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January 19, 2001

Transmitted via: Hand-delivery

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102-0360

FILED³

JAN 19 2001

Re: Case No. EA-2000-308

Missouri Public
Service Commission

Dear Judge Roberts:

Enclosed for filing in the above referenced matter please find the original and eight copies of the **Brief of Southside Neighbors.**

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

Sincerely,



Michael R. Dunbar
/skg

Enclosures: As stated

cc: Gary W. Duffy via first class mail
Mark Comley via first class mail
Office of Public Counsel via first class mail
All Southside Neighbors via first class mail

FILED³

JAN 19 2001

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Missouri Public
Service Commission

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

BRIEF OF SOUTHSIDE NEIGHBORS

COMES NOW, Southside Neighbors, hereinafter referred to as "Southside", by and through it's attorney and for it's brief in opposition 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 §386.800, R.S.Mo.1994, states as follows:

Statement of Facts

The City of Rolla, Missouri, hereinafter referred to as "Rolla", on October 29, 1999 filed an Application for an Order Assigning Exclusive Service Territories and for Determination of Fair and Reasonable Compensation Pursuant to §386.800, R.S.Mo.1994, with the Public Service Commission, hereinafter referred to as "Commission". This application seeks an Order pursuant to §386.800, R.S.Mo. 1994, assigning exclusive service territories and determining a fair and reasonable compensation. The application requested that the Commission make Intercounty Electric Cooperative Association, hereinafter referred to as "Intercounty" a party to the action as Intercounty would be a necessary party to have a full and fair judication of this matter. On December 2, 1999, an Application to Intervene was filed by the group known as Southside Neighbors, and the Commission on December 20, 1999 granted those individuals application to intervene.

The application seeks an Order assigning exclusive service territory within an area of property recently annexed by Rolla containing approximately 1,350 acres. The annexation of

this area became effective on June 8, 1998. The electric supplier of this area and of Southside is Intercounty. This area which was annexed was commonly referred to as the Southside Annexation. The Southside Neighbors are all individuals who reside within the Southside annexation area. Rolla Municipal Utilities, hereinafter referred to as "RMU", is owned by the City of Rolla and provides electric service for residential and commercial customers within the city limits of Rolla. RMU is governed by the Rolla Board of Public Works, which is a board approved by the City Council.

Pursuant to the annexation statute, Rolla was required to hold public hearings concerning the annexation and form a Plan of Intent setting forth the major services that Rolla would provide and those major services Rolla would not be providing the annexed area. Rolla filed its Plan of Intent, which was revised at least twice during the annexation process. Rolla's Revised Plans of Intent, one dated November 26, 1996 and the final Revised Plan of Intent, dated October 6, 1997, were both attached as schedules in the Prepared Rebuttal Testimony of Mr. Vernon Strickland, who is the General Manager of Intercounty, and Mr. Don Priest, a member of Southside Neighbors. The Revised Plans of Intent for electricity both provided as follows:

"The areas within the proposed annexation that are now receiving electric service from a Rural Electric CO-OP will 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. It is the policy of RMU to absorb the cost of any electric extension and this would continue to be the case. The proposed financing of electric extensions into the proposed annexation area is to use electric reserve funds to install any new lines."

Thirty eight (38) days after the Southside Annexation became effective, Rolla published a notice in the local newspaper that it desired to extend the electric service territory into this area and take over service of the Intercounty members located within the annexed area. A series of meetings took place between Rolla and Intercounty without a successful resolution. This led to Rolla filing 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 §386.800, R.S.Mo.1994.

The Honorable Kevin Thompson, Presiding, Deputy Chief Regulatory Law Judge, requested in particular three issues be addressed in the briefs to be filed by counsel as follows:

1. "To discuss and analyze the scope of the Commission's authority under the statute. In particular, can the Commission assign any part or all of the annexed territory as exclusive service area of Intercounty for the future and, if so, would Intercounty be able serve new structures?"

2. "Mr. Watkins has testified that it is his opinion that whatever the price might be that the Commission sets, the City Council of Rolla would have an opportunity to determine whether or not it's going to go through with the transaction; is that correct?" (witness): "Yes, your honor." Judge Thompson: "And I would like to have counsel's views on whether or not the city has, in fact, lost that discretion by bringing this matter to the Commission."

