercounty's system to serve these stranded consumers. He stressed that the right-of-way for this is very difficult to estimate. The school located within the existing Rolla city limits, but outside the Area, is virtually impossible to serve except through the Area, and right-of-way for a new line is impractical. He estimated the cost of preserving the same service for the stranded customers at $146,000.00.

*Transfer of facilities, including meter reading final bills and crew time*
*Reintegration of telephone, fiber optics, computers and communications*

Mr. Strickland concluded that for the transfer of facilities, including meter reading, final bills and crew time would cost $24,000. For the re-integration of telephones, fiber optics, computers and communications at a relocated office out of the annexed area, he estimated a cost of $53,000. (Ex. 11, Strickland Rebuttal, p. 16)

1. **Should the reasonable and prudent costs of detaching the facilities and reintegrating the system include:**

   a. **Intercounty's engineering costs related to the detachment of facilities and reintegration of the system?**

   b. **Intercounty's costs for detachment of its main tie lines?**

   c. **Intercounty's costs of pole and line construction for reintegrated lines?**

   d. **Intercounty's transfer of service costs, including final meter readings and crew time?**

   e. **Intercounty's transfer of facilities costs and demolition costs for removal of facilities?**

   f. **Intercounty's costs of acquiring and clearing right of way and obtaining right of way easements?**

   g. **Intercounty's costs to maintain service to stranded customers by the erection of new facilities?**

**h. Intercounty's costs of reintegrating telephone, fiber optic, computers and communications systems?**

**i. Intercounty's administrative costs associated with the above?**

It is Intercounty's position that the items of cost identified in Paragraph III. F. 1. and its subparagraphs, are the reasonable costs of detaching Intercounty's facilities and reintegrating its system. The amounts of those costs are included or embedded in the calculations explained under Paragraph III. F. above.

**2. If the Commission determines that an item listed in III-F. 1. above should be included in the reasonable and prudent costs, then how much of the cost of each of the following items should be included?**

**a. Intercounty's engineering costs related to the detachment of facilities and reintegration of the system?**

**b. Intercounty's costs for detachment of its main tie lines?**

**c. Intercounty's costs of pole and line construction for reintegrated lines?**

**d. Intercounty's transfer of service costs, including final meter readings and crew time?**

**e. Intercounty's transfer of facilities costs and demolition costs for removal of facilities?**

**f. Intercounty's costs of acquiring and clearing right of way and obtaining right of way easements?**

**g. Intercounty's costs to maintain service to stranded customers by the erection of new facilities?**

**h. Intercounty's costs of reintegrating telephone, fiber optic, computers and communications systems?**

**i. Intercounty's administrative costs associated with the above?**

Intercounty's total of these costs, which Intercounty scheduled in its position statement under Paragraph III. F. above, contains generally or specifically all of the costs identified in Paragraph III. F. 1. and its subparagraphs. It is Intercounty's position that all of the amounts set out above should be included in the calculation of the reasonable costs of detaching Intercounty's facilities and reintegrating its system.

**3. What is 400% of Intercounty's gross revenue less gross receipts taxes, for the twelve-month period preceding the approval of the Rolla city council to begin negotiations with Intercounty for the exclusive territory and for transfer of the facilities?**

**a. What customers or structures should be included/excluded in the calculation of same?**

**b. How should the gross revenue calculation be normalized to produce a representative usage?**

Section 386.800.5 includes as an element of fair and reasonable compensation,

> (3) Four hundred percent of gross revenues less gross receipts taxes received by the affected electric supplier from the twelve-month period preceding the approval of the municipality's governing body under the provisions of subdivision (2) of subsection 3 of this section, normalized to produce a representative usage from customers at the subject structures in the annexed area;

This should be a very simple calculation, but RMU has made it complicated. For purposes of this calculation, Intercounty used its billing records to determine the revenue received by the members in the Area for the applicable twelve month period and multiplied that figure by 4. The product of that equation was $1,548,294.96. ($387,073.74 [normalized revenue] x 4) (Ex. 9, Ledbetter Rebuttal, p. 8) RMU has suggested that the revenue of two customers, who were sources of revenue for Intercounty during the applicable twelve month time period, should not be included. RMU states that since CT Farm and County Store burned down after the annexation, and the Charles

Moreland property was torn down after annexation, the revenue from those two customers should not be counted. (Ex. 3, Bourne Direct, p. 7)

The statute makes no exception for customers or structures who (or which) may have disappeared, combusted or gone bankrupt. Whatever Intercounty's revenue was for the twelve month period from structures in the annexed area is the basis for the equation. What RMU proposes to exclude is not allowed by the statute, and its request to exclude the two customers it identifies should be rejected by the Commission.

