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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 18th
day of January, 2000.

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

**ORDER DENYING MOTION TO DISMISS,
EXTENDING TIME FOR DECISION,
SETTING PREHEARING CONFERENCE,
AND REQUIRING FILING OF
PROPOSED PROCEDURAL SCHEDULE**

On October 29, 1999, the City of Rolla, Missouri (City or Rolla),
filed an application with the Commission seeking an order pursuant to
Section 386.800, RSMo 1994, assigning exclusive service territories and
determining fair and reasonable compensation. According to its applica-
tion, the area concerned is a tract containing approximately 1,350 acres,
recently annexed by the City, and presently provided electric service by
Intercounty Electric Cooperative Association (Cooperative).

On November 3, 1999, the Commission issued its Order Directing
Notice and Adding a Party, by which Cooperative was made a party herein.
That Order also established a deadline for applications to intervene.
Accordingly, on December 2, 1999, an association of 16 persons collectively

styled the Southside Neighbors filed their timely application to intervene. The Commission granted intervention by Order issued on December 17, 1999.

On December 3, 1999, Cooperative filed its Response to City's Application. That Response contained a motion to dismiss and a number of contingent motions, to be taken up only if the motion to dismiss should be denied. One of these, Cooperative's request for an evidentiary hearing, need not be taken up as the statute requires that such a hearing be held. City replied on December 13, 1999. No further pleading has been filed by Cooperative and the interval for filing such established by Commission rule has passed.¹ Rule 4 CSR 240-2.080(12).

Cooperative's Motions:

1. Motion to Dismiss:

Cooperative contends that City's application must be dismissed as untimely filed because, although the parties agreed to extend the negotiating period by 180 days as allowed by statute, City never presented a written request for such an extension to the Commission, as the statute also specifically requires. Thus, Cooperative argues, City's application must be dismissed because the statute required that it be filed no later than May 6, 1999.

¹Although Cooperative's pleading is styled a "Response," it is actually a motion. Therefore, Cooperative had a right to file a pleading in reply to City's response to its motion.

City responds that it did, in fact, present a written request to the Commission on March 3, 1999. Because the 180-day extension permitted by statute was properly perfected, City argues, its application was timely filed, within 60 days of the end of the extension period. Therefore, City states, the motion to dismiss must be denied.

City is correct. Section 386.800.4, RSMo, specifically requires the mutual agreement of the parties and a written request to the Commission to perfect a 180-day extension of the negotiating period. Attached to City's reply is a copy of City's letter of March 3, 1999, to this Commission, bearing the stamp of the Commission's Records Department. Cooperative has not challenged the authenticity of this letter and the time for doing so has expired. Therefore, the Commission agrees with City that Cooperative's motion to dismiss must be denied.

2. Motion to Extend Time for Decision:

Section 386.800.6, RSMo, requires this Commission to determine City's application within 120 days of filing, "[u]nless otherwise ordered by the Commission for good cause shown." Both City and Cooperative have requested that the time for decision be extended by the Commission.

The 120th day following the filing of City's application is Saturday, February 26, 2000. Both parties assert that extensive discovery is planned and that every issue will be vigorously contested. Both parties agree that, under the circumstances, the case cannot be resolved by February 26, 2000. The Commission agrees and finds that "good cause" has been shown, such that the 120-day statutory limit may be extended.

However, neither party has provided any guidance to the Commission as to the length of the extension necessary. The statute, too, is silent on this point. Therefore, the Commission shall extend the time for decision in this case for an additional 120-day period, to Sunday, June 25, 2000. Should that interval not prove sufficient, the statute does not forbid additional extensions.

3. Motion for Feasibility Study:

Cooperative also prays that City be required to prepare and file a feasibility study showing how City proposes to serve the affected customers.

City responds that, first, the Commission has already relieved City of the need to file a feasibility study and that the time to contest that order has already expired. Second, City argues that a feasibility study is unnecessary in this case. City states that it will set out its plan for serving the annexed area in its direct testimony. City further states that it has not yet completed its plans in that regard and, indeed, cannot until Cooperative provides detailed information that City has sought by data request. Finally, City states that "[t]he Commission is not given statutory authority in this type of proceeding to determine 'feasibility' in the same way that it does under § 393.170 RSMo where a public utility proposes to enter a new area and construct new facilities."

City filed its application pursuant to Section 386.800.6, RSMo. That statute specifically provides that "[a]pplications shall be made * * * pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity."

