

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

April 12, 2001

CASE NO: EA-2000-308

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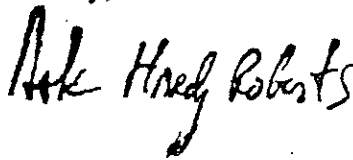
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of April, 2001.

In the Matter of the Application of the City)
of Rolla, Missouri, for an Order Assigning)
Exclusive Service Territories and for Deter-)
mination of Fair and Reasonable Compensation)
Pursuant to Section 386.800, RSMo 1994.)

Case No. EA-2000-308

**ORDER DENYING REHEARING AND
CORRECTING REPORT AND ORDER**

On March 15, 2001, the Commission issued its Report and Order in this matter. Thereafter, on March 23, the City of Rolla filed its application for rehearing and motion to modify report and order. On April 2, Intercounty Electric Cooperative Association filed its response to Rolla's application for rehearing.

Application for Rehearing:

Rolla requests that the Commission remove from the Report and Order two paragraphs which "purport to 'assign' service 'territories' inside the corporate limits of the City[.]" Rolla refers to the section of the Report and Order, actually three paragraphs in length, headed "Assignment of Service Areas in the Annexed Area." These three paragraphs appear on pages 33 and 34 of the Report and Order. Rolla asserts that "these two paragraphs are not essential to the result the Commission reaches in this case, and thus can be treated as surplus which can be removed without damaging or altering the result the Commission reaches."

Intercounty, in its response to Rolla's application and motion, states that "there is nothing invalid about the Report and Order."

Intercounty urges the Commission to deny Rolla's application and motion. The Staff of the Commission did not respond to Rolla's application and motion.

Section 386.800.6, RSMo 2000,¹ states that "[i]n the event that the parties are unable to reach an agreement . . . the municipally owned electric utility may apply to the commission **for an order assigning exclusive service territories within the annexed area**" (emphasis added). This is exactly the function of the paragraphs to which Rolla now objects. Because the authority vested in the Commission under Section 386.800 requires that the Commission assign exclusive service territories, the Commission must deny Rolla's application and motion.²

When faced with an application under Section 386.800.6, the Commission must make that disposition which, in consideration of the competent and substantial evidence of record and the factors set by statute, best serves the public interest. The Commission's authority under this statute extends to assigning some, all or none of the area in question to either or both of the two contending suppliers as exclusive service territories, according to its determination of the public interest. It happens, in this case, that the public interest dictated a result which may be similar to the situation which would have existed had Rolla not filed its application. Nonetheless, Section 386.800.6, requires that exclusive service areas be assigned.

¹All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

²The Commission does not discuss here the other obligation imposed by Section 386.800.6, that of determining fair and reasonable compensation, because the result reached in this case did not require a forced transfer of assets.


Correction of the Report and Order:

In its response to Rolla's application and motion, Intercounty points out that the Commission stated on page 18 of the Report and Order that "Intercounty filed its application with the Commission on October 29, 1999." In fact, it was Rolla, not Intercounty, which filed the application on that date. The Commission will correct this scrivener's error *nunc pro tunc*.

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing and Motion to Modify Report and Order filed by the City of Rolla on March 23, 2001, is denied.
2. That the Report and Order issued by the Commission in this case on March 15, 2001, is corrected *nunc pro tunc* in that the last sentence of the third full paragraph appearing on page 18 of the Report and Order is corrected to read, "The negotiation period expired on September 3, 1999, and Rolla filed its application with the Commission on October 29, 1999."
3. That this order shall become effective on April 12, 2001.
4. That this case shall be closed on April 13, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray,
and Simmons, CC., concur.
Gaw, C., not participating.

Thompson, Deputy Chief Regulatory Law Judge

ALJ/Secretary:

Thompson Pope

Date Circulated

4-10

CASE NO.

EA-2000-308

Lumpke, Chair

MLP

Drainer, Vice Chair

CM

Murray, Commissioner

KS

Simmons, Commissioner

AP

Gaw, Commissioner

ST

Agenda Date

4-12

Action taken:

4-0 AS

Must Vote Not Later Than

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 12th day of April 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