With respect to normalization of the gross revenue calculation Intercounty's position is that its revenue for the twelve month period has been normalized to the extent required to allow for major fluctuations in weather, (there were none) and to represent normal revenue for that period.

## IV. Other Costs/Issues Related to Calculating Fair and Reasonable Compensation

### A. Should the condition of Intercounty's easements, or lack thereof, in the annexed area be considered in the calculation of fair and reasonable compensation, and if so, in what amount and manner?

Intercounty's easements are mostly "blanket easements." These easements are granted to Intercounty by property owners to allow line construction within the property. They do not define specific corridors or segments of the property on which Intercounty may locate lines, however, as a matter of standard procedure, Intercounty will notify and seek approval of property owners before new lines are constructed. This allows Intercounty to locate and construct new lines in a manner that will result in the minimal amount of intrusion to those property owners who have granted Intercounty easement rights. **Intercounty's easements have proven to be cost efficient and reliable. Intercounty does not foresee any problems with them and considers them a valuable asset.**

(Ex. 10, Nelson Rebuttal, p.19-20) RMU believes that these easements are improper basically because RMU does not acquire easements in this way, and has asked for a deduction from the fair and reasonable compensation it may be required to pay. Its position is frivolous.

In this case, RMU has applied to the Commission for an order compelling Intercounty to convey targeted electric distribution assets. This is a case in which an involuntary transfer of Intercounty's assets is sought under a quasi-condemnation theory allowed by statute. Intercounty is not the applicant. It is not asking the Commission to force RMU to buy its assets. Intercounty and its members have been content with their relationship with each other and would like for it to long continue. RMU decided that it wanted to buy the facilities of Intercounty. Intercounty did not invite the offer. Nonetheless, RMU suggests that it should not be "forced" to buy Intercounty's easements in the condition they are. (Ex. 7, Watkins Surrebuttal, p. 21) It complains that the easements are not suitable for its purposes in that there may be a risk of future liability that could generate additional costs of operation. RMU has estimated that cost to be in excess of $400,000.

For RMU to state that it is being "forced" to buy the easements stands the statute on its head. The only party in this case that is being forced to do anything is Intercounty. RMU's position on Intercounty's easements is like the state highway department telling a condemnee that since he or she built a house on the location where the state wants to build a road, the condemnee must pay for moving or demolishing the house so the road bed is smooth.

The absurdity of RMU's suggestion is better illustrated when the set off for easement problems it requests is compared to what it believes it should pay for the facilities located on those easements. RMU expects to pay Intercounty $66,792 for an electrical distribution system that reliably serves 286 customers (about $233 a customer)-- a system which Intercounty wants to keep--

but RMU demands $400,000 from Intercounty as part of the take over. There is no conceivable way §386.800 can be interpreted such that Intercounty should pay RMU for the privilege of taking property Intercounty wishes to retain. Moreover, no court in this state will countenance a result in which a condemnee pays the condemnor to take the former's property. Condemnation is based on a fundamental principle: It is the condemnee who is justly compensated, not the condemnor.

Far too much has been written in the testimony, and now in this brief, about this non-issue. A quick reading of §386.800 will verify that it has no provision permitting reductions in the calculation of "fair and reasonable compensation" due to the quality of rights in land, or the quality of any other asset that is being transferred. The legislature has supplied a formula which sets the compensation to be paid to the electric supplier for the facilities, whatever those assets are, and in whatever condition they might be. No warranties of title are demanded of the involuntary transferor under this statute. RMU's request for an offset based on the condition of Intercounty's rights of way should be denied.

### B. Should the Commission order PCB testing of Intercounty's facilities in conjunction with the transfer, and if so, in what manner?

In his rebuttal testimony, Mr. Brian Nelson of Intercounty identified several "transfer of service" issues including the disposition of equipment that might be contaminated by PCB's (polychlorinated byphynals). He did not know of any PCB contaminated equipment within the Area, but advised that Intercounty had not tested every piece of equipment such as transformers, capacitors, and regulators within the Area. Transfer of ownership of PCB contaminated equipment would not release Intercounty from liability for disposal and clean up and Mr. Nelson proposed a method of

handling Intercounty's "cradle to grave" responsibility. He recommended the very reasonable solution of requiring RMU required to test any equipment prior to transfer of ownership. If the equipment were found to be contaminated with PCB's, Intercounty would maintain ownership and therefore the responsibility for disposal. RMU would be responsible for the replacement of any such equipment. (Ex. 10, Nelson Rebuttal, p. 22)

RMU has an altogether different idea, but one that is not surprising given its request that Intercounty pay RMU for taking Intercounty's system. Dan Watkins testified that RMU should not be required to pay for the testing because Intercounty should have done that testing long ago. Mr. Watkins wants the equipment tested at Intercounty's expense before the transfer. However, the RMU witnesses did not know of any regulation that required PCB testing on a time schedule any different than the one Intercounty was following. (Tr. 182) In fact, there is no law, code provision or regulation that specifies a definite period of time within which a utility must test for PCB's. *See*, 40 CFR §761.1 *et seq*.