Commission Rule 4 CSR 240-2.060(2)(F)5, in turn, requires that every such application include:

A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations[.]

The Commission, in its Order Directing Notice and Adding a Party of November 3, 1999, directed that "the City of Rolla, Missouri, need not submit a feasibility study in support of its application." This was in response to City's request, contained in its application, to be relieved from the obligation of filing a feasibility study because "the City does not presently possess the cost information on the Intercounty properties and facilities within the Area, and therefore is not in a position to create 'feasibility studies' based on such information." This was not a determination by the Commission that City need never show that its plans are feasible. Indeed, City evidently understands as much because City plans to show feasibility in its direct testimony.

As to the Commission's authority, Section 386.800.8, RSMo, expressly provides that "[t]he 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[.]" The Commission is empowered to do whatever is necessary in this matter. However, the Commission will not require City to file a feasibility study at this time. The Commission will require City to show that its plans are feasible in its direct testimony.

4. Request for Local Public Hearing:

Cooperative requests that the Commission hold a Local Public Hearing on this matter. The Commission has also received such a request in the form of a purported "petition," evidently submitted by affected consumers. City does not oppose a Local Public Hearing, but requests that it be set at such time as to afford City an opportunity to make informational presentations to affected consumers first. The Commission will grant Cooperative's Request for a Local Public Hearing and will schedule the same in a later order.

5. Motion to Add Parties:

Cooperative moves the Commission to join as "indispensable" parties Rural Utility Services (RUS) and the National Rural Utilities Cooperative Finance Corporation (NRUCFC) because they, and perhaps other unnamed parties, have security interests in Cooperative's facilities within the annexed area, which may be transferred to City. Cooperative contends that it may be left subject to conflicting obligations if RUS and NRUCFC are not joined.

City denies that RUS and NRUCFC are necessary parties to this case. City also points out that this Commission is not a court and that the Commission cannot construe contracts. City further suggests that Cooperative should have informed RUS and NRUCFC of this matter in time to permit their intervention. City also questions whether the Commission has any jurisdiction over RUS and NRUCFC and notes that the civil rule regarding indispensable parties has no application to this proceeding.

The Commission has considered the arguments of the parties and determines that there is no need to join RUS and NRUCFC as parties to this matter at this time. These entities may seek to intervene out-of-time or they may be joined later if their participation herein is truly necessary.

Prehearing Conference:

This matter is now at issue and a prehearing conference and procedural schedule are appropriate to ensure its prompt resolution. At the prehearing conference, the parties or their representatives should be prepared to discuss the nature of any discovery each will conduct and the interval necessary for its completion; the number of witnesses each expects to call at hearing; the number and nature of any exhibits each expects to offer at hearing; and the anticipated length of the hearing. The parties or their representatives should also be prepared to discuss the current status of settlement negotiations. It is expected that the prehearing conference will provide an opportunity for the parties to further pursue settlement discussions.

Proposed Procedural Schedule:

The parties shall jointly file a proposed procedural schedule. The proposed procedural schedule shall establish dates for the close of discovery, the filing of testimony, and the filing of a list of issues and the parties' position statements on those issues. The proposed procedural schedule shall also establish dates for the hearing of this matter.

IT IS THEREFORE ORDERED:

1. That the Motion to Dismiss filed by Intercounty Electric Cooperative is denied.

2. That the parties' requests to extend the time for decision herein are granted. The Commission hereby extends the time for decision in this case for an additional 120-day period, to Sunday, June 25, 2000. The parties may seek additional extensions if needed.

3. That the Contingent Motion to File Feasibility Study filed by Intercounty Electric Cooperative is denied. The City of Rolla shall show, in its Direct Testimony herein, that its plan for integrating the annexed area into its distribution system is feasible.

4. That the request of Intercounty Electric Cooperative for a Local Public Hearing is granted.

5. That the Contingent Motion of Intercounty Electric Cooperative to Add Parties is denied.

6. That a prehearing conference shall be held on February 1, 2000, beginning at 10:00 a.m. The prehearing conference shall be held at the Commission's offices on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing conference at: Consumer Services Hotline - 1-800-392-4211 or TDD Hotline - 1-800-829-7541.

7. That the parties shall jointly prepare and file a proposed procedural schedule no later than February 8, 2000.

8. That this order shall become effective on January 28, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray, and Schemenauer, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge