STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
March 15, 2001

CASE NO: EA-2000-308

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Gary W. Duffy
Brydon, Swearengen & England
312 E. Capitol Avenue, PO Box 456
Jefferson City, MO 65102

William E. Gladden
Attorney at Law
205 N. Grand
Houston, MO 65483

Michael R. Dunbar, Esq.
Smith Dunbar Turley
#266 Marshall Drive-St. Robert
P. O. Box 494
Waynesville, MO 65583

Mark W. Comley
Newman, Comley & Ruth
601 Monroe Street, Suite 301
Jefferson City, MO 65102

Edward Hoertel
Attorney At Law
Suite 207 Scott Building
Rolla, MO 65401

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

Sincerely,

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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**

REPORT AND ORDER

Issue Date: March 15, 2001

Effective Date: March 25, 2001

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APPEARANCES

Gary W. Duffy, Esq., Brydon, Swearengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102-0456, for the City of Rolla.

Mark W. Comley, Esq., Newman, Comley & Ruth, 601 Monroe, Suite 301, Post Office Box 537, Jefferson City, Missouri 65102, for Intercounty Electric Cooperative Association.

Edward D. Hoertel, Esq., Hoertel & Hoertel, Post Office Box 4, Suite 207, Scott Building, Rolla, Missouri 65402, for Intercounty Electric Cooperative Association.

William E. Gladden, Attorney at Law, 205 North Grand Avenue, Post Office Box 217, Houston, Missouri 65483, for Intercounty Electric Cooperative Association.

Michael Dunbar, Esq., Smith, Dunbar & Turley, 266 Marshall Drive, St. Robert, Missouri 65583, for the Southside Neighbors.

M. Ruth O'Neill, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65101-780, for the Office of the Public Counsel and the public.

Dennis L. Frey, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Kevin A. Thompson, Deputy Chief.**

REPORT AND ORDER

Procedural History

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 2000,[1] assigning exclusive service territories and determining fair and reasonable compensation. According to its application, the area concerned is a tract containing approximately 1,350 acres, recently annexed by the City, which presently receives

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

electric service from Intercounty Electric Cooperative Association (Intercounty).

On November 3, 1999, the Commission issued its Order Directing Notice and Adding a Party, by which Intercounty 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 on December 17, 1999.[2]

On December 3, 1999, Intercounty 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. City replied on December 13. On January 18, 2000, the Commission denied Intercounty's motion to dismiss, extended the time for decision for an additional 120-day period, granted the request that a local public hearing be held, set a prehearing conference for February 1, and required the filing of a proposed procedural schedule. The prehearing conference was later reset and held on March 1. On January 24, Intercounty sought a protective order, which was adopted on February 24.

On March 8, 2000, the parties jointly filed a proposed procedural schedule and motion to again extend the time for decision. The extension sought ran nearly a year. The parties explained that this was a case of first impression under the governing statute and that much discovery was required to prepare the case for hearing. On March 29, the Commission granted the parties' motion and extended the time for decision herein to

[2] These persons were Don Priest, Mary Ellen Irwin, Virginia Hays Priest, Marvin Koynenbelt, John E. Happel, Brooks R. Read, Diana L. Henry, Alva Branson, Tom Green, Barbara Crowley, Danny Winstead, Sharlyn Winstead, Nadine Jones, Calvin Jones, Deborah C. Volz, and Steven A. Volz. Six of them, including Calvin and Nadine Jones, Danny and Sharlyn Winsted, Mary Ellen Erwin, and Brooks Read, were permitted to withdraw as parties on May 19, 2000.

March 15, 2001. The Commission also adopted the proposed procedural schedule with only minor modifications and the usual conditions.

Pursuant to the procedural schedule, prepared direct testimony was filed on June 1, 2000, and prepared rebuttal testimony was filed on July 18. Following an extension requested by Rolla on September 8, and granted by the Commission on September 27, prepared surrebuttal and cross-surrebuttal testimony was filed on October 18. The local public hearing was held on October 23.

On November 14, 2000, as required by the procedural schedule, Staff filed a list of contested issues for determination by the Commission, a list of witnesses and the date each would appear, and an agreed order of cross-examination. The parties filed their position statements on November 21.

On November 14, Intercounty filed its motion to compel responses to data requests from City, with supporting suggestions. On November 16, Intercounty sought leave to file supplemental rebuttal testimony. On November 17, the Commission directed City to respond to Intercounty's motion to compel by November 21. Meanwhile, Intercounty filed its second motion to compel City to respond to data requests on November 17. City responded in opposition to the first motion to compel on November 21, as directed by the Commission, and, on November 22, responded to Intercounty's request for leave to file supplemental rebuttal testimony. On November 27, Intercounty replied to Rolla and submitted further suggestions in support of its motions to compel. City replied to Intercounty's further suggestions on November 29. On December 1, the Commission denied Intercounty's motions to compel and its motion for leave to file supplementary surrebuttal testimony.

On November 29 and December 1, the Public Counsel filed motions seeking pre-approval of certain exhibits. The Commission granted these

motions at the opening of the hearing and received the exhibits into the record.

An evidentiary hearing was held on December 4 and 5, 2000. All parties were represented at the hearing and were afforded the opportunity to present evidence and argument and to cross-examine witnesses. Also on December 4, Intercounty filed its Motion to Reconsider Order Regarding Motion to Compel and Motion to File Supplemental Rebuttal Testimony. On December 7, the Commission issued its briefing schedule.