3. "I'd like to direct counsel to please, in their briefs, explain to the Commission just what the meaning is of the last sentence of subsection 6 of Section 386.800. That is the one directing payment of compensation in transfer within 90 days of the order, and in particular the meaning of the last clause of that sentence, that any appeal therefrom becomes final unless the order provides otherwise."

I will address each of those issues in order that were requested by Judge Thompson in this brief, prior to addressing Southside's Statement of Position on the Issues as submitted to the Commission.

ISSUE 1: What is the scope of the Commission's authority under the statute and can the Commission assign any part or all of the annexed territory as exclusive service area of Intercounty for the future and, if so, would Intercounty be able to serve new structures?

In the cases of *Friendship Village of South County, et al., Vs. Public Service Commission of Missouri, et al*, 907 S. W. 2d 339 (Mo. App. W.D. 1995) and *Deaconess Manor Association, A Missouri Not For Profit Corporation, d/b/a Orchard House Vs. Public Service Commission of the State of Missouri and Union Electric Company, Respondents*, 994 S.W. 2d 602 (Mo. App. W.D. 1999) provided that in reviewing a decision of the Public Service Commission, the Court of Appeals views the evidence in the light most favorable to the agency, together with all reasonable supporting references. The party challenging an order of the Public Service Commission bears the burden of disproving its validity. That orders of the Public Service Commission are reviewed by applying a two-prong test: First, it is to be determined whether the Commission's order is lawful and second, to determine whether the order is reasonable and based upon competent and substantial evidence upon the whole record. The Commission's order will turn upon whether the Commission had the statutory authority to act as it did. The Commission's orders will be reviewed as to the matters of reasonableness, whether the order was supported by substantial and competent evidence on the whole record and whether the decision was arbitrary, capricious or unreasonable or whether the Commission abused its discretion. The term "substantial evidence" means evidence, which, if true, would have probative force upon issues, and necessarily implies and comprehends competent, not incompetent, evidence. The Court of Appeals, in reviewing the reasonableness of the order of the Commission, will consider the evidence in the light most favorable to the Commission, together with all reasonable supporting inferences and if the evidence permits either of two opposite findings, the Court of

Appeals will defer to the findings of the Commission. The Commission's orders must be clearly contrary to the overwhelming weight of the evidence for the orders to be set aside. When a decision involves exercise of the Commission's regulatory discretion, the law delegates a large area of discretion to the Commission and many of its decisions necessarily rest largely in the exercise of sound judgment.

The applicable statute governing this application is §386.800 R.S.Mo. 1994.

§386.800.1 (3) R.S.Mo. 1994 provides as follows: "No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991 unless: (3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section;"

§386.800.6 R.S.Mo. 1994 provides as follows: "In the event the parties are unable to reach an agreement under subsection 4 of this section, within sixty (60) days after the expiration of the time specified for negotiations, then the municipally owned electric utility may apply to the commission for an order assigning exclusive service territories within the annexed area and a determination of the fair and reasonable compensation amount to be paid to the affected electric supplier under subsection 5 of this section. Applications shall be made and notice of such filing shall be given to all affected parties pursuant to the rules and regulation of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty (120) days after the application is properly filed with the secretary of the commission. 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. 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. Review of such commission decision shall be governed by Sections 386.500 to 386.550. The payment of compensation and transfer of title and operation of the facilities shall occur within ninety (90) days after the order and any appeal therefrom becomes final unless the order provides otherwise.

§386.800.7 (1) provides in part as follows: 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 area are lower than those charged to other system customers; and”.

§386.800.8 RSMo. 1994 provides as follows: “The commission is hereby given all necessary jurisdiction over municipally owned electric utilities and rural electric cooperatives to carry out the purposes of this section consistent with other applicable law; provided, however, the commission shall not have jurisdiction to compel the transfer of customers or structures with a connected load greater than one thousand kilowatts. The commission shall by rule, set appropriate fees to be charged on a case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary costs incurred by the commission in carrying out it’s duties under this section.”

§ 394.315.2 R.S.Mo. 1994 provides in part as follows: “Once a rural electric cooperative or its predecessor in interest, lawfully commences supplying retail electric energy to a structure

through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in context of municipal annexation, pursuant to §386.800 R.S.Mo., and §394.080, or pursuant to a territorial agreement approved under §394.312. The Public Service Commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public's interest for a reason other than rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section....”