Unless there is a transfer or replacement of this equipment, Intercounty has no duty to undertake the cost or expense of testing for PCB's. By force of this application and the threatened take over of these facilities, Intercounty is faced with a task it otherwise could lawfully postpone. Again, it is not Intercounty that wants to transfer these assets. Since RMU is putting Intercounty to the inconvenience of accelerating its schedule to test this equipment, in equity RMU should conduct the tests itself on the facilities it has applied to purchase, or pay Intercounty its expenses in doing so. Like the situation with Intercounty's easements, this is yet another instance in which RMU wants to compel Intercounty not only to transfer its assets, but to help RMU pay for the transfer. That is contrary to the intention of the statute.

The equipment should be tested for PCB's. Intercounty's proposal should be adopted and decreed. RMU's proposal has no merit and should be rejected.

**C. Should joint use fees collected pursuant to Intercounty's pole attachment agreements be considered in the calculation of fair and reasonable compensation?**

Intercounty agrees that this issue should be considered in cases brought pursuant to §386.800, however there was no evidence in the record on joint use fees and none are being requested by Intercounty.

**D. Should the equity owed to the Intercounty members in the annexed area be considered in the calculation of fair and reasonable compensation?**

In his rebuttal testimony, Mr. Strickland included the cost to retire the annexed members' patronage obligation as part of the calculation of fair and reasonable compensation. He identified the cost to be $402,649.39. At hearing he explained why RMU should owe this amount.

> A. Basically, as I mentioned earlier, we have three mortgage holders, Rural Utility Service, CFC and the members. In effect, we owe a large block of money to a group of members that we will no longer have. I don't believe it's fair for the remaining members to have to pick up the cost of service provided to these 286 over the past ten years. This is an obligation that Intercounty is still responsible for. I think that as part of the acquiring utility, RMU ought to pay out the patronage on them.

(Tr. 513-514). As a result of any involuntary transfer of its members in the Area, Intercounty faces another obligation it otherwise would not need to immediately incur. Intercounty should be compensated so that it can set aside the amount needed to pay the patronage obligation which is owed the 286 customers.

**E. Should Intercounty's additional wholesale power costs be considered in the calculation of fair and reasonable compensation?**

The subject of additional wholesale power costs which Intercounty could anticipate as a result of the transfer requested in this case was taken up in Mr. Strickland's Supplemental Rebuttal testimony which was the subject of an offer of proof at hearing. In that offer of proof, Mr. Strickland testified that

> [t]he sole-requirements contract Intercounty has with Sho Me Power Cooperative, its energy provider, has a three year average demand feature whereby any financial impact for a change in peak demand is spread over three years. In Mr. Nelson's testimony on page 4, line 10 he estimates the potential loss of 2.5 MW in capacity if the members are transferred from Intercounty to RMU. Sho-Me Power Cooperative has determined that the loss of 2,500 kW and 286 members, under Intercounty's contract would cause the remaining members to experience the following additional cost with no corresponding sales from the transferred members to offset them. The first year following the transfer Intercounty would be required to pay Sho-Me $185,550 in demand costs with no sales revenues to offset. In the second and third years the cost would be $123,700 and $61,850 a year respectively. The cost experienced by the remaining members for the three years would be $371,100. Intercounty would expect that this cost would be considered by the Commission for reimbursement from RMU to Intercounty as part the transfer costs.

Intercounty contends that these costs should be included in any award of fair and reasonable compensation the Commission orders in this case.

## V. Issues Addressed at Commission Request

**A. If the Commission assigns exclusive territory to RMU and orders payment of compensation to Intercounty, may the city of Rolla at its option, decide not to close the transaction.**

**B. The Last Sentence of §386.800.6**

Intercounty will address these issues in its reply brief.

## CONCLUSION

The evidence is sufficient for the Commission to conclude that the assignment of the exclusive territory and transfers of Intercounty facilities requested by RMU are not, in total, in the public interest and therefore its application should be denied. Alternatively, the Commission may consider establishing exclusive territories within the annexed area between RMU and Intercounty. If so, Intercounty asserts that the record will need supplementation. In the event the Commission is inclined to grant RMU's request for exclusive territory and the transfer of the facilities, the Commission should direct RMU to pay Intercounty the sum of $4,517,253.40 as fair and reasonable compensation under the statute, or the alternative, including the wholesale power demand costs, a total of $4,892,353.40.

Respectfully submitted,

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Certificate of Service

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