On December 8, 2000, the parties unanimously moved the Commission to modify its Order Directing Filing of December 7, 2000, with respect to the page limitation imposed on the briefs of the parties. The Commission granted that motion on December 15.

On December 18, 2000, Public Counsel filed its Motion to Accept Late-filed Exhibits. On December 19, Public Counsel filed Late-filed Exhibits 24 and 25. Also on December 19, the parties filed the Joint Reconciliation pursuant to the Procedural Schedule. Public Counsel filed its Supplement to its Motion to Accept Late-filed Exhibits on December 20.

On January 19, 2001, The parties timely filed their initial briefs. Reply briefs were filed on February 9, 2001.

Late-filed Exhibits:

No objections were filed to Late-filed Exhibits 24 and 25; consequently, they are received and made a part of the record of this matter.

Objection of Improper Use of a Summary of Records:

At the hearing, Intercounty objected to lines 22:12 through 26:8 of Exhibit 4, the prepared Surrebuttal Testimony of Rolla Municipal Utilities' (RMU's) witness Rodney Bourne, on the grounds that it represented the improper use of a summary of records. This objection was

taken with the case in order to permit Rolla an opportunity to review the case cited by Intercounty and to formulate a response.

The testimony in question concerns Mr. Bourne's effort to determine the age of Intercounty's facilities in the annexed area by obtaining, from the Phelps County Assessor, the date when each structure in the tract was added to the tax rolls, on the theory that the associated electric distribution facilities were approximately the same age as the structure they served.

Intercounty objected, relying on *Sigrist By and Through Segrist v. Clark,* 935 S.W.2d 350 (Mo. App., S.D. 1996). That case held:

> The use of summaries to help make voluminous records understandable is approved in *The Bolling Co. v. The Barrington Co.,* 398 S.W.2d 28, 31 (Mo. App. 1965). Generally, a summary of records is admissible where the records upon which the summary is based are voluminous, are admissible and are available to the opposing party for inspection. *Ahrens & McCarron, Inc. v. Mullenix Corp.,* 793 S.W.2d 534, 539-40 (Mo. App. 1990). Nevertheless, the determination of the admissibility or exclusion of evidence is within the sound discretion of the trial court. Although certain evidence may be relevant, it is within the discretion of the trial court to exclude the evidence if its probative value is outweighed by its prejudicial effect. *See Stevinson v. Deffenbaugh Indus., Inc.,* 870 S.W.2d 851, 860 (Mo. App. 1993); *Trejo v. Keller Indus., Inc.,* 829 S.W.2d 593, 596 (Mo. App. 1992). Much as in the case of demonstrative evidence, the trial court is clothed with considerable discretion in its admission. *See McElhiney v. Mossman,* 850 S.W.2d 369, 371-72 (Mo. App. 1993). In *Erwin v. State Farm Fire & Casualty Co.,* 618 F.Supp. 1040, 1042 (E.D. Mo. 1985), the Court ruled that an exhibit setting forth the contents of a conversation in which certain phrases were underlined should be excluded. The Court stated that it was "an obvious attempt to highlight those portions of the exhibit." *Id.*

935 S.W.2d 350 at 356. The *Segrist* court went on to approve the exclusion of a summary of medical records where garish colors were used to draw attention to procedures likely to have been painful. *Id.* The exclusion was based on the familiar rule of evidence which permits the discretionary

exclusion of items whose probative value is outweighed by the potential for prejudice. *Id.*

Turning to the matter at hand, we note first that *Segrist* was tried to a jury and that a much greater concern for the possibly prejudicial effect of exhibits necessarily existed. Second, neither Schedule RB-4 to Exhibit 4 nor the lines of prepared testimony objected to by Intercounty are garishly colored; neither are either of them "argumentative." A thorough review of these items shows that there is no practical danger of undue prejudice; therefore, the objection is overruled and the designated testimony is received into the record.

Rehearing and Reconsideration:

On December 4, 2000, Intercounty filed its Application for Rehearing and Motion to Reconsider Order Regarding Motion to Compel and Motion to File Supplemental Rebuttal Testimony. Intercounty's two motions to compel, and its motion for leave to file supplemental rebuttal testimony, were denied by the Commission on December 1. At the hearing, Intercounty tendered the proposed testimony in question, Exhibit 15, as an offer of proof and it was received as such. Because Intercounty's application and motion present nothing new, they will be denied.

Discussion

Pursuant to the Commission's Order Adopting Procedural Schedule and Extending Time for Decision, the parties jointly prepared and filed a list of issues for resolution by the Commission and each party then filed a statement of its position with respect to each issue.

1. 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?

1.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")?

1.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?

1.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?

1.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?

1.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?

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

1.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?

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

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

3. 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?

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

3.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?

3.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?

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

3.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?

3.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?

3.F.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?

3.F.2. If the Commission determines that an item listed in 3.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?

3.F.3. What is 400 percent of Intercounty's gross revenue less gross receipts taxes for the 12-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?

4. Other Costs/Issues Related to Calculating Fair and Reasonable Compensation:

4.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?