§91.025.2 R.S.Mo. 1998 provides in part as follows: “Once a municipally owned or operated electrical system, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure, except as might be otherwise permitted in the context of municipal annexation, pursuant to §386.800 RSMo., or pursuant to a territorial agreement approved under §394.312 RSMo. The Public Service Commission, upon application made by customer, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over municipally owned or operated electric systems to accomplish the purpose of this section. The commission's jurisdiction under this section is limited to public interest determination and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction....”

§394.080.1(4) R.S.Mo. 1994 provides in part as follows: “1. A cooperative shall have power: (4) Except as provided in §386.800, R.S.Mo. to generate, manufacture, purchase, acquire,

accumulate and transmit electric energy and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members; provided, however, that where a cooperative has been transmitting, distributing, selling, supplying or disposing of electric energy in a rural area, by reason of increasing its population, its inclusion in a city, town or village, or by reason of any other circumstance ceases to be a rural area, such cooperative shall have the power to continue to transmit, distribute, sell, supply or dispose of electric energy therein until such time as the municipality, or the holder of a franchise to furnish electric energy in such municipality, may purchase the physical property of such cooperative located within the boundaries of the municipality, pursuant to law, or until such time as municipality may grant a franchise in the manner provided by law to a privately owned public utility to distribute electric power within the municipality and such privately owned public utility shall purchase the physical property of such cooperative located within the boundaries of the municipality.

Under this section, when a rural area served by a cooperative is annexed into a city, the cooperative has the authority to continue selling electricity to its members in the formerly rural area.

§394.315.1(2) R.S.Mo. 1994 provides in part as follows: "Nothing in this section shall be construed to confer any right on a rural electric cooperative to serve new structures on a particular tract of land because it is serving an existing structure on that tract."

All consistent statutes relating to the same subject matter are construed together as though constituting one act, whether adopted at different dates or separated by long or short intervals. *State Ex Rel. Rothermic vs. Gallagher*, 816 SW2d, 194 (Mo. Banc. 1991).

Considering the entire legislative scheme and the plain meaning of the language used, the court

must attempt to harmonize each statutory enactment. *AG Processing, Inc. Vs. South St. Joseph Indus. Sewer District.*, 937 SW2d, 319, 324 (Mo. App. 1996). The case of *Farmer's Elec. Co-op, Inc. Vs. Missouri Department of Corrections and City of Cameron*, 977 SW2d, 266 (Mo. En Banc. 1998) did state that "under plain language of statutory scheme pertaining to powers and limitations of municipally-owned electric utilities and rural electric cooperatives to provide electric service, a contract was illegal to the extent that it provided rural electric cooperatives would serve electrical needs of new structure built on land annexed by city, even though cooperative had authority to continue providing service to any structures in the annexed area which it had been serving before annexation, in light of city's authority to supply power to its inhabitants and to extend electrical service to any new structure located in newly annexed area that has not previously received permanent service from another supplier."

The case above is not applicable as the current proceedings is under the jurisdiction of the Public Service Commission pursuant to §386.800 R.S.Mo. 1994.

§386.800.6 R.S.Mo. 1994 states in part, "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 the electric suppliers in the annexed area. 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 jurisdiction of the Public Service Commission extends to both municipally owned electric companies and rural electric cooperatives to carry out the purposes of §386.800 R.S.Mo. 1994. The only jurisdiction withheld was that the Public Service Commission could not compel the transfer of customers or structures with a connected load greater than one thousand kilowatts.

The Public Service Commission was directed by statute to consider in total, "public interest". Thus, in assigning service territories, the Commission is granted wide latitude in formulating what it believes is best in the public interest. This includes defining a service territory in any manner the Commission believes is in the best interest of the public. This could include but not be limited to: (a) denying Rolla's Application for Exclusive Service Territory and allowing Intercounty to continue serving its present customers; (b) to deny Rolla's Application for Exclusive Service Territory and determine that the annexed area shall continue to be served by Intercounty to include all new structures; (c) to deny Rolla's Application of Exclusive Service Territory and determine appropriate service areas in a manner which are consistent with the public interest by drawing boundary lines of what territory would be exclusively served by Rolla and what territory would be served by Intercounty; (d) or granting Rolla's request for exclusive service territory.

Based upon statutory authority the Public Service Commission has a broad range of power in determining what is in the public interest. This would include the above options.

ISSUE 2: Whether or not Rolla would have an opportunity to determine whether or not it is going to continue with the Application for Exclusive Service Territory after submitting this case to the commission?

