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December 3, 1999

FILED

DEC 3 1999

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

**Missouri Public
Service Commission**

Re: Case No. EA-2000-308

Dear Judge Roberts:

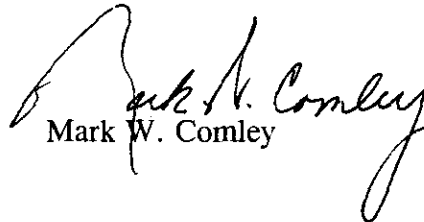
Enclosed for filing in the referenced matter please find the original and fourteen copies of Intercounty Electric Cooperative Association's Response to Application.

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

MWC:ab

Enclosure

cc: Office of Public Counsel
Gary W. Duffy
Michael R. Dunbar
Vernon W. Strickland

FILED

DEC 3 1999

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE 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

**INTERCOUNTY ELECTRIC COOPERATIVE ASSOCIATION'S
RESPONSE TO APPLICATION**

Comes now Intercounty Electric Cooperative Association (hereinafter "Intercounty"), by and through its attorneys, and in response to the City of Rolla's (hereinafter "Rolla") application in the captioned case submits the following:

MOTION TO DISMISS

Rolla's application fails to sufficiently plead the facts necessary to invoke the jurisdiction of the Commission. In paragraph 15 of its application Rolla alleges in part that "[t]here was a mutually agreed extension of the original 180 day time period to continue the negotiations." Section 386.800.4 RSMo 1994 provides:

The time period for negotiations allowed under this subsection may be extended for a period not to exceed one hundred eighty days by a mutual agreement of the parties and a written request with the public service commission.

There is no allegation that a request was filed with, and approved by, the Public Service Commission. In the absence of such a request, Intercounty submits that the extended negotiating period was invalid under the statute. Accordingly, to be timely filed this application should have been filed with the Commission within 60 days after March 7, 1999, or May 6, 1999. Based upon the facts set forth in the application, it is untimely and therefore should be dismissed.

CONTINGENT MOTIONS

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Intercounty submits a series of motions below which are contingent, and should only be considered if Intercounty's Motion to Dismiss is denied. These are alternative motions and are submitted without prejudice to and expressly reserving Intercounty's Motion to Dismiss.

CONTINGENT MOTION TO EXTEND TIME FOR DECISION
AND
REQUEST FOR EVIDENTIARY HEARING

If this matter shall proceed, Intercounty anticipates considerable discovery between the parties thus making meaningful preparation for hearing and disposition of the cause impracticable within the 120 days statutorily assigned for this application. Intercounty suggests there is good cause for extending the 120 day time period set out in §386.800.6 RSMo 1994 and prays for the Commission's order to that effect. Furthermore, Intercounty requests a full evidentiary hearing on each and every allegation set out in Rolla's application.¹

CONTINGENT MOTION TO ORDER ROLLA
TO PREPARE AND FILE FEASIBILITY STUDY

In reaching its decision in this matter the Commission shall consider factors set out in the subparagraphs of §386.800.7 RSMo 1994. One factor the Commission shall consider is

whether the acquisition or transfers sought by the municipally owned electric utility within the annexed area for the affected electric supplier are, in total, in the public interest

In order to examine this factor, the Commission should review Rolla's own expectations of how it will provide service to the area identified in the application. Based upon counsel's information and

¹In its November 3, 1999 Order, the Commission provided that Intercounty "may file its responsive pleading, if any, within 30 days" of the date of the order. The Commission did not direct the filing of an "answer" to the application. Section 386.800, RSMo 1994 does not make provision for an answer. As a result, Intercounty has not responded paragraph by paragraph to the application. In the event an answer is deemed required by the Commission's order or applicable statute, then Intercounty denies each and every allegation of the application except to the extent any have been specifically admitted in the body of this Response.

belief, Rolla has not, at any stage of this process, supplied to Intercounty, or the customers affected by this application, a plan or study outlining its anticipated means of providing service. That it is not an investor owned utility subject to the general regulatory jurisdiction of this Commission is not a reason to excuse Rolla from supplying to the Commission, Staff, Public Counsel, Intercounty and other parties an adequate study of its ability to supply or provide service to this area, all of which can be examined under oath. Intercounty respectfully requests the Commission to order Rolla to prepare and file a feasibility study for this application.

CONTINGENT REQUEST FOR LOCAL PUBLIC HEARING

In excess of 250 Intercounty customers are potentially affected by this application. In connection with the Commission's consideration of the public interest, it should convene a local hearing at which affected persons can testify. Intercounty requests the Commission to schedule a hearing at an appropriate venue in connection with this application.

CONTINGENT MOTION TO ADD INDISPENSABLE PARTIES

The whole of Intercounty's property is encumbered by mortgages or deeds of trust in which the party(ies) secured include Rural Utility Services and the National Rural Utilities Cooperative Finance Corporation. A transfer of title to any facilities that are subject to the mortgages or deeds of trust without the approval of the secured parties will violate the terms of the indentures, and thereby expose Intercounty to liability for breach. Disposition of Rolla's application in the absence of Rural Utility Services and National Rural Cooperative Finance Corporation leaves Intercounty at a substantial risk of incurring inconsistent obligations, and therefore both Rural Utility Services and National Rural Cooperative Finance Corporation should be joined as parties in this proceeding. If they cannot be joined, then the application should be dismissed.

CONCLUSION

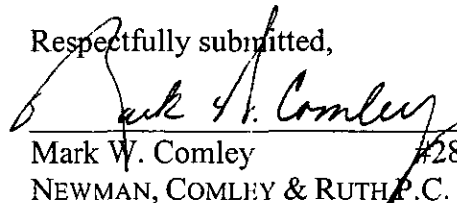
Based upon the above and foregoing, Intercounty respectfully requests the Commission to enter the following relief:

- a. Dismiss Rolla's application; or

In the alternative:

- b. Set this matter for a full evidentiary hearing and extend the time within which to rule beyond the 120 days allowed by §386.800.6 RSMo 1994;
- c. Direct Rolla to prepare and file a feasibility study for purposes of its application;
- d. Schedule a local hearing(s);
- e. Join as parties to this action Rural Utility Services and National Rural Cooperative Finance Corporation, and if it is not feasible to do so, dismiss the application;
- e. After consideration of the evidence and the briefs of the parties, deny Rolla's application in its entirety; and
- f. Such other relief the Commission deems just under the circumstances.

Respectfully submitted,


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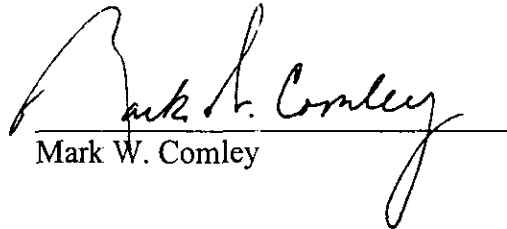
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand delivered, on this 3rd day of December, 1999, to:

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