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

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

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

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

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered in making this decision Failure to

specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Rolla Municipal Utilities:

RMU provides electrical and water service to some 8,000 residential, commercial and industrial customers. RMU has operated since 1945. RMU's rates are set by the Board of Public Works and not by the citizens of Rolla. The meetings of the Board of Public Works are open to the public and the agenda is published. The agenda provides an opportunity for public comment.

RMU is a component unit of the City of Rolla, a city of the third class. RMU is run by its own board, the Board of Public Works, which is appointed by the Mayor of Rolla, with the advice and consent of the Rolla City Council. Rolla also has a city administrator. Ultimately, RMU and the City of Rolla are one and the same.

RMU purchases the power it distributes, it does not generate it. At the time of hearing, RMU had a full requirements contract with AmerenUE and had had one for about 50 years; however, a new full requirements contract with a new supplier, Missouri Public Energy Pool (MOPEP), took effect on January 1, 2001. MOPEP is a municipal power pool. After January 1, 2001, RMU will still receive its power over AmerenUE's transmission lines. The new power supply agreement would not result in any rate increase for RMU's customers.

In August 2000, the Rolla City Council authorized RMU to acquire 14 trailer-mounted generating units on a ten-year lease-purchase at $802,000 annually. While the record does not disclose the purpose for which RMU acquired these units, it does disclose that they will be

connected in parallel with RMU's existing system and that they will be available to provide power in emergencies.

On September 30, 1999, RMU's retained earnings balance was $17,465,440. On the same date RMU's unrestricted cash and investment balance was $8,362,122 and its liabilities were $1,817,893. RMU's net income for the year ended September 30, 1999, was $1.7 million. RMU's retained earnings have been increasing, year by year. RMU's Operation Expenses for Fiscal Year 1999 were $12,386,326.82; its Operation Income for that fiscal year was $14,001,006.77.

RMU contributes a percentage of its revenues to Rolla in the form of a set quarterly payment. This is a generally accepted practice in Missouri local government. RMU transfers money to the city for administrative costs. The City Council can also request RMU to transfer money to the city in addition to the set quarterly payments. The City government then uses this money as it pleases. In the past, money transferred by RMU to the City has been used to build a new police station, to build a recycling center, and to purchase a building for the location of a factory operated by a private corporation.

Historically, RMU has made expenditures for economic development purposes. The State Auditor has criticized some of RMU's transfers to Rolla. In 1997, the State Auditor criticized RMU for spending $1.3 million over the previous five years on economic development in addition to city administrative costs. However, taking its set quarterly contributions and the special draws together, RMU contributes 5.8 percent of its revenues to Rolla annually.

RMU has had outages in the past. One outage resulted in the cancellation of school in the City of Rolla. That outage, and the single other city-wide outage over the past three years, resulted from failure of

AmerenUE's transmission lines. RMU's outages are often reported in the Rolla newspaper.

RMU has one service center in Rolla. Crews can reach any location in the city from the service center in ten minutes. RMU also has a "state-of-the-art" Supervisory Control and Data Acquisition system for dispatching crews. RMU prioritizes service restoration according to this guideline: (1) remove dangers to the general public, (2) restore emergency service and communications, and (3) restore general service. A citizens' attitude survey conducted by RMU in 1994 showed a 93 percent approval rating. RMU does not have a formal system to accept and act upon written service complaints from customers.

RMU has never given a capital credit or a refund to its customers.

Intercounty Electric Cooperative Association:

Intercounty has provided electric service for 60 years. Intercounty has a total of 28,100 customers in six rural counties. Intercounty operates 5,385 miles of distribution lines over 2,500 square miles. Intercounty's headquarters are at Licking, Missouri. Intercounty is controlled by a board of directors elected by its customers. Intercounty buys power from Associated Electric Cooperative, Inc., of Springfield, via Sho-Me Electric Power Cooperative.

Intercounty has over $73 million of utility plant in service and its annual revenues exceed $27 million. Since 1995, Intercounty has returned $7 million in capital credits to its members. Intercounty has been adding an average of 718 customers annually. Intercounty's customers experience service outages from time-to-time. Given Intercounty's size and the size of the annexed area, the proposed transfer would have little impact on Intercounty.

Intercounty already serves 113 customers within Rolla's city limits as a result of previous annexations. These customers are not located together in one area, but are scattered through the City. This has resulted in duplication of facilities. Associated safety concerns have been mitigated by adherence to the National Electric Safety Code, although at some additional cost.

The Southside Neighbors:

The persons cooperatively litigating herein in opposition to the forced sale proposed by Rolla are all present residents of the annexed area and customers of Intercounty.

The Other Parties:

The Staff of the Commission is represented by the Commission's General Counsel, an employee of the Commission authorized by statute to "represent and appear for the Commission in all actions and proceedings involving this or any other law [involving the Commission.]" Section 386.071, RSMo 2000.[3]

The Public Counsel is appointed by the Director of the Missouri Department of Economic Development and is authorized to "represent and protect the interests of the public in any proceeding before or appeal from the public service commission[.]" Sections 386.700 and 386.710.

The Annexed Area:

The annexation process was lengthy and began in 1994. This is the first annexation by Rolla in 20 years.

Rolla annexed approximately 1,350 acres on the south side of the City, effective June 8, 1998. The annexation election was held on April 8, 1998.

[3] Unless otherwise specified, all statutory references herein are to the Revised Statutes of Missouri (RSMo), revision of 2000.