4 CSR 240-2.116 is entitled to "**Dismissal**". The stated purpose of 4 CSR 240-2.116 provides as follows: "Purpose: This rule prescribes the conditions under which the Commission or an initiating party may dismiss a case. 4 CSR 240-2.116 (1) provides as follows: "An applicant or complainant may voluntarily dismiss an application or complaint without an order of the Commission at any time before prepared testimony has been filed or oral evidence has been offered, by filing a *Notice of Dismissal* with the commission and serving a copy on all parties.

Once evidence has been offered or prepared testimony filed, an applicant or complainant may dismiss an action only by leave of the Commission, or by written consent of the adverse parties.”

Rolla has submitted to the jurisdiction of the Public Service Commission and may not now decide to dismiss its application without the permission of the Public Service Commission or the written consent of Intercounty and Southside Neighbors. In the cross examination of Mr. Dan Watkins, starting at page 343, beginning at line 7 and continuing to page 345, through line 7, Mr. Watkins indicates that if the Commission were to order a price paid to Intercounty that was greater than the city believed was fair, then RMU may not want to proceed with this takeover or the Application of Exclusive Service Territory.

Questions to Mr. Watkins by Chair Lumpe on concerning this issue of whether the City of Rolla would pay the price which may be set by the commission are found beginning at page 388, line 11 and continuing through page 389, through line 19. Mr. Watkins indicates to Chair Lumpe when the Public Service Commission decides an amount to be paid, Rolla would then have the ability to reevaluate and decide if they wanted to pay that price and then decide whether to go ahead.

An entity can not conditionally make application for an order assigning exclusive service territory and for determination of fair and reasonable compensation and then through testimony state Rolla may not approve the decision of the Commission. Rolla's Application for Order Assigning Exclusive Service Territory should be dismissed at this time. §386.800 R.S.Mo. 1994 allows Rolla to apply to the Commission for an Order Assigning Exclusive Service Territories, but the statute does not make a provision for a conditional application.

Once application is made, evidence is heard, Rolla does not have the ability to dismiss its application without leave of the Commission or by written consent of the adverse parties.

ISSUE 3: What is the meaning of the last sentence of Subsection 6 of Section 386.800, "The payment of compensation and transfer of title and operation of the facility, shall occur within ninety (90) days after the order and any appeal therefrom becomes final unless the order provides otherwise."?

Review of the Public Service Commission 's decision in this case is outlined by §386.500 to 386.550 R.S.Mo. The Commission's orders are final and an appeal therefrom becomes final unless the order provides otherwise. This would mean that Rolla would have to pay to Intercounty, the amount ordered by the Commission within ninety (90) days after the order by the Public Service Commission.

ISSUE 4: List of issues presented to the Public Service Commission

I. Is the City of Rolla's request for an assignment of the exclusive territory and transfer of Intercounty Electric Cooperative Association's ("Intercounty") facilities in the public interest?

Southside's position remains the same as originally filed with the Public Service Commission. The determination of whether to grant Rolla's Application for Exclusive Service Territories is determined based on findings of what best serves the public interest. The relevant statute does not define what is public interest.

Black's Law Dictionary, 7th Edition, 1999 defines public interest as follows: "**Public interest.** 1. The general welfare of the public that warrants recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation."

The prepared rebuttal testimony of Brian Nelson, Exhibit 10, page 4, lines 15 and 16 define public to mean those most directly affected by the resolution of this issue. Mr. Nelson

believed that those most affected by the resolution of the issue of presence would be as follows:

“The current Intercounty members located in the annexed area. The members of Intercounty who are located outside the area. The citizens of Rolla and the customers of RMU.”

§386.800.7 R.S.Mo. 1994 provided the Commission factors to consider: (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 area are lower than those charged to other system customers; and (2) The fair and reasonable compensation to be paid by the municipally owned electric utility, to the affected electric suppliers with existing system operations within the annexed area, for any proposed acquisitions or transfers, and (3) Any effect on system operation, including, but not limited to, loss of load and loss of revenue, and (4) Any other issues upon which the municipally owned electric utility and the affected electric supplier might otherwise agree, including, but not limited to, the valuation formulas and factors contained in subsections 4, 5 and 6 of this section, even if the parties could not voluntarily reach an agreement thereon under those circumstances.

Many factors may be considered in determining the public interest. The factors the Commission may consider, but not limited to, are as follows:

(1) Rolla's Representation to the Public. Rolla's Revised Plan of Intent provided “the areas within the proposed annexation that are now receiving electric facilities from a rural electric co-op would continue to do so. RMU would not be allowed to serve any of these properties. Any new developments within the area would receive electric service from RMU. It is the policy of RMU to absorb the cost of any electric extension and this would continue to be

the case. The proposed financing of electric extensions into the proposed annexation area is to use electric reserve funds to install any new lines. The Revised Plan of Intent that were provided to the public are found in both the rebuttal testimony of Mr. Vernon Strickland, Exhibit 15 and the rebuttal testimony of Mr. Don Priest, Exhibit 12.

The rebuttal testimony of Mr. Don Priest also contains the minutes from a special city council meeting for the City of Rolla, Missouri, dated March 20, 1995. The Rolla City Council minutes reflect at page 3, the public was informed: "Under the "flip-flop" law, the City can not take any of Intercounty Electric's present customers. However, any new homes would be provided electric service through Rolla Municipal Utilities."

Individuals who testified at the public hearing were asked by the Commissioners present, who had advised them that Rolla would not be allowed to serve Intercounty's present customers? All individuals questioned indicated that the City of Rolla had advised them that Intercounty would continue to provide their service. Mr. Dan Watkins, in his cross examination, confirmed that it had originally been the plan of Rolla that Intercounty would continue to serve its present customers in the annexed area.

The comment made by Commissioner Murray, found on page 373, line 20-24, seems to make this point, "And it seems to me that if we were to grant this application, that we would be sending a message that it is okay to misrepresent things to the voters before you present it to them, and that appears that would not be in the public interest, and I'd like you to address that." The public should be allowed to rely on the information provided by Rolla.

(2). Opinion of the Public. (Those individuals living within the annexed area presently being served by Intercounty)

The Commission conducted a public hearing in the City of Rolla, to allow the public to express their views concerning this application. The public hearing was well attended to include being attended by Chair Lumpe and Commissioner Murray. All those who testified at the public hearing voiced their objections to the application that Rolla would be there new electric service provider. There were no statements at the public hearing supporting this application. The Office of Public Counsel admitted over 100 letters from the public at the evidentiary hearing. These letters were written by individuals who lived or owned businesses within the annexed area and who are opposed to the commission granting Rolla's application. The letters overwhelming expressed their opposition to Rolla taking over their electrical utilities and advised that they wished to remain with Intercounty. A very important factor in considering what is in the public interest should be the consideration of individuals or businesses who are presently being served by Intercounty. This is especially true considering the number of individuals who are opposed to this application.

(3). Electrical Rates. The evidence submitted in this case suggest that the rates of both Intercounty and Rolla would be similar. The rate structure of Rolla does not take into account that the Commission may order an amount paid by Rolla greater than the anticipated. The rates of Rolla may have to be increased if the Commission grants Rolla's application and orders an amount in excess of what Rolla proposed.

(4). The Reliability of Service. The overwhelming feeling as presented by the evidence is that those customers presently being served by Intercounty have trust and confidence in the reliability of services provided by Intercounty. This was also brought out at the public hearing by those who testified and in the over 100 letters introduced into evidence by the Public Service Commission. This is also shown in the prepared rebuttal testimony of Mr. Don Priest and

the rebuttal testimony of Mr. Brian Nelson. In the rebuttal testimony of Mr. Brian Nelson, at page 6, he discusses the reliability of services. He also testifies that Rolla through RMU does not maintain annual statistics on the extent and causes of outages. Mr. Priest through his prepared rebuttal testimony and others who testified at the public hearing, all informed the Commission of their experiences with outages with Rolla. There were examples given at the public hearing of the service that was provided by Intercounty and the reason that these individuals wished to continue with Intercounty.

(5). Expenditures of Utility Money. Mr. Don Priest, in his rebuttal testimony, attached a copy of the Offices of the State Auditor of Missouri, Jefferson City, Report for the City of Rolla, Missouri, year ended September 30, 1997. On pages 16, 17 and 18, the auditor made findings that the City of Rolla had expended money for non-utility items. The recommendation of the auditor was that the city council ensure that RMU limits expenditures to only those which are necessary to properly operate the city's utility operations. The auditor, on page 19 in the auditor's comment, stated as follows: "The statutes in Chapter 91 R.S.Mo. cited in the Board of Public Works response do not support the board's assertions. In addition, these statutes do not apply to the City of Rolla. The Board of Public Works' authority and power is limited to managing municipal utilities. Any expenditures of utility monies for non-utility purposes translate into higher utility rates than necessary to operate and maintain the municipal utilities." RMU, as cited in the auditor's report, does spend monies which are not necessarily for the use and benefit of the utility service.