There are 197 properties in the annexed area, some of which have multiple meters. Only about 25 percent of the annexed area was developed at the time of annexation. Intercounty has 286 customers in the annexed area. This is equivalent to about 40 percent of Intercounty's annual growth.

Intercounty serves the annexed area with four three-phase feeder lines from three Sho-Me Electric substations, with tied together or looped backfeeds. Additionally, single-phase taps extend throughout the area to serve existing Intercounty customers. RMU has calculated the load of the annexed area at 2,500 to 3,500 kW; Intercounty calculated it at 2.5 MW. Intercounty recently rebuilt the north distribution feeder from its South Rolla Substation to 477 MCM to provide for backfeeds, reliability and growth. Intercounty's substations have ample capacity for present needs and for future growth. Intercounty's trunk lines in the annexed area were built in the 1940s. About 99 percent of Intercounty's system consists of overhead construction.

Approximately 80 percent of the existing structures in the annexed area were built before 1976, and 44 percent before 1965. Since the annexation, one new subdivision has been platted in the annexed area and two others are planned.

RMU's existing substations have enough capacity to serve the annexed area.

Rolla's Plan of Intent:

Rolla had to prepare a Plan of Intent (POI) as part of the annexation process. Rolla's POI went through two revisions. The POI represented the official position and actual intentions of the City. At page 9, the second POI, dated November 26, 1996, stated:

> The areas within the proposed annexation that are now receiving electric service from a rural electric

> cooperative 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. 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.

Originally, RMU planned to allow Intercounty to continue to serve its existing customers in the annexed area under a franchise, while RMU would serve new structures. This plan was repeatedly publicized prior to the annexation election. This plan was approved by the circuit court when it certified the annexation election and this plan was relied on by the voters when they approved the annexation.

However, after the election, RMU realized that it lacked authority to impose a franchise tax on a cooperative. During the negotiations, Intercounty declined to make a voluntary contribution in lieu of tax or to provide free energy for street lighting. Rolla then decided to pursue this action.

Rolla sent out survey cards in the annexed area when it determined to seek to extend its services into the annexed area. Approximately a third of the respondents favored receiving electric service from the City. Intercounty also surveyed its customers in the annexed area. Intercounty's poll of 76.5 percent of its members in the annexed area showed that 93.8 percent favored continued service by Intercounty over service by RMU.

Rolla's witness, Watkins, testified that the transaction would not go forward, regardless of the Commission's decision in this case, if the Rolla City Council withheld final approval.

The Negotiations:

The Rolla Board of Public Works approved the beginning of negotiations between RMU and Intercounty in the third week of June, 1998. The City Council approved them on September 8, 1998.

On July 15, 1998, RMU had published the notice required by Section 386.800.3(1) that it intended to extend its system into the annexed area. Prior to this date, the residents of the annexed area did not know that RMU intended to extend its system into the annexed area. Neither had they been informed regarding any proposed payment in lieu of tax by Intercounty to Rolla.

Likewise, RMU provided written notice to Intercounty and to the Commission on July 13, 1998. RMU then obtained the consent of the Rolla City Council and entered into negotiations with Intercounty. The negotiations extended over approximately one year, the statutory period of 180 days having been extended by the Commission on March 3, 1999. The negotiation period expired on September 3, 1999, and Intercounty filed its application with the Commission on October 29, 1999.

What is the Fair and Reasonable Compensation?

RMU contends that $1,285,210.83 is fair and reasonable compensation.

Intercounty, on the other hand, asserts that fair and reasonable compensation amounts to $4,037,604.01.

1. The Reproduction Cost New (RCN):

Intercounty considers the RCN to be $547,131.01. RMU accepts the RCN of $547,131.01. This figure has been corrected to $742,131.01.

Intercounty, however, has revised its RCN figure upwards to $1,046,115.06 as explained by its consultant, Ledbetter. Administrative,

engineering, easement fees, staking, and right-of-way acquisition and clearing costs in the amount of $195,000 should be added to the value of Intercounty's existing facilities, as estimated by Intercounty's witness, Ledbetter. Intercounty also included the value of its office building in the annexed area in the calculation, at $1,000,229.16.

RMU excluded Intercounty's Rolla office building/warehouse from the calculation. Ledbetter valued this building at $1,000,229.16. Intercounty insists that the building remain in its service area so that Intercounty will serve it. RMU is willing to allow Intercounty to continue to serve its office building, even if the Commission finds in favor of RMU. If RMU does not purchase the office building, it need not spend $53,000 to relocate and reintegrate Intercounty's associated communications equipment.

RMU believes it should not have to pay the patronage or capital credits owed by Intercounty to its members in the annexed area, an amount of $402,649.39.

2. Straight Line Depreciation (SLD):

In accounting, assets are depreciated in order to allocate their benefit to the years that actually receive the benefit. Under Generally Accepted Accounting Principles (GAAP), straight line depreciation (SLD) is calculated by dividing the cost of an asset by its estimated useful life.

Intercounty's expert, Ledbetter, multiplied RCN by 71.69 percent to reach a depreciated value of Intercounty's assets. This is the system-wide figure used by Intercounty pursuant to regulations of the United States Rural Utilities Services (RUS). Intercounty depreciates its system over 35 years.

Ledbetter testified that the depreciation method used by RMU misstated the age and condition of Intercounty's facilities.

Intercounty uses a system-wide depreciation rate of 2.8 percent. This is the depreciation rate applicable to Intercounty's assets at issue in this case. However, Intercounty's system-wide depreciation method should not be used in this case. Intercounty's witness, Ledbetter, miscalculated Intercounty's depreciation and did not calculate it as the statute requires or in accordance with GAAP. Ledbetter failed to depreciate each class of asset separately and thereby produced a skewed result. Under GAAP, you cannot determine a depreciation rate by subtracting total accumulated depreciation from total fixed assets, you must use the age of the assets. Ledbetter's result was skewed because population growth is exponential and population growth drives a corresponding growth in utility assets.

Present value can be determined from the estimated replacement cost, the estimated useful life and the age of the assets. To calculate net book value, or present value, accumulated depreciation must be subtracted. Total depreciation can be expressed as a percentage of total investment, as can present value. The average age of an asset can be calculated by dividing total depreciation, as a percentage of total investment, by the annual depreciation percentage.

The statute's requirement of reproduction costs, new, eliminates any need to identify improvements made over time. Reproduction costs, new, could be greater or lesser than market value in any given instance.

Different types of assets have different useful lives, thus, the applicable annual depreciation percentage rate varies from class to class. Intercounty uses an estimated useful life of 35.71 years and an annual rate of 2.8 percent to depreciate their electric distribution facilities.

3. The Age of Intercounty's Facilities:

Intercounty lacks specific age records for much of its distribution system. A review of records shows that Intercounty acquired the easements in the annexed tract between 1938 and 1952. The four main subdivisions in the area were platted from the mid to the late 1950s ('53, '55, '57, '59), another in the 1960s ('63), and two in the 1970s ('73, '74).

RMU estimates that 44 percent of Intercounty's facilities were installed prior to 1965 and were fully depreciated by 2001. RMU assumes that the remaining 26 percent were installed prior to 1976 and have been depreciated for 25 of 36 years, leaving only 11 years of value, or $50,554.90. RMU assumes that any components installed after 1976 are maintenance, not improvements or new facilities. Intercounty, however, presented testimony that over half of the 286 services in the area were constructed, revamped, or had a transformer change since 1980.

Staff calculated the age of Intercounty's facilities based on the median age of the transformers in the annexed area. The median age was 19.74 years as of June 8, 1998.

4. What is RCN less SLN?

RMU calculated RCN less SLD at $66,791.79. Intercounty, in turn, calculated RCN less SLD at $749,959.89. Staff calculated it as $331,955.70.

5. Compensation for Lost Revenues:

RMU calculates 400 percent of 12 months gross revenues, normalized, to be $1,481,853.80. This was calculated from a list of customers and associated revenues over a 14-month period from July 1997 to August 1998 provided to RMU by Intercounty. RMU plotted each customer on a

map and excluded those found to be outside the annexed tract. RMU then deleted the revenue for the two months July 1998 and August 1998, to find the actual revenue realized for the 12 months immediately preceding annexation.

RMU then deleted the CT Farm and Country Store, which burned down after the annexation, and the Charles Moreland property, which has also been demolished since the annexation. Rolla's expert witness, Rodney Bourne, believed that only RMU could lawfully serve new structures erected on these plots, so RMU shouldn't have to provide any compensation to Intercounty with respect to them. RMU considered the removal of these parcels to be "normalization" as called for by the statute. However, the CT Farm and Country Store was being served by Intercounty during the 12 months next preceding the date the negotiations were approved.

Later, RMU adjusted its position and decided that the 12-months base revenue of $370,463.45 should be reduced by 27 percent to reflect discounts and patronage, to $291,703.51. 400 percent of this amount is $1,166,814.04. Discounts and patronage are amounts rebated by Intercounty to its customers, thus reducing gross revenues.

Intercounty calculated 400 percent of normalized revenues to be $1,548,294.96. Discounts and patronage capital were not removed from base revenues in making this calculation.

No normalization was undertaken by RMU in its calculations, other than removal of the CT Farm and Country Store and the Moreland property, because Intercounty indicated that it did not consider the historical revenues to be abnormal. Intercounty normalized the base revenue amount by assuming full occupancy. RMU contended that the revenues should not be adjusted to account for temporary vacancies because such are normal.

Staff started with the annual base revenue figure constructed by Mr. Bourne, then included the CT Farm and Country Store and Moreland

property revenues excluded by Bourne, and did not gross up apartments and the like to 100 percent occupancy as did Ledbetter. Using these assumptions, Staff calculated compensation for lost revenue at $1,534,145.96.

6. Other Matters:

A. Intercounty's Easements:

Intercounty uses blanket easements which permit them to locate their facilities anywhere on a parcel of land. Intercounty's easements sometimes do not include a legal description, some are not notarized, and many others were never recorded. Intercounty was unable to produce easements with respect to part of their system. In other cases, Intercounty placed its facilities outside of the platted easement. RMU may have to resort to condemnation in order to cure the defects in Intercounty's easements. RMU's position is that this creates a potential for future litigation such that $408,892 should be deducted from the compensation paid by RMU to Intercounty.

Staff contends that the easements issue is outside of the Commission's jurisdiction. Intercounty suggests that, in this forced sale situation, RMU must take the easements as it finds them. After all, it need not take them at all.

B. Transfer, Detachment and Reintegration:

RMU determined the reasonable and prudent costs of detachment and reintegration to be $80,000.