(6) Intercounty Elects it's Board of Directors. The evidence presented to the commission is that Intercounty members elect the Board of Directors. This allows the members to have direct control and input into the direction for services. This certainly would be the

public's interest to be able to have input and control over how services are provided along with their costs. This again, would appear to be in the public's interest and an important factor in considering whether to grant Rolla's application. Should Rolla's application be granted, Intercounty's members located within the annexed area would lose a valuable right that they presently have.

(7). Duplication of Services/Safety. Should the Commission deny the application by Rolla, there may be duplication of services. This led to the next logical question of that being safety, not only to the public but to those workers of RMU and Intercounty. The individuals who provided testimony through their prepared testimony and at cross examination during the evidentiary hearing all stated that safety codes are in place to ensure the safety of the public as well as the workers. There are presently facilities being served by Intercounty within the City of Rolla and have been so for a number of years. The duplication of facilities was not an issue for the City of Rolla at the public hearings held concerning the annexation along with both Revised Plans of Intent which were provided to the Commission. Rolla would now seem to be attempting to use that issue to help them when prior to the annexation it was a non-issue.

(8) Facilities Currently In Place by Intercounty. Intercounty, at present, already has electrical facilities in place to serve their customers and members presently located within the annexed area. These facilities include the office building presently operational and serves the needs of the public.

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)?

RESPONSE: Southside takes no separate position with regards to this issue but would defer to the position taken by Intercounty.

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?

RESPONSE: Southside takes no separate position with regards to this issue but would defer to the position taken by Intercounty.

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?

RESPONSE: Southside takes no separate position with regards to this issue but would defer to the position taken by Intercounty.

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?

RESPONSE: Southside takes no separate position with regards to this issue but would defer to the position taken by Intercounty.

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?

RESPONSE: Southside takes no separate position with regards to this issue but would defer to the position taken by Intercounty.

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

RESPONSE: Southside takes no separate position with regards to this issue but would defer to the position taken by Intercounty.

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?

RESPONSE: Southside takes no separate position with regards to this issue but would defer to the position taken by Intercounty.

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

RESPONSE: The Revised Plan of Intent of the city should be considered with respect to the interest of the public in this case. Again, as Commissioner Murray noted, "It would send a message that it is okay to misrepresent things to the voters before you present it to them. The public can not be served by allowing Rolla during the annexation process of this area to consistently maintain the position that utility service would not be transferred to Rolla and now to be allowed to change that position.

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

RESPONSE: The position of Southside is that the Commission should not assign the annexed area in whole or in part to the City of Rolla as its exclusive territory. This was discussed above and is incorporated herein by reference.

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?

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

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?

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

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?

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?

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?
- 2. If the Commission determines that an item listed in III-E.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?
- 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?**

RESPONSE: With respect to Paragraph III and all of its subparts, Southside takes no separate position.

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?

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

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

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

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

RESPONSE: With respect to Paragraph IV and all of its subparts, Southside takes no separate position.

Southside respectfully requests that in the matter of the application of the City of Rolla for an Order Assigning Exclusive Service Territories and for a Determination of Fair and

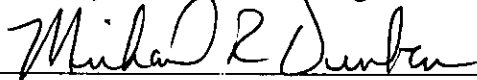
Reasonable Compensation Pursuant to Section 386.800 RSMo. 1994 be denied. Southside would additionally, respectively request that the present customers of Intercounty be allowed to continue to be served by Intercounty and the Commission consider making the service territory that was annexed by the City of Rolla to be the exclusive territory of Intercounty. That in the event the Commission would wish to have oral argument, that Southside Neighbors be allowed to present oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the above and foregoing **Brief of Southside Neighbors** was served by placing the same in an envelope, with first class postage affixed thereto, addressed as set forth below, and by then depositing the same in a U.S. Mail receptacle in Waynesville, Missouri, on the 19 day of Jan, 2001.

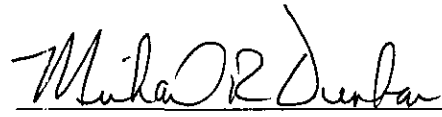
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