Originally, RMU developed a plan to minimize Intercounty's reintegration costs. RMU proposed that Intercounty maintain its 12.47 kV trunk lines that run through the annexed tract and link substations. RMU proposed that it reinstall these lines on higher poles that would permit

RMU to also run lines through this existing corridor. This work would cost approximately $80,000.

RMU later decided against this plan. This was partly because Intercounty's alternative plan better disposed of certain issues and partly because Intercounty refuses to enter into a joint use agreement with RMU. RMU's final position on reintegration is $383,077.50. RMU also suggests that it will simply pay Intercounty's actual reintegration costs, whatever they are, up to a cap.

The transfer would occur in three stages over 24 months. The transfer of service would result in a service outage of one to two hours. RMU's witness, Bourne, accepts the estimate of witness Strickland that transfer of service costs would amount to about $24,000.

C. Joint Use:

RMU and Intercounty have a long history of the joint use of poles. This has been accomplished without any joint use agreement. However, RMU will not engage in any additional, future joint use until Intercounty enters into a joint use agreement with RMU. There is not presently any prospect of a joint use agreement between Intercounty and RMU covering the entire annexed area.

Intercounty's expert, Ledbetter, testified that RMU's original plan, involving joint use of poles carrying trunk lines through the annexed area, was not feasible given economic and safety concerns. Ledbetter estimated $593,120.00 to move and rebuild Intercounty's feeder lines.

D. Stranded Customers:

The proposed transfer would result in two stranded customers, who are located outside of the annexed area but are served by Intercounty facilities within the annexed area. These are the Harley Moore property and the Gary Buenger property. The former has been acquired and will be

removed by the Highway Department as part of a right-of-way improvement project. RMU wants Intercounty to consent to the transfer of the latter to RMU. RMU, in exchange, will pay 400 percent of 12 prior months' compensation to Intercounty in the amount of $5,775.36. This amount is included in the compensation figure proposed by RMU in this proceeding. Otherwise, Intercounty will have to build a new line, 1,470 feet long, to serve this single customer.

Intercounty's plan, to build new trunks around the annexed area, would create additional stranded customers: the Elks Lodge, the Faulkner property and the Elliott property. RMU's final position on reintegration of stranded customers is $58,790.

Intercounty estimated it would cost $146,000.00 to restore service to stranded customers.

E. PCB Contamination:

Because Intercounty will retain liability for any of its facilities that are contaminated with PCBs, Intercounty should be ordered to test all of its facilities in the annexed area so that any contaminated ones can be removed and not transferred.

Any accident with equipment not certified as PCB-free requires a costly clean-up on the assumption of PCB contamination.

The Impact if the Forced Sale is Approved:

Upon being assured that it would retain its existing customers, Intercounty considered the impact of the transaction so slight that it did not bother to participate further in the annexation process.

The expert opinion of Andrew Marmouget is that RMU would not have to raise its rates if the Commission approved the proposed transfer and RMU paid a fair amount for Intercounty's assets.

The financial impact of the proposed acquisition on RMU would be slight. With respect to the annexed area, RMU expects first and second year operation expenses of $282,075.54 and $122,728.16, and first through third year operation revenues of $14,400.00, $241,920.00 and $263,520.00.

Staff's expert witness, James Ketter, testified that the transaction, if approved, would have little effect on either system.

The Impact if the Forced Sale is Not Approved:

Upon being assured that it would retain its existing customers, Intercounty considered the impact of the transaction so slight that it did not bother to participate further in the annexation process.

If the Commission does not order the sale, RMU will build new pole lines and extend its services into the area as development occurs. This is not a problem at all in the undeveloped areas. In the developed areas, where Intercounty already has pole lines in the back yards, RMU will have to build new lines along the street to reach the remaining vacant lots. There are already some areas in Rolla where RMU and Intercounty operate adjacent lines.

RMU will build a distribution system to serve the annexed area regardless of the outcome of this case. This has been understood by RMU ever since the annexation was approved by the voters. RMU always planned to serve any new structures in the annexed area and, consequently, always intended to build the requisite facilities. If the Commission does not approve the transfer, the new facilities built by RMU will be duplicative of Intercounty's existing facilities. Essentially, two distribution systems will exist to serve the same area. RMU is already serving new structures in the annexed area with newly constructed facilities.

Construction of duplicate systems in the annexed area is an aesthetic issue. It can also be a safety issue. However, safety concerns

are minimized because all system construction, both existing and new, is to National Electrical Safety Code clearances. RMU's expert engineer, Rodney Bourne, testified that building to code would minimize any safety issues. It is also an economic issue in that the ratepayers would have to underwrite duplicative systems. Likewise, the duplicate facilities could not be used to their potential.

RMU's general manager, Watkins, was not able to articulate any negative financial impact on RMU or on the City if Intercounty is permitted to continue serving its current customers in the annexed area without payment of any tax or other contribution to Rolla.

The Public Interest:

RMU's rates are lower than Intercounty's by 25 percent. Additionally, RMU does not charge each customer a service fee of $11.50 monthly as Intercounty does.

RMU takes the position that Intercounty cannot lawfully add new customers in the annexed area. Thus, should Intercounty keep its existing customers, RMU will have to build a duplicate system to serve new customers in the area. The existence of Section 386.800 shows that the General Assembly contemplated that municipal utilities would grow with the municipalities they serve.

RMU's general manager, Watkins, agreed that cheapest is not always best, that one has to examine the total package.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Jurisdiction:

Rolla is a Missouri city of the third class which owns and operates RMU as authorized by Chapters 77 and 91, RSMo, as a means of providing electric and water service to its citizens. The Missouri Public Service Commission regulates municipal utilities only with respect to territorial contests with other utilities. Section 91.025.

Intercounty is a rural electric cooperative, authorized by Chapter 394, RSMo, to provide electric service to customers in rural areas of Missouri. The Commission's jurisdiction over rural electric cooperatives is, in general, limited to matters of safety in construction, maintenance and operation. Section 394.160.

The Governing Statute:

The duty of the Commission in a proceeding under Section 386.800 is to issue "an order assigning exclusive service territories within the annexed area" with "a determination of the fair and reasonable compensation amount to be paid to the affected electric supplier under subsection 5 of this section." Section 386.800.6. An exclusive service territory necessarily confers the right to serve both existing and future structures and customers within the defined territory. The Commission must resolve these questions "based on findings of what best serves the public interest," *id.*, and, in doing so, must consider each of 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; and
>
> (2) The fair and reasonable compensation to be paid by the municipally owned electric utility, to the affected electric supplier 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 subsections.

Section 386.800.7.

The Commission "shall hold evidentiary hearings" and the Commission's decision must take the form of a Report and Order. Section 386.800.6. In its decision, the Commission must "assign service territory between affected electric suppliers inside the annexed area" and "determine the amount of compensation," if any, "due any affected electric supplier for the transfer of plant, facilities or associated lost revenues between electric suppliers in the annexed area." *Id.*

The Burden of Proof:

Section 386.800, at subsections 6, 7 and 8, does not expressly impose the burden of proof on either party, that is, upon either the "municipally owned electric utility" or "the affected electric supplier." However, the statute does vest the power to seek resolution by the Commission exclusively in the "municipally owned electric utility": "In the event 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 and a determination of the fair and reasonable compensation amount to be paid to the affected electric supplier under subsection 5 of this section." Section 386.800.6. The statute also includes certain express jurisdictional prerequisites, which presumably only the petitioning municipal

utility has an interest in showing. *See, e.g.,* Section 386.800.6, the application must be filed with the Commission "within sixty days after the expiration of the time specified for negotiations[.]" Therefore, we necessarily must conclude that the municipal utility has the burden of proof in this proceeding.

Is the Forced Sale Sought by Rolla in the Public Interest?

This is the first of the mandatory factors set out in Section 382.800.7 for consideration by the Commission. Rolla, which brought this action in order to force a transfer of Intercounty's customers and facilities in the annexed tract, argues that the transfer is in the public interest for various reasons; Intercounty argues that it is not.

Rolla points to RMU's lower residential rates and to the aesthetic, economic and safety concerns which all militate against duplicate electric distribution facilities. Intercounty, in turn, argues that it is the existing supplier and that most of the affected customers do not want their supplier to be changed. The Commission's Staff, like Rolla, argues that the forced sale sought by Rolla is in the public interest. Staff recites that RMU's facilities are closest to the annexed area, that RMU has the capacity to serve the annexed area with no loss of quality, that RMU's service crews are closer, and that Intercounty would be unable to use its stranded facilities to their full capacity if the sale is not ordered. Staff also refers to the aesthetic, economic and safety concerns raised by Rolla. The Southside Neighbors, residents of the annexed area, oppose the forced sale. They emphasize the fact that, prior to the annexation election, RMU widely publicized its intention to allow Intercounty to continue to serve its existing customers in the annexed area. The Public Counsel did not express an opinion as to whether or not the forced sale would be in the public interest.

Having considered the evidence and the arguments of the parties, the Commission concludes that the transfers and acquisitions proposed by Rolla are not in the public interest.

The record shows that the annexation process took several years. Throughout that interval, until the very end, Rolla planned that Intercounty would continue to serve its existing customers in the annexed area. This intention was formally embodied in Rolla's Plan of Intent, was publicized to the citizenry, and was relied upon by the voters who approved the annexation. Only after the annexation was effective did Rolla change its intention.

The foremost public interest in this matter is to ensure that the residents of the annexed area receive a safe and adequate electric service at a reasonable price. *See, e.g.,* Section 393.130; *and see* ***State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz,*** 596 S.W.2d 466, 468 (Mo. App., E.D. 1980). The record shows that both RMU and Intercounty are capable of providing such service and, although their rates are not identical, they are in each case reasonable. In this regard, then, the public interest does not favor one over the other.

Rolla argues that the public interest favors the expansion of municipal utility services into annexed areas and the minimization of duplicate facilities. But there are other aspects to the public interest. It is in the public interest to permit the existing relationship of Intercounty and its customers to continue undisturbed. Intercounty continues to serve other customers within the city limits of Rolla and there was no evidence presented that that situation is contrary to the public interest, or that it has raised critical aesthetic, economic or safety concerns. The record shows that, at best, only about a third of the respondents welcomed the prospect of service by RMU when a poll of the

residents of the annexed area was taken. The public interest is not served by imposing a change of provider on these unwilling customers where such a change is not necessary.

It is also in the public interest that governmental bodies are seen to keep their promises. Having announced that Intercounty would continue to serve its existing customers, Rolla cannot now take a different position without breaking faith with the voters. RMU seems to be amply supplied with funds and there is no evidence suggesting that the lack of a franchise tax or PILOT, and the necessity of paying for street lighting in the annexed area, will be an insuperable burden. Likewise, the record does not show that the future growth of either Rolla or RMU will be unreasonably impeded if Intercounty keeps its existing customers in the annexed area.

For these reasons, therefore, the Commission determines that the forced sale sought by the City of Rolla is not in the public interest and should be denied.

What is the Fair and Reasonable Compensation to be Paid?

This is the second of the mandatory factors set out in Section 382.800.7 for consideration by the Commission. Because the Commission has determined that the forced sale proposed by Rolla is not in the public interest, it follows that there is no fair and reasonable compensation to be paid.

What is the Effect of the Forced Sale on System Operation?

This is the third of the mandatory factors set out in Section 382.800.7 for consideration by the Commission. The Commission has determined that the forced sale proposed by Rolla is not in the public interest. Thus, there is no transfer or acquisition whose effect must be considered. The effect of denying the forced sale proposed by Rolla is discussed elsewhere in this Report and Order.

It is clear on the record that, were the proposed forced sale ordered, the effect on both systems would be negligible. It is reasonable to infer, therefore, that the effect on both systems of not ordering the proposed forced sale is also negligible.

Other Issues as Agreed by the Parties:

This is the fourth of the mandatory factors set out in Section 382.800.7 for consideration by the Commission. The parties did not agree on any other issues to be determined. The parties litigated various issues relating to "the valuation formulas and factors contained in subsections 4, 5 and 6" of Section 386.800, such as whether Rolla must buy Intercounty's office building in the annexed area; how to calculate depreciation given the general lack of evidence regarding the age of Intercounty's equipment in the annexed area; how to normalize Intercounty's revenues from the annexed area; whether or not to adjust the compensation to reflect the quality of Intercounty's easements in the annexed area; which of the parties should test Intercounty's equipment in the annexed area for contamination by PCBs; and the like. However, none of these points need be decided since the Commission has determined that the proposed forced sale is not in the public interest.

Assignment of Service Areas in the Annexed Area:

The Commission will assign service areas in the annexed area in conformance with the expectations created by Rolla's Plan of Intent and relied upon by the voters in approving the annexation. Intercounty shall retain all of its facilities in the annexed area and shall continue to serve all of the structures in the annexed area which it was serving on June 8, 1998. RMU shall serve any and all structures which first received service after June 8, 1998; that is, "new" structures.

The effect of this decision will be to create duplicate facilities. The record shows that RMU expected to be in this circumstance anyway and planned accordingly, because RMU did not make the decision to attempt to displace Intercounty from the annexed area until after the effective date of the annexation. Therefore, Rolla is getting the benefit of the bargain it originally sought in pursuing the annexation, except that it will not receive any franchise taxes, payments in lieu of taxes, or cost-free services from Intercounty.

The record shows that the solution adopted herein by the Commission raises aesthetic, economic and safety considerations. The safety concerns, to take the most important first, are minimized, and thus resolved, by the adherence of all parties to the National Electrical Safety Code. During the hearing, the Commission was repeatedly assured that all safety concerns were thereby resolved. The economic concern, namely, the inefficient duplication of plant, is largely unavoidable. Nevertheless, Rolla assured the Commission that it had expected and anticipated these costs from the beginning. Finally, the aesthetic concerns are subject to mitigation, through cooperation of RMU and Intercounty. Some facilities can be jointly used, rendering duplication unnecessary. New facilities can be installed underground. In any event, the cooperation of RMU and Intercounty can alleviate the safety, aesthetic and economic concerns. Now that the Commission has made its decision, the parties should cooperate to make the situation work best for all concerned.

IT IS THEREFORE ORDERED:

1. That Late-filed Exhibits 24 and 25 are received and made a part of the record of this matter.

2. That Intercounty Electric Cooperative's objection to lines 22:12 through 26:8 of Exhibit 4, the prepared Surrebuttal Testimony of Rodney Bourne, are overruled and the same are received into the record.

3. That the Application for Rehearing and Motion to Reconsider Order Regarding Motions to Compel and Motion to File Supplemental Rebuttal Testimony, filed on December 4, 2000, is denied.

4. That any pending motions not otherwise disposed of herein are denied.

5. That the forced acquisitions and transfers proposed by the City of Rolla in its application filed on October 29, 1999, are denied because the Commission has determined that they are not in the public interest.

6. That the service areas of Rolla Municipal Utilities and Intercounty Electric Cooperative in the annexed area are assigned as set out in this order, to-wit: Intercounty Electric Cooperative shall continue to serve all structures in the annexed area which it was serving on June 8, 1998; Rolla Municipal Utilities shall serve all other structures in the annexed area, including any new structures built after June 8, 1998.

7. That this Report and Order shall become effective on March 25, 2001.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, Schemenauer, and Simmons, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri, on this 15th day of March, 2001.

ALJ/Sec'y: Thompson, Pope

Date Circulated: 3-13

CASE NO.: EA-2000-308

Lumpe, Chair

Drainer, Vice Chair

Murray, Commissioner

Schemenauer, Commissioner

Simmons, Commissioner

Agenda Date: 3-15

Action taken: 5-0AA

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 15th day of March 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge